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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 11th March, 2025***

+ W.P.(C) 806/2024

BIKASH KUMAR JAIN

.....Petitioner

Through: Mr. N.K. Singh, Advocate.

versus

SECURITIES AND EXCHANGE BOARD OF INDIA & ANR.

.....Respondents

Through: Mr. Sai Deepak, Sr. Advocate with
Ms. Ekta Choudhary, Mr. Anand
Krishna and Mr. R. Abhishek,
Advocates for respondent No.1.

Mr. Vinay Yadav with Mr. Ansh
Kalra, Ms. Kamna Behrani,
Ms. Divyanshu Sinha, Advocates for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The present petition has been preferred by petitioner invoking Article 226 and 227 of the Constitution of India.
2. The grievance raised in the present petition is with respect to order dated 17.10.2023, passed by *Securities Appellate Tribunal* whereby the appeal filed by the petitioner herein has been dismissed on the point of limitation. Along with the aforesaid appeal, the appellant had filed an application under Section 5 of Limitation Act, 1963 as there was a delay of 188 days in filing such appeal and the learned Tribunal, after considering the entire matter, held that such application lacked merit, and consequently, while rejecting the application, the appeal was also dismissed.



3. Such order dated 17.10.2023 is under challenge.
4. Admittedly, as per Section 15Z of *Securities and Exchange Board of India Act, 1992* (SEBI Act), any person aggrieved by any such decision of the Appellate Tribunal can file an appeal to the Hon'ble Supreme Court. The abovesaid provision reads as under:-

“15Z. Appeal to Supreme Court.

Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order :

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.”

5. Learned counsel for petitioner, however, submits that since there is no *question of law* involved in the present matter, he is precluded from availing such statutory appeal. He, while referring to Section 104 CPC and Order XLIII Rule 1 CPC, contends that there is no provision of filing any appeal.
6. Learned Senior Counsel for respondent/SEBI challenges the very maintainability of the present writ petition.
7. It is submitted that learned Tribunal had refused to condone the delay of 188 days in filing the appeal for the reason that the impugned order i.e. the order passed by the learned Adjudicating Authority had been duly served upon the appellant through his counsel, on his email. Details of such e-mail were provided by the appellant himself before the Adjudicating Authority and, therefore, service upon the counsel was taken as “*due service*” upon the appellant. It is contended that if petitioner is of the view that such service is



not valid service or sufficient service in the eyes of law, it itself becomes a *question of law* and, therefore, in terms of Section 15Z of SEBI Act, 1992, an appeal can lie before the Hon'ble Supreme Court, provided it is filed within the time stipulated therein. He also supplements that in such a situation recourse to Article 226 and 227 of Constitution of India is not permissible.

8. Admittedly, the sole question raised in the present petition, *inter alia*, revolves around the fact that whether the service upon the counsel can be said to be a valid service in the eyes of law or not?

9. Assuming for a moment that the present writ is maintainable, this Court is fully cognizant of the limited scope of appreciation in a writ of present nature. While entertaining any such writ, this Court cannot sit as an 'Appellate Court' and can evaluate the correctness of the abovesaid order.

10. The scope of appreciation under Article 227 is very limited and duty of any Supervisory Court is to interdict only if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be made to *Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283*.

11. The aspect related to condonation of delay has direct correlation with existence of sufficiency of cause. The Tribunal has refused to condone the delay and exercise of such discretionary power does not indicate any illegality or perversity either. Supervisory court, in such a situation, need not interfere where there is mere exercise of discretionary power, without there being any perversity.



12. In context of Article 226, reference be made to *M/s Radha Krishan Industries Vs. State of HP & Ors.: (2021) 6 SCC 771* wherein it has been held by Hon'ble Apex Court that when alternate remedy exists in law, then High Court will not entertain petition under Article 226 except in exceptional situations. It is argued that when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy. The relevant portion of the said judgment reads as under: -

“27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.”

13. Here, no such exceptional situation exists.

14. There is also nothing to indicate or suggest violation of principles of natural justice or non-compliance of statutory requirements in any manner.

15. The reliance upon statutory provisions of CPC, in the present context, seems completely misplaced.

16. Learned Senior Counsel for respondent/SEBI also relies upon *Assistant Commissioner (CT) LTU, Kakinada and Ors. vs. Glaxo Smith Kline Consumer Health Care Limited: (2020) 19 SCC 681* and argues that High Court ought not entertain a challenge under Article 226 when the aggrieved person can avail an effective alternate remedy in the manner prescribed by law.

17. Undeniably, remedy of appeal is creature of statute.



18. In view of the above, ideally, the petitioner should have filed an appeal under Section 15Z of SEBI Act, 1992, particularly, when even as per him, a question of law is, evidently, involved.

19. This Court has already noted above the limited scope of appreciation it possesses, while considering any such petition filed under Article 226 and Article 227 of the Constitution of India and, therefore, the irresistible conclusion is that the present petition lacks any substance or merit.

20. The same is, accordingly, dismissed.

(MANOJ JAIN)
JUDGE

MARCH 11, 2025 *st/kt*