

(2020) 10 SEBI CK 0098

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No.329 Of 2020, Appeal No. 321 Of 2020

Avijit Saha And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 09-10-2020

Acts Referred:

Citation : (2020) 10 SEBI CK 0098

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Dr. C. K. G. Nair, Member; M. T. Joshi, J

Bench : Full Bench

Advocate : Vikas Bengani, Abhiraj Arora

Judgement

Tarun Agarwala, Presiding Officer

1. The present Appeal has been filed against an order dated 30.11.2018 passed by the Adjudicating Officer imposing a penalty. There is a delay of

617 days in filing the present appeal and, accordingly, the appellant has filed an application seeking condonation of delay.

2. We have heard Mr. Vikas Bengani, learned counsel for the appellant and Mr. Abhiraj Arora, learned counsel for the respondent through video conference.

3. The ground urged is, that the applicant is a very poor person and is the sole bread earner being 28 years of age and working in a private limited

company. It was contended that he had no knowledge of the securities market and only came to know when he received the show cause notice and,

thereafter, from the impugned order by the Adjudicating Officer in which he found that his signatures were misused / forged by one Devesh

Upadhyay who was playing the securities market under his name.

4. It was urged that recently the statement of Mr. Upadhyay was recorded by the Income Tax Authorities in which he had admitted that he was using the name of the appellant.
5. On this basis, the appellant prayed that the delay may be condoned and the matter may be remanded so that the authority may consider the statement of Mr. Upadhyay made before the income tax authorities.
6. Having heard the learned counsel for the appellant, we find that the appellant had participated in the adjudicating proceedings and was duly served with the impugned order. No steps were taken by the appellant to file the appeal within the statutory period nor any plausible explanation has been given as to why he could not file the appeal earlier.
7. Merely because he has received some statement of Mr. Upadhaya does not entitle the appellant for condonation of the inordinate delay. No valid or bona fide explanation has been given by the appellant for condoning the inordinate delay.
8. In *Basawaraj and Anr. vs. Special Land Acquisition Officer*, (2013) 14 SCC 81 the Supreme Court held that the discretion to condone the delay has to be exercised judicially based on facts and circumstances of each case and that sufficient cause cannot be given a liberal interpretation if lack of bonafide is attributed to a party. The Supreme Court further held that delay cannot be condoned on equitable ground beyond the limits permitted expressly by statute.
9. The Supreme Court in *Ram Nath Sao and Ors.* (supra) held that the expression "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to a party. The same view was reiterated by the Supreme Court in *Madanlal vs. Shyamlal*, (2002) 1 SCC 535.
10. In *Balwant Singh (Dead) vs Jagdish Singh & Ors*, (2010) 8 SCC 68 5Supreme Court held that the expression "sufficient cause" means the presence of legal and adequate reasons. The decisions cited by the learned counsel for the appellant are of no avail and, in any case, not applicable in the present circumstance of the case.
11. This Tribunal is possessed with the exercise of judicial discretion in condoning the delay if sufficient or adequate reason is given. It is also a settled

proposition of law that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so

prescribes. The court has no power to extend the period of limitation on equitable grounds as held by the Supreme Court in *Basawaraj and Anr.*

(*supra*). In the instant case we do find any legal or adequate reasons to condone the delay.

12. Thus for the reasons stated aforesaid, we do not find any reason to condone the inordinate delay in filing the appeal. The Misc. Application for

condoning the delay is rejected on the ground of laches as a result of which the Appeal is also dismissed with no order as to costs.

13. During the course of the hearing the learned counsel for the appellant pointed out that Mr. Devesh Upadhyaya had made a statement before the

Income Tax Authority that he was using the name of the appellant. This statement has been annexed to the memorandum of appeal. We find that this

statement was not placed before the Adjudicating Officer (â??AOâ? for convenience) of the Securities and Exchange Board of India (â??SEBIâ?

for convenience). Without going into the veracity of the document we leave it open to the appellant to move an appropriate application before the AO

of SEBI.

14. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor

a certified copy of this order could be issued by the Registry. In these circumstances, this order will be digitally signed by the Presiding Officer on

behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally

signed copy sent by fax and/or email.