(2013) 04 P&H CK 0146

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15987 of 2012

Balbir Singh APPELLANT

Vs

State Bank of Patiala and Others RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 17

Citation : (2013) 171 PLR 97

Hon'ble Judges : Ritu Bahri, J;Hemant Gupta, J

Bench : Division Bench

Advocate : Diwan Singh, for the Appellant; C.B. Goel and Mr. Nitin Jain for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to an order passed by the Debt Recovery Appellate Tribunal on 27.6,2012 (Annexure P-32), whereby an application filed by the petitioner for condonation of delay of 11 days in filing the application in terms of Section 17 of the Securitization and Reconstruction of Financial Assets and Information Security Interest Act, 2002 (for short the ''Act'') was dismissed in appeal. Earlier the petitioner filed a writ petition challenging the proceedings initiated by State Bank of Patiala (Bank) u/s 13 of the Act. The said writ petition was disposed of on 15.12.2005 (Annexure P-7) with liberty to the petitioner to avail the statutory remedy with further order that the period of limitation shall commence from that day. The certified copy of the order was received by the petitioner on 16.1.2006 and the application in terms of Section 17 of the Act was filed on 10.2.2006. As per the petitioner if the limitation for filing an application u/s 17 of the Act is counted from the date of receipt of certified copy of the order, then the application submitted by the petitioner is within the period of limitation. Since the order of this Court contemplated that the limitation shall commence from the date of the order, petitioner filed an application for condonation of delay. It is the said application which was allowed by the Debt Recovery Tribunal-I, Chandigarh on 1.2.2012 but the said order was set aside by the Debt Recovery Appellate Tribunal, Delhi primarily on the ground that the remedy was required to be availed by the petitioner within 45 days from the date of the order whereas the petitioner has availed the remedy after the expiry of 45 days from the said order.

2. We have heard learned counsel for the parties and find that the order passed by the Debt Recovery Appellate Tribunal suffers from patent illegality. Though, the order of this court contemplated that the limitation of filing an application shall commence from the date of the order but the exact language of the order could be known to the petitioner only when certified copy of the order was delivered to him. Petitioner availed such remedy within 45 days though by that time, it was barred by limitation by 11 days from the date of the order. The learned Debt Recovery Tribunal rightly condoned the delay of 11 days but the learned Debt Recovery Appellate Tribunal has allowed the appeal by examining the letter of the order and not the spirit thereof. For delay of 11 days, the parties are in Court for the last more than 7 years. The ends of justice would meet if the application filed by the petitioner is heard on merits rather than non-suiting petitioner on the ground that the petitioner has not filed an application u/s 17 of the Act within 45 days of the orders of this Court.

3. Consequently, the order passed by the Debt Recovery Appellate Tribunal is set aside and the matter is remitted to the Debt Recovery Tribunal-I, Chandigarh to decide the application filed by the Petitioner u/s 17 of the Act on merits. Parties are directed to appear before the Debt Recovery Tribunal-I, Chandigarh on 6.5.2013.

Disposed of.

