(2011) 05 GUJ CK 0063

In the Gujarat High Court

Case No : Special Civil Application No. 5811 of 2011

Bhagvanbhai Malabhai Parmar APPELLANT

Vs

Kodinar Taluka Co-operative Banking Union Ltd. RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 05 GUJ CK 0063

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Amit N. Chaudhary, for the Appellant; Sandip M. Patel, for Respondent 1, for the Respondent

Judgement

S.R. Brahmbhatt, J.—The Petitioner has approached this Court under Articles 226 and 227 of the Constitution of India, challenging the orders passed by the Gujarat State Cooperative Tribunal dated 17.02.2011 passed in Review Application No. 1/2011, where under the Petitioner has sought review of the order dated 29.12.2010 passed by the Tribunal in Civil Misc. Application No. 274/2010, seeking condonation of delay in bringing appeal against the order of Board of Nominees'' dated 23.01.2002 in Lavad Suit No. 178/1999, on the ground that the orders impugned are required to be quashed and set aside, as the Petitioner''s ground for seeking condonation have not been dealt with appropriately.

2. Learned advocate for the Petitioner as well as learned advocate for the Respondent Bank on caveat have requested that the Court may dispose of this petition finally. Hence, Rule. Learned advocate Shri Sandip Patel on caveat waives service of notice of Rule.

3. The Petitioner had applied for the Term Loan of Rs. 2,75,000/- from the Respondent Bank, as he had purchased a tractor bearing No. GJ11B 9620 and a trailer bearing No. GJ11u 6556 SIK 011/95. As per the hypothecation agreement between the Petitioner and the Respondent Bank, the said advance was made on

06.02.1995 and the repayment was to be paid on or before 28.02.2004. The Petitioner could not repay the said loan, as the amount of interest was disputed. The Bank, therefore, filed Lavad Suit No. 178/1999 against the Petitioner and the guarantors namely Keshubhai Nodhanbhai Parmar and Jahagirmiya Rajanali Nakvi for recovering total amount of Rs. 4,81,481/-. The said Lavad Suit was filed in the Board of Registrar Nominees'', Rajkot. Vide Exhibit 37, the evidence of Officer of Bank were taken. The advocate for the Petitioner could not remain present and the evidence stage of Petitioner was closed on 18.01.2002. Thereafter, ultimately on 23.01.2002 the Board of Nominees'', Rajkot passed ex-parte order decreeing the suit in favour of the Bank. Thus, as per the decree, the decreetal amount of Rs. 4,81,481/- was to be recovered and 20% interest was directed to be paid from 01.04.1999 and Petitioner was also directed to pay Rs. 4,850/- towards cost. The Petitioner''s tractor and trailer, in pursuance of decree passed by the Board of Nominees'', Rajkot, came to be attached and auctioned by the Bank for realizing the decreetal amount. The said incident of attachment and auctioning happened in the year 2003 and out of the sale price of Rs. 1,53,500/-, Rs. 2519/- deducted towards administrative expenses and remaining amount was credited against the outstanding to be recovered from the Petitioner. Thereafter, Petitioner in the year 2010, to be precise on 03.12.2010, chose to prefer appeal with delay condonation application and pleaded that on account of various adverse circumstances the delay occurred in bringing appeal against the impugned order of Board of Nominees'' dated 23.01.2002. The said application came to be dismissed by the Tribunal vide its order dated 29.12.2010 on the ground that the Petitioner could not explain delay at least from 2003, when his tractor and trailer came to be attached and sold till the date he filed the petition. The delay was inordinately gross and therefore, the Tribunal did not exercise its discretion in favour of the Petitioner. The Petitioner thereafter chose to file Review Application being Review Application No. 1/2011, requesting the Tribunal to review its own order dated 29.12.2010. The Tribunal rejected the same on the ground that the order sought to be reviewed was just and proper and need not call for any interference, hence the present petition is filed.

4. Learned advocate appearing for the Petitioner has placed on record in a tabular form, the amount outstanding claimed by the Bank from the Petitioner, which is shown to be Rs. 14,38,763/- and submitted that the Tribunal ought to have appreciated the fact that the Petitioner was being agriculturist, did not have enough wherewithal, knowledge or understanding of the legal proceeding and therefore, the delay occurred ought to have been viewed in its proper perspective especially when the decreetal amount was only Rs. 4,81,481/-, which has now been accumulated to Rs. 14,38,763/- and odd that too after the tractor and trailer being sold and the sale price being appropriated against the outstanding amount. The Bank is under obligation to explain the inaction on their part in not taking action and permitting the interest amount to mount like this. The delay, therefore, is required to be condoned as condonation of delay would not in any manner jeopardize the interest of Bank and the Bank will otherwise

escape its liability to explain the galloping amount of interest as it is evident from the statement placed on record.

5. Learned advocate for the Bank appearing on caveat submitted that the statement placed on record was not forming part of the delay condonation application and therefore, it would not be open for the learned advocate for the Petitioner to rely upon them, however, he could not dispute that this amount is not as on date claimed by the Bank from the Petitioner. Learned advocate for the Respondent submitted that the Bank has followed the applicable rules and regulations for calculating the interest and only on ground of accrual of interest over the years, the delay could not be condoned. The reasoning indicated by the Tribunal for not condoning the delay being just and proper, the Court may not interfere with the same. The Petitioner has failed in explaining the delay at least after the year 2003, when the tractor and trailer came to be attached and auctioned by the Bank thus the Petitioner''s initial say with regard to ignorance of the judgment would be of no avail to the Petitioner and therefore, the petition may not be entertained and be rejected.

6. Respondent''s advocate in alternative without prejudice to the aforesaid submission, submitted that in case, if the Court is inclined to accept this petition, then in that case the Court may direct the Tribunal to decide the appeal within reasonable period.

7. This Court has heard learned advocate for the parties and perused the orders impugned. The few glaring aspects which would require consideration are unfortunately not noticed by the Tribunal while considering the delay condonation application. The original order sought to be challenged by way of appeal, was the order dated 23.01.2002 and in the order itself 20% interest is accepted without there being any discretion about the applicable banking regulations warranting levying of such interest upon the loan or advance for agricultural equipment or agricultureal purpose. The merits of the matter are not to be brushed aside only on account of delay as the merits are also to be considered while considering the delay condonation application. In the instant case, unfortunately the Tribunal has not referred to the merits of the matter in any manner in the judgment impugned in the appeal. The Respondent Bank''s inaction for all these years and allowing the interest to mount so as to reach the figure of Rs. 14 lacs and odd for the remaining outstanding amount of Rs. 2,50000/- in 2003 itself, is required to be considered which would cast obligation upon the Bank to explain its inaction which could be only by way of filing appropriate reply in the proceeding of appeal. Therefore, the merits of the matter do require some consideration and in my view those consideration are such as to out weigh the delay pleaded by the Bank, in case, if the delay is condoned. The condonation of delay would at the best result into Bank''s liability to explain the calculation of interest and its justification but that in itself should not be held against the Petitioner who happen to be an agriculturist operating in the remote area and is not claimed to be an educated person aware about his rights and liabilities. This factor is all the

more required to be considered as the original hypothecation goods namely tractor and trailer were attached in auction by the Bank, thereafter the plausibility cannot be ruled out that agriculturist may not have any knowledge or even anticipation that thereafter Bank would still claim more outstanding. Had the Bank been acting promptly in chasing its outstanding in time, the same would have resulted into the agriculturist Petitioner, filing appropriate proceeding immediately. All these aspects, in my view have not been considered by the Tribunal and, therefore, I am of the view that the delay occurred, is required to be condoned. Hence, the delay is condoned. The order impugned is quashed and set aside. The Tribunal is directed to register the appeal and the same shall be decided on merits, preferably within a period of six months from the date of receipt of the writ or from the date of receipt of certified copy of this order, whichever is earlier. Rule made absolute. No order as to costs.