

(1998) 05 DEL CK 0011
In the Delhi High Court
Case No : Civil Writ Petition No. 1399/98

Girdhar Lal M. Pittie

APPELLANT

Vs

Appellate Authority for Industrial and Financial
Reconstruction

RESPONDENT

Date of Decision : 22-05-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 114

Citation : (1998) 4 AD 668 : AIR 1998 Delhi 400 : (1998) 94 CompCas 225 :
(1998) 75 DLT 132 : (1999) 48 DRJ 280

Hon'ble Judges : Y.K. Sabharwal, J;C.K. Mahajan, J

Bench : Division Bench

Advocate : Mr. Alok Dhir and Ms. Manisha Dhir, for the Appellant; Mr. Kapil Sibal
Mr. Amitabh L. Das, Mr. Atul Y.Chitale, Mr. S.Ganesh, Mr. Vibhu Bakhru and
Mr.Vivek Sibal, for the Respondent

Judgement

Y.K. Sabharwal, J.—The challenge in this petition is to the order dated 23rd December, 1997 passed by the Appellate authority for Industrial & Financial Reconstruction (AIFR). By the impugned order, the Appeal of the petitioner against the order dated 18th March, 1997, passed by Board for Industrial & Financial Reconstruction (BIFR) was dismissed on the ground that the appeal was time-barred. The period for limitation for preferring appeal is 45 days from the date on which a copy of the order sought to be impugned is issued.

The conclusions reached by AIFR may be re-produced as under:-

"14. Counsel for the Respondent No.2 and 12 relied on M/s. S.R.F. Ltd. Vs. M/s. Garware Plastics and Polyesters Ltd. AIR 1995 SC 22 and contended that the proceedings before the Board have to be expeditiously disposed of and it cannot be allowed to be used as dilatory tactics for a potential sick company. The counsel submitted that it is a case where scheme has been sanctioned and thereafter much progress has occurred and large expenditure has been incurred

by the new promoter and entertainment of the belated appeal would lead to drastic consequences.

15. Section 114 of the Evidence Act provides that the court may presume that existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (e) states that judicial and official facts have been regularly performed. Unless anything contrary to what has been stated in Registrar's letter is established, it cannot be merely discarded on the bald submissions of an interested party. Appellant could not offer any Explanation as to why the certified copy was not received on 21.4.1997.

16. As the appeal is filed beyond the period of limitation, it is dismissed."

2. After about three months of the passing of the aforesaid order by AIFR, the present petition was filed.

3. The scheme was sanctioned by BIFR in terms of its order dated 18th March, 1997. The representatives of the petitioners were present when the order dated 18th March, 1997 was made. It is not in dispute and is even otherwise evident that the contents of the scheme were known to the petitioners. Respondent no.12 M/s. Sai Construction (P) Ltd., were the co promoters under the scheme. The sanctioned scheme inter alias required the co promoter to bring over Rs. 33 crores. From the reply filed by the co-promoter before AIFR, it appears that by December, the co-promoter had already put in Rs. 17 crores towards the implementation of the sanctioned scheme. Further, the claim of the co-promoter is that 50% of one time settlement amount payable to the bank and financial institutions under the scheme had also been paid and the balance 50% was to be paid as per the stipulation of the sanctioned scheme. It is also claimed that the workers have been paid over Rs. 7 crores as per the agreed Voluntary Retirement scheme and the strength of the work force had been reduced to the level provided for by scheme.

4. The Appeal against the order of BIFR dated 18th March, 1997 was filed by the petitioner on 25th July, 1997. According to the petitioners, the certified copy of the BIFR order dated 18th March, 1997 was made available to them on 23rd June, 1997 and thus the Appeal was filed within limitation.

5. It is not in dispute that the representatives of the petitioners were present when order was passed by BIFR on 18th March, 1997. It is also not in dispute that after the order dated 18th March, 1997, an application was filed on 26th March, 1997 by the petitioners for obtaining copy of the order of the BIFR. The order of AIFR shows that the petitioners did not offer any Explanation why the certified copy of the order of 18th March, 1997 was not received by the petitioners on 21st April, 1997. It was con-tended before us that no such copy was supplied to the petitioners on that date. In this connection, we may note the order made by the AIFR on 1st September, 1997. The said order shows that a

contention was raised by the respondents before the AIFR that the appeal was barred by limitation and in reply the representation made by counsel for the petitioners before AIFR was that the appeal was not time/barred because the request for certified copy had been rejected by the Registrar of BIFR. Counsel for the petitioners under took before AIFR to file copy of rejection order passed by the Registrar. Admitted copy of no such order was filed. It is not in dispute that such an order does not exist on record of BIFR. On a subsequent application filed by the petitioners on 5th May, 1997, a copy of order was supplied on 26th June, 1997. This copy was filed with appeal before AIFR. The reference to the rejection by the Registrar to supply copy of the order of BIFR is pursuant to the application of petitioners dated 26th March, 1997 for supply of copy of the said order. The letter of the Registrar dated 5th September, 1997 placed on record Along with the reply of the respondents before us shows that the petitioners were allowed to obtain copy of the order of BIFR on 21st April, 1997. This fact is disputed by the petitioners. However, it is neither expedient nor is it a fit case in which these disputed questions deserve to be gone into in the exercise of writ jurisdiction. On the facts and circumstances of the case, we find it difficult to accept the contention that the entire staff of the BIFR was mixed up with the opposite party in not supplying the certified copy of the order of BIFR. If that was so, the petitioners could take up the matter with the higher authorities, particularly when they knew that large sums of money would be invested by the co-promoter pursuant to the scheme sanctioned by the BIFR on 18th March, 1997.

6. The petitioner knew the implication of not challenging the order dated 18th March, 1997 before the AIFR with expedition. We may also note that a copy of the reply wherein the averments regarding the co-promoter having put in Rs. 17 crores and having taken other steps had not been filed along with the petition. This documents has been filed before us by the respondents. In a matter of this nature, we expect the petitioners to place before this Court all relevant material and documents which were before AIFR or BIFR. Counsel for the respondent No.12 contended that as of now, the entire amount under the scheme has been put in. All these facts have been noticed to highlight the desirability and requirement of challenging the orders with expedition.

7. In cases of this nature, unlike cases under general law, when liberal approach is adopted while considering prayer for condensation of delay, a serious view of the time spent or delay in preferring the Appeal has to be taken. That is the approach which has also been adopted by the AIFR. The reason is obvious. It is prejudice to opposite party and difficulties in setting back the clock. In the present case, the prejudice to the respondents is evident for the facts noticed above. Thus, the AIFR had rightly dismissed the appeal as time barred.

8. It is in the aforesaid circumstances we have also to weigh what we have noticed earlier that this petition was filed about three months after the order was passed by the AIFR.

We find no infirmity in the order of the AIFR.

The Writ petition is accordingly dismissed. Parties are, however, left to bear their own costs.