
(2021) 04 SEBI CK 0042

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No.324 Of 2020, Appeal No.316 Of 2020

Ipsita Das Giri

APPELLANT

Vs

Recovery Officer And Others

RESPONDENT

Date of Decision : 19-04-2021

Acts Referred:

Citation : (2021) 04 SEBI CK 0042

Hon'ble Judges : Tarun Agarwala, Presiding Officer; M. T. Joshi, J

Bench : Division Bench

Advocate : Sheshashayee N. S, Sunil Vyas, Siddhi Vora, Kumar Desai, Abhiraj Arora, Karthik Narayan, Rashi Dalmia

Final Decision : Allowed/Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated December 18, 2017 passed by the Whole Time Member ("WTM" for convenience) of the Securities and Exchange Board of India directing the appellant and other entities to refund the money collected illegally in violation of the Companies Act, 1956. The appellant has also challenged the recovery certificate and the attachment order dated 19.11.2019 and 20.11.2019 by which the appellant's bank account and demat account have been attached.

2. There is a delay of 1004 days in the filing of the appeal and accordingly an application for condonation of delay has been filed.

3. The ground urged is, that the appellant is undergoing mental agony and is suffering from health issues including depression for a long time since 2013. Further, the appellant and her son is receiving life threats from alleged investors. On account of the health issues and anxiety level she could not comprehend the impact on the notices and the orders issued by the WTM. Further, the appellant submitted that she had no knowledge of the transactions being done as the same was being carried out by her husband and this is one of the reasons why she was

unaware of the proceedings.

4. It was also contended that the appellant is having matrimonial issues with her husband and in this regard a suit has been filed which is pending before the appropriate forum. On these facts a prayer was made to condone the delay.

5. Having heard the learned counsel for the parties at some length, we find that there is an inordinate delay in the filing of the appeal. The grounds urged are neither bonafide nor are legal which would condone the delay. In our opinion, the ground urged is an afterthought and no sufficient cause has been shown.

6. With regard to the allegation that she is suffering from mental illness, we find that no proof has been filed along with the application for condonation of delay. The appellant has however filed a separate list of documents which is not supported by an affidavit. This list of documents includes the doctors prescription for the period 10.02.2017 to 20.03.2020.

A perusal of the prescription given by the doctor indicates anxiety, sadness, lack of sleep and loss of appetite for which adequate medicines had been prescribed. These prescription nowhere indicate any mental illness by which the power of comprehending or leading a normal day to day life is affected. Thus the contention that the appellant had a mental illness problem and could not comprehend the impact of the impugned orders cannot be believed. The reliance on the decision of the Karnataka High Court in the matter of Chandrakanth & Ors. Vs. Ramesh and Ors. MANU/KA/1476/2018 is totally distinguishable and is not applicable in the instant case.

7. Even otherwise the allegation relating to matrimonial dispute is clearly an afterthought and in any case there is nothing to indicate any matrimonial dispute which was existing at the time when the show cause notice was issued and the proceedings were under consideration.

8. A feeble attempt was made by the learned counsel that the applicant was never served with the show cause notice or with the impugned orders. This fact cannot be believed as it is contradictory to the earlier stand made by the appellant, namely, that on account of mental illness the appellant could not comprehend the impact of the notices and the orders issued by the authorities. In any case, we find from a perusal of the ex-parte interim order as well as from the impugned orders that notices were duly delivered and served upon the appellant. Further, publications were made in the newspapers directing the appellant to appear before the authority on a particular date. There is no denial of these facts in the application of the appellant with regard to the condonation of delay. Consequently, the contention that the appellant was never served cannot be believed.

9. 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.

10. 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.

11. In *Balwant Singh (Dead) vs Jagdish Singh & Ors*, (2010) 8 SCC 685 Supreme 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.

12. 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.

13. For the reasons stated aforesaid, the application for condonation of delay cannot be allowed and is rejected, as a result of which the appeal is also dismissed. with no order as to costs.

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 Private Secretary 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.