(2007) 11 AHC CK 0107

In the Allahabad High Court

Case No : S.R. No. 19 of 2006

Misuki Exports Pvt.Ltd. APPELLANT

Vs

State Bank of India and another RESPONDENT

Date of Decision : 21-11-2007

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 17, 18

Citation : (2007) 11 AHC CK 0107

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

Final Decision : Dismissed

Judgement

R.S. Tripathi, J.—This is an application moved under section 5 of the Limitation Act, 1963 for condonation of delay in filing the present appeal.

The present appeal has been preferred against an order dated 11th November, 2005 passed by the D.R.T., Lucknow in Appeal No. 4/05 upholding the order dated 6th May, 2005 passed by the Assistant Registrar, D.R.T., Allahabad, who held that the appeal moved under section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (briefly stated as S.R.F.A.E.S.I. Act in this order) in the light of objections raised by office was liable to be rejected. The present applicants had preferred an appeal under section 17 of the S.R.F.A.E.S.I. Act, 2002 and the office of the D.R.T., Lucknow found the defects in the above appeal. The present applicants contested with regard to the defects in the above appeal. The present applicants contested with regard to the defects raised by the office and consequently the Assistant Registrar, D.R.T., Lucknow passed an order dated 6th May, 2005 holding that the appeal moved under section 17 was also barred by limitation. Against this order of the Assistant Registrar, the present applicants preferred Appeal No. 4/2005 before the D.R.T. Lucknow and the D.R.T. upheld the order of the Assistant Registrar and feeling aggrieved with this order of D.R.T., Lucknow, the present appeal has been preferred along with an application moved under section 5 of the Limitation Act.

2. The applicants have pleaded in their present application under section 5 of the Limitation Act that the present appeal has been preferred under section 20 of the R.D.D.B.F.I. Act, 1993 read with section 18 of the S.R.F.A.E.S.I. Act, 2002 against the order dated 11th November, 2005 passed by the D.R.T., Lucknow. According to the applicants, the first certified copy of the impugned order was received by the Counsel of the applicants at Lucknow on 16th November, 2005 and he sent that copy to the office of applicant company at New Delhi by courier on 18th November, 2005 and it was received there on 21st November, 2005. After the receipt of the said copy of impugned order, it was sent to the office of the Director of the applicantcompany on 22nd November, 2005 for further action and on consultation with the Board of Directors of the company on 30th November, 2005 the Counsel for the applicants at new Delhi was consulted for further legal course of action. On 10th December, 2005 the Counsel at New Delhi advised that against the impugned order, appeal under section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act i.e. S.R.F.A.E.S.I. Act, 2002 would lie at Appellate Tribunal, Allahabad, accordingly a draft of the appeal under section 18 of the S.R.F.A.E.S.I. Act was prepared on 15th December, 2005 and the same was sent to the Counsel at Lucknow for his perusal and advice. On 18th December, 2005 the Counsel at Lucknow after going through that draft gave an opinion that the appeal under section 20 of the R.E.D.B.F.I. Act, 1993 Act would lie to the Appellate Tribunal and not an appeal under section 18 of the S.R.F.A.E.S.I. Act. According to the applicantcompany thereafter Counsel for the applicants at New Delhi was not available due to winter vacation and he was available, he could be consulted only on 28th December, 2005 and thereafter it was found that certified copy of the impugned order dated 11th November, 2005, which was sent to the Counsel for the legal advice, was misplaced somewhere and could not be traced out in the office of the Counsel. Then on 29th December, 2005 Counsel at Lucknow was instructed to obtain another certified copy of the impugned order to send the same immediately to Delhi. Counsel at Lucknow on 30th December, 2005 moved an application for another certified copy and it was prepared on 2nd January, 2006 and was received by the Counsel at Lucknow on 4th January, 2006. Thereafter it was sent to New Delhi, where it was received on 6th January, 2006. In the meantime, Counsel for the applicants at Lucknow and Delhi after having telephonic conferencing on 4th January, 2006 concluded that against the impugned order dated 11th November, 2005, appeal under section 20 of the R.D.D.B.F.I. Act, 1993 Act read with section 18 of the S.R.F.A.E.S.I. Act should be prepared and filed. On the basis of above conclusion, a new draft of appeal was drafted and prepared by the Counsel at New Delhi and was sent to his counterpart at Lucknow for further action. According to the applicants, thereafter Counsel at Lucknow remained busy hi connection with the preparations of marriage of his brother and only on 21st January, 2006 after incorporating certain modifications in the draft he sent back the same to Delhi on 22nd

January, 2006 and after receiving the same, the Counsel for applicants at Delhi returned it for filing to his counterpart at Lucknow, who received the same on 30th January, 2006 and thereafter it was filed. The contention from the side of the applicants is that in view of above facts and circumstances, there was no delay in filing the appeal due to any carelessness or fault on part of the applicants, therefore, in the light of above explanations, the delay should be condoned. The appeal has been filed on 20th February, 2006 with an application for condonation of delay, which is supported with an affidavit of Shyam Sunder Verma, Director of the applicantcompany.

3. The above application for condonation of delay is opposed from the side of the respondent bank by filing objection against this application. The bank has mentioned in its objection that the period of limitation provided for filing the appeal had already expired and applicant has failed to furnish arty satisfactory explanation for the delay. According to the bank, even the names of the Counsels, who were being consulted at Lucknow and Delhi, have not been given by the applicant for the reasons best known to the applicantcompany. According to the case of the bank, the total delay in filing the appeal is more than of fiftyfive days, which remains unexplained. The bank has also pleaded that the property, which has been contested by the applicant, has already been sold and auctioned under the provisions of the S.R.F.A.E.S.4. Act, 2002 and the purchaser has already been handed over the possession, therefore, the present application/ appeal is devoid of any force.

4. Having heard the Counsel for both the parties at length, this Tribunal has gone through the material available on the record. Learned Counsel for the appellant reiterating the ground for delay as contained in the application for condonation of delay due to the various circumstances including the loss of first certified copy as well as after obtaining second copy as per telephonic consultations between two Counsel one at Delhi and other at Lucknow this appeal has been filed. It has also been argued before this Tribunal that the period for which the appeal could not be filed stands properly explained, therefore, the delay should be condoned for the purpose of further proceedings of the appeal. Against this submission from the side of the opposite party bank is that the entire story set up by the applicant company is concocted and incorrect and in absence of any satisfactory explanation of delay, the delay in filing the appeal cannot be condoned. Counsel for the bank has argued that the names of Advocates, numbers of the courier receipts and names of courier company have not at all been given to justify the condonation of delay, what to say of filing such receipts. His argument is that who was responsible for the loss of first copy, his name has not been disclosed. He also argued that the knowledge of the impugned order dated 11th November, 2005 was on the same date, therefore, the period of limitation cannot be calculated from any other date than 11th November, 2005. His contention is that application under section 17 of the S.R.F.A.E.S.I. Act, 2002 can be filed only within the period of thirty days from the date of copy received, but since this has not been done, the delay cannot be condoned in the instant case. His argument

is that the filing of the appeal under section 20 of the R.D.D.B.F.I. Act, 1993 read with section 18 of the S.R.F.A.E.S.I. Act, 2002 is misconceived, as the provisions of S.R.F.A.E.S.I. Act are independent and provisions for filing an appeal under section 18 before the Appellate Tribunal are specifically given with no concession. Counsel for the bank has also argued that the Assistant Registrar after considering the objections raised by the office and reply thereof filed on behalf of the applicant has committed no error in passing the impugned order particularly when the Hon''ble High Court and the Hon''ble Apex Court both refused to grant any relief to the applicant in connection with these dues. In this connection, attention of this Tribunal has been drawn towards the copies of the orders of the Hon''ble High Court and the Hon''ble Apex Court available on the file of memo of appeal. Counsel for the bank has cited P.K. Ramchandran v. State of Kerala, AIR 1998 SC 2276 to argue that in absence of any satisfactory explanation for delay, the condonation of delay cannot be considered.

5. Having considered all above arguments, this Tribunal is of the opinion that first the appeal against an order under section 17 of the S.R.F.A.E.S.I. Act, 2002 lies only under section 18 of the S.R.F.A.E.S.I. Act, 2002 and there is no doubt about it that the provisions of S.R.F.A.E.S.I. Act, 2002 are separate and independent to that of the provisions of R.D.D.B.F.I. Act, 1993, therefore, the argument from the side of the appellant and drafting of the present appeal for filing under section 20 of the R.D.D.B.F.I. Act, 1993 read with section 18 of the S.R.F.A.E.S.I. Act, 2002 is totally misconceived and in the opinion of this Tribunal this has been done with a view to take the benefit of proviso added to section 20 of the Act of 1993 and the provisions of Limitation Act to argue before this Appellate Tribunal to condone the delay in case any satisfactory explanation is given for condonation of delay. For filing the appeal under the provisions of section 18 of the S.R.F.A.E.S.I. Act, the provision is as under:

"18. Appeal to Appellate Tribunal. (1) Any person aggrieved, by any order made by the D.R.T. under section 17, may prefer an appeal to an Appellate Tribunal within thirty days form the date of receipt of the order of D.R.T.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose off the appeal in accordance with the provisions of the R.D.D.B.F.I. Act, 1993."

The above provisions of section 18 of S.R.F.A.E.S.I. Act, 2002 provide for filing of the appeal under the S.R.F.A.E.S.I. Act within thirty days without any mention of any relaxation in the period of filing of the appeal within thirty days as provided in that section. The provision of section 18 (2) at the most under the S.R.F.A.E.S.I. Act lays down about the procedure to dispose off the appeal filed under section 18 of the S.R.F.A.E.S.I. Act. Learned Counsel for the applicant in support of his argument has submitted written submission to press for applying section 29 (2) of the Limitation Act, 1963. As held by the Hon''ble Apex Court in case as Hukumdev Narain Yadav v. Lalit Narain Mishra, AIR 1947 SC 480 wherein while dealing with the provisions of section 29 (2) and section 5 of the Limitation

Act has concluded that the provisions of Limitation Act cannot come to the rescue of a person filing an appeal under any special law in case such special law is silent about the relaxation for condonation of delay. In the above ruling, what has been observed is that

"Even in a case where the special law does not exclude the provisions of sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of the provision of the special law or the nature of the subjectmatter and scheme of the special law exclude their operation. What the Court has to see is whether the scheme of the special law and the nature of the remedy provided therein are such that the legislature intended it to be a complete code. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the special Act".

Apart form above, in the above ruling, Hon''ble Apex Court has considered the scope of section 29 (2) also declining toe consider such matters under section 29 of Limitation Act.

6. In the light of above observations of Hon''ble Apex Court, aims and objects of a special law is also required to be kept in mind. The provisions of S.R.F.A.E.S.I. Act, 2002 have been enacted with a view to expedite the recovery of dues of the banks in a speedy manner in the interest of society at large. The Hon''ble Apex Court in another case as Fairgrowth Investments Ltd. v. Custodian, (2004) 11 SCC 472 while analyzing the provisions of section 4 (2) of the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 where the provision of filing an application under section 4 (2) are almost similar to that of S.R.F.A.E.S.I. Act, 2002, has been taken the view that if the Act itself is silent for any relaxation in period of filing the application within thirty days, the Court can not interpret such provisions to relax the period of filing the application applying the provisions of C.P.C. or provision of Limitation Act, 1963 to defeat the aims and objects of such special law. The following observations of the Apex Court in the aforesaid ruling are worth noting:

"10. Section 4 (2) of the Act plainly read simply requires a person objecting to a notification issued under subsection (2) of section 3 to file a petition raising such objections within 30 days of the issuance of such notification. The words are unequivocal and unqualified and there is no scope for reading in a power of Court to dispense with the time limit on the basis of any principle of interpretation of statutory provisions.

11. The mere fact that the Special Court may have been imbued with the same status of a High Court would not alter the situation. We are of the view that it was not necessary for section 4 (2) of the Act to use additional peremptory language such as "but not thereafter" or "shall" to mandate that an objection had to be made within 30 days. The mere use of word "may" in section 4 (2) of the

Act does not indicate that the period prescribed under the section is merely directory.

13. It is not for the Courts to determine whether the period of 30 days is too short to take into account the various misfortunes that may be faced by notified persons who wish to file objections under section 4 (2) of the Act nor can be election be held to be directory because of such alleged inadequacy of time. As was held by the Privy Council in Nagendra Nath Dey v. Suresh Chandra Dey, AIR P. 176 :

"The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is, their lordships think, the only safe guide." In the light of above discussions, this Tribunal is of the opinion that the question of granting any concession for applying the provisions of Limitation Act under section 18 of the S.R.F.A.E.S.I. Act for filing appeal in above circumstances does not arise.

7. Now on factual aspect of this case, it is interesting to note that in the present appeal the application for condonation of delay filed by the applicant is supported with an affidavit of Shyam Sunder Verma, Director of the applicantcompany. On the factual aspect, there is no detailed explanation as to when the copy was found missing and under whose custody the certified copy was, when it was said to be missing was at the time of its alleged loss. The names of two Counsel, the delay in sending the copy, delay in getting the opinions of two Counsel, the period for which the Counsel at Lucknow remained busy in connection with the marriage of his brother or after the preparation of the draft applicants'' Counsel at Lucknow remained preoccupied for not filing the appeal at earliest are not properly explained to consider the matter for condonation of delay if any as prayed by the applicant. The appeal was filed only on 20th February, 2006. The affidavit of Shyam Sunder Verma on its verification part states as under :

"Verified at Allahabad on this 20th February, 2006 that the contents of the affidavit are true and correct to my knowledge, no part of it is false and no material information has been concealed there from" and in para No. 2 of the affidavit of Shri Shyam Sunder Verma, the following averment has been made :

"2. That the facts stated in the accompanying application are true and correct to the best of my knowledge, whilst the legal submissions made therein are true on information received and believed to be correct".

8. From above verification, it cannot be said that Shri Shyam Sunder Verma has nay personal knowledge of the facts narrated or averred in the application for condonation of delay.

9. The above materials leave no doubt to believe that the affidavit filed on behalf of the applicant is of no help to accept the contention of the applicant for the facts narrated in the application.

10. The result of above discussions is that firstly the application for condonation of delay is liable to be rejected as the period of delay has not been satisfactorily explained. Secondly in the opinion of this Tribunal, the provisions of Limitation Act do not come to the rescue of the applicant for filing the present appeal under section 18 of the S.R.F.A.E.S.I. Act. Therefore, this appeal has to be dismissed.

ORDER

Appeal is hereby dismissed with no order as to costs. Copy of this order be sent to the D.R.T., for further proceedings at the earliest.