
(2023) 07 SEBI CK 0050

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 541, 542, 543 Of 2023, Appeal No. 612 Of 2023

Mohammad Rashid

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 17-07-2023

Acts Referred:

Citation : (2023) 07 SEBI CK 0050

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Meera Swarup, Technical Member

Bench : Division Bench

Advocate : Pawan Kumar Bahal, J P Pathak, Shailendra Verma, Ravishekhar Pandey, Shefali Shankar, Rasika Ghate, Amarpal Singh Dua

Final Decision : Dismissed/ Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated February 15, 2022 passed by the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) imposing a penalty.
2. An urgency application has been filed. Since the appeal has been taken up for admission, the urgency application is disposed off. The exemption application is also allowed.
3. There is a delay in the filing of the appeal. According to the appellant, there is only a delay of 63 days in the filing of the appeal. It is contended that the appellant came to know of the impugned order only when the attachment of the bank account was made known to the appellant on December 24, 2022. Prior to that the appellant was not aware of the passing of the impugned order.
4. On the other hand, the Registry has placed a note contending that there is a delay of 376 days in the filing of the appeal. The appeal was presented through

email on April 12, 2023 and the physical copy was submitted on June 21, 2023 and the Court fee was filed on July 05, 2023.

5. The learned counsel for the respondent contended that he has received instructions to state that the impugned order was duly delivered at the residence of the appellant as shown in the memorandum of appeal. On the same address the recovery certificate and notice of demand dated July 08, 2022 was also served as well as the attachment of the bank accounts served on December 22, 2022. It was urged, that the appellant has stated false facts to the effect that they have not received the copy of the impugned order. It was urged, that the copy of the impugned order, the notice of demand and the attachment order was all sent at the same address which is depicted in the memorandum of appeal.

6. The learned counsel for the appellant conceded that the impugned order may have been received by some person in the family but contended that the appellant was unaware of the nuances of law as he was a driver and only consulted his advocate when his bank account was ceased.

7. Having heard the learned counsel for the parties, we are of the opinion that the impugned order was duly served at the address which is given in the memorandum of appeal. The fact that the appellant came to know of the impugned order only when the bank accounts was attached is incorrect as the appellant had due knowledge when the impugned order was delivered at the address of the appellant and further when the notice of demand dated July 08, 2022 was duly served.

8. Since no plausible explanation has been given, we are of the opinion that there is an inordinate delay in the filing of the appeal.

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 not find any legal or adequate reasons to condone the delay.

13. In view of the aforesaid, we do not find any merit in the application for condonation of delay. The application is rejected on the ground of undue delay, as a result of which the appeal fails and is dismissed with no order as to costs. The misc. application for stay is disposed off accordingly.

14. 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. Certified copy of this order is also available from the Registry on payment of usual charges.