

(2005) 05 GAU CK 0018
In the Gauhati High Court
Case No : Writ Petition (C) No. 4885 of 2003

Neermali Das and Another	Vs	APPELLANT
State Bank of India and Others		RESPONDENT

Date of Decision : 05-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 2, 5
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20, 20(3)

Citation : (2006) GLT 787 Supp

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : C.K. Sarma Baruah, S. Medhi and Sheeladitya, for the Appellant; B. Kalita and D. Barman, for the Respondent

Final Decision : Allowed

Judgement

Amitava Roy, J.—The Petitioner has sought to invoke the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India to quash the order dated 29.04.03, passed by the Debts Recovery Appellate Tribunal, Kolkata (hereafter referred to as Appellate Tribunal), in Misc. Case No. DRAT/CAL/20/ 2002/385, condoning the delay in preferring the appeal u/s 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereafter referred to as a Act) against the judgment and order dated 14.06.02 passed by the Debts Recovery Tribunal, Guwahati (hereinafter referred to as the Tribunal) in Original Application No. 70 of 1998. By the impugned order, the Appellate Tribunal also admitted the appeal and stayed the operation of the judgment and order appealed against.

2. I have heard Mr. CK Sarma Baruah, senior Advocate for the Petitioners and Mr. B. Kalita, Advocate for the Respondent No. 1, State Bank of India (hereinafter referred to as the Bank).

3. The facts in brief, leading to the filing of the instant petition deserve to be noted at the outset. The Respondent No. 1, filed Title Suit No. 144 of 1986 (later T.S. No. 74 of 1991), in the Court of A.D.J. No. 1, Guwahati, against the Petitioners claiming inter alia a decree for releasing an amount of Rs. 14,61,218.44. After the passing of the Act, the said suit stood transferred to the Tribunal, whereafter it was registered as O.A. No. 70 of 1998. The learned Tribunal on a consideration of the pleadings of the parties and the other materials on record, vide judgment and order dated 14.06.2002 dismissed the application holding that the applicant Bank had failed to establish its claim. A belated appeal was filed on 10.10.2002, by the Bank, before the Appellate Tribunal with an application for, condonation of delay as envisaged u/s 20(3) of the Act, 1993. On receipt of the notice of the application, the Petitioners filed their written objection and eventually by the impugned order dated 29.04.03, the learned Appellate Tribunal condoned the delay and admitted the appeal as aforesaid. On the aspect of delay and the explanation offered, the learned Appellate Tribunal observed thus:

I have perused the petition, the affidavit-in-opposition, and I have heard the advocates for the parties. The grounds set out in the petition for condonation of delay are less than convincing. However in the interest of justice, I am of the view that the appeal should be heard.

4. The learned senior counsel for the Petitioners has strenuously urged that as on the face of the records no sufficient cause as envisaged u/s 20(3) of the Act, explaining the delay was furnished, the learned Appellate Tribunal committed an error of jurisdiction in condoning the delay on the reported ground of interest of justice. According to him, the learned Appellate Tribunal having clearly recorded that the grounds set forth in the condonation application were less than convincing, the appeal ought to have been dismissed. The Appellate Tribunal being satisfied that the cause shown explaining the delay was not sufficient, it had no inherent jurisdiction to condone it, he urged. The impugned order having been passed in contravention of the settled principles bearing on condonation of delay, the same is manifestly illegal warranting interference of this Court, in exercise of its powers u/s 226, Constitution of India. In support of his contentions, Mr. Sarma Baruah placed reliance on the following decisions :

P.K. Ramachandran Vs. State of Kerala and Another,

Union of India and Others Vs. Wood Crafts Products Ltd. and Another,

State of Assam and Others Vs. Muss. Mariam Nessa and Another,

Tulshi Nandi Vs. Noor Sahida Begum,

(2000) 2 GLT 575 (Premananda v. Basanta Kr. Ghosh)

5. Mr. Kalita has contended that the learned Appellate Tribunal having condoned the delay on a consideration of all relevant facts and in the interest of justice in the exercise of its judicial discretion, this Court in exercise of its power of judicial

review would not lightly interfere therewith. This Court under Article 226 of the Constitution of India being not a Court of appeal, the impugned order condoning the delay by way of an equitable relief ought not be interfered with. According to him it being no longer *res integra* that the expression "sufficient cause" should be extended a liberal interpretation to advance the cause of justice, this Court in the facts and circumstances of the case, having regard to the fact that the Respondent Bank, is a public authority and custodian of public money would not adopt too technical an approach in the matter. The learned Counsel sought to support his submissions citing the decisions of the Apex Court in *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, *G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore*, and *M.K. Prasad Vs. P. Arumogam*,

6. I have lent my anxious consideration to the rival contentions of the parties. It is more than apparent from the impugned order that the learned Appellate Tribunal was not satisfied with the grounds offered by the Respondent Bank, explaining the delay in filing the appeal. The delay was however, condoned in the interest of justice. There is however, no dilation on this aspect by the learned Appellate Tribunal. In other words, it is not clear from the said order, as to what considerations had weighed with it in condoning the delay, though it was otherwise satisfied that the grounds for explaining the delay were not at all convincing.

7. u/s 20 of the Act, an appeal lies to the Appellate Tribunal from an order passed by a Tribunal and the period specified therefore is 45 days from the date on which the copy of the impugned order is made or deemed to have been made by the Tribunal is received by the Appellant. Power is vested in the Appellate Tribunal to entertain the appeal after the expiry of the prescribed period if it is satisfied that there was sufficient cause for the delay in not filing it within that period. Existence of sufficient cause, therefore is an essential and indispensable pre condition for the Appellate Tribunal to exercise its discretion to entertain a time barred appeal. It is a trite law that the appeal provided under the Act, is a creature of the statute and therefore, the process of filing the same would be mandatorily guided by the related provisions incorporated therein. As a corollary, the Appellate Tribunal, in the exercise of its discretion, will be essentially guided by the parameters prescribed by the statute for preferring such appeal. In my view, no equitable consideration can replace such a statutory requirement.

8. Whether in the attending facts, the grounds furnished in the application for condonation of delay constituted a sufficient cause?

9. A reading of the application, reveals broadly two grounds explaining the delay. Firstly, the alleged indifference and inaction of the conducting counsel and secondly, bereavement of Mr. Soumitra Shankar Das, an officer of the Respondent Bank. According to the Respondent No. 1-Bank, the certified copy of the judgment and order of the learned Tribunal was obtained on 24.06.02 and in terms of the period prescribed for the appeal, the same ought to have been filed

on 08.08.02. Its contention is that from 20.06.02 to 03.10.02, it unsuccessfully pleaded with its conducting counsel to retrieve the records from him. In the mean time, the brother of its officer Mr. Sourmitra Shankar Das expired on 17.08.02, for which he had to rush to New Delhi. The appeal was eventually filed on 10.10.02.

The application does not disclose as to when and how the records of the proceedings said to be lying with the conducting counsel of the Respondent Bank were received from him and further, if Mr. Soumitra Shankar Das was the only competent officer to take necessary steps in preferring the appeal before the learned appellate Tribunal. Nothing is forthcoming as to when was the said officer relieved of this personal preoccupations to attend his official duties. It is apparent from the application that on the date of the passing of the impugned judgment and order, the Respondent Bank was aware that the last date of filing of the appeal was 08.08.02. The application is silent as to what steps, the Respondent Bank took in the face of the alleged conduct of its conducting counsel in releasing the records of the case. In my view, therefore, the observation of the learned Appellate Tribunal that the grounds narrated in the application for condonation of delay are less than convincing is clearly borne out by the records.

10. I have carefully perused the judgment and order passed by the learned Tribunal, dismissing the original application. It transpires therefrom that after the suit was transferred to the learned Tribunal for fresh adjudication, no legally admissible evidence was adduced on behalf of the Respondent Bank, in support of its claim. Though the impugned judgment and order records that some statements of the above named officer were filed those were not supported by any affidavit. According to the discussion entered in the impugned judgment and order, in spite of repeated opportunities neither any affidavit evidence was filed on behalf of the Respondent Bank, nor any attempt was made to prove the documents in support of his claim. The learned Tribunal, therefore, in absence of any evidence to substantiate the claim, dismissed the same holding that the Respondent Bank, had failed to prove its case.

11. In the memorandum of appeal filed before the Appellate Tribunal, though it was urged on behalf of the Respondent Bank that all original documents in support of the claim had been filed before the learned Tribunal, it has been conceded that the accompanying affidavit was not affirmed by its officer Shri Soumitra Shankar Das. Here again the Respondent Bank, found it convenient to shift the blame on its counsel for such lapse and/ or omission. Further the memorandum of appeal discloses an admission on the part of the Respondent Bank, that an amount of Rs. 13,92,384.38/- had been shown to be recorded in Petitioner's credit in the relevant statement on accounts which of course was sought to be explained as an inadvertent clerical error. This entry in the banks statement, however, accorded with the stand of the Petitioners in the proceeding before the learned Tribunal that the above amount was paid by way of liquidation

of their dues. The position that prima facie emerges from the above, is that admittedly, the Respondent Bank, had failed to adduce any legally admissible evidence in support of its claim against the Petitioners in the original proceedings. On the other hand, its official records prima facie indicated liquidation of the dues of the Petitioners. In the above state of materials on record, it is not possible to hold either that the Respondent Bank, in the appeal before the learned Appellate Tribunal had a good case on merits so much so, that refusal to condone the delay would result in a meritorious matter being thrown out at the threshold to the prejudice of the cause of substantial justice. In that view of the matter, the observation of the learned Appellate Tribunal that the delay was condonable in the interest of justice not being borne out by the recorded factual datas cannot be sustained being illogical and perverse. 12. The law with regard to condonation of delay is by now well settled. The Apex Court in Collector Land Acquisition, Anantnag v. Katiji (supra) while dilating on the expression "sufficient cause" held that the same is adequately elastic to enable the Courts to apply the law in a meaningful manner, so as to serve the ends of justice. It held inter alia that if substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred.

13. The decision of the Apex Court in G. Ramegoda (supra) while indicating the approach to be adopted in such matters when the delay is on behalf of the Govt., reiterated the same view. In M. K. Prasad (supra) the Apex Court ruled that the expression "sufficient cause", appearing in Section 5 of the Limitation Act 1963 has to be provided a liberal construction so as to advance substantial justice and generally the delay ought to be condoned in the interest of justice, where gross negligence or deliberate inaction or lack of bona fide is not attributable to the party seeking condonation of delay. It recalled its observations in N. Balakrishnan Vs. M. Krishnamurthy, to the effect that once a Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such a finding much less in revisional jurisdiction unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse.

14. There cannot be two opinions with regard to the judicially enounced principles adumbrated hereinabove. It is only the applicability thereof that may yield different consequences contingent on the contextual facts.

15. A distinctly discordant note was struck by the Apex Court in P.K. Ramachandran (supra), where it was emphatically expressed 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 and the Courts have no power to extend the period of limitation on equitable grounds. This dictum understandably is in accord with the maxim *Equitas sequitur legem* (Equity follows law). A Division Bench of this Court, while dealing with the same issue in Union of India v. Wood Crafts Products Ltd. voiced itself in the following terms:

The term "sufficient cause" is not defined u/s 2 of the Limitation Act, but by the same, it means and so far has been construed as beyond control of the party seeking indulgence for extension of the period of limitation. But from a bare perusal of Section 5 of the Limitation Act and its preamble, it manifests that Limitation Act is an exhaustive Code governing the law of limitation in respect of matters specially deal with by it. This is why the law of Limitation is a panacea to prevent disturbance of deprivation of what may have been acquired in equity of justice or what may have been lost by the parties or inaction/negligence of laches. The courts are not permitted to travel beyond the provisions of the Act or to supplement them.

16. The views expressed in *Premananda Nama (supra)*, *State of Assam v. Mariam Nessa*, in (*supra*) and *Tulshi Nandi (supra)* being in the same lines, I do not wish to burden this judgment by referring to the facts thereof.

17. The essence of the judicial pronouncements as noticed hereinabove, is that though normally a liberal approach has to be adopted in the matter of condonation of delay, so as to advance the cause of justice and avoid a just cause being defeated on technical considerations, the prescription of sufficient cause clearly indicates that the party in default is obligatorily required to put forward an adequate and acceptable explanation, reasonably justifying the delay. Any plea however frivolous and casual would not satisfy the requirement. As condonation of delay is by way of discretionary relief, the ground or cause shown must generate the necessary satisfaction of the Court so as to judicially conclude that the party in default was prevented by unavoidable and compelling circumstances to act in time. Condonation of delay in other words cannot be granted as a matter of course. This is more so as in view of the delay in pursuing the remedy prescribed by law a right in law vests in the other party which ought not be lightly dislodged. If the grounds furnished are deficient and do not conform to the requirements of sufficient cause, the equitable relief of condonation cannot ensure to the benefit of the defaulting party.

18. The attending facts and circumstances noticed hereinabove at all stages of proceedings, in my view exhibit a callous attitude of the Respondent Bank, in pursuing its claim against the Petitioners. After the judgment, it allowed the time to drift away allegedly the conducting counsel to retrieve the records said to be with him. The materials on record do not demonstrate that Mr. Soumitra Shankar Das was the only competent and authorized officer of the Bank to take steps for preferring the appeal.

19. In the above view of the matter, I am of considered opinion that applying the legally settled principles qua condonation of delay to the facts of the instant case, the learned Tribunal was manifestly wrong in passing the impugned order on the purported consideration of "interest of justice" though otherwise satisfied that the grounds furnished by the Respondent Bank, for explaining the delay were wholly unconvincing. The learned Appellate Tribunal in my view in condoning the delay in the above circumstances acted against the letter and spirit of

Section 20(3) of the Act, and the impugned order thus is not only manifestly illegal but also suffers from an error of jurisdiction.

20. I therefore, find sufficient merit in the petition, which is accordingly allowed. The impugned order dated 29.04.03 is set aside. There will be no order as to costs.