

(2008) 01 MAD CK 0009

In the Madras High Court

Case No : Writ Petition No. 21097 of 2007

Ravi Enterprises and Others

APPELLANT

Vs

Indian Bank and Others

RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Limitation Act, 1963 — Section 5

Citation : (2008) 3 BC 67

Hon'ble Judges : S.J. Mukhopadhyaya, J;M. Venugopal, J

Bench : Division Bench

Advocate : Ar. L. Sundaresan for K.N. Nataras, for the Appellant; Rita Chandrasekaran, for Aiyar and Dolia for Respondent No. 1 and K. Doraisamy for C.K.M. Appaji, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioners have filed the present Writ Petition praying for an issuance of a writ of certiorarified mandamus calling for the records of the

second respondent viz., the Chairperson, Debts Recovery Appellate Tribunal, Chennai in regard to the order dated 10.5.2007 passed in M.A.

No. 205 of 2006 and M.A. No. 206 of 2006 and quash the same and, consequently, not to confirm the auction held on 11.10.2006 in DRT No.

103 of 1999 on the file of Debts Recovery Tribunal-I in respect of the schedule mentioned property.

2. The writ petitioners are the defendants in O.A. No. 1774 of 1998 before the Debts Recovery Tribunal, Chennai. The first respondent-Bank has

filed O.A. No. 1774 of 1998 against the writ petitioners/defendants for recovering a sum of Rs. 20,71,776/- with interest at 19.89% per annum

with quarterly rests from the date of application till the date of realisation with

costs and for sale of the plaint schedule property. The writ petitioners/defendants 1 to 4 were set ex parte and an order was passed on 8.4.1999 by the Debts Recovery Tribunal, Chennai declaring that the first respondent-Bank is entitled to the Recovery Certificate against the writ petitioners/defendants 1 to 4 for a sum of Rs. 20,71,776/- till date of application and with 12% simple interest from the date of application till the date of realisation with costs which includes the Advocate fees and a Recovery Certificate was ordered to be issued thereto, with a direction to communicate the copy of the order to all the parties.

3. In M.A. Nos. 205 and 206 of 2006 filed by the writ petitioners/appellants, a common order was passed on 10.5.2007 by the second respondent viz., the Chairperson, Debts Recovery Appellate Tribunal dismissing both the appeals. As a matter of fact, M.A. Nos. 205 and 206 of 2006 arise out of the common orders passed by the Debts Recovery Tribunal-I, Chennai on 11.10.2006 in M.A.S.R. Nos. 1274 and 1277 of 2006 to condone the delay of 1006 days in filing these applications to restore M.A. Nos. 338 and 339 of 2002. The Debts Recovery Tribunal-I, Chennai has dismissed M.A.S.R. Nos. 1274 and 1277 of 2006 on 11.10.2006 without costs finding that the writ petitioners/petitioner defendants have not properly explained the delay of 1006 days.

4. The learned Counsel for the writ petitioners/appellants/defendants urges that the common order of the second respondent viz., Debts Recovery Appellate Tribunal dated 10.5.2007 passed in M.A. Nos. 205 and 206 of 2006 in dismissing the appeals is against the well established principles of natural justice and that the second respondent viz. Debts Recovery Appellate Tribunal has not taken into consideration of the fact that the property belongs to a senior lady citizen, one of the guarantors and who is ready and willing to settle the matter and that a sum of Rs. 10,00,000/- deposited with the first respondent Bank by the writ petitioners/defendants does not find a place in the order passed by the second respondent/DRAT on 10.5.2007 and that the facts and circumstances leading to the passing of the ex parte decree on 8.4.1999 in O.A. No. 1774 of 1998 have not been taken into consideration by the second respondent/DRAT and therefore pray for setting aside the common order passed in M.A. Nos. 205 and 206 of 2006 dated 10.5.2007 and to allow the Writ

Petition.

5. The case of the writ petitioners/appellants/defendants is that they filed LA. No. 949 of 1999 to set aside the ex parte order passed against

defendants 1 and 2 and further that LA. Nos. 1063 and 1064 of 1999 were filed to set aside the ex parte decree and that the ex parte decree was

passed on 8.4.1999 in O.A. No. 1774 of 1998 and that when the certificate of recovering Officer, Debts Recovery Tribunal-I, dated 14.01.2001

was served on the second petitioner to the effect that the property would be brought to public auction on 26th December, 2001 at 3.00 p.m. M.A.

Nos. 338 and 339 of 2002 were filed to condone the delay in filing the petition and to stay the operation, but the said M.A. Nos. 338 and 339 of

2002 were dismissed for non-prosecution and only on 9.9.2006 the dismissal of M.A. Nos. and 339 of 2002 came to the knowledge and that the

petitioners are ready to settle the matter and that they should be given an opportunity and in the interest of justice the delay of 1006 days in filing

the application to restore M.A. Nos. 338 and of 2002 are to be allowed.

6. It is a specific case of the writ petitioners/appellants/petitioners/defendants that the Debts Recovery Tribunal-I, Chennai and the Debts Recovery

Appellate Tribunal, Chennai in their orders in M.A.S.R. Nos. 1274 and 1277 of 2006 dated 11.10.2006 and M.A. Nos. 205 and 206 of 2006

dated 10.5.2007 have not applied the principles of natural justice in proper perspective and they ought to have condoned the delay of 1006 days

in filing the application M.A.S.R. Nos. 1274 and 1277 of 2006 to restore M.A. Nos. 338 and 339 of 2002 and allowed the Appeals and since

they have not taken a liberal view in the matter, this has resulted in miscarriage of justice.

7. The learned Counsel for the writ petitioners relied on the Hon"ble Supreme Court decision reported in Ram Nath Sao @ Ram Nath Sahu and

Ors. v. Gobardhan Sao and Ors. 2002 (1) CTC 769, where under it is observed as follows:

Limitation Act, 1963, Section 5--Condonation of delay--Sufficient cause--Meaning of--Approach of Courts while considering petition to condone

delay--Expression "sufficient cause" in connection with delay in filing application to set aside abatement or other similar provision should receive

liberal construction so as to advance justice when no negligence, inaction or want

of bona fide is imputable to party--Whether explanation for delay would constitute sufficient cause will depend upon facts of each case--Courts should not proceed with tendency of finding fault with "cause" shown and reject petition in over jubilation of disposal drive--Acceptance of explanation furnished should be rule and refusal exception more so when no negligence, inaction or want of bona fide can be imputed to defaulting party--However Courts should not lose sight of fact that by not taking steps within prescribed time valuable right as accrued to other party which should not be lightly defeated by condoning delay in a routine manner--

Explanation for delay should not rejected taking pedantic and hyper technical view or when stakes are high or where arguable points of facts and law are involved--Courts have to strike balance between the effect of order on parties to lis.

Words and Phrases--"Sufficient Cause"--Meaning of--Expression ""sufficient cause"" in connection with delay in filing application to set aside

abatement or other similar provision should receive liberal construction so as to advance justice when no negligence, inaction or want of bona fide

is imputable to party--Whether explanation for delay would constitute sufficient cause will depend upon facts of each case--Courts should not

proceed with tendency of finding fault with cause shown and reject petition in over-jubilation of disposal drive--Acceptance of explanation

furnished should be rule and refusal exception more so when no negligence, inaction or want of bona fide can be imputed to defaulting party.

8. He also relied on N. Balakrishnan Vs. M. Krishnamurthy, , wherein it is observed as follows:

Limitation Act, 1963, Section 5--Condonation of delay--Discretion of Court--How to exercise--Guidelines stated--Words ""sufficient cause

should be construed liberally--Acceptability of explanation for the delay is the sole criterion, length of delay not relevant--In absence of anything

showing mala fide or deliberate delay as a dilatory tactic, Court should normally condone the delay--However, while doing so Court should also

keep in mind the consequent litigation expenses to be incurred by the opposite party and should compensate him accordingly--Where a Court

condones delay in positive exercise of discretion, superior Court and more particularly the re visional Court should not normally disturb the same--

But where request for condonation of delay is refused, it would be open to the superior Court to come to its own finding on the basis of

explanation for the delay given by the party--Delay on the part of defendant--appellant of 883 days in approaching the Court against dismissal of

his application to set aside ex parte decree passed against him--Non-action on the part of his Advocate explained as cause for the delay--

Appellant also complaining about conduct of the Advocate before Consumer Forum and getting Rs. 50,000/- as compensation--Appellant's

explanation for the delay accepted and delay condoned by Trial Court--But in Revision High Court setting aside the order of Trial Court on

ground that appellant was negligent and was not careful enough to meet the Advocate to verify the stage of the proceedings for a long time--Held,

High Court in Revision erred in interfering with the exercise of jurisdiction by Trial Court in condoning the delay when appellant's conduct did not

as a whole warrant castigating him as an irresponsible litigant having regard to present busy and preoccupied life.

Limitation Act, 1963--Object of fixing time-limit--Not meant to destroy rights--It is founded on public policy fixing a life span for the legal remedy

for the general welfare.

9. Yet another decision Malkiat Singh and Anr. v. Joginder Singh and Ors. I (1998) CLT 44 : AIR 1998 SC 258, was relied on the side of writ

petitioners wherein it is held as follows:

Civil P.C. (5 of 1908), Order 9, Rule 13--Ex parte decree--Setting aside of--Defendants engaging Counsel to defend Suit filed against

them½Suit proceeded ex parte and ex parte decree passed on Counsel reporting no instructions--Neither Counsel reporting this fact to

defendants nor Court issued notice to them--Defendants getting knowledge of ex parte decree only when they approached the Counsel--

Application to set aside decree filed by defendants within 4 days of knowledge--Defendants cannot be said to be careless/negligent--Ex parte

decree liable to be set aside.

10. It is to be noted that the third respondent was the successful bidder in public auction for a sum of Rs. 29,10,000/- and that the sale certificate

was issued in her favour on 13.3.2007.

11. In Kailash Vs. Nanhku and Others, , it is observed that ""a provision relating

to participation of a party in any proceedings, in an adversarial system, held, should be so construed that ordinarily no party is denied the opportunity of participating in the process of justice dispensation--Civil Procedure Code, 1908--Orders 1, 7, 8, 9, 17, 18, 22, 23, 35 and 41".

12. It is useful to refer to the decision *Dinabandhu Sahu v. Jadumoni Mangaraj and Ors.* AIR 1954 SC 411 at 412, wherein it is laid as follows:

Held that even if the matter had to be judged u/s 5 of the Limitation Act, it would have been a proper exercise of the power under that section to

have excused the delay. The words "sufficient cause" should receive a liberal construction so as to advance substantial justice when no negligence

nor inaction nor want of bona fides is imputable to the appellant. The order condoning delay was on the facts a proper one to pass under the

Proviso to Section 85.13 Mad 269, Approved.

13. We have heard the learned Counsel and noticed the rival contentions. The learned Counsel for the writ petitioners at the time of advancing his

arguments informed this Court that the petitioners are willing to pay a cost of Rs. 25,000/- if an opportunity is given to them to prove their case on

merits.

14. We are of the view that refusal to condone delay can result in a meritorious matter being thrown at the early stage and cause of justice being

defeated. Moreover, the law Courts should not prefer to adopt a pedantic approach and on the other hand a pragmatic approach has to be made

to deliver substantial justice overriding technical considerations as far as the present case is concerned. Furthermore, a party does not stand to

benefit by adopting delay. Per contra, he runs a grave risk. It cannot be gainsaid that judiciary is respected because it is capable of removing

injustice and is expected to do so. Admittedly, the claim of the first respondent-Bank is for Rs. 20,71,776/- together with interest at the rate of

19.89% p.a. with quarterly rests from the date of the application till the date of realization, etc.

15. The learned Counsel for the writ petitioners informs this Court that already a sum of Rs. 15 lakh was paid and the

petitioners/appellants/defendants are willing to pay the rest of the amount and to settle the matter. It cannot be denied that the Debts Recovery

Tribunal has power to recall the Recovery Certificate even after its issuance on

the basis that the matter was settled between the creditor/Bank. At and the borrower/guarantor. No wonder the recovery of due is an essential function of any Bank. At this juncture, it cannot be lost sight of that the preamble of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 speaks of expeditious adjudication and recovery of debts due to Banks and financial institutions. Moreover, merely because an application for setting aside the ex parte order having been allowed to go for wilful default and also allowed the Restoration Petition also dismissed for default, it cannot be said by any means that the writ petitioners lack bonafides in their endeavour to set aside the ex parte order. In short, the length of delay is immaterial, in our considered opinion.

16. In the light of the foregoing discussions and in view of the specific averment of the second writ petitioner/second defendant, being the Managing Partner of the first defendant firm i.e. the sole individual engaged in business activity and to move quite often from place to place in order to secure business, etc., and since he is ready to settle the matter consciously and judicially and taking note of all attendant circumstances together, we are of the considered view that the writ petitioners have furnished sufficient cause in M.A.S.R. Nos. 1274 and 1277 of 2006 filed to condone the delay of 1006 days to restore M.A. Nos. 338 and 339 of 2002 and, therefore, we are inclined to interfere with the orders passed in M.A. Nos. 205 and 206 of 2006 dated 10.5.2007 passed by the second respondent and also that of the order of the Debts Recovery Tribunal-I, Chennai dated 11.10.2006 passed in M.A.S.R. Nos. 1274 and 1277 of 2006 and, accordingly, set aside their orders in the interest of justice. However, we direct the writ petitioners/appellants/defendants to pay a sum of Rs. 25,000/- to the first respondent Bank as costs within 10 days from the date of receipt of a copy of this order.

17. With the above observations, we allow the writ petition. The writ petitioners/appellants/defendants are given the opportunity to contest the proceedings before Debts Recovery Tribunal-I, Chennai diligently in the manner known to law and to settle the matter in issue by paying the balance amount due. Having regard to the facts and circumstances, the parties are directed to bear their own costs.