

(2009) 06 KAR CK 0014
In the Karnataka High Court
Case No : Writ Petition No. 11136 of 2008

Smt. P. Ragini

APPELLANT

Vs

Bank of India and Sri M.M. Ananthamurthy

RESPONDENT

Date of Decision : 10-06-2009

Acts Referred:

Limitation Act, 1963 — Section 5
Securitization and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 — Section 17 (1)

Citation : AIR 2010 Kar 38 : (2011) 1 RCR(Civil) 82 : (2011) 1 RCR(Civil) 82

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : B.G. Ashok Kumar, for the Appellant; Vijay Kumar, V. Advocate for R1 and Pramod N. Kathari, for R2, for the Respondent

Final Decision : Allowed

Judgement

N.K. Patil, J.—Petitioner in this petition has sought for quashing the impugned order dated 9th May 2008 passed by the Debts Recovery Tribunal at Bangalore on I.A. No. 436/2005 in I.R. No. 13/2006 under Annexure A and to direct the Debts Recovery Tribunal to condone the delay, if any and direct the Debts Recovery Tribunal to proceed further in LR. No. 13 of 2006 in disposing the same on merits.

2. The undisputed facts of the case are that, the petitioner herein had earlier filed W.P. No. 3259/2004 assailing the correctness of the notice dated 6th December 2003 issued by the second respondent herein vide Annexure D therein. The said writ petition had come up for consideration before this Court on 14th October 2004 and the writ petition filed by petitioner stood disposed of reserving liberty to petitioner to avail the other remedies with an observation that if any appeal is filed by petitioner before the competent authority, the same shall not be rejected on the ground of delay since the petitioner was pursuing her remedy before this Court. A copy of the said order is produced as Annexure B to

the writ petition. After disposal of the said writ petition, petitioner has filed the application I.A. No. 436/2005 dated 5th January 2005 for condoning the delay in filing the I.R. No. 13/2005. The said application filed u/s 17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called "SARFAESI Act, 2002") read with Section 5 of the Limitation Act had come up for consideration before the Debt Recovery Tribunal, Bangalore ("Tribunal" for short) on 9th May 2008. The Tribunal after hearing both parties dismissed the said application holding that, there is a delay of around one year for which there is no explanation coming forth from the side of the petitioner in spite of stating that he proceeded the papers to the Advocate and delay occurred while preparing the appeal cannot be believable. Accordingly, the Tribunal came to the conclusion that the petitioner has failed to offer sufficient cause for condonation of delay in preferring the appeal for disposing the writ petition before this Court and dismissed the application. Being aggrieved by the order impugned passed by the Tribunal, petitioner herein felt necessitated to present this petition seeking appropriate reliefs as stated supra.

3. I have heard learned Counsel for petitioner and learned Counsel for respondents.

4. After careful perusal of the order impugned, passed by the learned Presiding Officer of the Tribunal, it emerges that, the Tribunal has committed a grave error and material irregularity in proceeding to pass the impugned order, which is highly unsustainable and is liable to be rejected at the threshold for the reason that, in the earlier litigation when the petitioner had filed the writ petition before this Court, as referred above, the said writ petition was disposed of by this Court by its order dated 14th October 2004 specifically observing that, if any appeal is filed by petitioner before the competent authority, the same shall not be rejected on the ground of delay since the petitioner was pursuing her remedy before this Court. When this Court has specifically observed that, if any appeal is filed by petitioner, the same shall not be rejected by the said authority on the ground of delay, the Tribunal ought not to have proceeded and rejected the application filed for condonation of delay by taking into hyper technical grounds that petitioner has not explained the delay satisfactorily and that, the delay occurred while preparing the appeal cannot be believed, etc. But, petitioner has in fact, explained the delay in filing at paragraphs 2 and 3 of the application that there was some latches on the part of the learned Advocate who drafted the application in not mentioning the date of application, date of obtaining the certified copy of the order etc. Non mentioning of the two dates cannot be a ground for rejecting the application contrary to the specific direction issued by this Court. The Tribunal ought to have taken a lenient view of the matter and taken the decision on merits of the case and permitted the petitioner to redress her grievance, instead of dismissing the application on ground of delay in spite of the specific direction by this Court. If the same was not explained satisfactorily, the Tribunal could have compensated the same by imposing some reasonable cost against the petitioner. This aspect of the matter has not been looked into

nor considered and straightaway proceeded to reject the application on hyper technical grounds in spite of the specific direction by this Court not to reject the application on ground of delay. Therefore, the impugned order passed by Tribunal cannot be sustained in view of non compliance of the direction issued by this Court as referred above.

5. In the light of the facts and circumstances of the case, as stated above, the writ petition filed by petitioner is allowed in part. The impugned order passed by the Debt Recovery Tribunal (Karnataka) -- at Bangalore dated 9th May 2008 passed on I.A. No. 436/2005 in I. R. No. 13/2005 vide Annexure A is hereby set aside.

For the reasons stated at paragraphs 2 and 3 of the affidavit dated 5th January 2005 and the application dated 5th January 2005 and in the light of the specific observations made by this Court by its order dated 14th October 2004 passed in Writ Petition No. 3259/2004, the said application is allowed subject to condition that petitioner shall pay cost of Rs. 2,500/- (Rupees Two Thousand Five Hundred Only) to first respondent - Bank and a sum of Rs. 1,000/- (Rupees One Thousand Only) to second respondent which shall be paid to them personally or through their respective counsel and to file a memo along with acknowledgement before the Tribunal within two weeks from the date of receipt of copy of this order.

The Tribunal is directed to proceed further and decide the matter on merits in I.R. No. 13/2005 after affording reasonable opportunity to the parties to the proceedings and dispose of the same as expeditiously as possible.