

**(1987) 08 CAL CK 0019**

**In the Calcutta High Court**

**Case No :** Appeal No. of 1987 and Suit No. 233 of 1976

State Bank of India

APPELLANT

Vs

Balito Engineering Corporation and Others

RESPONDENT

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**Date of Decision :** 14-08-1987

**Acts Referred:**

Limitation Act, 1963 — Section 5

**Citation :** AIR 1988 Cal 246 : (1989) 65 CompCas 670

**Hon'ble Judges :** Shyamal Kumar Sen, J; Dipak Kumar Sen, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## **Judgement**

Dipak Kumar Sen, J.—The present application for condonation of delay is by the State Bank of India which wants to prefer an appeal against an order dated the 25th June 1986. A signed copy of the minutes of the said order was made available to the State Bank of India on an unspecified date. It appears that the said order was considered in various Departments and levels of the State Bank of India and ultimately, the State Bank of India instructed its Advocate on record to file an appeal towards the end of January, 1987. It is stated that Counsel was briefed for drawing up of the memorandum of appeal and an application, towards the beginning of February, 1987. Drafts were prepared and it took sometime to engross the same and make them ready. An application for condonation of the delay in filing the appeal which was affirmed on the 10th June, 1987 was presented in this Court sometime on the 11th June, 1987. Directions were given to the respondents to file their affidavit in opposition who have not done so. In this application it is prayed that the delay in putting in requisition for the certified copy of the order dated 25th June, 1986, making of this application for condonation of delay and filing of the proposed appeal should be condoned.

2. It is to be noted that when this application was moved neither the Memorandum of Appeal nor the application for admission of the appeal was ready or presented in Court, though it has been stated in the petition that the

memorandum of appeal and the application have been prepared, engrossed and made ready.

3. During the pendency of the application the memorandum of appeal and the regular application for admission of the appeal has been presented before us and the same have been affirmed on the 7th August, 1987.

4. There has been more than one year's delay in preferring the appeal. The explanations which have been given in the petition are that the Clerk of the Advocate on record failed and neglected to put in requisition for drawing up of the said order dated the 25th June 1986 disregarding the standing instructions that in every case -wherever an order or decree is passed in the matters dealt with by the Advocate on record appropriate requisition should be put. In any event, this is immaterial as there was no instruction from the State Bank of India to file any appeal prior to January, 1987 and the question of giving requisition for drawing up of the said decree would not normally arise before such instructions were received. There has been no satisfactory explanation as to why it took the State Bank of India to make up its mind to file the appeal till the end of January, 1987. It has not been stated as to when the signed copy of the minutes of the said order dated the 25th June 1986 was made available to the State Bank of India. Except that Counsel was briefed in the beginning of February, 1987, no particulars have been given as to when the drafts were actually prepared by Counsel and made over to the Advocate on record. No explanation has been given as to why the application for condonation of delay was made ready and moved on the 11th June, 1987 when neither the memorandum of appeal nor the application for admission of the appeal were ready. Even if we had allowed this application when moved, the State Bank of India would not have been in a position to file their appeal till the same was made ready.

5. For the reasons as aforesaid we do not see any ground for condoning the delay in the instant case.

6. Learned Counsel for the State Bank of India stressed on the merits of the case and the prejudice which the State Bank of India would suffer if delay was not condoned but merely on the ground of merit we are unable to condone such a long period of delay without any proper explanation from the State Bank of India.

7. Learned Counsel for the State Bank of India cited a decision of the Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, . In that case, the Supreme Court set aside the order of the Jammu & Kashmir High Court which refused to condone a delay of four days in preferring an appeal. The Supreme Court laid down certain principles on which delay should be condoned. Even if we apply the said decision in the facts of this case we would be unable to allow the application. Without taking any pedantic approach and also presuming that the State Bank of India had no intention to deliberately delay the matter, some explanation should have been forthcoming for this long period of delay. We note that the judgment is mainly in favour of the State Bank

of India and only on the quantum of the rate of interest that the State Bank of India is seeking to prefer this appeal.

8. The application is dismissed.

9. There will be no order as to costs.

Shyamal Kumar Sen, J.

10. I agree.