

(2006) 01 GAU CK 0056

Gauhati High Court

Case No: W.A. No. 595 of 2005

State Bank of India

APPELLANT

Vs

Neermali Das and Others

RESPONDENT

Date of Decision: Jan. 4, 2006

Acts Referred:

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

Citation: (2006) 3 BC 488 : (2007) 138 CompCas 574 : (2006) 2 GLR 535 : (2006) 1 GLT 246

Hon'ble Judges: B. Sudershan Reddy, C.J; B.P. Katakey, J

Bench: Division Bench

Advocate: B. Kalita, S. Dutta, D. Talukdar and A. Goswami, for the Appellant; Sailen Medhi and Seeladitya, for the Respondent

Final Decision: Allowed

Judgement

B. Sudershan Reddy, C.J.

In [Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others](#), Thakkar, J. while dealing with the question of condonation of delay observed : "To condone, or not to condone is not the only question. Whether or, not to apply the same standard in applying the "sufficient cause" test to all the litigants regardless of their personality in the said context is another". In this writ appeal we are faced with same question and are required to answer what test is required to be applied in considering the present application to condone the delay of 65 days in preferring the appeal u/s 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act"), against the judgment and order dated 14.6.2002 passed by the learned Debts Recovery Tribunal (for short "Tribunal"), Guwahati, in O.A. No. 70 of 1998.

2. The Debts Recovery Tribunal dismissed the Original Application No. 70 of 1998 filed by the State Bank of India, in instrumentality of State, on totally erroneous ground, according to the appellant. Being aggrieved by the same the appellant herein filed in appeal before the learned Appellate Tribunal together with an application u/s 20(3) of the said Act, praying for condonation of delay of 65 days in preferring the appeal.

3. In the said application the appellant herein in clear and specific term pleaded that all the material papers including the certified copy of the order of the Debts Recovery Tribunal obtained on 24th June, 2002 were in the custody of the learned standing counsel for the Bank. The Bank requested the counsel vide letter dated 20th June, 2002 to supply all the relevant papers in order to prefer the appeal against the judgment and order of the learned Tribunal, but, as the said learned counsel did not supply the material papers, the Bank by its letter dated 9.7.2002 requested the said counsel for fixing a date for enabling the appellant to collect the relevant papers from his residence but there has been no response. The appellant in the circumstances was constrained to address letters dated 24.7.2002, 7.8.2002, 23.8.2002, 11.9.2002, 24.9.2002 and 3.10.2002 requesting the learned Counsel to hand over the papers in order to enable the Bank to prefer an appeal. These letters have been annexed to the application and marked as Annexure "B" to "B-7" respectively.

4. It has further been pleaded that one Mr. Soumitra Shankar Das, an officer of the Bank who was entrusted to prefer the appeal, was suffering from bereavement as his brother died on 17.8.2002. Copy of the death certificate dated 17.8.2002 was marked as Annexure "C". It was under those circumstances the appellant bank could not prefer the appeal within the prescribed time and there was a delay for 65 days in preferring the appeal. The case of the appellant as is evident from the contents of the application, the delay caused in filing the appeal was for the reasons entirely beyond its control, therefore, there was sufficient cause to condone the delay in preferring the appeal.

5. The respondents filed counter affidavit. Each and every statements made in support of the application seeking condonation of delay are denied. Shorn of details, the respondents have gone to the extent of suggesting that those documents annexed as Annexure "B" to "B-7" were manufactured by the Bank only to get advantage of Section 5 of the Limitation Act for condonation of delay in preferring the appeal beyond the period of limitation.

6. The learned Appellate Tribunal having regard to the facts and circumstances of the case came to the conclusion that in the interest of justice the appeal should be heard on merit and accordingly condoned the delay subject to payment of costs assessed at Rs. 510 payable to the advocate of the respondents. The learned Appellate Tribunal while disposing of the application no doubt observed that "the ground set out in the petition for condonation of delay are less than convincing".

7. Perhaps taking advantage of the observation made by the appellate Tribunal, the respondent herein chosen to invoke the extraordinary jurisdiction of the Court under Article 226 of the Constitution of India and filed writ petition challenging the legality, propriety and validity of the order of the Appellate Tribunal in condoning the delay. The respondents herein, in the writ petition, more or less stated the same grounds as in their counter affidavit filed in the application seeking condonation of delay. The appellant bank also more or less adopted the same stand which it did before the learned Appellate Tribunal and accordingly prayed to dismiss the petition.

8. The learned Single Judge on elaborate consideration came to the conclusion that the appellant-bank failed to show "sufficient cause" to condone the delay. The learned Single Judge accordingly interfered with the order passed by the Appellate Tribunal and set aside the same. Being aggrieved by the said order, the State Bank of India preferred this appeal.

9. The learned senior counsel Mr. Kalita appearing on behalf of the appellant-State Bank of India, inter alia, submitted that the learned Single Judge took a very hyper technical view in considering the application filed by the appellant-bank seeking condonation of mere 65 days in preferring the appeal. Learned senior counsel submitted that there is no finding recorded as such either by the Appellate Tribunal or by the learned Single Judge as to the genuineness of Ext. "B to B-7" letters addressed by the Bank to its counsel and there is no reason to disbelieve that those letters were addressed by the Bank in discharge of its normal duties, as a prudent banker. Mere assertion by the respondents that the documents were not genuine would not be enough to disbelieve Ext. "B to B-7" documents.

10. Per contra, Mr. C.K.S. Baruah, learned senior Counsel appearing on behalf of the respondents has submitted that the learned Appellate Tribunal committed infirmity in allowing the application for condonation of delay and the same has rightly been interfered with by the learned Single Judge of this Court and there is no reason to disturb the finding recorded in the order passed by the learned Single Judge. The learned senior Counsel submitted that the learned Appellate Tribunal having observed that there is no convincing ground to condone the delay, ought not to have condoned the delay on the ground of interest of justice. The sum and substance of the submission is that the appellant has miserably failed to show any sufficient cause to condone the delay of 65 days in preferring the appeal.

11. We have carefully considered the submissions made by the learned counsel for the parties and also the precedents cited at the bar. The question for consideration before this Court is whether the appellant had shown "sufficient cause" to condone the delay of 65 days in preferring the appeal u/s 20 of the Act?

12. It is not necessary to restate the grounds stated in the application filed by the appellant herein seeking condonation of delay filing the appeal, as we have already

noted the same in details. It is also not necessary to reiterate that there is no finding either by the Appellate Tribunal or by the learned Single Judge as to the genuineness of documents Ext. "B to B-7" addressed by the appellant bank to its own advocate requiring him to hand over the relevant papers for preferring, the appeal. There are no circumstances as such placed before the Court by the respondent, to doubt the genuineness of those documents issued by the appellant-bank and to suggest that those documents were brought into existence for the purpose of condoning the delay only.

12. Before we proceed further to consideration whether the appellant herein has shown "sufficient cause" to condone the delay, it is appropriate to observe that the application filed by the appellant herein to condone the delay is not the one filed u/s 5 of the Limitation Act but the same has been filed under proviso to Sub-section (3) of Section 20 of the Act. It is no doubt that the said provision also subject to "sufficient cause" to be shown for entertaining the appeal after the expiry of period of 45 days provided for filing of appeal. We have grave doubt as to whether the expression "sufficient cause" used in the said proviso is to be understood in the same manner and in the same rigour as has been understood in the context of the expression "sufficient cause" in Section 5 of the Limitation Act.

13. The learned Counsel for the appellant relied upon the judgments of the Apex Court in Collector, Land Acquisition Anantnag (supra), in [N. Balakrishnan Vs. M. Krishnamurthy](#), in [Gangadeep Pratisthan Pvt. Ltd. and Others Vs. Mechano and Others](#), in support of his submission that the Court in considering the application for condonation of delay should not adopt a pedantic approach but what required is justice oriented approach. Per contra, the learned senior counsel for the respondents relied upon the decision of the Supreme Court in [P.K. Ramachandran Vs. State of Kerala and Another](#), and also of a Division Bench of this Court in Union of India and Ors. v. Wood Crafts Products Ltd. and Anr. reported in 2001 (1) GLT 34.

14. That a combined reading of the judgments cited above, do not suggest that the Apex Court laid down any rigid, inflexible and readymade view as to how an application filed seeking condonation of delay should be considered and disposed of. In our considered opinion, variety of facts and circumstances, the foundational facts pleaded have to be taken for consideration in order to arrive at proper and just conclusion to decide as to whether any "sufficient cause" has been shown to condone the delay in preferring the appeal.

15. The Supreme Court in Collector, Land Acquisition Anantnag (supra) has held that there is no warrant for according a step-motherly treatment when the State is the applicant praying for condonation of delay. It has in fact been held that the Courts have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". The courts are required to bear in mind that there is an impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck

ethos, delay on its part is less difficult to understand though more difficult to approve. In N. Balakrishnan (supra) the Apex Court held that "Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but to seek the remedy promptly.... There is no presumption that delay is always deliberate.... It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and shut the door against him. If the explanation does not smack of mala fide or it is not put forth as part of a dilatory strategy the Court must show utmost consideration for the suitor".

16. There is nothing on record to suggest that the explanations offered by the appellant Bank, as to why they could not prefer the appeal within the period of limitation, smack of any mala fide. Can it be said was an act of dilatory tactics on its part? There is nothing on record to suggest that the appellant herein chosen to approach the appellate tribunal with delay in preferring the appeal to cause any harm or loss to the respondents. There is no mala fide as such. It is not the act of individual officer out of any grudge as against the respondent. It is not uncommon that the organisation like the appellant-State Bank of India requires some time to take appropriate decision to give a final shape to the proceeding for presentation in appropriate forum. There is nothing on record to disbelieve the version of the appellant that in spite of its best effort the appellant could not secure the record from its own standing counsel. The facts speak for themselves, and we wish to say nothing more as regards the role, if any, played by the bank's counsel in the matter that ultimately resorted in causing delay in filing the appeal.

17. Expression "sufficient cause" u/s 5 of the Limitation Act requires to receive a liberal construction so as to advance substantial justice, held by the Apex Court in [Shakuntala Devi Jain Vs. Kuntal Kumari and Others](#), and [The State of West Bengal Vs. The Administrator, Howrah Municipality and Others](#). We do not find any reason as to why expression "sufficient cause" in proviso to Sub-section (3) of Section 20 of the Act are not to receive the same liberal interpretation. The case in hand is not the one where the delay in preferring the appeal is inordinate nor it is vitiated on account of any dilatory tactics or negligence on the part of the appellant.

18. The Supreme Court in Gangadeep Pratisthan (P.) Ltd. (supra) having found that there was hardly any explanation for the delay of about 5 months in preferring the appeal, however, refused to interfere with the discretion exercised by the High Court in condoning the delay in the interest of justice. The Appellate Tribunal in the case in hand exercised its discretion, though it found that grounds are less convincing, and condone the delay in preferring the appeal. In our considered opinion, no such extraordinary case is made out by the respondents requiring interference with such discretionary order passed by the learned Appellate Tribunal. The order passed by the Tribunal has not resulted any injustice to any of the parties requiring interference by this court in exercise of its extraordinary jurisdiction under

Article 226 of the Constitution. Interference by this court is not a matter of course more so interference with the discretionary order passed by such Tribunal or quasi-judicial authorities.

19. The observations made by the Apex Court in P.K. Ramachandran (supra) that the Courts have to apply the Law of Limitation with all its rigour, cannot be pressed into service out of control, as if the Court is disable to condone the delay in the interest of justice. The observations are required to be understood in the factual background where the respondent State therein filed the application seeking condonation of inordinate delay of 565 days without any proper explanation much less a reasonable or satisfactory one. Such is not the case in hand. The delay in preferring the appeal by the appellant in the instant case is only 65 days and that too for the reason beyond its control. Therefore, the observations made in P.K. Ramachandran (supra) cannot be applied to the facts of the case in hand.

20. What remains for our consideration is the decision in Wood Crafts Products Ltd. (supra). The Division Bench merely followed the observations made in P.K. Ramachandran (supra) and applied the law of limitation with all its rigour. As no acceptable explanation was forthcoming from the appellant, the Court came to the conclusion that application for condonation of delay has been filed in a very cryptic and casual manner without explaining the delay as is required by the law. The application filed by the appellant in the instant case cannot be categorised as a cryptic or casual manner. The details of effort made by the appellant to secure the records from its counsel specifically pleaded and we do not find any reason to disbelieve the same.

21. For the aforesaid reasons, we hold that the appellant herein has made out a clear case and had shown "sufficient cause" to condone the delay of 65 days in preferring the appeal before the learned Appellate Tribunal. The Appellate Tribunal rightly exercised the discretion vested in it and accordingly condoned the delay in preferring the appeal. No case is made out requiring our interference in exercise of our jurisdiction under Article 226 of the Constitution of India.

22. In view of the above, the impugned order of the learned Single Judge is set aside. The order passed by the learned Appellate Tribunal shall stand restored. It is brought to our notice by the learned senior counsel for the appellant that they have deposited the cost in terms of the order of the learned Appellate Tribunal, which has already been withdrawn by the respondents. On this ground alone the writ petition preferred by the respondents deserves dismissal as the respondents having accepted the order, as it transpires from the said act, would not have filed and maintained the writ petition.

23. The Writ Appeal is accordingly allowed. No costs.