

Condonation of delay application by bank in filing appeal dismissed due to negligence and lack of sufficient cause: DRAT KOLKATA

Central Bank of India

...Appellant

Syed Ahmed Basha

...Respondent

Case No: Dy. No. 56 of 2019

Date of Judgement: 16th June, 2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Biswajit Bhattacharya, Advocate.

For Respondent: None.

Facts:

Central Bank of India filed an appeal with 434 days delay against the order of the Debts Recovery Tribunal (DRT), Visakhapatnam dated 5th December 2017 along with an application under Section 5 of the Limitation Act seeking condonation of delay. The bank gave various reasons for the delay from the date of receiving the DRT order to final filing of the appeal. It stated that the DRT order was received by the concerned branch on 14th April 2018 who then sent it to the regional office on 23rd April 2018. Opinion of counsel was obtained on

7th June 2018. After several clarifications and approvals at various levels, the appeal was finally filed on 14th March 2019.

Court's Observations and Reasons:

The court held that provisions of Section 5 of Limitation Act are equally applicable to banks as well as private litigants. Banks are expected to act diligently and cannot take advantage of negligence of their officers. Mere procedural delays in taking approvals cannot be a sufficient cause for condonation of huge delays as was in this case. There was negligence on part of the bank officers at every stage. Even after draft appeal was submitted by counsel on 7th August 2018, approval was granted after 3 months on 9th November 2018. Another over a month's delay just for signatures of competent authority on 28th January 2019 showed carelessness and negligence. No sufficient cause was shown for condonation of delay. The bank's functioning lacked due diligence expected from such institutions.

Arguments by Bank's Counsel:

Delay was due to procedural requirements of seeking approvals at various levels as per bank's process. It was not intentional. Appeal deserves to be heard on merits as impugned DRT order is against the law. Delay may be condoned and appeal admitted.

Arguments by Respondent's Counsel:

None appeared on behalf of respondents.

Sections:

Section 5 of Limitation Act – For condonation of delay

Cases Referred:

No specific case laws referred.

Laws Referred:

Limitation Act

Conclusion:

Application for condonation of delay dismissed due to negligence and lack of sufficient cause. Consequently appeal also dismissed as being barred by limitation.

Copy <https://dreamlaw.in/wp-content/uploads/2024/02/DRAT-KOLKATA21.pdf>

Full Text of Judgment:

Instant I.A. No. 384 of 2019 application under Section 5 of Limitation Act for condonation of delay in preferring the Appeal. Respondents are served but not present.

I have heard the Learned Counsel for the Appellant and perused the Record. Impugned order was passed by the Ld. DRT Visakhapatnam on 5th December, 2017 in S.A. No. 61 of 2013.

Feeling aggrieved Appeal was preferred on 14.03.2019 with an application for condonation of delay of 434 days. As would appear from the Application grounds for condonation are stated in Para No. 4 to 9 wherein it is submitted that the impugned order came to the knowledge of the Appellant on 14.04.2018 when the copy was dispatched by the Ld Tribunal on 21st March, 2018. Thereafter, the concerned branch communicated the order to the regional office on 23rd April, 2018. Opinion of the Learned Counsel was obtained which was received on 7th June, 2018. Thereafter it was communicated to the Learned Counsel who prepared the memo of appeal on 11th June, 2018. Learned Counsel sought certain clarifications and documents which were provided on 25th June, 2018 and received in the office of the Learned Counsel on 30th June 2018. Learned Counsel prepared the memo of Appeal on 7th August, 2018 and sent the same to the Branch of the Bank who sought the approval from the controlling authority which were approved on 9th November, 2018. Certain legal points were to be incorporated on 3rd January, 2019. Learned Counsel returned the memo for final approval which was approved on 20th January, 2019. Paper was sent to the Branch on 28th February, 2019 for signatures which was received in the office of the Learned Counsel on 11th March, 2019. Thereafter, Appeal was filed. Learned Counsel for the Appellant submits that the delay in filing the Appeal is procedural wherein certain approvals were required. On receipt of the approval, appeal was filed. It was not an intentional delay. It is further submitted that the impugned judgment is passed against the law. Accordingly, the delay in preferring the Appeal may be condoned.

It is settled legal proposition that provisions of Section 5 of Limitation Act are equally applicable to the Government or Government functionary or the Financial Institution or Bank on one hand and the private litigant on the other hand. There is no distinction or special privilege is granted to the Bank in the matter for condonation of delay. Banks are supposed to act in accordance with law. Rather, they owe a higher responsibility in comparison to an ordinary litigant. Bank's officers are expected to act diligently. They have to abide by the law. Delay of each day has to be explained by the Appellant to the satisfaction of the Court. In the case at hand, bare perusal will show the slackness and negligent attitude of the concerned officers of the Bank in dealing with the matter. Although the first ground that the judgment dated 5th December, 2017 was received by the Tribunal on 14.04. 2018 and the Bank came to know about the judgement on 14th April, 2018 could not be accepted. When the judgement was passed, due notice was given to the parties for delivery of judgment. However, even if the submissions are accepted, then since then the record shows that at every stage there was sign of negligence on the part of Bank officers in dealing with the matter.

Even ultimately on 7th August, 2018 when the Learned Counsel submitted the draft memo of Appeal, same was approved on 9th November, 2018. Again, when the paper was sent for signatures in the branch on 28th January, 2019, the signatures were made on 11th March, 2019. It was simply a ministerial act wherein on an approved memo of Appeal Authorised officer or the competent officers had to sign. It also took more than month's time for signatures. This shows how careless and negligent the concerned officer was? Appellant Bank cannot take advantage of the negligence of its officers. It could not be sufficient cause for condonation of delay. Accordingly, I am of the view that no sufficient cause could be shown by the Bank for condonation of delay in preferring the Appeal. Accordingly, Application No. 384 of 2019 under Section 5 of Limitation Act for condonation of delay lacks merit and is dismissed. Consequently, Appeal is also dismissed being time barred.

File be consigned to Record Room.

Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT.

Copy of the Judgment/ Final Order be uploaded in the Tribunal's Website.

Order signed and pronounced by me in the open Court on this the 16th day of June, 2023.