

Dismissal of appeal and application for condonation of delay due to unexplained delay: DRAT KOLKATA

Trust Bank Ltd

...Appellant

Indian Bank

...Respondent

Case No: Appl. Dy No. 160 of 2023

Date of Judgement: 09.06.2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Mridul Kanti Mondal, Mr. Safidul Mondal, Advocates.

For Respondent: Mr. Debasish Chakraborty, Ms. Sharmistha Pal, Advocates.

Facts:

The appellant, Trust Bank Ltd of Bangladesh, had filed an appeal against the order dated 24.07.2020 after a delay of 770 days. An application under Section 5 of Limitation Act was filed for condonation of delay. The respondents included Indian Bank and others who had provided financial assistance to a proprietorship firm M/s KPS Enterprises. The appeal was filed on 03.03.2023 while the impugned order was passed on 24.07.2020. In the application for condonation of delay, the appellant submitted that information about impugned order was received on 08.12.2020. Legal opinion was sought on 01.09.2021. After board resolution on 21.01.2021, communication was sent to advocate to file the appeal.

Court's Opinion and Reasoning:

The delay was about 922 days. After excluding 90 days' exemption granted by Supreme Court, still the delay was inordinate. In an application under Section 5, the appellant must show sufficient cause for each and every day's delay. The delay cannot be condoned in a routine manner. As per documents, the legal opinion was received on 25.08.2021 and 02.09.2021 while the Board Meeting authorizing the advocate was held on 21.01.2021 much before that. No explanation was given for this discrepancy. Even after receiving legal opinion in September 2021, much time was taken to file appeal showing negligence. The delay was not properly explained. Hence there were no sufficient grounds to condone the huge delay of 770 days. Both appeal and application for condonation of delay were dismissed.

Arguments by Appellant:

The delay in filing appeal was not intentional. Reliance was placed on contents of application which stated the sequence of events. Legal opinion was taken and thereafter Board Meeting authorized the advocate to file the appeal. Soon after that, the appeal memo was prepared and filed.

Arguments by Respondents:

Opposed the prayer for condonation of delay stating that the grounds explained were not sufficient. Huge unexplained delay shows negligence and lack of due diligence by the appellant.

Sections:

Appeal filed under Section 5 of Limitation Act for condonation of delay

Reference made to Suo Motu Writ Petition No. 3 of 2020 granting blanket exemption of 90 days

Referred Laws:

Provisions of Limitation Act regarding sufficient cause for condonation of delay.

Laws regarding exercise of discretion by courts in condoning delay.

Case Laws Referred:

No case laws were referred in the order.

Download

Court

Copy <https://dreamlaw.in/wp-content/uploads/2024/02/DRAT-KOLKATA19.pdf>

Full Text of Judgment:

1.I.A. 102 of 2023 is filed by the appellant Trust Bank Ltd of Bangladesh u/s 5 of the Limitation Act for condonation of 770 days' delay. Impugned order was passed on 24.07.2020 while the appeal was filed on 03.03.2023.

2. Learned counsel for the appellant submits that delay in filing the appeal was not intentional. He placed reliance upon Para 3 to 7 of the application for condonation of delay wherein it is stated that on receiving information about the impugned order on 08.12.2020 legal opinion of the learned advocate was sought 01.09.2021. Accordingly, after Board Resolution on 21.01.2021 communication was sent to the learned advocate to prefer the appeal and thereafter memo of appeal was prepared and filed.

3. Learned counsel for the respondent vehemently opposes the prayer. He submits that grounds as explained in the application are not sufficient to extend the period of limitation.

4. As far as delay is concerned it is about 922 days. Although Hon'ble Apex Court in Suo Motu Writ Petition No. 03 of 2020 dated 10.01.2022 has granted exemption for a period of 90 days from 01.03.2022. Even if that period is excluded, then it is to be seen as to whether there is sufficient ground for condonation of delay. In an application u/s 5 of the Limitation Act, it is required for the appellant to show sufficient cause for the delay. Delay cannot be condoned in a routine manner.

5. Having gone through the submissions made in the application for condonation of delay, it is revealed that legal opinion was received on 25.08.2021 and 02.09.2021. As per annexure at Page 12 of the application for condonation of delay, Board Resolution was passed on

21.01.2021 for filing of appeal and Mr. Shafijkul Mondal, Advocate, was authorized to file the appeal. If legal opinion was received on 28.08.2021 and

02.09.2021 how the Board Meeting was held on 21.01.2021 authorizing learned advocate to prefer the appeal. No explanation is given in the application filed u/s 5 of the Limitation Act for such an inordinate delay in communicating learned counsel for filing appeal. Even after receiving legal opinion on 02.09.2021 much time was consumed in preferring the appeal. Law is well settled that each and every day's delay is to be explained by the appellant for condoning delay in preferring the appeal in an application filed u/s 5 of the Limitation Act. In this matter delay could not be explained by the appellant as referred to above. It

shows that appellant was very negligent on its part to exercise its right. I do not find sufficient ground to condone the delay. Accordingly, application filed u/s 5 of the Limitation Act is liable to be dismissed.

6. I.A. 102 of 2023 is dismissed. Consequently, Appeal Dy. No. 160 of 2023 is also dismissed as time barred. No order as to costs. Both the file be consigned to record room.

Copy of the order be supplied to the appellant and the respondents and a copy be also forwarded to the concerned DRT.

Copy of the judgement/Final Order be uploaded in the Tribunal's website.

Order dictated, signed and pronounced by me on this the 9th day of June, 2023.