

Punjab National Bank v. Basil Resource Pvt. Ltd. & Ors.

Punjab National Bank

...Appellant

Basil Resource Pvt. Ltd. & Ors.

...Respondent

Case No: Appeal No. 71/2022

Date of Judgement: 05/06/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Fraser M. Alexander, M/s. Majmudar & Partners, Advocate.

For Respondent: None.

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Facts:

Punjab National Bank (Appellant) filed an appeal (Appeal No. 71/2022) before the Debts Recovery Appellate Tribunal (D.R.A.T.), Mumbai, aggrieved by the order dated 11/10/2017 in M.A. No. 51/2017 in O.A. (Lodging) No. 36/2016 passed by the Debts Recovery Tribunal-I, Mumbai (D.R.T.). The impugned order dismissed the application for condoning the delay in filing the chamber appeal against the order of the Registrar declining to register the appeal for failing to cure the defects pointed out by the office. The Appellant had filed the aforesaid appeal on 11/02/2016, seeking to recover a sum of ₹11,54,10,672/- from the Defendants (Respondents). Certain defects were pointed out by the office, but those defects were not cured despite repeated opportunities being granted. On 29/08/2016, when the matter was taken up before the Ld. Registrar, there was no

representation for the Appellant, and the defects pointed out in the application were not cured. The Ld. Registrar declined to register the original application. The Appellant contended that the junior advocate who was attending the matter had left the office in May 2016, and the files were not entrusted to anyone. It was only in May 2017 that the Appellant bank came to know about the non-registration of the application. A certified copy of the order of the Ld. Registrar was obtained on 25/05/2017. The chamber appeal was filed on 03/06/2017, with an application to condone the delay. The Ld. Presiding Officer, vide the impugned order dated 11/10/2017, dismissed the application for condonation of delay on the technical ground that the number of days of delay had not been specified in the application, and it was not the job of the D.R.T. to calculate the number of days of delay. The Ld. Presiding Officer observed that the Tribunal was not inclined to consider such an ill-drafted application and resultantly dismissed the application together with the chamber appeal.

Arguments by the Appellant:

The Appellant contended that the registry could have marked the non-mentioning of the number of days of delay in the application as a defect and could have got that cured. It was also stated that the Appellant should not be penalized for the laches on the part of the advocate in drafting the application.

Court's Elaborate Opinions:

The D.R.A.T. observed that while considering an application for condonation of delay, there is no straitjacket formula to conclude whether sufficient and good grounds have been made out or not. Hence, each case has to be weighed from its facts and circumstances in which the party acts and behaves. If, from the conduct and behavior and attitude of the Applicant, it cannot be said that it had been absolutely callous and negligent in prosecuting the matter, the delay ought to be condoned, particularly if the Respondent(s) is/are not put to harm or prejudice. The duty of the court while considering an application for condonation of delay is to see that justice is done between the parties. The D.R.A.T. relied on the Hon'ble Supreme

Court's decision in Improvement Trust, Ludhiana vs. Ujagar Singh & Ors. (2010) 6 SCC 786, which held that unless malafides is writ large on the conduct of the party, the application should be allowed as a general and normal rule. The D.R.A.T. also referred to the Hon'ble Supreme Court's decision in B.S. Shaeshagiri Shetty & Ors vs. State of Karnataka & Ors (2016) 2 SCC 123, which held that when justice is at stake, a technical and pedantic approach should not be adopted by courts to do justice when there is miscarriage caused to a public litigant. The length of the delay is not material. What is of concern while considering an application for condonation of delay is the sufficiency of the reasons for the delay. In the instant case, the lawyer who was entrusted with the matter left the office and did not hand over the file to anyone in the office to follow it up. The Appellant Bank was under the impression that the matter was being pursued. A huge amount of ₹11,54,10,672/- was to be recovered from the Respondents. It cannot be said that the Appellant would stand to gain by not pursuing the matter for recovery of the amount against the Respondents. If there is any delay in prosecuting the matter, it is the Respondents who stand to gain. No prejudice whatsoever would be caused to the Respondents by condoning the delay. The number of days of delay in filing the chamber appeal is something that can be calculated. That is not a fact which is exclusively within the knowledge of the Appellant. Hence, not mentioning the number of days of delay in the application should not prove fatal. The Ld. Presiding Officer should not have taken such a pedantic view in dealing with the application for condonation of delay.

The D.R.A.T. referred to the Hon'ble Supreme Court's decision in Sridevi Datla vs. Union of India & Ors (2021) 5 SCC 321, which held that the term "sufficient cause" is relative and fact-dependent and has many hues, largely deriving color from the facts of each case and the behavior of the litigant who seeks condonation of delay.

The D.R.A.T. also cited the Hon'ble Supreme Court's decision in Sesh Nath Singh & Ano. vs. Baidyabati Sheoraphuli Co-operative Bank Ltd & Ano. (2021) 7 SCC 313, which held that it is not mandatory to file an application in writing before relief can be granted under Section 5 of

the Limitation Act.

Importing the principles from these cases, the D.R.A.T. held that when even without a specific application for condonation of delay, the delay can be condoned, non-mentioning the number of days of delay is inconsequential.

Sections and Laws Referred:

Section 5 of the Limitation Act.

Cases Cited:

Improvement Trust, Ludhiana vs. Ujagar Singh & Ors. (2010) 6 SCC 786

B.S. Shaeshagiri Shetty & Ors vs. State of Karnataka & Ors (2016) 2 SCC 123

Sridevi Datla vs. Union of India & Ors (2021) 5 SCC 321

Sesh Nath Singh & Ano. vs. Baidyabati Sheoraphuli Co-operative Bank Ltd & Ano. (2021) 7 SCC 313

Final Order:

The D.R.A.T. allowed the appeal filed by Punjab National Bank, subject to the payment of a cost of ₹25,000/- to the D.R.T. Bar Association, Mumbai, towards the purchase of books and periodicals, within a period of one week.

The impugned order dated 11/10/2017 in M.A. No. 51/2017 was set aside, and the chamber appeal at lodging No. 417 of 2017 was directed to be taken on file if there were no other defects to be cured.

The matter was posted before the Registrar for reporting compliance on 13.06.2023.