

**BEFORE THE DEBTS RECOVERY**  
**APPELLATE TRIBUNAL, AT: MUMBAI**

**Present: Mr Justice Ashok Menon, Chairperson**

**Appeal No. 71/2022**

**Between**

Punjab National Bank ... Appellant/s  
V/s.

Basil Resource Pvt. Ltd. & Ors. ... Respondent/s

Mr Fraser M. Alexander, M/s. Majmudar & Partners, Advocate for  
the Appellant.

**:- Order dated: 05/06/2023:-**

The Appellant is in appeal aggrieved by the order dated 11/10/2017 in M. A. No. 51/2017 in O.A. (Lodging) No. 36/2016 the files of the Debts Recovery Tribunal-I, Mumbai (D.R.T.) dismissing the application for condoning 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.

2. The only question for consideration in this appeal is whether the Ld. Presiding Officer was justified in dismissing the application for condonation for the reason that the number of days of delay is not specifically mentioned in the application.

3. The Appellant had filed the aforesaid appeal on 11/02/2016 seeking to recover a sum of ₹11,54,10,672/- from the Defendants. 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 contends 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 is 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.

4. 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 has not been specified in the application and it is 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, the application was dismissed together with the chamber appeal.

5. The Appellant is aggrieved and hence in appeal.

6. The Appellant contends 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 is also stated that the Appellant should not be penalised for the laches on the part of the advocate in drafting the application.

7. The delay in filing an appeal or a chamber appeal is sought to be condoned. While considering an application for condonation of delay, there is no straitjacket formula to come to the conclusion if

sufficient and good grounds have been made out or not. Hence, each case has to be weighed from its fact and circumstances in which the party acts and behaves. If from the conduct and behaviour 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 be done between the parties. Unless malafides is writ large on the conduct of the party, the application should be allowed as a general and normal rule (*Improvement Trust, Ludhiana vs. Ujagar Singh & Ors. (2010) 6 SCC 786* relied upon).

8. The Hon'ble Supreme Court has in *B.S. Shaeshagiri Shetty & Ors vs. State of Karnataka & Ors (2016) 2 SCC 123* held that when justice is at stake, the technical and pedantic approach should not be adopted by courts to do justice when there is miscarriage caused to a public litigant.

9. 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 is being pursued. A huge amount is 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.

10. The expression “sufficient cause” must receive a liberal construction so as to advance substantial justice. In the instant case, there is no gross negligence or deliberate inaction or lack of bona fides imputable to the Appellant seeking condonation of delay. The adoption of a strict standard of proof sometimes fails to protect public justice. A sum of ₹11,54,10,672/- of public money is to be recovered from the Respondents. The Hon’ble Supreme Court has in *Sridevi Datla vs. Union of India & Ors (2021) 5 SCC 321* held that the term “sufficient cause” is relative and fact dependent, and has many hues, largely deriving colour from the fact of each case, and behaviour of litigant who seeks condonation of delay. In *Sesh Nath Singh & Ano. vs. Baidyabati Sheoraphuli Co-operative Bank Ltd & Ano. (2021) 7 SCC 313* the Hon’ble Supreme Court has held that it is not mandatory to file an application in writing before relief can be granted under Sec. 5 of the Limitation Act. Had such an application been mandatory, Sec. 5 would have expressly provided so. Importing the principles to the case in hand, it will have to be 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.

11. For the reasons mentioned above, it has to be held that the Ld. Presiding Officer was not justified in dismissing the application for condonation of delay and consequently the chamber appeal as well. The impugned order calls for interference in appeal. However, the Appellant is directed to pay a cost of ₹25,000/- to the D.R.T. Bar Association, Mumbai towards the purchase of books and periodicals.

Resultantly, the appeal is allowed subject to the payment of cost as mentioned above, within a period of one week, and the impugned order dated 11/10/2017 in M.A. No. 51/2017 is set aside and the chamber appeal at lodging No. 417 of 2017 is directed to be taken on file if there are no other defects to be cured.

Post before the Registrar for reporting compliance on 13.06.2023.

Sd/-  
Chairperson

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