IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

Appl. Dy No. 191 of 2024
(Arising out of S.A. 251 of 2019 – DRT-I Hyderabad)

THE HON'BLE JUSTICE SHRI ANIL KUMAR SRIVASTAVA, CHAIRPERSON

08.05.2026

M /s. Jagityala Warehousing Private Ltd having Registered Office at Jagityala, Karimnagar District. and 4,Kiran Shankar Roy Road, Room No.4, Gr. Floor, Kolkata – 700 001.

..Appellant

--Vs--

1. V. Savithri, residing at H.No.2-33, Block No.2, Nallabelly Village, Wardhannapet Mandal, Warangal Dist.

2. Union Bank Of India (Andhra Bank) Zonal Office, NRR Bhavan Hanamakonda, Warangal Dist.

..Respondents

For Appellant : Mr. V. Ravinder , ld. adv. virtually

For Respondent : Ms. Aparajita Rao, ld. Adv.
Ms. Nabanita Dutta, ld. Adv.

THE APPELLATE TRIBUNAL :

I.A. 107 of 2024 is filed u/s 5 Limitation Act praying for condonation of 288 days' delay in preferring the appeal against the order dated 22.05.2023 passed by the learned DRT-I, Hyderabad whereby e-auction sale conducted by the bank was set aside and bank was directed to refund the amount to the auction purchaser with 9% interest simple.

2. Heard learned counsel for the appellant as well as learned counsel for respondent bank and perused records.

3. S.A. 251 of 2019 was filed by the borrower challenging the auction sale conducted by the bank on 20.08.2019 in pursuance of the sale notice dated 30.07.2019 on certain grounds. S.A. was ultimately allowed by learned DRT by passing the impugned order. Auction sale conducted by the bank was set aside and bank was directed to refund the amount to the auction purchaser with 9% interest simple from the date of deposit till the date of payment within one month.

4. The order passed by learned DRT was challenged by the bank by preferring appeal being no.128 of 2023 wherein the only challenge was made regarding rate of interest. Appeal was allowed on 16.01.2024 by reducing the rate of interest from 9% to 7% simple. Subsequent thereto the amount along with interest was credited to the account of the auction purchaser which was received by him without any protest.

5. Thereafter, instant appeal is filed on 05.03.2024 along with application u/s 5 Limitation Act for condonation of 288 days delay on the ground that Managing Director of the appellant company was suffering from health problem and could not instruct his counsel. After recovery from the ailment he applied for certified

copies of the entire file and the cause papers were sent to Kolkata on 28.02.2024 and appeal was thereafter filed on 05.03.2024 with the application for condonation of 288 days delay.

6. Learned counsel for appellant would submit that delay was caused for the ailment of the Managing Director of the appellant company. It is further submitted that judgment passed by the Appellate Tribunal in Appeal filed by the bank is also challenged before the Hon'ble High Court.

7. Per contra, learned counsel for respondent would submit that in the present application u/s 5 Limitation Act, no 'sufficient cause' could be shown by the appellant for condonation of delay. Basic principle of condonation of delay is to show 'sufficient cause'. Learned counsel further submits that bank has already settled the matter with the borrower and account was closed. However, learned counsel for appellant would submit that account was settled pending S.A.

8. As far as condonation of delay in filing the appeal is concerned, it has been held by the Hon'ble Apex Court in a judgment ***Sheo Raj Singh (Deceased) through Legal Representatives & Others -vs- Union of India & Another***

[(2023) 10 SCC 531] has held in paragraphs 30 and 32 as under:

"30. X x x condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial."

"32. x x x At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication."

9**.** The Hon'ble Apex Court in ***State (NCT of Delhi) -vs- Ahmed Jaan [(2008) 14 SCC 582],*** held that proof of sufficient cause is a condition precedent. In para 10 it is held that

"There is no general principle saving the party from all mistakes of its Counsel could be laid. The expression 'sufficient cause' must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay."

10**.** The Hon'ble Apex Court in ***S. Ganesharaju (Dead) through LRs -vs- Narasamma (Dead) through LRs [(2013) 11 SCC 341]*** in para 12 it was held that

"Unless the Respondents are able to show mala fides in not approaching the Court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the Courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by."

It was further held in para 14 that :

"Since sufficient cause has not been defined, thus, the Courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in prosecution of the matter."

11. As far as legal proposition is concerned law is well settled by the Hon'ble Supreme Court in **Shivamma (dead) by Lrs. Vs. Karnataka Housing Board & Ors.** [2025 SCC OnLine SC 1969] wherein it has been held that appellant is not only required to explain the delay after expiry of the statutory period of delay

rather he is required to explain the delay from the date when limitation is running, meaning thereby appellant has to explain the delay right from the day one when the impugned order is passed.

12. In Shivamma (supra) Hon'ble Apex Court has held as under:

> "40. As such, under Section 5 of the Limitation Act, for the purpose of seeking condonation of delay in filing of an appeal or application, as the case may be, beyond the stipulated period of limitation, the delay in the filing has to be explained by demonstrating the existence of a "sufficient cause" that resulted in such delay for both the prescribed period of limitation as-well as the period after the expiry of limitation, up to actual date of filing of such appeal or application, as the case may be, or to put it simply, explanation has to be given for the entire duration from the date when the clock of limitation began to tick up until the date of actual filing, for seeking condonation of delay by recourse to Section 5 of the Limitation Act.
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> 115. However, as is manifest from the entire discussion above, for the purpose of condonation of delay in terms of Section 5 of the Limitation Act, the delay has to be explained by establishing the existence of "sufficient cause" for the entirety of the period from when the limitation began till the actual date of filing. In other words, if the period of limitation is 90-days, and the appeal is filed belatedly on the 100th day, then explanation has to be given for the entire 100-days."

13. Now we have to look into the matter whether sufficient cause for the delay in preferring the appeal is fully proved or whether appellant could make out grounds for sufficient cause for condonation of delay?

14. Appellant has to establish sufficient cause for condonation of delay which could not be condoned in a routine manner. If the delay is not fully explained by the appellant statutory right accrues in favour of the respondent. In case it is to be deviated,

then it can only be in accordance with law wherein appellant has to establish 'sufficient cause' for condonation of delay.

15. In the present case ground is taken by the appellant for ailment of the Managing Director of the appellant company. In Para 3 of the application u/s 5 Limitation Act a simple statement is made that Managing Director was suffering from health problem and could not instruct their counsel at Kolkata. Since when Managing Director was suffering from health problem, what was the ailment and when he recovered from the same, nothing is stated in the application. No document or medical certificate or certificate from any hospital is enclosed. It is incumbent upon the appellant to establish by providing necessary documents to make out 'sufficient cause' for condonation of delay, but in absence of any material documents, grounds taken by the appellant cannot be accepted. Law is very well settled that delay has to be sufficiently explained.

16. Accordingly, we have a considered opinion that appellant could not be able to make out 'sufficient cause' for condonation of 288 days delay in preferring the appeal. Application lacks merit and is liable to be dismissed.

O R D E R

17. I.A. 107 of 2024 is dismissed. Consequently, Appeal Dy. No. 191 of 2024 is also dismissed as time barred. Pending I.A., if any, is also disposed of. Costs easy.

File be consigned to record room.

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

Order dictated, signed and pronounced by me in the open Court on this the 8th day of May, 2026.

(Anil Kumar Srivastava, J)
Chairperson

Dated : 08.05.2026
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