State Bank of India Vs. Union Bank of India and ors.

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Court : DRAT Madras

Decided On : Jan-06-2003

Reported in : II(2003)BC42

Judge : A Subbulakshmy

Appellant : State Bank of India

Respondent : Union Bank of India and ors.

Judgement :

1. The appellant 3rd defendant filed IA-583/2001 before the DRT, Ernakulam, to reopen the case and allow the petitioner to cross-examine the applicant Bank witness and that was dismissed by the Tribunal by order dated 23.8.2001. Challenging that Order, Appeal MA-76/2002 is filed.

2. Order was passed in the original application (OA) on 24.4.2001.

After passing of the final Order, IA-583/01 was filed on 5.6.2001 before the PO, DRT, for reopening the case for cross-examining the applicant Bank witness. The appellant has filed the petition to reopen the case after final order was passed. Before the final order is passed, a party can seek relief of reopening the case and seeking for further cross-examination. After final order is passed the remedy open to the appellant is only to prefer appeal as against the final order and he is not entitled to seek the relief of reopening the case and cross-examining the Bank witness. For the relief sought for in IA-583/01 after disposal of the OA and after the

PO, DRT, has become functus officio, the IA filed by the appellant is itself not maintainable and that relief cannot be sought for and cannot be granted. The PO, DRT, rightly dismissed that petition.The order by the PO, DRT, Ernakulam, does not warrant any interference.

4. In IN-55/2002, the appellant has preferred this appeal as against the final order passed, with a delay of 289 days and the petition to condone the delay has been filed.

5. Counsel for the appellant Bank submits that the appellant was under the impression that some order will be passed in the petition filed to reopen the case and he was waiting for that order to be passed in that petition and so he did not prefer the appeal in time and thus the delay has occurred and the delay has to be condoned. The appellant is the Bank. The appellant is well aware that the appeal has to be preferred within 45 days from the date of receipt of final Order. The appellant has miserably failed to do so. It is stated that the Bank was hopeful of obtaining favourable orders from the DRT in IA-583/2001 which was filed for reopening the case but that IA was dismissed. Counsel for the appellant Bank also submitted that only because of the pendency of that IA and as the appellant was waiting for the order to be passed in that IA, the appeal was not preferred in time and the Bank was waiting for the order to be pronounced and thus the delay has occurred. Even the petition to reopen the case was filed after disposal of the OA.6. As against the final order passed, the appeal ought to have been preferred in time. The appellant being the Bank is well aware of all the procedures and also the limitation time. The appellant did not take steps to prefer the appeal in time and the appellant has preferred the appeal after a deal of 289 days, after a delay of more than 9 months.

Further, the Order in IA-583/01 was passed on 23.8.2001. This appeal has been preferred on 18.2.2002. The appellant being the Bank ought to have been diligent enough to file the appeal in time. The appellant is also well aware of the procedures and limitation period. There is no proper and acceptable reason for condoning the delay of 289 days.

7. The Court granting indulgence for condoning the delay must be satisfied that there was diligence on the part of the appellant and that he was not guilty of negligence whatsoever. Where there is no sufficient cause for condoning the delay having regard to the position of the party that too, when it is a Bank having assistance of best of men to conduct its affairs, delay should not be condoned as it amounts to a case of discretion not being exercised judicially even though the apex Court has observed in many decisions that the word "sufficient cause" must be construed liberally. There must be some tangible proof for the sufficient cause for condoning the delay and the Court must be fully satisfied that the appellant was prevented by reasons from approaching the Court in time. The word "sufficient cause" cannot be construed liberally merely because the party in default is the Government or an Institution. There must be sufficient explanation from the source at which the delay occurred and the reasons for such delay.

In the absence of any satisfactory explanation of the delay by the Bank the delay cannot be condoned and sufficient cause must be a cause which is beyond the control of the party invoking the aid of the section. A cause for delay, which a party could have avoided by the exercise of due care and attention cannot be a sufficient cause.

8. There is no sufficient cause at all for condoning the inordinate delay of 289 days. IA-2 petition for condonation of delay dismissed.

9. In the result both the appeals MA-76/2002 and IN-55/2002 are dismissed.