

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 07.08.2020

Misc. Application No. 208 of 2020
In
Appeal No. 5 of 2018

N. Krishnan Nair
Vadakkekara House,
Vazhottukonam Vattiyoorkavu
Trivandrum - 695013.

.... Applicant
(Org. Appellant No. 2)

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.

... Respondent
(Org. Respondent)

In the matter of

1. G. Unnikrishnan Nair
Chattanoorpuzha
Adoor, Pathanamthitta
Dist., Kerala.
2. N. Krishnan Nair
Vadakkekara House, Vazhottukonam
Vattiyoorkavu, Trivandrum- 695 013.
3. Komala Unnikrishnan
Mullasseriyil House Churakode P.O.

Chattanoorpuzha Adoor,
Pathanamthitta, Dist., Kerala.

4. G. Suresh Kumar
X/137 Varenickal,
Mavelikkara- 690 107,
Alappuzha Dist., Kerala.

5. P. Parameswaran
242, New Lawyers' Chambers,
Supreme Court of India,
New Delhi- 110 001.

....Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.

... Respondent

Mr. G. Raghavan, FCA with Ms. Revathy Raghavan, Advocate i/b
Ms. Revathy Raghavan for the Applicant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Mihir Mody,
Mr. Shehaab Roshan, Advocates i/b K. Ashar & Co. for the
Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. By an order of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') dated August 10, 2017 the appellant and its directors were directed to refund the money jointly and severally collected through NCDs alongwith interest at the rate of 15 % p.a

2. The appellant, being aggrieved, filed Appeal No. 262 of 2017 before this Tribunal which was dismissed for want of prosecution by an order dated May 20, 2019. Now, an application dated July 20, 2020 has been filed for restoration of the appeal and for recall of the order dated May 20, 2019.

3. We have heard Mr. G. Raghavan, FCA with Ms. Revathy Raghavan, the learned counsel for the applicant and Mr. Mustafa Doctor, the learned senior counsel with Mr. Mihir Mody, Mr. Shehaab Roshan, the learned counsel for the Respondent.

4. The contention of the learned counsel for the applicant is, that he could not attend the day to day affairs of the office due of disturbance from the customers from the various branches. In December 2018, the applicant was arrested by the Ernakulum Police but subsequently was enlarged on bail on January 1, 2019. He was again arrested in January 2019 and was granted bail four days later. It was contended that on account of various cases and FIR's filed against the applicant and continuous harassment from the investors and recovery proceedings and attachment of bank accounts by SEBI that he left his place of residence and went underground. Accordingly, he did not come to know about the dismissal of the appeal on May 20, 2019. It is further alleged that the applicant came to know about the dismissal of the appeal in July/August 2019 through ex-employees of the company and thereafter the present application for restoration was filed on July 20, 2020.

5. On these facts, the learned counsel for the applicant contended that there was a bonafide and genuine reasons for not filing the restoration application within the stipulated period and, therefore, the

delay in filing the restoration application may be condoned and the appeal may be restored to its original number.

6. Having heard the learned counsel for the parties, we are of the opinion that there is an inordinate delay in filing the present application. Admittedly, when the appeal was dismissed, the applicant was not under any kind of detention and was enlarged on bail. Assuming without admitting that the applicant was not aware of the dismissal of the appeal, nonetheless, on his own showing, the applicant came to know about the dismissal of the appeal in July/August 2019. No steps whatsoever was taken by the applicant to file a restoration application and, eventually the application was filed after 11 months. This delay has not been explained. The contention that the applicant went underground since he was being harassed by the investors is neither a cogent or a legal ground nor sufficient cause has been shown. We are of the opinion that no valid or bonafide explanation has been given by the applicant as to why he could not prefer the restoration application earlier. In the absence of any plausible explanation, we are of the opinion that the applicant

has not shown any sufficient cause for condoning the delay. The application is not bonafide nor has been filed in good faith.

7. In *Basawaraj and Anr. vs. Special Land Acquisition Officer, [(2013) 14 SCC 81]* the Supreme Court held that the discretion to condone the delay has to be exercised judicially based on facts and circumstances of each case and that sufficient cause cannot be given a liberal interpretation if lack of bonafide is attributed to a party. The Supreme Court further held that delay cannot be condoned on equitable ground beyond the limits permitted expressly by statute.

8. The Supreme Court in **Ram Nath Sao and Ors vs Gobardhan Sao and Ors, (2002) 3 SCC 195.** held that the expression “sufficient cause” should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to a party. The same view was reiterated by the Supreme Court in *Madanlal vs. Shyamlal, [(2002) 1 SCC 535]*.

9. In *Balwant Singh (Dead) vs Jagdish Singh & Ors*, [(2010) 8 SCC 685] Supreme Court held that the expression “sufficient cause” means the presence of legal and adequate reasons.

10. This Tribunal is possessed with the exercise of judicial discretion in condoning the delay if sufficient or adequate reason is given. It is also a settled proposition of law that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds as held by the Supreme Court in **Basawaraj and Anr. (supra)**. In the instant case we do find any legal or adequate reasons to condone the delay.

11. For the reasons stated aforesaid, we do not find any merit in the restoration application and is dismissed without any order on costs.

12. The present matter was heard through video conference due to Covid-19 pandemic. At this stage, it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the Registry. In these circumstances, this order will be digitally

signed by the Presiding Officer on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

07.08.2020
PTM