

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 19.8.2020

**Misc. Application No.234 of 2020
(Application for Condonation of Delay)
Misc. Application No. 235 of 2020
(Application for Stay)
And
Appeal No.193 of 2020**

Jiban Mitra
B 14/101, Larica Township,
P.O.- Nabapally, P.S.- Barasat District,
North 24 Parganas, Kolkatta – 126.

... Appellant

Versus

1. Recovery Officer
Securities and Exchange Board of India
Eastern Regional Office (ERO),
The Regional Director, L&T Chambers,
3rd Floor, 16 Camac Street,
Kolkata – 700017, West Bengal.

2. Securities & Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G Block, Bandra Kurla Complex,
Bandra (E), Mumbai – 51.

... Respondents

Ms. Rinku Valanju, Advocate with Ms. Hiral Shah and Mr.
Pratham Masurekar, Advocate i/b. R V Legal for the
Appellant

Mr. Abhiraj Arora, Advocate i/b. ELP for the Respondents.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M.T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. The present appeal has been filed against an order dated 8th November, 2017 directing the Appellant and other Directors to refund the money collected jointly and severally during the financial years 2009-2010, 2010-2011 and 2011-2012 alongwith interest. The Appellant was also restrained from selling its assets till such time the amount collected was refunded and was further restrained from accessing the securities market for a period of four years.

2. The Appellant had earlier filed Appeal No.49 of 2020 on 29th January, 2020 alongwith an application for condonation of delay which was dismissed as withdrawn by an order of this Tribunal dated 13th July, 2020 with liberty to file afresh. Now a fresh appeal has been filed alongwith an application for condonation of delay of 776 days.

3. It is alleged that the Appellant was unaware of the interim order dated 14th January, 2016 or the final order dated 8th November, 2017 passed by the respondent and only came to know when the Appellant went to its bank on 15th

November, 2019 when he found that his bank account was seized pursuant to the Recovery Certificate dated 25th October, 2019 issued by the Recovery Officer. The appellant immediately thereafter filed the appeal.

4. It was contended that no summons were ever received nor the Appellant came to know about the pendency of the proceedings which were published in the newspapers 'The Times of India' and 'Anand Bazar Patrika' and that the Appellant only came to know when his bank account was seized pursuant to the Recovery Certificate.

5. It is the case of the Appellant that at the relevant moment of time when the Appellant was a Director he was staying with his parents at Ray Lane, Khamarpara, Bansberia Hoogly, West Bengal – 712502 and left his parental house in 2012 since his relationship with his parents became strained. It was also stated that between 2013-2016 he was residing at Purba Bankim Pally, Madhyamgram, North, Parganas-700129 and that he applied for change of address in his voters card in 2015. In 2016 he started doing a restaurant business in the name of Pizza Lovers and, on this basis, contended that neither the summons were served upon him

nor had he read the summons in the newspapers and accordingly the delay in filing the appeal may be condoned.

6. Having heard Ms. Rinku Valanju, learned counsel for the Appellant and Mr. Abhiraj Arora, learned counsel for the Respondent we find that even though the submissions made by the learned counsel for the Appellant seemed attractive at the first blush but on a closer scrutiny we find that the Appellant has stated false facts on oath and, therefore, he is not entitled for any discretionary relief whatsoever.

7. The impugned order indicates that the summons were delivered at his last known address namely Ray Lane, Khamarpara, Bansberia Hoogly, West Bengal – 712502 which the Appellant alleges that he had left that premises on account of strained relationship with his parents. We however find that the Appellant filed Appeal no.49 of 2020 in January, 2020 before this Tribunal. The address of the Appellant in the memo of appeal as well as in the verification clause was the same, that is, the address of the house of the parents where the summons were delivered. This appeal was conveniently withdrawn with liberty to file afresh as the Appellant wanted to hide this fact from the Tribunal. This concealment however could not go unnoticed as in the

present appeal the address of the Appellant in the memo of appeal was changed but in the verification clause the address remained the same, namely the address of the parents where the original summons were served. In this regard, a feeble attempt was made by the learned counsel for the Appellant stating that it is a typographical error which in our opinion cannot be and is an afterthought. The address given in the verification clause is the same address where the summons were served and, therefore, it cannot be a clerical or a typographical error.

8. Apart from the aforesaid, there is another evidence to show that the Appellant is still using the address of his parents. It clinches the issue and hits the nail on the head namely the Leave and License Agreement which was executed by the Appellant on 1st February, 2016 (Exhibit 'D'). This document shows the same address, namely, the address of the parents where the summons were delivered.

9. In the light of the aforesaid, we are of the opinion that the contention of the Appellant that he was never served with the summons as he left the residential house of his parents cannot be believed. The Appellant was continuously using the parental address and was thus deemed to be aware of the

service of the summons. The publication of the summons in the two daily newspapers published in the same locality/region also proves that the Appellant had knowledge of the proceedings.

10. In view of the aforesaid, we are of the opinion that the Appellant had knowledge of the proceedings but chose not to file the appeal within the stipulated period. The Appellant has stated false facts on oath and has tried to mislead the Court by stating false facts. No sufficient cause has been shown nor there is any legal ground to condone the inordinate delay in filing the appeal. The Appellant has shown that there is a delay of 776 days which is incorrect in as much as the delay has been calculated upto 29th January, 2020 whereas the delay till the filing of the appeal in August, 2020 have to be calculated.

11. For the reasons stated aforesaid, the application for condonation of delay lacks merit and is dismissed as a result of which the appeal as well as the Misc. Application No.235 of 2020 for stay are also dismissed with no order as to 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

Dr. C. K. G. Nair
Member

Justice M.T. Joshi
Judicial Member

19.8.2020
RHN