

Avneesh Chandan Gadgil & Anr. Vs. Oriental Bank of Commerce & Ors.

Civil Appeal No. 6898 of 2021

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Full judgment text

Avneesh Chandan Gadgil & Anr. Vs. Oriental Bank of Commerce & Ors.

[Civil Appeal No. 6898 of 2021]

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 16.02.2016 passed by the High Court of Delhi in Writ Petition (C) No.4207 of 2015 by which the High Court has allowed the said appeal preferred by the respondent No.1 herein - Bank and has quashed and set aside the order passed by the Debts Recovery Appellate Tribunal (hereinafter referred to as "DRAT") by which the learned DRAT quashed and set aside the order passed by the Debts Recovery Tribunal condoning the delay in preferring the appeal under Section 30 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the Act, 1993"), the original respondent has preferred the present appeal.

2. The issue involved in the present appeal is in a very narrow compass.

3. The short question, which is posed for consideration before this Court is whether Section 5 of the Limitation Act shall be applicable to the appeal against the order of Recovery Officer under Section 30 of the Act, 1993?

4. It is not in dispute that there was a delay of 31 days in the appeal preferred by the respondent No.1 - Bank preferred against the order of Recovery Officer. The Debts Recovery Tribunal condoned the delay by applying Section 5 of the Limitation Act, 1963. The DRAT set aside the order passed by the Debts Recovery Tribunal condoning the delay applying Section 5 of the Limitation Act observing that Section 5 of the Limitation Act shall not be applicable to the appeal under Section 30 of the Act, 1993 against the order passed by the Recovery Officer. By the impugned judgment and order, the High Court has set aside the order passed by the DRAT relying upon the decision of this Court in the case of A.R. Venugopal Alias R. Venugopal Vs. Jotheeswaran and Ors., (2016) 16 SCC 588.

5. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court restoring the order passed by the Debts Recovery Tribunal condoning the delay applying Section 5 of the Limitation Act to the appeal under Section 30 of the Act, 1993, the original respondent - Bank has preferred the present appeal.

6. We have heard the learned counsel for the respective parties at length.

7. At the outset, it is required to be noted that the issue involved in the present appeal is now not res integra in view of the direct decision of this Court in the case of International Asset Reconstruction Company of India Limited Vs. Official Liquidator of Aldrich Pharmaceuticals Limited and Ors., (2017) 16 SCC 137. Dealing with the appeal under Section 30 of the Act, 1993 after 2000 amendment, it is held that Section 5 of the limitation Act is specifically excluded so far as appeal under Section 30 of the Act, 1993 is concerned. While holding so, in paragraph 13, it is observed and held as under:-

"13. The RDB Act is a special law. The proceedings are before a statutory Tribunal. The scheme of the Act manifestly provides that the legislature has provided for application of the Limitation Act to original proceedings before the Tribunal under Section 19 only. The Appellate Tribunal has been conferred the power to condone delay beyond 45 days under Section 20(3) of the Act. The proceedings before the Recovery Officer are not before a Tribunal. Section 24 is limited in its application to proceedings before the Tribunal originating under Section 19 only.

The exclusion of any provision for extension of time by the Tribunal in preferring an appeal under Section 30 of the Act makes it manifest that the legislative intent for exclusion was express. The application of Section 5 of the Limitation Act by resort to Section 29(2) of the Limitation Act, 1963 therefore does not

arise. The prescribed period of 30 days under Section 30(1) of the RDB Act for preferring an appeal against the order of the Recovery Officer therefore cannot be condoned by application of Section 5 of the Limitation Act."

8. At this stage, it is required to be noted that the decision of this Court in the case of A.R. Venugopal Alias R. Venugopal (supra), which has been relied upon by the High Court while passing the impugned judgment and order has been expressly overruled by this Court in the decision in the case of International Asset Reconstruction Company of India Limited (supra).

9. Thus, as per the law laid down by this Court in the aforesaid case and even otherwise considering Section 30 of the Act, 1993, we are also of the view that Section 5 of the Limitation Act shall not be applicable to the appeal against the order of Recovery Officer as provided under Section 30 of the Act, 1993. Therefore, the High Court has committed a grave error in quashing and setting aside the order passed by the DRAT and in restoring the order passed by the Debts Recovery Tribunal condoning the delay in preferring the appeal under Section 30 by applying Section 5 of the Limitation Act.

10. In view of the above and for the reasons stated above, the present appeal succeeds, the impugned judgment and order passed by the High Court and the order passed by the Debts Recovery Tribunal condoning the delay in preferring the appeal under Section 30 of the Act, 1993, preferred against the order passed by the Recovery Officer are unsustainable and deserve to be quashed and set aside and are accordingly quashed and set aside. The order passed by the DRAT setting aside the order passed by the Debts Recovery Tribunal is restored. Appeal is allowed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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