

CM No. 7 of 2013 in
CAPP No. 3 of 2013 in
Company Application No. 245 of 2011 in
CP No. 77 of 2001

General Manager District Industries Centre
Versus
M/s Punjab Electro Optics Ltd. (In liquidation) and another

Present:- Mr. P.S. Bajwa, Additional Advocate General, Punjab,
for the applicant-appellant.

Mr. Praveen Gupta, Advocate, for respondent No. 1.

Mr. R.S. Bhatia, Advocate, for respondent No. 2.

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The Official Liquidator (OL) moved an application before the learned Company Judge seeking permission to release amounts to the secured creditors in pursuance to the accounts formulated by the Chartered Accountant appointed by the OL. Since the requisite amounts were available, the learned Single Judge in terms of the impugned order dated 6.12.2011 permitted release of the amounts to Punjab National Bank, one of the secured creditors, in terms of the decree passed in favour of the Bank but as informed to us, interest was paid only till the date of winding up order. As far as the appellant is concerned, the principle amount was directed to be released as the loan was a interest free loan.

The appellant is aggrieved by non-grant of interest on the principle amount. It is the contention of the learned Additional Advocate General that the interest is payable as there was default in payment of the amount even though the amount was advanced as a interest free loan.

There is an impediment for the appellant at the threshold in view of the appeal being barred by 184 days, for which an application under Section 5 of the Limitation Act, 1963 has been filed. A perusal of this application shows that the appellant took no steps till 2.2.2012 qua the

impugned order dated 6.12.2011 whereupon it sought copy thereof from the OL. It was certainly not the responsibility of the OL to supply a copy and the appellant obtained a copy from the Judicial Branch of this Court on 13.2.2012. Thereafter, again there is complete silence for almost four months as it is averred that, vide letter dated 7.6.2012, information was sought from the OL regarding payment of interest. The original agreement was sought, vide letter dated 30.7.2012. Again there is silence for more than three months when the Director of Industries, Punjab, vide letter dated 7.11.2012, advised filing of appeal. The appeal was filed only on 25.1.2013.

We have set out the aforesaid dates to show that there is no cogent explanation whatsoever for this inordinate delay in filing the appeal of 184 days. The usual explanation of Government delays is no more acceptable in view of the judgment of the Hon'ble Supreme Court in Office of the Chief Post Master General and others Versus Living Media India Ltd. and another, 2012 (2) SCT 269, paras 12 and 13 whereof read as under :-

“12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate

inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

Thus, we find no sufficient cause to condone the delay in filing appeal.

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Even otherwise if the appeal is examined on merits, the appellant having advanced an interest free loan, there can be no question of grant of interest that too from a company in liquidation. The appellant cannot claim parity with Punjab National Bank which had advanced loan on interest, had a decree in its favour and even then interest was granted only upto the date till the winding up order was passed.

Dismissed.

(SANJAY KISHAN KAUL)
CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

12.8.2013
sjks