

condone the delay in the absence of the reasonable explanation for the said delay so as to affect the rights of the opposite party.

Bearing this in our mind, if we look at the facts and explanation, we notice that the Applicant/Appellant from the beginning has been thoroughly, negligent in filing the Appeal in time. In addition to this, we also find that the explanation offered by the Applicant/Appellant for the delay would expose lack of bonafide on the part of the Applicant/Appellant.

As a matter of fact, the impugned Order had been passed on 09.11.2010, but the Applicant/Appellant had taken no steps to file the Appeal within 45 days. Admittedly, there is no explanation for this failure. On the other hand, they filed an Application before the Commission on 23.2.2011 requesting the Commission not to pass any further Orders consequent to the earlier Order passed on 09.11.2010.

Having aggrieved over the non-compliance of the impugned Order, the Respondent No.2 filed an Application before the Commission on 03.03.2011 praying for taking appropriate action under Section 142 of the Act reporting the non-compliance of the Order passed on 09.11.2010. Notice was issued. The

Applicant/Appellant appeared and instead of filing reply sought time to have conciliation with the opposite party to settle the matter. Accordingly, the time was granted.

As no settlement was arrived at by the parties, the same was reported to the Commission. Even then, the Applicant/Appellant did not choose to file its reply in the said petition under Section 142 of the Act. At that stage, the Applicant/Appellant thought it fit to file an Appeal as against 09.11.2010 Order before this Tribunal and as there was delay, the Applicant filed an Appeal along with an Application to condone the delay, in the Registry on 27.05.2011.

In the meantime, the Commission passed an Order in the Application filed under Section 142 of the Act on 02.06.2011 by giving one more opportunity, simply directing the Applicant/Appellant to comply with the Order passed on 09.11.2010 without any further delay.

Though the Appeal along with an Application to condone the delay was filed on 27.05.2011 before this Tribunal, the Registry noticed certain defects on 15.06.2011 and asked the Applicant to cure those defects. Accordingly, the defects were cured. The Applicant/Appellant has circulated a letter to the Registry of this

Tribunal requesting not to post the application to condone the delay and the present Appeal, since they intend to file another Appeal as against the Order passed on 02.06.2011 and to post both the matters together later. Accordingly, Registry did not post the matter before this Tribunal on the basis of the letter given by the Applicant/Appellant.

Only thereafter, as against the Order passed on 02.06.2011 in the Application under Section 142 of the Act, the Appellant filed another Appeal in Appeal No. 109 of 2011 on 18.07.2011.

As indicated earlier, along with this Appeal an Application for condonation of delay was also filed. So when the matter came up for condonation of delay on 11.08.2011, this Tribunal directed the Registry to give explanation as to why the Application to condone delay and the Appeal has not been posted before us immediately after curing the defects.

As requested by the Appellant, Registry posted Appeal No. 109 of 2011 filed against the Order passed on 02.06.2011 and it came up for admission on 11.08.2011. The same was also heard.

We felt that the Order passed on 02.06.2011 is a consequential Order to the main Order passed on 09.11.2011, and

so the Appeal filed as against the Order dated 02.06.2011 cannot be maintained so long as the Order passed on 09.11.2010 is in existence, on that ground, we dismissed the said Appeal No. 109 of 2011 on 26.08.2011.

Thereafter, this Application for condonation of delay was taken up. Mr. Umapathy, the learned counsel for the Respondent sought for time to file Counter to this Application for condonation of delay. Accordingly, the time was granted.

On 20.09.2011, counter has been filed. On that day, the Applicant/Appellant asked time for filing Rejoinder. Accordingly, adjourned. Again, on 12.10.2011 the Appellant sought time for filing Rejoinder. As requested, the matter was once again adjourned to 21.10.2011. In the mean time, the Rejoinder has been filed on 20.10.2011.

We received explanation from the Registry to the effect that only on the request made by the Applicant/Appellant through a letter requesting for posting of this Appeal along with other connected Appeal, this Appeal has not been posted in time. Registry has also tendered apology for not posting the Application and Appeal in time.

We are unable to appreciate the explanation that has been offered by the Registry. However, we hereby direct the Registry to number the Applications/Appeals and post the Applications/Appeals before us then and there in the future to enable us to pass appropriate Orders, once the Appeals/Applications are in order.

In this matter, we are more concerned with the explanation offered by the Appellant with regard to the delay caused. As a matter of fact, as pointed out by the learned counsel for the Respondent and as indicated above there is no reason as to why the Applicant/Appellant had not taken steps to file the Appeal immediately after the main Order that was passed on 09.11.2010. Further, even after filing of the Application under Section 142 of the Act on 03.03.2011, the Applicant/Appellant had not taken immediate steps to file the Appeal in this Tribunal. On the other hand, the learned counsel for the Applicant/Appellant represented before the Commission and submitted that already they have filed an application intimating the jurisdictional error as early as on 23.02.2011 itself requesting not to pass any further final order in this matter. Admittedly, this was filed even before filing of the Application under Section 142 of the Act on 03.03.2011. Despite

this, unfortunately no reply had been filed in the Application filed under Section 142 of the Act, which was ultimately disposed of on 02.06.2011.

To make the matter worse, in spite of the fact that the Commission simply directed the Appellant through the Order dated 02.06.2011 to refund the amount without any further delay, without taking any action, the Applicant/Appellant had not chosen to comply with that Order also.

As a result, the Respondent had to file another Application under Section 142 of the Act mentioning the non-compliance of both the Orders. It is now brought to our notice that the said Application has been allowed and ordered on 23.08.2010 again directing the Appellant/Applicant for the refund of the amount.

As indicated above, even before the Application that was filed by the Respondent on 03.03.2011 under Section 142 of the Act, the Appellant chose to file the Application before the Commission on 23.02.2011 itself indicating that there is jurisdictional error and so no Orders need be passed in the present proceedings. He also brought to the notice of the Commission through the said Application that the issue is pending before the other CGRF.

Despite this specific stand taken in the Application filed on 23.02.2011, there was no reason as to why no reply had been filed opposing the prayer sought for under Section 142 of the Act in the Application filed on 03.03.2011. Similarly, there is no reason as to why no steps have been taken to file an Appeal against the Order 09.11.2010 at least after receipt of notice in the Application filed by the Respondent under Section 142 of the Act on 03.03.2011.

On the other hand, the matter was periodically adjourned at the instance of the Applicant who sought time to have discussion with the other party. These things would indicate that the Appellant has not taken diligent steps to agitate its rights before the appropriate forum in time. On the other hand, as pointed out by the Respondents, the Appellant has represented before the State Commission in the proceedings under Section 142 of the Act that the Appellant was in the process of implementing the impugned Order.

This conduct would reveal that the Applicant has taken different stand at different times exposing its lack of diligence and lack of bonafide on the part of the Applicant in prosecuting the matter.

Of course, Mr. Samir Malik, the learned counsel has presented the case well and took pains to convince this Tribunal by elaborately arguing to the effect that his client was under bonafide impression that he was not liable to pay the amount especially in the light of the fact that there was no specific direction given in the Order dated 09.11.2010 and therefore delay may be condoned. Though we appreciate the presentation with persuasion made by Mr. Samir Malik, the learned counsel for the Applicant, to convince us with reference to the delay, we are unable to hold that the Appellant was bonafide and diligent in prosecuting the matter without any reasonable delay for the reasons mentioned above.

In the light of the above facts, we are constrained to hold that there is no sufficient cause shown in the explanation to condone the delay, particularly when we find the application would suffer from lack of bonafide. Therefore, the Application to condone the delay is dismissed. Consequently, the unnumbered Appeal is also dismissed. However, there is no order as to costs.

(V.J. Talwar)
Technical Member

(Justice M. KarpagaVinayagam)
Chairperson

TS/KS