

**NEW DELHI**

**Un-numbered Company Appeal (AT)) No. /2018**  
**(F.No.12/03/2018/NCLAT/UR/170)**

## Dhiren Pratapmal Bhandari

## Versus

## .... Respondents

**26.03.2018**

2. The allegation in the application is that the necessary papers had to be sent to the Applicant in Mumbai for rectification of the defects causing delay in presenting the Appeal after curing the defects. Hence, the prayer is to condone the delay of one day.

i) Is the time given for complying the direction to cure the defects liable to be extended under sub-rule (3) to rule 26 of the Rules?

4. **Point No. (i):** - Heard the learned counsel for the Applicant.

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5. The aforesaid appeal is seen presented before the Registry on 12.03.2018. The appeal when scrutinised on 14.03.2018 was found to be defective and so on the same day the Applicant was informed of the defects with a direction to cure them within a period of seven days. The period of seven days' expired on 21.03.2018. However, the appeal was presented after curing the defects only on 22.03.2018. According to the Section there is a delay of one day and hence the matter has been put up before me under sub-rule (2) to rule 26 of the Rules for appropriate orders.

6. The free certified copy of the impugned order is seen made ready on 14.11.2017. Therefore, the office computed the period of limitation from 15.11.2017 and when so computed, the period of 45 days for filing the appeal would expire on 29.12.2017. In para 6 of the Appeal memorandum it is alleged that the certified copy of the impugned order was provided only on 11.12.2017. This allegation is supported by the endorsement seen made on the first page of the copy produced. Therefore, if 12.12.2017 is taken as the starting point of limitation, the period of 45 days would expire on 25.01.2018.

7. In the case on hand, the initial presentation of the appeal under Rule 22 on 12.03.2018 and the subsequent presentation after curing the defects on 22.03.2018 are apparently much beyond the period of 45 days. It is true that the proviso to sub-section (3) to section 421 of the Act provides that the period of filing an appeal can be extended for a further period not exceeding 45 days. However, the power to extend the period provided under the proviso can be invoked only by the Hon'ble Appellate Tribunal.

8. Sub-rule (3) to rule 26 enables the Registrar to extend the time for compliance given under sub-rule (2) to rule 26. However, the Rules cannot override the provisions of the Act. The power under sub-rule (3) to rule 26 to extend the time given for compliance can be exercised by the Registrar, provided it is within the period of 45 days referred to in sub-section (3) to section 421 of the Act.

9. In the instant case, as the initial presentation as well as the subsequent presentation of the appeal after curing the defects are beyond the period of 45 days, the time granted for compliance under sub-rule (2) to rule 26 cannot be extended by

invoking the power under sub-rule (3) to rule 26. Therefore, the matter be placed before the Hon'ble Appellate Tribunal for appropriate orders. Point answered accordingly.

10. **Point No.(ii):** - M.A. No.65/2018 disposed of.

List the matter before the Hon'ble Appellate Tribunal on 28.03.2018.

(C.S. Sudha)  
Registrar