

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-2, MUMBAI**

APPEAL NO. CGIT- 2 / EPFA /28 /2023

**M/s. The Kalwan Merchants Cooperative
Bank Ltd. Kalwan**

G.T. Kothawade Road,
At Post Tal. Kalwan,
Dist. Nashik, Pincode-423501.

- Appellant

V/s.

**The Regional Provident Fund Commissioner-II,
EPFO, Nashik.**

**Employee Provident Fund Organization,
Nashik Regional Office**

Plot No. P-11, Bhavishya Nidhi Bhavan,
Satpur MIDC, Nashik-422007.

- Respondent

**ORDER
(Delivered on 14-01-2025)**

M/s. The Kalwan Merchants Cooperative Bank Ltd./appellant has challenged the legality of the orders dated 18.10.2021, passed u/s. 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (for-short "the EPF Act"), by the Regional Provident Fund Commissioner Nashik/respondent and by this application the appellant prays for condonation of delay in filing an appeal.

2. According to the appellant, after receipt of copy of order dated 18.10.2021 on 25.11.2021, initially the said order was challenged in Writ Petition No. 11886 of 2022 before the High Court on wrong legal advice, the same was disposed of on 13.10.2022, due to availability of alternate remedy. The copy of that order received on 17.10.2022. Then on the basis of Resolution of Board of

Directors dated 18.11.2022 and due to Covid situation and Diwali vacation, the Review application was filed on 22.12.2022. The said application of Review came to be rejected by order dated 16.01.2023, that order was received on 16.01.2023 and thereafter the present appeal has been filed on 08.02.2023. Lastly the appellant urged that due to the reasons referred above the appellant was prevented from filing an appeal within prescribed period of limitation, thus prays for condonation of delay in filing an appeal.

3. The respondent resisted this application for condonation of delay by reply. The respondent contended that, the appeal has to be filed within 60 days from the date of order and if prevented by sufficient cause the Tribunal can condone the delay of further period of 60 days. The Tribunal has no jurisdiction to condone the delay for more than 120 days from the date of passing of order. In the instant case the delay in filing an appeal is more than one year after completing the period of 120 days therefore the appellant is not entitled for condonation of delay in filing an appeal and ultimately prayed for rejection of the application.

4. I have heard Mr. P.K. Bodke Advocate for the appellant and Mrs. K. Sawant Advocate for the respondent.

5. It is worthwhile to mention here that, the relevant Clause of the Employees' Provident Funds Appellate Tribunal (Procedure) Rules 1997 (for-short, "Rules") reads as follows-

Clause 7 (2) - Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other Authority under the Act, may within 60 days from the date of issue of the

notification/order prefer an appeal to the Tribunal:

Provided that the Tribunal may if it is satisfied that, the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.

It is clear from the above mentioned Clause that, the Tribunal can extend the period of limitation only for the period of 120 days from the date of passing order.

6. I have gone through the decision of High Court Orissa reported in **LAWS (Orissa) 2018-3-41** relied by the respondent, it has been appreciated that, if the legislation has been provided, it has to be followed in strict sense and if there is specific time period framed in the legislation to entertain appeal, the Authorities concerned are not supposed to extend the period by assuming the power conferred upon.

Similarly in the decision of our Bombay High Court in **Writ Petition No. 15694 of 2023** relied by the respondent, the Hon'ble Lordships considered the decision of the Supreme Court in **Assistant Commissioner (CT) LTU Kakinada and Ors. v/s. Glaxo Smith Kline Consumer Health Centre Ltd. (2020) 19 SCC 681**, in which it has been appreciated that, the remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days, therefore not entertain and thereby concluded that, the petitioner approached the court beyond the period of 120 days, effectively with the delay of 24 months there beyond, could not be justified and entertaining Writ Petition the light of decision of Supreme Court referred above.

7. In the case in hand, the order under appeal came to be passed on 18.10.2021, the appeal has been filed on 08.02.2023 i.e., approximately more than one year and 100 days an attempt has been made on behalf of the appellant to show that, initially he approached to the High Court in Writ Petition No. 11886 of 2022, the same was disposed off on 13.10.2022, however the copy of order of High Court has not been placed on record before this Tribunal. Not only this but, there is absolutely nothing on record to show that, after how many days i.e., 18.10.2021, the Writ Petition was filed. It seems that thereafter, the application for Review has been filed on 22.12.2022 i.e., after about 71 days from the date of withdrawal of the Writ Petition from the High Court. The same Review application was rejected on 16.01.2023. The copy of that order is also not place on record and then the present appeal has been filed on 18.02.2023. In short, the order under appeal dated 18.10.2021 has been challenged after about more than one year and 100 days.

8. I reiterate that, there is nothing on record to show that, after how many days the Writ Petition was filed by the appellant after order passed by the respondent on 18.10.2021. The Review application has been filed after more than 71 days and even after rejection of the Review application, the present appeal has been filed after about 23 days from the above discussed fact. It is clear that even assuming that, the appellant was prevented by filing of Writ Petition as well as Review application, still there is a delay of more than 120 days in filing an appeal and as per the legal provision discussed above as well as settled position of Law, the

court can condone the delay only upto 120 days and not more than 120 days.

9. I have gone through the decision of the Supreme Court in **M/s. Consolidated Engineering Enterprises and The Principal Secretary (Irrigation Department & Ors.) (2008) 7 SCC 169. SLP (Civil) Nos. 2733-2734 of 2024 Mool Chandra v/s. Union of India & Anr.**, and the decision of Bombay High Court in **Shaikh Chand s/o Shaikh Ahmed v/s. Zaitunbee w/o Shaikhlal, in Writ Petition No.10439 of 2015.**

10. In the decision of Supreme Court in M/s. Consolidated Engineering, it has been appreciated that, the Schedule to the Limitation Act prescribes the period of limitation only to the proceedings in the court and not to any proceedings before the Tribunal or quasi judicial Authority consequently Section 3 and Section 29 (2) of the Limitation Act will not apply to appeals or applications before the Tribunal, unless expressly provided. It has been further appreciated that, time during which the applicant has been prosecuting with due diligence another proceeding, whether in a court of first instance or appeal or revision, against the same party for the same relief shall be excluded. Where such proceeding is prosecuted in good faith in a court which from the effect of jurisdiction or other cause of like nature is unable to entertain it.

11. The another decision of the Supreme Court, is in respect of enquiry and it has been held that, while deciding the application for condonation of delay under Section 5 of the Limitation Act it was necessary to consider the sufficient cause and the question is one of discretion to be followed in the facts and circumstances. In the

decision of the Bombay High Court relied by the appellant (supra), the matter before Hon'ble Lordship was in respect of execution proceedings under Civil Procedure under Procedure Code in which it has been observed that, the sufficient cause needs to be explained.

12. It is clear from the above referred decisions that, the provisions of the Limitation Act are not applicable to the appeal under the EPF Act and the limitation of filing an appeal is expressly mentioned in the Act. Similarly even if the appellant approaches to the High Court in good faith, however there is no exact date when the appellant filed Writ Petition before the High Court for want of certified order. Thereafter from the disposal of the Writ Petition by the High Court the Review application was also filed after more than 120 days, therefore I do not think that, the observations of the Supreme Court are anyway helpful to the applicant to point out before the Court that, he was prevented by just and sufficient cause and entitled for condonation of delay more particularly when this Tribunal cannot condone the delay of more than 120 days from the date of passing of order even assuming that there was sufficient reason for the same there cannot be any quarrel about the ratio laid down by the superior courts however the ratio laid down therein cannot be made applicable to this case as the present case is under the EPF Act. To my mind, the decisions relied by the appellant are distinguishable on facts. In such circumstances it can be safely said that, as the present appeal has been filed beyond the period of 120 days from the date of order i.e., more than one year and 100 days the applicant is not entitled for condonation in filing an appeal.

In the result, the application is dismissed. The appellant is not entitled for condonation of delay in filing the appeal therefore the appeal stands dismissed as barred by limitation.

Sd/-

Date: 14-01-2025

(Shrikant K. Deshpande)
Presiding Officer
CGIT -2, Mumbai