

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 10.01.2014

+ WP (C) 527/2012

POONAM GARG

... Petitioner

versus

**THE CHIEF MANAGER, STATE BANK OF
PATIALA & ANOTHER**

... Respondents

Advocates who appeared in this case:-

For the Petitioner : Mr Vikas Mahajan with Mr Vikrant Nilesh Goyal
For the Respondent No.1 : Mr Shiv K. Tyagi

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

BADAR DURREZ AHMED, J

1. The question that arises for consideration in this writ petition is – whether the Debts Recovery Appellate Tribunal has jurisdiction to condone the delay under Section 5 of the Limitation Act, 1963 in the filing of an appeal under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as ‘the Securitisation Act’)? The

petitioner had filed an application under Section 17 of the Securitisation Act, being aggrieved by the measures taken by the respondent No.1 / bank under Section 13(4) of the said Act. That application was filed on 04.02.2008 and was registered as S.A. No.152/2008 with the Debts Recovery Tribunal-II, Chandigarh. We need not advert to the merits of the application under Section 17 inasmuch as we are only concerned with the question of limitation with regard to the filing of an appeal under Section 18 of the said Act before the Debts Recovery Appellate Tribunal, New Delhi (DRAT). What is relevant for us are only the dates of various steps in the course of the present litigation.

2. On 08.08.2008, after the respondent No.1 / bank had filed its written statement, the case was listed for hearing before the Debts Recovery Tribunal-II, Chandigarh. On that date, nobody appeared on behalf of the petitioner and, therefore, the said application (being S.A. No.152/2008) was dismissed in default. Thereafter, the petitioner filed an application being M.A. No.52/2008 in the said S.A. No.152/2008 seeking recall of the order dated 08.08.2008 and restoration of the application being S.A. No.152/2008. On 30.11.2009, when the said M.A. No.52/2008 was taken up for hearing, the petitioner's counsel was not

present and the said application also suffered the same fate as the earlier S.A. No.152/2008 and was dismissed for non-appearance. Subsequently, the petitioner filed another application being M.A. No.95/2009 for restoration of M.A. No.52/2008. That application was dismissed by the Debts Recovery Tribunal-II, Chandigarh by an order dated 02.06.2011 on the ground that the petitioner had not been able to indicate sufficient cause for non-appearance.

3. Thereafter, the petitioner, being aggrieved by the order dated 02.06.2011 passed by the Debts Recovery Tribunal-II, Chandigarh, preferred an appeal under Section 18 of the Securitisation Act before the DRAT. The said appeal was numbered as Inward No.435/2011 arising out of S.A. No. 152/2008 (Chandigarh-II). The appeal was, admittedly, filed after a delay of 8 days and, therefore, the petitioner filed an application (M.A. No.599/2011) alongwith the said appeal seeking condonation of delay under Section 5 of the Limitation Act, 1963. The said application and the appeal were dismissed alongwith two other matters by a common order dated 02.09.2011 passed by the DRAT. The view taken by the DRAT was that it did not have the jurisdiction to condone the delay under Section 5 of the Limitation Act, 1963 in respect

of a delayed appeal filed under Section 18 of the Securitisation Act. The DRAT took the view that the Securitisation Act had specifically referred to limitation under Section 36 thereof and by virtue of that provision, the only aspect covered therein was with regard to the period of limitation prescribed under the Limitation Act, 1963 for a secured creditor to take all or any of the measures under Section 13(4) of the Securitisation Act. The DRAT held that this was the only extent to which the Limitation Act, 1963 was made applicable to proceedings under the Securitisation Act. The DRAT observed that once the law of limitation had been taken care of in the Securitisation Act and the legislature had not applied the whole of the Limitation Act, 1963 to the proceedings under the Securitisation Act, then it could not be understood to mean that all the provisions of the Limitation Act would apply. As such, there was an express exclusion of the provisions of the Limitation Act, 1963 to the proceedings under the Securitisation Act and, particularly, in respect of an appeal under Section 18 of that Act. It was, therefore, held by the Tribunal that Section 18 of the said Act did not empower the DRAT to condone the delay. The DRAT, New Delhi followed the view taken by the DRAT Allahabad in several orders passed by the latter in the cases of **State Bank of India v.**

Sudershan Doors Pvt. Ltd, Misuki Exports Pvt. Ltd v. State Bank of India and Another, etc.

4. Being aggrieved by the impugned order dated 02.09.2011 passed by the DRAT, the present writ petition has been filed in this court.

5. The question before us, as pointed out in the very beginning, is – whether the DRAT has the jurisdiction to condone the delay in the filing of an appeal under Section 18 of the Securitisation Act by invoking the provisions of Section 5 of the Limitation Act, 1963 ? It is the contention of the petitioner that the whole approach of the DRAT was erroneous inasmuch as there was no need for the legislature to have specifically applied the provisions of Sections 4 to 24 of the Limitation Act, 1963 to any special Act, such as the Securitisation Act, inasmuch as the said provisions of the Limitation Act, 1963 became applicable to the Securitisation Act by virtue of Section 29(2) of the Limitation Act, 1963 itself. It was also contended on behalf of the petitioner that the DRAT was wrong in concluding that there was an express exclusion of the provisions of the Limitation Act, 1963 insofar as proceedings under the Securitisation Act were concerned. It was submitted on behalf of the petitioner that merely because there is a reference to the Limitation Act,

1963 in Section 36 of the Securitisation Act and, that too, for a limited purpose, it did not mean that the legislature had taken care of the whole of the Limitation Act, 1963, including the provisions of Section 4 to 24 thereof. It was also contended that the DRAT failed to appreciate that the provisions of Section 36 of the Securitisation Act, did not, in any manner, restrict or circumscribe the period prescribed for filing an appeal under Section 18 of the Securitisation Act. A reference was made to the Supreme Court decision in the case of Union of India v. Popular Construction Company: 2001 (8) SCC 470 which considered the provisions of Section 34 (3) of the Arbitration & Conciliation Act, 1996. In that provision, the crucial words used were “but not thereafter”. The said phrase was held by the Supreme Court to amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, 1963 and, therefore, amounted to a bar to an application under Section 5 of the said Act beyond the further period of 30 days as provided in the proviso to Section 34(3) of the Arbitration and Conciliation Act, 1996. In this context, it was submitted on behalf of the petitioner that there is no such expression or phrase such as “but not thereafter” in Section 18 of the Securitisation Act which merely prescribes that the appeal may be preferred within 30 days from the date of receipt of the order of the Debts

Recovery Tribunal. As such, there is no express provision, excluding the applicability of Section 5 of the Limitation Act, 1963.

6. It was then contended by the learned counsel for the petitioner that the provisions of Section 29(2) of the Limitation Act, 1963 are very material. The said provision reads as under:-

“29. Savings.—

(1) xxxxx xxxxx xxxxx xxxxx

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.”

It was contended that by virtue of Section 29 of the Limitation Act, 1963, the provisions contained in Sections 4 to 34 (inclusive) were to apply insofar as the Securitisation Act was concerned, but only insofar as, and to the extent to which, they are “not expressly excluded” by the Securitisation Act. It was contended that the expression “expressly excluded” was different and distinct from a case of “exclusion by implication”. In this context, it was submitted that the exclusion must be

express. In other words, it must be in direct terms, it must be definite, manifest and not implied. Construing the phrase, “expressly excluded” in this manner, it was contended that there is no such clear, direct, definite explicit or manifest exclusion of the provisions of Section 4 to 24 of the Limitation Act, 1963 in the Securitisation Act.

7. On the other hand, on behalf of the respondent No.1 / bank, it was contended that the decision of the DRAT was in accord with the law laid down by the Supreme Court. Several decisions were referred to, including the decision in the case of *Popular Construction Company (supra)* and *CCE and Customs v. Hongo India (P) Ltd:* 2009 (5) SCC 791.

8. It was contended on behalf of the respondent No.1 / bank that it was necessary to also keep in mind the intention of the legislature in enacting the Securitisation Act. It was submitted that the Securitisation Act was preceded in time by the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as ‘the RDDBFI Act’). It was submitted that, as the proceedings before the Debts Recovery Tribunal under the RDDBFI Act became similar to those of the regular civil courts, a need was felt for facilitating the speedy recovery of

banks' dues. The Ministry of Finance, Government of India had constituted a committee to suggest measures for expediting the recovery of the debts due to banks and financial institutions. The Committee submitted its report and suggestions made by it were accepted by the Government of India which ultimately led to the enactment of the Securitisation Act in 2002 by which, for the first time, secured creditors had been empowered to take steps for recovery of their dues without the intervention of the courts and / or tribunals under Section 13 of the Securitisation Act.

9. In this backdrop, it was submitted that the only reference to the Limitation Act, 1963 is contained in Section 36 of the Securitisation Act and, that is limited to the measures that a secured creditor could take under Section 13 (4) of the said Act. Therefore, according to the learned counsel for the respondent No.1 / bank, the DRAT was right in holding that only a specific part of the Limitation Act was made applicable to the proceedings under the Securitisation Act. This necessarily meant that the other provisions of the Limitation Act were excluded insofar as the proceedings under the Securitisation Act were concerned.

10. It was further submitted that a plain reading of Section 18(1) of the Securitisation Act would show that the words used are clear and unambiguous and that the appeal before the DRAT should be filed within 30 days from the date of receipt of the order of the Debts Recovery Tribunal passed under Section 17. It was contended that there is no scope left to infer that the DRAT had power to extend the period prescribed under Section 18 of the Securitisation Act and that the only source of such power could possibly have been Section 5 of the Limitation Act, 1963, but that has not been applied to the Securitisation Act.

11. It was also contended that since the Securitisation Act followed the RDDBFI Act and since the Securitisation Act has clear reference to the RDDBFI Act, the provisions of both the Acts have to be considered. It was contended that the provision for appeal to the Appellate Tribunal under the RDDBFI Act is contained in Section 20 thereof. The prescribed period of limitation is 45 days from the date on which the order made by the Debts Recovery Tribunal is received by the aggrieved party. Under the Securitisation Act, as already pointed out above, the period prescribed for preferring an appeal in respect of an order made by the Debts Recovery Tribunal under Section 17 is 30 days from the date of

receipt of such an order. Insofar as an appeal under Section 20 of the RDDBFI Act is concerned, the same has to be made, as pointed out above, within 45 days, but there is a proviso to Section 20(3) of that Act which permits the Appellate Tribunal to entertain an appeal even after the expiry of the said period of 45 days if it is satisfied that there was sufficient cause for not filing the appeal within that period. But, there is no such proviso in Section 18 of the Securitisation Act. Therefore, it was contended, the clear intention of the legislature, insofar as proceedings under the Securitisation Act were concerned, was to expressly and clearly limit the period of limitation for filing an appeal to the period of 30 days prescribed under Section 18(1) of the Securitisation Act. It was, therefore, submitted that no power to condone the delay has been granted to the DRAT under Section 18 of the Securitisation Act.

12. The learned counsel for the respondent No.1 / bank also placed reliance on a decision of the High Court of Madhya Pradesh in the case of **M/s Seth Banshidhar Kedia Rice Mills Pvt. Ltd and Others v. State Bank of India and Another**, WP No.2393/2011, decided on 05.09.2011 wherein the very question which arises in this petition, had been considered. The Madhya Pradesh High Court referred to the Supreme

Court decisions in **Fair Growth Investments Limited v. Custodian: 2004** (11) SCC 472 and **Hukumdev Narain Yadav v. Lalit Narain Mishra: AIR 1974 SC 480.** Referring to *Fairgrowth Investments Limited (supra)*, the Madhya Pradesh High Court observed that, according to the Supreme Court, the general rule, as far as the special laws and local Acts are concerned, is that the specified provisions, including Section 5 of the Limitation Act, 1963 would apply provided the special or local Act prescribes a period of limitation different from that prescribed under the Limitation Act and that the special / local Act does not expressly exclude the application of the Limitation Act. It was also noticed in the said decision of the Madhya Pradesh High Court that the Supreme Court in *Hukumdev Narain Yadav (supra)* held that the expression “expressly excluded” also means “exclusion by necessary implication” and that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act, 1963 by an express reference, it would nonetheless be open to the court to examine as to whether and to what extent the said provisions are excluded by the nature of the subject matter and the scheme of the special law. After considering various decisions, the High Court of Madhya Pradesh came to the conclusion that the legislature had consciously excluded the applicability of the

provisions of Sections 4 to 24 of the Limitation Act, 1963 insofar as they relate to Section 18 of the Securitisation Act.

13. We may point out that the learned counsel for the respondent No.1 / bank also referred to a decision of a Division Bench of the Bombay High Court in the case of **Madhukar Govindrao Thaware & Others v. Central Bank of India: 2012 (1) DRTC 14 (Bom)**. In that decision, the provisions of Section 30 of the RDDBFI Act were considered. The said provision permitted a person aggrieved by an order made by the Recovery Officer under the RDDBFI Act to prefer an appeal to the Debts Recovery Tribunal within 30 days from the date on which a copy of the order was issued to him. In the case before the Bombay High Court, the appeal filed under Section 30 was beyond the prescribed period of 30 days and was accompanied by an application seeking condonation of delay under Section 5 of the Limitation Act, 1963. The question raised before the Bombay High Court was whether the provisions of Section 5 of the Limitation Act or its principles were applicable to an appeal filed under Section 30 of the RDDBFI Act. The Bombay High Court considered the provisions of Section 5 and Section 29(2) of the Limitation Act, 1963 as also the Supreme Court decision in the case of **Hongo India (supra)**. The

court then compared the provision of appeal under Section 20 of the RDDBFI Act to the provision of appeal under Section 30 of the said Act. It was observed that while the proviso to Section 20(3) of the RDDBFI Act permitted the Appellate Tribunal to entertain an appeal after the expiry of the prescribed period of limitation if it was satisfied that there was sufficient cause for not filing the appeal within that period, there was no such provision insofar as an appeal under Section 30 of the said Act was concerned. The court, therefore, held that the legislature by necessary implication did not intend to include the principles of Section 5 of the Limitation Act, 1963 while enacting Section 30 of the RDDBFI Act.

14. Finally, the Bombay High Court observed as under:-

“14. ... If the relevant special statute provides for the specific period of limitation to prefer Appeal without any specific provision for the Court to condone delay, then inherent power of the Court to condone delay under the general law i.e. Limitation Act, 1963 cannot apply and delay cannot be condoned on the ground of equity and hardship. Order of the Recovery officer under Chapter V of the RDDBFI Act would become absolute and binding if no Appeal is preferred within specified limitation of 30 days as provided for under Sec. 30 of the Act. Thus we find that a pure question of law which arose for determination in this petition is as to whether an application for condonation of delay in preferring an application under Sec. 30(1) of the RDDBFI Act beyond the period of 30 days prescribed under

the said provision can be allowed by Debits Recovery Appellate Tribunal (DRAT) by exercising power to condone delay as understood under Sec. 5 of the Limitation Act?

In our opinion, the question of law posed above must be answered in the negative for the reasons stated and discussed by us.

(underlining added)

15. A reference was also made by the counsel for the parties to the decisions of this court in the cases of M/s Parnam Enterprises v. Commissioner of Sales Tax, New Delhi & Others [WP(C) 5170/2003, decided on 21.05.2004]; M.R. Tobacco Pvt. Ltd v. UoI & Others [WP(C) 8592/2003, decided on 20.04.2004]; and Delta Impex v. Commissioner of Customs [Cus. A.C. No.9/2003, decided on 13.02.2004].

16. At this juncture, it is appropriate to set out the relevant provisions. Sections 2(j), 3(1), 5 and 29(2) of the Limitation Act, 1963 are as under:-

“2(j) “period of limitation” means the period of limitation prescribed for any suit, appeal or application by the Schedule, and “prescribed period” means the period of limitation computed in accordance with the provisions of this Act;”

XXXX

XXXX

XXXX

XXXX

XXXX

“3. Bar of Limitation.—(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the

prescribed period shall be dismissed although limitation has not been set up as a defence.”

XXXXX XXXXX XXXXX XXXXX

“5. Extension of prescribed period in certain cases.–

Any appeal or any application, other than an application under any of the provisions of Order 21 of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

XXXXX XXXXX XXXXX XXXXX

“29. Savings.–

(1) XXXXX XXXXX XXXXX XXXXX

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.”

17. The relevant provisions of the Securitisation Act are as under:-

“17. Right to appeal.–(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may prefer an appeal to the Debts Recovery Tribunal having jurisdiction in

the matter within forty-five days from the date on which such measure had been taken.

(2) Where an appeal is preferred by a borrower, such appeal shall not be entertained by the Debts Recovery Tribunal unless the borrower has deposited with the Debts Recovery Tribunal seventy-five per cent. of the amount claimed in the notice referred to in sub-section (2) of section 13:

Provided that the Debts Recovery Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

(3) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.

18. Appeal to Appellate Tribunal.—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under Section 17, may prefer an appeal along with such fee, as may be prescribed to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not

less than twenty-five per cent of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as maybe, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.

XXXXX XXXXX XXXXX XXXXX

36. Limitation.—No secured creditor shall be entitled to take all or any of the measures under sub-section (4) of section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963 (36 of 1963).

37. Application of other laws not barred.—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.”

18. The relevant provisions of the RDDBFI Act are as under:-

“19. Application to the Tribunal.—(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction,—

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

- (b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business, or personally works for gain; or
- (c) the cause of action, wholly or in part, arises.

Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier under that Act:

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section(1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.

20. Appeal to the Appellate Tribunal.– (1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

PROVIDED that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty five days if it is satisfied that there was sufficient cause for not filing it, within that period.

(4) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

XXXXX XXXXX XXXXX XXXXX

24. Limitation.—The provisions of the Limitation Act, 1963, (36 of 1963) shall, as far as may be, apply to an application made to a Tribunal.”

19. It may be pointed out at the outset that Section 5 of the Limitation Act has reference to “Court”. However, for the present purposes, we are not entering into the controversy as to whether the DRAT satisfies the

description of “Court” or not because the matter can be decided even on the assumption that the DRAT is a “Court”. As observed by the Supreme Court in **Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker: 1995 (5) SCC 5**, Section 29 requires that for importing the machinery of the provisions contained in Sections 4 to 24 of the Limitation Act, 1963, the following two conditions have to be satisfied:-

- (i) There must be a provision for a period of limitation under any special or local law in connection with any suit, appeal or application;
- (ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the Schedule to the Limitation Act.

20. In the present case, we find that the appeal of the kind referred to in Section 18 of the Securitisation Act is not even mentioned (and could not have been as the Securitisation Act was enacted much later in 2002) in the Schedule to the Limitation Act, 1963. Therefore, it is clear that the prescription of a period of limitation under Section 18 of the Securitisation Act is clearly “different” from the period prescribed by the Schedule to the Limitation Act, 1963. Once these two conditions are satisfied, Section 29(2) of the Limitation Act, on its own force would get attracted and all the provisions of Sections 4 to 24 of the Limitation Act,

1963 would become applicable, but only insofar as, and to the extent to which, they are not expressly excluded by the Securitisation Act.

21. In *Hukumdev Narain Yadav (supra)*, the Supreme Court, *inter alia*, examined the question as to whether, by virtue of Section 29(2) of the Limitation Act, 1963, the provisions of Sections 4 to 24 of that Act would be applicable to the filing of election petitions ? The Supreme Court held that the provisions of Section 5 of the Limitation Act, 1963 would not govern the filing of election petitions. The Supreme Court considered the words “expressly excluded” as appearing in Section 29(2) of the Limitation Act, 1963. While doing so, the Supreme Court observed as under:-

“17. Though Section 29(2) of the Limitation Act has been made applicable to appeals both under the Act as well as under the Code of Criminal Procedure, no case has been brought to our notice where Section 29 (2) has been made applicable to an election petition filed under Section 81 of the Act by virtue of which either Sections 4, 5 or 12 of the Limitation Act has been attracted. Even assuming that where a period of limitation has not been fixed for election petitions in the Schedule to the Limitation Act which is different from that fixed under Section 81 of the Act, Section 29 (2) would be attracted, and what we have to determine is whether the provisions of this Section are expressly excluded in the case of an election petition. It is contended before us that the words “expressly excluded” would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the

operation is to be excluded. As usual the meaning given in the Dictionary has been relied upon, but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. ...

(underlining added)

22. From the above, it is apparent that the Supreme Court made it clear that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act, 1963 by an express reference, it would nonetheless be open to the court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.

23. A similar view has been taken by the Supreme Court in ***Hongo India*** (*supra*), wherein it was observed as under:-

“35. It was contended before us that the words “expressly excluded” would mean that there must be an express reference made in the special or local law to the specific provisions of

the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.”

(underlining added)

24. We may now advert to the decision of the Supreme Court in *Popular Construction Company (supra)*. The question that was considered by the Supreme Court in that case was whether the provisions of Section 5 of the Limitation Act, 1963 were applicable to an application challenging an award under Section 34 of the Arbitration and Conciliation Act, 1996. Analysing the provisions of Section 29(2) of the Limitation Act, 1963, the Supreme Court held that the provisions of Sections 4 to 24 of the Limitation Act would apply when (i) there is a

special or local law which prescribes a different period of limitation for any suit, appeal or application; and (ii) the special or local law does not expressly exclude those sections. Insofar as Section 34 of the Arbitration and Conciliation Act, 1996 was concerned, as mentioned by us earlier in this judgment, the proviso to sub-section (3) thereof stipulated that after the court was satisfied that the applicant had been prevented by sufficient cause from making the application within the said period of three months, it may entertain the application within a further period of 30 days, “but not thereafter”. The phrase “but not thereafter”, extracted in the above proviso was held by the Supreme Court to amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, 1963 and was, therefore, held to be a complete bar to the application of Section 5 of the Limitation Act. In *M. R. Tobacco (supra)*, a Division Bench of this court had, *inter alia*, considered the question as to whether the position would have been different if the words “but not thereafter” had not been used. Could the provision still amount to an express exclusion as contemplated in Section 29(2) of the Limitation Act, 1963 ? This court held that although on first blush, it may appear from the decision in *Popular Construction Company (supra)* that if the words “but not thereafter” had not been there in the proviso to Section 34(3) of the Arbitration and

Conciliation Act, 1996, it may not have amounted to an express exclusion of, *inter alia*, the provisions of Section 5 of the Limitation Act, 1963, but, a deeper examination would, however, show that such a conclusion would not be in order.

25. From the above discussion, it is clear that if the provisions contained in Sections 4 to 24 of the Limitation Act, 1963 were to apply to the Securitisation Act, by virtue of Section 29(2) of the Limitation Act, it would have to be seen as to what extent they have been made applicable under the Securitisation Act and as to whether they are not expressly excluded by the Securitisation Act. We have also seen that the words “expressly excluded” do not merely mean that there must be an express reference made in the special or local law and that the said words would even be applicable in the absence of an express reference where the nature of the provisions of the special Act or the nature of the subject-matter or the scheme of the special law excludes the operation of Sections 4 to 24 of the Limitation Act, 1963. It is also clear that the applicability of the said provisions of the Limitation Act, 1963 are to be judged not from the terms of the Limitation Act, 1963, but by the provisions of the

special law (in this case, the Securitisation Act) relating to the filing of an appeal.

26. We agree with the learned counsel for the respondent No.1 / bank that the provisions of the Securitisation Act have to be read in juxtaposition with the provisions of the RDDBFI Act. This is more so because Section 18(2) of the Securitisation Act specifically prescribes that, save as otherwise provided in the Securitisation Act, the Appellate Tribunal, shall, as far as may be, dispose of the appeal in accordance with the provisions of the RDDBFI Act and the rules made thereunder. In other words, unless something is expressly provided in the Securitisation Act with regard to the disposal of an appeal, the same has to be disposed of in accordance with the provisions of the RDDBFI Act and the rules made thereunder. Therefore, it becomes necessary to examine the provisions of the appeal contained in the Securitisation Act in comparison with the provisions of appeal to the Appellate Tribunal under the RDDBFI Act. We have already noticed above that while Section 18 of the Securitisation Act prescribes a period of limitation of 30 days for filing of an appeal before the Tribunal from an order passed under Section 17 by the Debts Recovery Tribunal, Section 20 of the RDDBFI

Act stipulates a period of 45 days for filing of an appeal to the Appellate Tribunal from an order passed by the DRT. Apart from this difference, in the periods of limitation, there is another significant and material difference between the provisions of Section 18 of the Securitisation Act and Section 20 of the RDDBFI Act. While the proviso to Section 20(3) of the RDDBFI Act enables the Appellate Tribunal to entertain an appeal even after the expiry of the prescribed period of 45 days, if it is satisfied that there was sufficient cause for not filing the appeal within the prescribed period, there is no such stipulation or provision contained in Section 18 of the Securitisation Act. When the legislature enacted the Securitisation Act, it was certainly aware of the provisions of appeal to an Appellate Tribunal under the RDDBFI Act. Being aware of the provisions, it specifically provided for a different period of limitation of 30 days for an appeal under the Securitisation Act and also consciously excluded a provision similar to the proviso to Section 20(3) of the RDDBFI Act. The only conclusion that can be drawn from this is that the legislative intent was clear, in that the delay in filing an appeal under Section 18 of the Securitisation Act could not be condoned. This would clearly fall within the expression “expressly excluded” as appearing in Section 29(2) of the Limitation Act, 1963.

27. It is also pertinent to mention here that Section 24 of the RDDBFI Act specifically stipulates that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to an application made to a “Tribunal”. Two things are important. The first is that the provisions of the Limitation Act, 1963 have been specifically made applicable under the RDDBFI Act. The second point to be noted is that the provisions of the Limitation Act, 1963 have been made applicable only to an application made to a Tribunal and not to an appeal before the Appellate Tribunal. Insofar as the Securitisation Act is concerned, the provision as to limitation is contained in Section 36 thereof which, only speaks of the limitation prescribed under the Limitation Act, 1963 in respect of a secured creditor’s entitlement to take all or any of the measures under Section 13(4) of the Securitisation Act. The DRAT in the impugned order has correctly observed that it is only to that extent that the limitation has been made applicable to the proceedings under the Securitisation Act. It may be relevant to note that unlike the RDDBFI Act, the Limitation Act, 1963 has not even been made applicable to an application under Section 17 of the Securitisation Act. It has only been made applicable insofar as the secured creditor’s entitlement to take all or any of the

measures under Section 13(4) of the Securitisation Act are concerned. For this reason also, we are of the view that there is an express exclusion of the provisions of Sections 4 to 24 of the Limitation Act, 1963.

28. In view of the foregoing discussion, it is clear that the Debts Recovery Appellate Tribunal does not have the power to condone the delay in the filing of an appeal under Section 18 of the Securitisation Act. Consequently, the writ petition is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

VIBHU BAKHRU, J

JANUARY 10, 2014

dutt