

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P.No.32520 of 2015

and

M.P.No.1 of 2015

1.M/s.Priya Tea Industries,
rep by its Managing Partner,
A.Chandran,
Robroy Estates,
Konavakorai Road,
Kotagiri.

2.A.Chandran,
Managing Partner,
M/s.Priya Tea Industries,
Robroy Estates,
Konavakorai Road,
Kotagiri.

3.Mrs.Kali Chandran,
Partner,
M/s.Priya Tea Industries,
Robroy Estates,
Konavakorai Road,
Kotagiri.

... Petitioners

Vs.

1.Indian Bank,
rep by its Authorised Officer,
359, Dr.Nanjappa Road,
Coimbatore-18.

2.Indian Bank,
rep by its Branch Manager,
Coonoor Branch,
The Nilgiris.

3.M/s.Navashila Agro Private Ltd.,
809, Parekh Market,
No.29, JSS Road,
Near Kennedy Bridge,
Opera House,
Mumbai-400 008.

..Respondents

The Writ Petition is preferred under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus to call for the records of the Debt Recovery Appellate Tribunal, Chennai pertaining its proceedings I.A.No.1077/14 in AIR(SA)No.775 of 2011 and quash the order dated 1.12.2014 and consequently direct the Debt Recovery Appellate Tribunal, Chennai to hear and pass suitable orders in I.A.No.1077 of 2014 on its merit.

For Petitioners : Mr.R.Sivakumar

For Respondents : Mr.F.B.Benjamin George for RR1 and 2
Mr.Sriram
for M/s.A.S.Kailasam & Associates
for R-3

ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Questioning the correctness of the order dated 1st December, 2014 passed in I.A.No.1077/14 in AIR(SA)No.775 of 2011, whereunder the application for condonation of delay in preferring appeal under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") was dismissed by the Debt Recovery Appellate Tribunal, Chennai on the ground that the question of condonation of delay does not arise in cases of appeals filed under Section 18 of the SARFAESI Act, the instant writ petition is filed.

2. Mr.R.Sivakumar, learned counsel appearing for the petitioners would contend that the appellate Tribunal under a mistaken belief that the Tribunal has no power to condone the delay in filing the appeal under Section 18 of the SARFAESI Act, has dismissed the application for condonation of delay without assigning reasons. It is further contended that the appellate Tribunal has full jurisdiction and competence to consider the reasons for condonation of delay in filing the appeal and on being satisfied with the reasons, the delay deserves to be condoned.

3. The issue as to whether the appellate tribunal, while exercising its power under the provisions of Section 18 of the SARFAESI Act, is competent to consider the application for

condonation of delay if an appeal is preferred beyond the limitation period and to condone the delay, came up for consideration in Baleshwar Dayal Jaiswal Vs. Bank of India and others¹, wherein the Supreme Court, considering all aspects of the matter, held as under :

"10. It is difficult to appreciate how the above principle justifies the view of the High Court. The change intended in the SARFAESI Act has to be seen from the statute and not from beyond it. No doubt the period of limitation for filing an appeal under Section 18 of the SARFAESI Act is 30 days as against 45 days under Section 20 of the RDDB Act. To this extent, the legislative intent may be deliberate. The absence of an express provision for condonation, when Section 18(2) expressly adopts and incorporates the provisions of the RDDB Act which contains provision for condonation of delay in filing of an appeal, cannot be read as excluding the power of condonation. As already observed, the proviso to Section 20(3) which provides for condonation of delay (45 days under the RDDB Act) stands extended to disposal of appeal under the SARFAESI Act (to the extent that condonation is of delay beyond 30 days). There is no reason to exclude the proviso to Section 20(3) in dealing with an appeal under the SARFAESI Act. Taking such a view will be nullifying Section 18(2) of the SARFAESI Act. We are thus, unable to uphold the view taken by the Madhya Pradesh High Court.

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15. As a result of the above discussion, the question is answered in the affirmative by holding that delay in filing an appeal under Section 18(1) of the SARFAESI Act can be condoned by the Appellate Tribunal under proviso to Section 20(3) of the RDDB Act read with Section 18(2) of the SARFAESI Act. The contrary view taken by the Madhya Pradesh High Court in Seth Banshidhar Kedia Rice Mills (P) Ltd. case¹ is overruled."

4. In view of the aforesaid ratio laid down by the Supreme Court, the impugned order is set aside and the matter is remitted back to the Appellate Tribunal to consider the application for condonation of delay and pass appropriate orders in accordance with law and on its own merit.

1 (2016) 1 SCC 444

5. Resultantly, the writ petition stands allowed. No costs. Consequently connected miscellaneous petition stands closed.

vvk

Sd/-
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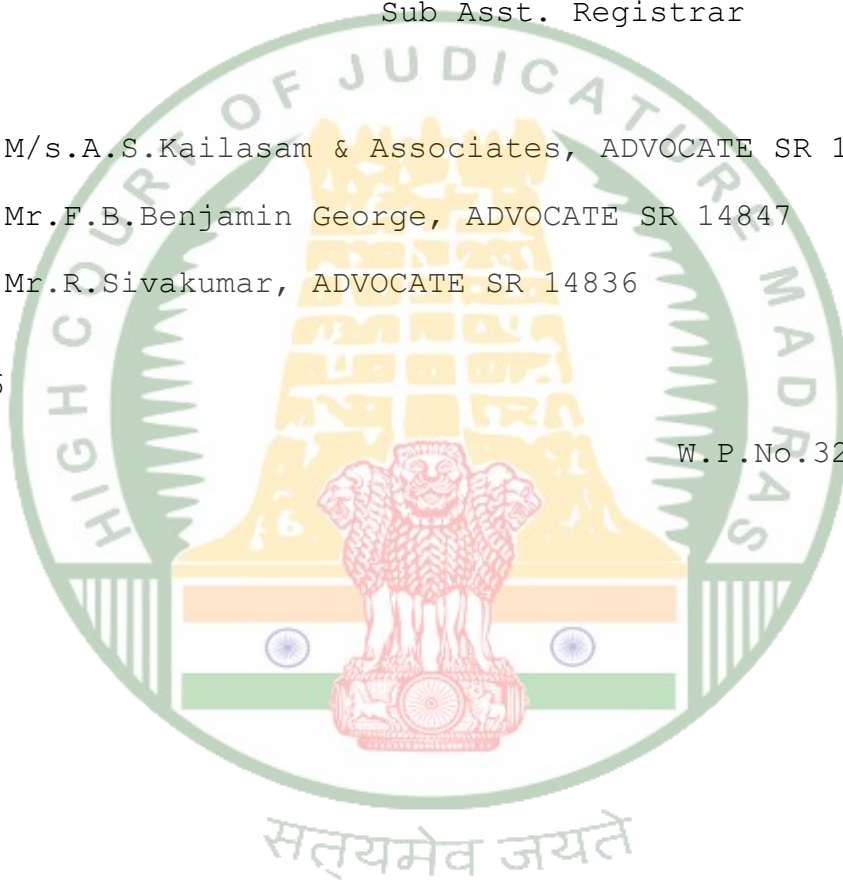
+ 1 CC TO M/s.A.S.Kailasam & Associates, ADVOCATE SR 14896

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