

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.3967 of 2016
Date of Decision : 12.05.2016.**

Bhagwati Printers Private Limited

.....Petitioners

Versus

IDBI Bank Limited and another

..... Respondents

**CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI**

Present : Mr. D. Hasija, Advocate with
Mr. Ravinder Hooda, Advocate for the petitioners.

Mr. K.P.S.Dhillon, Advocate for the respondents.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? Yes
3. Whether the judgment should be reported in the digest?

S.J.VAZIFDAR, ACTING CHIEF JUSTICE (ORAL):

The question of law that arises in this petition is whether an appeal under Section 18 of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') is maintainable against an order of the Debt Recovery Tribunal dismissing an application under Section 17 of the Act on the ground of limitation. It is contended that an order dismissing an application for condonation of delay in filing an appeal under Section 17 is not an order under Section 17 and is therefore not appealable under Section 18 of the Act. Based on this contention it is alleged that the petitioners have no alternate remedy.

2. We have not accepted this submission. We have held that such

an order is appealable and have accordingly relegated the petitioner to the alternate remedy under the SARFAESI, Act.

2. Section 5 of the Limitation Act reads as under:-

“5. Extension of Prescribed period in certain cases.-Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 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.

Explanation.-The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section”.

Sections 17 and 18 of the SARFAESI in Act, so far as they are relevant read as under:-

“17.Right of 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 make an application alongwith such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

“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:

3. Section 17, requires the application to be made within 45 days from the date on which the measures referred to therein had been taken. If, an application under Section 17 is filed beyond the period of 45 days

prescribed therein, it would be liable to be dismissed. No doubt, such an order of dismissal would be one in the application i.e. the Securitization Appeal itself. It follows then that the order of dismissal on the ground that the application under Section 17 was beyond the period of limitation prescribed therein is an order made by the Debt Recovery Tribunal under Section 17. Consequently, such an order would be appealable to the Debt Recovery Appellate Tribunal under Section 18 of the Act.

4. It is contended, however, that this would not be the case where an application for condonation of delay in filing an application under Section 17 is taken out and such an application is dismissed by the Debt Recovery Tribunal for such an application is independent of the application under Section 17 and is, therefore, not an order under Section 17. Accordingly, it is contended, such an order is not appealable as only orders made by the Debt Recovery Tribunal under Section 17 are appealable under Section 18 of the Act.

5. The submission is not well-founded. Both the parties for the purpose of this petition proceeded on the basis that Section 5 of the Limitation Act is applicable to an application for condonation of delay for filing an appeal under Section 18. Section 5 by itself has no existence. It arises only upon its invocation in an appeal or an application. An application for condonation of delay is, therefore, one in respect of an application under Section 17 itself. It is made under the appeal or application on the basis or in view of Section 5 of the Limitation Act. The application is under the appeal or application and the order passed thereon is thus under the appeal or the application. The Debt Recovery Tribunal

while considering such an application, in fact considers the maintainability of the main application under Section 17 itself.

6. Whether such an application is taken out separately and not prayed for in the main application under Section 17, is irrelevant. That is only a matter of procedure. The manner in which the application is made, is not relevant while interpreting the ambit of Sections 17 and 18.

7. An order rejecting or granting an application for condonation of delay in filing an application under Section 17 is, therefore, an order under Section 17 of the Act. It would accordingly be appealable under Section 18.

8. The petition is disposed of by relegating the petitioners to the alternate remedy of an appeal under Section 18 of the SARFAESI Act.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

12.05.2016

Manoj Bhutani

(ARUN PALLI)
JUDGE