

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

Writ Petition No.14013 of 2014

ORDER: [Per the Hon'ble Sri Justice *Sanjay Kumar*]

This writ petition was filed assailing the order dated 22.1.2014 passed by the Debts Recovery Appellate Tribunal, Kolkata, in Appeal No.377 of 2013 refusing to condone the delay of 61 days in the presentation of the appeal under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act'). The Appellate Tribunal was of the opinion that it had no jurisdiction to condone the delay beyond the stipulated period of 30 days in the light of its earlier judgment dated 6.1.2014 in Appeal Nos.307 and 308 of 2013.

Notice having been served on both the respondents, there is no representation on their behalf.

Sri K.Mallikarjuna Rao, learned counsel for the petitioner, would contend that in the light of the Division Bench judgment of this Court in *Sajida Begum v. State Bank of India, Hyderabad*,¹ the order of the Appellate Tribunal under challenge cannot be sustained. He drew our attention to para 12 of the aforesaid judgment, wherein the Division Bench opined that Section 29(2) of the Limitation Act, 1963 would be attracted and thereby, Sections 4 to 24 (inclusive) of the said Act would be applicable to proceedings under Sections 17 and 18 of the SARFAESI Act before the Debts Recovery Tribunal and

¹ AIR 2013 AP 24

the Debts Recovery Appellate Tribunal. The Division Bench accordingly set aside the order passed by the Appellate Tribunal rejecting the application for condonation of delay for want of jurisdiction.

That apart, in the light of the view taken by the Supreme Court in *Baleshwar Dayal Jaiswal v. Bank of India and others*,² the Appellate Tribunal can also take recourse to the discretion vesting in it under the proviso to Section 20(3) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and condone the delay in the presentation of an appeal under Section 18 of the SARFAESI Act. The contrary judgment of the Appellate Tribunal relied upon in the order under challenge therefore does not constitute good law. The order under challenge is accordingly set aside. The Debts Recovery Appellate Tribunal, Kolkata, shall consider afresh the application for condonation of delay in the appeal filed by the petitioner on its own merits and in accordance with law.

The Writ Petition is allowed to the extent indicated above.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

SANJAY KUMAR, J

GUDISEVA SHYAM PRASAD, J

Date: 29.06.2017
skmr

² (2016) 1 SCC 444