

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

W.P.NO.4941 OF 2017

O R D E R (Per the Hon'ble Sri Justice Sanjay Kumar)

Challenge in this writ petition is to the order dated 10.01.2017 passed by the Debts Recovery Tribunal, Visakhapatnam, in M.A.No.05 of 2015 in S.A. No.(UN).

The said M.A. was filed by the petitioners herein seeking condonation of the delay of 304 days in presenting the securitization application under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act'). By the order under challenge, the Tribunal dismissed the application.

In terms of the law laid down by the Supreme Court in ***BALESHWAR DAYAL JAISWAL v. BANK OF INDIA***¹ an application for condonation of delay in filing a securitization application under Section 17 of the SARFAESI Act can be entertained by the Tribunal, by virtue of sub sections 1 and 7 of Section 17 of the SARFAESI Act read with Section 24 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In that view of the matter, the Tribunal had power to condone the delay in filing of the said securitization application, if it found valid grounds to do so.

¹ (2016)1 SCC 444

Perusal of the order under challenge however reflects that the Tribunal did not consider the grounds cited by the petitioners herein for seeking condonation of the delay, but went on the merits of the matter and came to the conclusion that the petitioners were liable to pay the entire loan amount. It is in this context that the Tribunal concluded that no substantial evidence / arguments were brought out before it for condoning the delay.

As the application for condonation of delay had to be considered on its own merits, independent of the merits sought to be raised in the securitization application, the findings recorded by the Tribunal in the order under challenge on the merits of the said securitization application, demonstrate the prejudice caused to the petitioners. The order under challenge is therefore unsustainable and is accordingly set aside. The matter is remitted to the file of the Debts Recovery Tribunal, Visakhapatnam, for consideration afresh of M.A.No.05 of 2015 in S.A.No.(UN) on its own merits and in accordance with law, independent of the merits of the securitization application sought to be filed by the petitioners.

As this is the second round of litigation, the Tribunal shall endeavor to dispose of the application expeditiously and preferably within six weeks from the date of receipt of a copy of this order.

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

P.KESHA VA RAO,J

DATE:29—11—2017

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