

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1029 of 2018
IN
Civil Writ Jurisdiction Case No. 15034 of 2017**

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Dilip Kumar son of Sri Raj Kumar Paswan, Resident of Village- Sherpura
Panchdevta, P.S. Tekari, District-Gaya.

.... Appellant/s

Versus

1. The Union of India through the Secretary, Banking Division, Ministry of Finance, Government of India, New Delhi.
2. The Presiding Officer, Debt Recovery Tribunal, Patna.
3. UCO Bank, M.M.C.H. Branch, Gaya.
4. Authorised Officer, UCO Bank, Regional Office, 4th Floor in Block-A, Mauryalok Complex, New Dak Bunglow Road, P.S.- Kotwali, District- Patna, Patna-800001.

... Respondents/Respondents 1st Set.

5. Sri Niteesh Kumar Singh, son of Late Om Prakash Singh
6. Smt. Kiran Singh, W/o Late Om Prakash Singh, Both resident of Mohalla-Bahuar Chaura, Tilha Dharamshala, West Gate, P.S.- Civil Lines, District-Gaya

.... Petitioners/Respondent 2nd Set.

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Appearance :

For the Appellant/s	: Mr. Rajendra Narain, Senior Advocate
	: Mr. Rajesh Kumar, Advocate
For the UCO Bank	: Mr. Ranjeet Kumar Pandey, Advocate
For the Respondent Nos. 5&6:	Mr. Shivendra Kumar Roy, Advocate
For the Respondent/UOI	: Mr. S.D. Sanjay, ASG.
	: Ms. Kanak Verma, C.G.C.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 27-09-2018

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge dated 25.06.2018 passed in C.W.J.C. No. 15034 of 2017 by which the learned Single Judge has allowed the said petition preferred by the original writ petitioners-respondent Nos. 5 and 6, herein, and quashed and set aside the order passed by the Debt Recovery



Tribunal, Patna dated 01.09.2017 passed in Review Application No. 02 of 2017, by which the learned Presiding Officer, D.R.T. Patna dismissed the said review application as not maintainable, and thereafter, remanded the matter to the learned Presiding Officer, D.R.T., Patna for considering the said review application in accordance with law and on merits, the original respondent No. 5 has preferred the present Letters Patent Appeal.

2. The facts leading to the present Letters Patent Appeal, in nutshell, are as under:

2.1. That one Om Prakash Singh (now deceased) and father of respondent No.5, herein, had taken housing loan from various Banks including the UCO Bank. That the dwelling house in which the borrower as well as the original writ petitioners were residing was mortgaged. That SARFAESI proceedings were initiated by the UCO Bank and finally the mortgaged property came to be auction/sold on 27.05.2016. That the respondent Nos. 5 and 6, herein (hereinafter referred to as the 'Original writ petitioners') therefore, filed SARFAESI Application No. 209 of 2016 before the Debt Recovery Tribunal (hereinafter referred to as 'the DRT') on 30.11.2016 contending, *inter alia*, that the notices under Sections 13(2) and 13(4) of the SARFAESI Act were not served. As there was delay in preferring an appeal, the original writ petitioners filed a limitation petition under Section 5 of the Limitation Act and



requested to condone the delay of 15 days. The DRT dismissed the said SARFAESI Application No. 209 of 2016 along with limitation petition, holding that there was suppression of material fact as they had not disclosed the material fact. That thereafter, the original writ petitioners filed a review application being R.A. No. 02 of 2017 to review and recall the order dated 09.01.2017. That the said review application was filed under Rule 5-A of the Debts Recovery Tribunal (Procedure) Rules, 1993 (hereinafter to as 'the 1993 Rules') read with sub-section 7 of Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act'). That by the order dated 01.09.2017, the learned Presiding Officer, DRT, Patna dismissed the said application as not maintainable on the ground that there is no provision in the SARFAESI Act for review of the judgment and order passed in SARFAESI Application by the Tribunal.

2.2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned DRT, Patna dated 01.09.2017 passed in R.A. No. 02 of 2017, dismissing the review application as not maintainable, the original writ petitioners preferred the writ petition being C.W.J.C. No. 15034 of 2017 before this Court. That by the impugned judgment and order dated 25.06.2018 considering the provisions of Section 17(7) of the



SARFAESI Act, 2002 read with Section 22(2)(e) of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as the 'RDB Act') read with Rule 5-A of the 1993 Rules, the learned Single Judge has allowed the said writ petition and quashed and set aside the order passed by the learned DRT rejecting the review application as not maintainable and has remanded the review application directing the learned DRT to disposed of the same in accordance with law.

3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge, the original respondent No.5, purchaser of the mortgaged property purchased in an auction in a proceeding initiated by the UCO Bank, has preferred the present Letters Patent Appeal.

4. Sri Rajendra Narain, learned Senior Advocate has appeared on behalf of the appellant and Sri Ranjeet Kumar Pandey, learned Advocate has appeared on behalf of the UCO Bank and Sri Shivendra Kumar Roy, learned Advocate has appeared on behalf of the original writ petitioners-respondent Nos. 5 and 6 herein.

5. Sri Rajendra Narain, learned Senior counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case, the learned Single Judge has materially erred in quashing and setting aside the order passed by the learned DRT, rejecting the review application as not maintainable. It



is further submitted that the impugned judgment and order passed by the learned Single Judge is not sustainable at law. It is further submitted that the learned Single Judge has materially erred in observing and holding that the DRT would have jurisdiction to entertain and consider the review application. It is further submitted that in the present case, the learned Single Judge has materially erred in relying upon and considering the Section 22(2)(e) of the RDB Act, 1993 as well as Rule 5-A of the 1993 Rules and also Section 17(7) of the SARFAESI Act, 2002. It is further submitted that the learned Single Judge has materially erred in observing and holding that the learned DRT would have jurisdiction to decide the review application with respect to review the order passed under the SARFAESI Act, 2002 as there are no specific powers of review conferred with the learned Tribunal under the SARFAESI Act, 2002.

5.1. Sri Rajendra Narain, learned Senior counsel appearing on behalf of the appellant has further submitted that as the DRT, under the SARFAESI Act, 2002, is a creature of the statute and derive its powers only from the special provisions of the statute and there being no specific power of review with the learned DRT to review the order passed in SARFAESI Application and therefore, the DRT cannot assume the power of review.

5.2. In support of his above submission, Sri Rajendra Narain, learned Senior counsel appearing on behalf of the appellant has



heavily relied upon the following decisions of the Hon'ble Supreme Court;

(i) ***Rajeev Hitendra Pathak & Ors. Vs. Achyut Kashinath Karekar & Anr.*** reported in ***2011 (9) SCC 541***;

(ii) ***Kalabharati Advertising Vs. Hemant Vimalnath Narichania & Ors.*** reported in ***2010 (9) SCC 437***;

(iii) ***Kapra Mazdoor Ekta Union Vs. Management of M/s. Birla Cotton.*** reported in ***2005 (13) SCC 777***;

5.3. Sri Rajendra Narain, learned Senior counsel appearing on behalf of the appellant has also heavily relied upon the decision of the Division Bench of the Madhya Pradesh High Court in the case of ***M/s. Ramdev Ginning Factory Vs. Chief Manager, Authorized Officer, ICICI BANK LTD. Others*** passed in ***Writ Petition No. 12718 of 2013***.

5.4. Sri Rajendra Narain, learned Senior counsel appearing on behalf of the appellant has further submitted that while passing the impugned judgment and order and holding that the DRT would have jurisdiction to review its own order passed in SARFAESI Application, the learned Single Judge has materially erred in relying upon sub-section 7 of Section 17 of the SARFAESI Act. It is further submitted that sub-section 7 of Section 17 of the SARFAESI Act, 2002 shall be applicable and confers power to the learned DRT to



dispose of the application in accordance with the provision of *Recovery of Debts Due to Banks and Financial Institutions Act, 1993* and the rules made thereunder in so far as the procedural aspect is concerned only and not with respect to the powers of review.

6. Making above submissions and relying upon the above decisions, it is requested to allow the present Letters Patent Appeal and quash and set aside the impugned judgment and order passed by the learned Single Judge and to restore the order passed by the learned DRT dated 01.09.2017 passed in Review Application being R.A. No. 2 of 2017.

7. Sri Ranjeet Kumar Pandey, learned counsel appearing on behalf of the UCO Bank has supported the appellant herein and has submitted that the order passed by the learned DRT holding that the review application to review the order passed in SARFAESI Application shall not be maintainable.

8. Sri Shivendra Kumar Roy, learned counsel appearing on behalf of the original writ petitioners has supported the impugned judgment and order passed by the learned Single Judge and has submitted that the learned Single Judge has rightly considered and relied upon sub-section 7 of Section 17 of SARFAESI Act, 2002 and thereby, has rightly relied upon and considering Section 22(2)(e) of the RDB Act, 1993 by which powers of review are conferred with



the DRT and thereby, has rightly remanded the matter to the learned Tribunal to decide and dispose of the review application.

8.1. Sri Shivendra Kumar Roy, learned counsel appearing on behalf of the original writ petitioners has heavily relied upon the decision of the Hon'ble Supreme Court in the case of ***Baleshwar Dayal Jaiswal vs. Bank of India and Others*** reported in **2016 (1) SCC 444** (Paragraphs 7 and 8) and submitted that the provisions of Recovery of Debts and Bankruptcy Act, 1993 and the rules thereunder shall be applicable to the proceeding before the DRT with respect to the SARFAESI Act, 2002 by incorporation and/or by reference. It is further submitted that therefore, Section 22(2) (e) of the RDB Act, 1993 shall be applicable to the disposal of the application by the DRT under Section 17 of SARFAESI Act, 2002. It is further submitted that even Rule 5-A of the Debts Recovery Tribunal (Procedure) Rules, 1993 also shall be applicable with respect to the proceedings/application under the SARFAESI Act, 2002. It is further submitted that therefore, the learned Single Judge has rightly held that the DRT would have jurisdiction to entertain/consider the review application to review the order passed under the SARFAESI Act, 2002.

8.2. Sri Shivendra Kumar Roy, learned counsel appearing on behalf of the original writ petitioners has also relied upon the decision of the learned Single Judge of the Calcutta High Court in



the case of ***Bangla Bijuli Power Technologies Private Limited Vs. The Authorized Officer, I.D.B.I. Bank Limited, Kolkata & Ors.*** passed in W.P. No. 27330(W) of 2016.

8.3. Making above submissions and relying upon the above decision, it is requested to dismiss the present Letters Patent Appeal.

9. Heard learned counsel appearing on behalf of the respective parties at length.

10. The short question, which is paused for consideration by this Court, is whether the DRT would have jurisdiction to entertain the review application to review its own order passed under the SARFAESI Act, 2002 or not?

11. It is the case on behalf of the appellant herein that as under the SARFAESI Act, 2002, there is no specific provision conferring the power upon the DRT to review its own order passed under the SARFAESI Act, 2002 and therefore, the Tribunal being creature of the statute, unless the specific powers are conferred, the DRT would not have any jurisdiction to review its own order passed under SARFAESI Act, 2002.

12. Per contra, it is the case on behalf of the original writ petitioners that as held by the learned Single Judge considering sub-section 7 of Section 17 of the SARFAESI Act, 2002, the provisions of the RDB Act, 1993 and the rules thereunder shall be applicable and, therefore, as under Section 22(2)(e) of the Recovery of Debts



and Bankruptcy Act, 1993, the DRT would power to review its own order, the DRT would have jurisdiction to review its order passed under SARFAESI Act, 2002 also.

12.1. While considering the aforesaid question, namely, whether the DRT would have jurisdiction to review its own order passed under SARFAESI Act, 2002, relevant provisions of the SARFAESI Act, 2002 as well as the RDB Act, 1993 and even the Debts Recovery Tribunal (Procedure) Rules, 1993 are required to be referred to.

12.2. Sub-section 7 of Section 17 of the SARFAESI Act, 2002, Section 22(2)(e) of the RDB Act, 1993 and Rule 5A of the Debts Recovery Tribunal (Procedure) Rules, 1993, which are relevant for the purpose of determination and adjudication of the issue, involved in the present Letters Patent Appeal, read as under:

“17(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.”

“22. Procedure and Powers of the Tribunal and the Appellate Tribunal-

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908(5 of 1908), while trying a suit, in respect of the following matters, namely:-

- (a)***
- (b)***
- (c)***
- (d).....***



(e); reviewing its decisions”

Rule 5-A. Review- (1) Any party considering itself aggrieved by an order made by the Tribunal on account of some mistake or error apparent on the face of the record desires to obtain a review of the order made against him, may apply for a review of the order to the Tribunal which had made the order.”

(2) No application for review shall be made after the expiry of a period of [thirty days] from the date of the order and no such application shall be entertained unless it is accompanied by an affidavit verifying the application.

(3) Where it appears to the Tribunal that there is no sufficient ground for a review, it shall reject the application [but where the Tribunal is of opinion that the application] for review shall be granted, it shall grant the same:

Provided that no such application shall be granted without previous notice to the opposite party to enable him to appear and to be heard in support of the order, a review of which is applied for.]

12.3. Thus, as per sub-section 7 of Section 17 of the SARFAESI Act, 2002, the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder shall be applicable with respect to the application under the SARFAESI Act and it provides that the Debts Recovery Tribunal may also dispose of the application (under SARFAESI Act, 2002) in accordance with provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Rules made thereunder. It is not in dispute that Section 22(2)(e) of the RDB Act, 1993 confers power upon the Tribunal to review its own order/decision. Even there is specific provision in the Debts Recovery Tribunal (Procedure) Rules, 1993 viz. Rule 5-A of 1993



Rules which specifically confer powers upon the Tribunal to review its own order. Thus, the legislation by incorporation or by reference has adopted the provisions of the RDB Act, 1993 and the rules made thereunder into SARFAESI Act, 2002 by virtue of Section 17(7) of the SARFAESI Act, 2002.

12.4. Somewhat identical questions came to be considered by the Hon'ble Supreme Court in the case of *Baleshwar Dayal Jaiswal (supra.)* In the case before the Hon'ble Supreme Court, the question was with respect to power of the Appellate Tribunal to condone the delay in filing the appeal under Section 18(1) of the Act, 2002. After considering a similar provision under the SARFAESI Act, 2002 and Section 18(2) SARFAESI Act, 2002, the Hon'ble Supreme Court has observed that the proviso to Section 20(3) of the RDDB Act, 1993 shall be applicable by virtue of Section 18(2) of the SARFAESI Act, 2002 by incorporation or by reference. Section 18(2) of the SARFAESI Act, 2002 which was under consideration before the Hon'ble Supreme Court which reads as under:

“18(2) Save as otherwise provided in this Act, the Appellate 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.”

By considering Section 18(2) of the SARFAESI Act, 2002, the Hon'ble Supreme Court has observed and held that the proviso to Section 20(3) of the RDDB Act shall be applicable to the disposal of



the appeal by the Appellate Tribunal under Section 18(2) of the SARFAESI Act, 2002, the relevant paragraphs read as under:

“7. The first point for consideration is the applicability of proviso to Section 20(3) of the RDDB Act to the disposal of an appeal by the Appellate Tribunal under Section 18(2) of the SARFAESI Act. A bare perusal of the said Section 18(2) makes it clear that the Appellate Tribunal under the SARFAESI Act has to dispose of an appeal in accordance with the provisions of the RDDB Act. In this respect, the provisions of the RDDB Act stand incorporated in the SARFAESI Act for disposal of an appeal. Once it is so, we are unable to discern any reason as to why the SARFAESI Appellate Tribunal cannot entertain an appeal beyond the prescribed period even on being satisfied that there is sufficient cause for not filing such appeal within that period. Even if power of condonation of delay by virtue of Section 29(2) of the Limitation Act were held not to be applicable, the proviso to Section 20(3) of the RDDB Act is applicable by virtue of Section 18(2) of the SARFAESI Act. This interpretation is clearly borne out from the provisions of the two statutes and also advances the cause of justice. Unless the scheme of the statute expressly excludes the power of condonation, there is no reason to deny such power to an Appellate Tribunal when the statutory scheme so warrants. Principle of legislation by incorporation is well known and has been applied, inter alia, in Ram Kirpal Bhagat v. State of Bihar, Bolani ores Ltd. v. State of Orissa, Mahindra and Mahindra Ltd. v. Union of India and Onkarlal Nandlal v. State of Rajasthan relied upon on behalf of the appellants. We have thus no hesitation in holding that the Appellate Tribunal under the SARFAESI Act has the power to condone the delay in filing an appeal before it by virtue of Section 18(2) of the SARFAESI Act and the proviso to Section 20(3) of the RDDB Act.

8. The fact that RDDB Act and the SARFAESI Act are complementary to each other, as held by this Court in Transcore v. Union of India, also supports this view.”

12.5. Applying law laid down by the Hon’ble Supreme Court



in the case of *Baleshwar Dayal Jaiswal (supra)* to the facts of the case on hand, more particularly, with respect to applicability of Section 22(2)(e) of the RDB Act to the disposal of an application by the DRT under Section 17 of the SARFAESI Act, 2002, the learned Single Judge has rightly observed and held that the DRT would have jurisdiction to review its own order passed under the SARFAESI Act. A similar view has been taken by the Calcutta High Court in the case of *Bangla Bijuli Power Technologies Private Limited (supra)*.

13. In so far as the reliance placed upon the decisions of the Hon'ble Supreme Court, referred to hereinabove, relied upon by the learned counsel appearing on behalf of the appellant that the Tribunal being the creature of the statute, unless the specific powers are conferred, the Tribunal will not assume the jurisdiction of review is concerned, there cannot be any dispute to the proposition of law laid down by the Hon'ble Supreme Court in the aforesaid decision. However, as observed above, by incorporation or by reference and considering the sub-section 7 of Section 17 of the SARFAESI Act, 2002, Section 22(2) (e) of the RDB Act, 1993 and Rule 5-A of the Debts Recovery Tribunal (Procedure) Rules, 1993 shall be applicable and therefore, the aforesaid decisions shall not be of any assistance to the appellant.

14. In so far as the reliance placed upon the decision of the Madhya Pradesh High Court is concerned, in view of the decision of



the Hon’ble Supreme Court in the case of *Baleshwar Dayal Jaiswal* (*supra*) referred to hereinabove, we are not in agreement with a view taken by the Madhya Pradesh High Court as apart from the fact, the Madhya Pradesh High Court, in the same decision, was dealing with the powers of the Appellate Tribunal.

15. In view of the above and for the reasons, stated above, we are of the opinion that the learned Single Judge has not committed any error in holding that the DRT would have jurisdiction to review its own order passed under the SARFAESI Act, 2002. We are in complete agreement with the view taken by the learned Single Judge, therefore, no interference by this Court is called for in exercise of the intra Court appellate jurisdiction.

16. In view of the above and for the reasons, stated above, the present Letters Patent Appeal fails and the same deserves to be dismissed and is, accordingly, dismissed.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Brajesh/-

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CAV DATE	
Uploading Date	
Transmission Date	

