

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/4/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition Nos.9904, 11377 of 2014
and 10928 of 2017 and

Writ Petition No.9904 of 2014

Mrs.C.K.Amirthavalli ... Petitioner

Vs

1. The Chairperson
Debts Recovery Appellate Tribunal
4th Floor, Wellington Estate
No.55, Ethiraj Salai
Egmore
Chennai 600 008.

2. The Assistant General Manager-cum-
Authorised Officer
M/s. Allahabad Bank
Mount Road Branch
No.41 Anna Salai
Chennai 600 002. ...

Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records of the first respondent, pertaining to the order of dismissal and direction, dated 2/4/2014, passed in I.A.No.395 of 2014 in M.A.S.A.No.673 of 2010 and to quash the same and consequently, direct the first respondent to restore the above I.A.No.395 of 2014 in M.A.S.A.No.673 of 2010 to its file and dispose of the same in accordance with law on merits.

For petitioner ... Mr.Om Prakash,
Senior Counsel for
M/s.Alagendiran Law Asso.,

For respondent ... Tribunal - R.1.
Mr.M.Devaraj
for R.2 / All WP's

W.P.No.11377 of 2014

Mr.R.Paranthaman

...

Petitioner

Vs

The Assistant General Manager-cum
Authorised Officer
M/s. Allahabad Bank
Mount Road Branch
No.41 Anna Salai
Chennai 600 002.

...

Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records of the respondent, pertaining to the auction proceedings, dated 22/12/2010 conducted in pursuance to the sale notice dated 10/11/2010 and the consequent alleged sale in and by which the respondent claims to have sold the immovable property situated at Door No.17 L, Subburaya Gramani Street, Egmore, Chennai 600 008, morefully and particularly described in Schedule to the petition herein to the secured creditor bank and to quash the same and consequently direct the respondent to release the schedule mentioned property by way of receiving the sum of Rs.2,31,82,000/- being the sale consideration purported to have been paid by the secured creditor bank from the petitioner and to restore possession of the schedule mentioned property to the petitioner herein and dispose of the same in accordance with law on merits.

W.P.No.10928 of 2017

Mrs.C.K.Amirthavalli

...

Petitioner

Vs

1. The Assistant General Manager-cum
Authorised Officer
M/s. Allahabad Bank
Mount Road Branch
No.41 Anna Salai
Chennai 600 002.

2. The Registrar
Debts Recovery Appellate Tribunal
4th Floor, Wellington Estate
No.55 Ethiraj Salai
Egmore
Chennai 600 008.

3. The Presiding Officer
Debts Recovery Tribunal - I
6th Floor
Dewa Towers
770 Anna Salai
Chennai 600 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records of the impugned order dated 20/4/2017 passed by the Debts Recovery Appellate Tribunal, Chennai, in M.A.S.A.No.3 of 2016 from the file of the second respondent and quash the same and consequently, direct the learned PO, DRT - I, Chennai, third respondent to dispose of S.A.No.313 of 2010, in accordance with law on merits.

C O M M O N O R D E R

(Order of the Court was made by S.MANIKUMAR, J)

Writ Petition No.9904 of 2014 has been filed to quash the order, dated 2/4/2014, passed in I.A.No.395 of 2014 in M.A.S.A.No.673 of 2010, by the Debts Recovery Appellate Tribunal, Chennai, first respondent, and consequently, for a direction to the first respondent to restore I.A.No.395 of 2014 in M.A.S.A.No.673 of 2010 to its file and dispose of the same in accordance with law.

2. Order impugned in W.P.No.9904 of 2014 is extracted hereunder:-

"Record of proceedings on 2/4/2014 in I.A.No.395 of 2014 (direction). No representation for the petitioner. Petitioner is called absent. The respondent bank is represented by Ld. Counsel. This I.A is dismissed for default. Hence the Registry is directed to send the amount lying in this Tribunal in this case to the respondent Bank along with the interest accrued. The respondent Bank is directed to deal with the same in accordance with law."

3. Writ Petition No.11377 of 2014 has been filed to quash the auction proceedings, dated 22/12/2010, conducted in pursuance to the sale notice, dated 10/11/2010 and the consequent sale, in and by which the Assistant General Manager-cum-Authorised officer, M/s. Allahabad Bank, Chennai, respondent, is stated to have sold the immovable property, situated at Door No.17 L, Subburaya Gramani Street, Egmore, Chennai 600 008, to the secured creditor bank. Petitioner has prayed for a direction to the respondent to release the

schedule mentioned property, by receiving a sum of Rs.2,31,82,000/- from the petitioner being the sale consideration, purported to have been paid by the secured creditor bank and to restore possession of the schedule mentioned property to the petitioner.

4. Tender-cum-Auction sale, impugned in W.P.No.11377 of 2014, reads thus:-

Sale of Immovable Property mortgaged to bank under
Securitisation and Reconstruction of Financial Assets and
Enforcement of Security Interest Act, 2002 (No.54 of 2002)
SARFAESI Act

Whereas as Smt.C.K.Amirthavalli Thayarammal borrowed money from Allahabad Bank, Mount Road Branch, under Chennai Zone and 1. Sri.R.Parandhaman, 2. Sri.R.Sanjeevi & 3. Sri.R.Rajesh (all these 4 are residing at) No.8, Subbaraya Street, Shenoy Nagar, Chennai 600 030 stand guarantee for the said borrowing and they owe a sum of Rs.3,48,56,779/- (Rupees Three crores forty eight lakhs fifty six thousand seven hundred and seventy nine only) as on 9/11/2010, together with further interest from 10/11/2010, costs, charges and expenses thereon till the realisation of entire outstanding.

Whereas the Authorised Officer of the Bank has issued notice under SARFAESI Act and thereafter has taken possession of the following mortgaged property and has decided to sell the property described herein, below on "AS IS WHERE IS BASIS and WHATEVER THERE IS BASIS" under Rules 8 & 9 of the Security Interest (Enforcement) Rules, 2002.

DETAILS OF SALE

PLACE OF AUCTION: Allahabad Bank, Mount Road Branch, "Anna theater Building", and No.41 Anna Salai, Chennai 600 002.

Date and Time of auction : On 22/12/2010 at 4.30 p.m.
Reserve Price : Rs.231.82 lakhs (Rupees two crores thirty one lakh eight two thousand only)

DESCRIPTION OF PROPERTY

All that piece and parcel of land owned and mortgaged by Mrs.C.K.Amirthavalli Thayarammal, bearing Municipal Door (Now Corporation of Chennai) No.17 L, situated in the Eastern side of Subbaraya Gramani Street, Chetput, Egmore, Chennai Police Division F 3, Chennai Corporation Division No.63 within the Registration District of Chennai and Sub-District of West Chennai, bearing Certificate No.742, Old Survey No.106, New Survey No.241/3 part, present New Survey No.241/7 measuring 3 grounds and 2082 sq.ft or the thereabouts together with building thereon having

approximately 3510 sq.ft of RCC building and 4646 sq.ft of AC shed bounded on the North by:Kimberley House, South by: House of Smt C.K.Amirthavalli, East by: Vembuliamman Temple land and West by: land belonging to Smt.R.Sakunthala and passage leading to Subbaraya Gramani Street.

Terms and conditions of Tender-cum-Auction

1.Tender form can be collected on payment of Rs.100/- (Rupees One hundred only), from the Allahabad Bank, Mount Road Branch, at "Anna Theater Building", No.41 Annasalai, Chennai 600 002.

2. The sealed tenders addressed to Authorised officer along with a demand draft for Rs.23.18 lacs (Rupees Twenty three lacs eighteen thousand only), 10% of reserve price towards earnest money, favouring Allahabad Bank A/c. Mrs.C.K.Amirdhavalli payable at Chennai, should be submitted by, on or before 20/12/2010, 2.00 p.m., at Allahabad Bank, Mount Road Branch, No.41, Anna Salai, Chennai 600 002. The left top corner of the cover should be superscribed with "Public Tender, A/c.Mrs.C.K.Amirdhavalli: Chetpet property."

3. Any tender submitted after the last date and time specified herein or not attached with the DD of earnest money as specified above, will not be entertained.

4. The earnest money paid will be refunded to all unsuccessful tenderers at the end of auction proceedings.

5. The tenders of the property will be opened, before then available tenderers (or their respective duly authorised representatives), on 22/12/2010, by 4.30 p.m., at Allahabad Bank, Mount road Branch, at "Anna Theater Building", No.41 Anna Salai, Chennai 600 002.

6. After opening of tenders on the date and time mentioned above, Authorised officer may allow open bidding between the available participants of the tender, with a view to improve their offer to get maximum offer price for the property.

7. The successful bidder at the time of auction sale shall pay 25% of the bid amount (Exclusive of the EMD already deposited) immediately on the sale being knocked down in his favour and the balance within 15 days or such other day as Authorised Officer may specify. The payment to be made in the form of Cash/Demand Draft in favour of the

Authorised Officer, Allahabad Bank, payable at Chennai.

8. In case, the successful bidder fails to deposit 25% of the bid amount immediately on the sale being knocked down in his favour or the balance amount within 15 days as stipulated above, the entire deposit amount made by the bidder inclusive of EMD will be forfeited by the Authorised Officer without any notice and the sale will be cancelled.

9. In the event of failure of successful bidder in depositing the 25% of the bid amount exclusive of the earnest money on the spot, the Authorised Officer may restart the bidding from the second highest bid amount or sell the property to the second highest bidder.

10. The property will not be sold below the reserve price.

11. The above asset will be sold in "AS IS WHERE IS BASIS" and "WHATEVER THERE IS BASIS" condition.

12. The successful bidder should bear the legal charges fees and incidental expenses namely, Stamp Duty, Registration fees local tax, exercise duty and other statutory dues attached to the property.

13. The Authorised Officer has the absolute right to accept or reject the bid or postpone/cancel/restart the auction without assigning any reason therefore.

14. The sale is subject to confirmation by the bank.

15. This is also a notice to the borrower/mortgagor of the above account.

16. For inspection of the property, and for any other information, the intending bidders may contact the Asst. General Manager, Allahabad Bank Mount Road Branch, No.41 Anna Salai, Chennai 600 002, Telephone No.28585641 and 28549262 or The Chief Manager, Allahabad Bank, Recovery Branch, "Apex Chamber" No.20 Sir Thyagaraya Road, T.Nagar, Chennai 600 017, Telephone No.24312417/24322418, on working days & during office hours."

5. Writ Petition No.10928 of 2017 has been filed to quash the order, dated 20/4/2017, passed by the Debts Recovery Appellate Tribunal, Chennai, in M.A.S.A.No.3 of 2016 and consequently, direct the learned Presiding Officer, Debts Recovery Tribunal - I, Chennai, third respondent, to dispose of S.A.No.313 of 2010, in accordance with law.

6. Order impugned in W.P.No.10928 of 2017 is as
<https://hcservices.ecourts.gov.in/hcservices/>

follows:-

"1. Appellant Bank has challenged the order dated 8/12/2015 of DRT - I, Chennai, passed in S.I.A.No.65/2013 in S.A.No.313 of 2010 by which delay of 625 days in restoration of SARFAESI Appeal, after imposing cost of Rs.5000/- was condoned.

2. Necessary facts in short are that the appellant Bank had sanctioned loan of Rs.2.50 crores to the respondent borrower, which was classified as NPA due to non-payments. Bank issued a notice under Section 13 (2) of the SARFAEI Act on 28/6/2007 followed by a notice for symbolic possession under Section 13 (4) of the SARFAESI Act, on 10/9/2007.

3. According to Appellant Bank, respondent borrower challenged the sale notice, dated 18/10/2007 by which auction was fixed on 22/11/2007, in S.A.no.229 of 2007. For want of compliance of deposit of the amount, the S.A was dismissed on 21/5/2008. Then, Authorised Officer issued second Sale Notice, on 9/6/2008 fixing the auction sale on 16.07.2008.

(a). Respondent did not challenge the sale notice dated 9/6/2008. However, Ms.Sripriya, daughter of the borrower had challenged the possession notice, dated 10/9/2007 in S.A.No.117 of 2008, before DRT - II, Chennai. Aforesaid S.A was dismissed on merits on 30/6/2009. It is pertinent to note that daughter of the borrower obtained stay on the condition of deposit of Rs.1.20 crores in two instalments of Rs.60 lakhs each, which she failed to comply. Then, Authorised officer issued third sale notice on 6/9/2008, fixing the sale on 13/10/2008.

(b). Son of the borrower Mr.Rajesh has challenged the SARFAESI proceedings in S.A.No.106 of 2008 in which he was directed to make a deposit of 20% of the amount within eight weeks, which he failed to comply and the S.A was dismissed on merits on 30/9/2009. Then, Authorised Officer issued fourth sale notice on 23/5/2009 fixing the sale on 10/7/2009.

(c). Aforesaid fourth sale notice was challenged by the respondent borrower in High Court of Madras in W.P.No.12522 of 2009. Hon'ble High Court had directed the borrower to make a deposit of Rs.60 lakhs along with expenses of Rs.1 lakh, which she failed to comply. Hence on 6/10/2009, borrower withdrew the writ petition. Then, Authorised Officer issued fifth sale notice on 18/8/2009 fixing

the auction on 25/9/2009. Daughter of the borrower Ms.Sripriya challenged the sale notice in High Court of Madras in W.P.No.19692 of 2009 in which her prayer was accepted for grant of four weeks time for repayment. But she failed to comply the order, hence interim protection was vacated on 24/9/2009. Thereafter, the Authorised Officer issued sixth sale notice on 7/11/2009, fixing the auction on 17/12/2009.

(d). Respondent challenged the sixth Sale notice in S.A.No.275/2009 before DRT - I, Chennai, in which no interim protection was granted and the S.A was dismissed on 10/2/2010. Respondent filed I.A to set aside the dismissal before the DRT itself, which was also dismissed. Then, Authorised Officer had issued seventh sale notice dated 3/5/2010 fixing the auction sale on 10/6/2010. Borrower challenged it in S.A.No.145 of 2010, but the S.A was ultimately dismissed on 22/12/2010. Thereafter, the Authorised officer issued eighth Sale Notice dated 10/11/2010, fixing the auction on 22/12/2010.

(e). This eighth sale notice was challenged by the respondent borrower in S.A.No.313 of 2010. On the basis of eighth sale notice, while Bank did not find any suitable bidder, then came forward itself and purchased the property on 22/12/2010 for a consideration of Rs.2,31,82,000/-. Prior to that, i.e., on 20/4/2010, the Chief Metropolitan Magistrate had issued order regarding physical possession of the property also. It is pertinent to note that S.A.No.313 of 2010 was dismissed for non-prosecution on 20/11/2011.

4. According to the appellant Bank, in aforesaid background, respondent had preferred S.I.A.No.65 of 2013 for condonation of delay of 625 days in filing of the SA praying for restoration of S.A.No.313 of 2010. Aforesaid delay has been condoned by the Presiding Officer by impugned order. This order has been challenged on the ground that a detailed counter of the Bank Officer neither has been considered by the Presiding Officer nor its contents have been referred in the impugned order. Borrower did not file any rejoinder to the counter affidavit. Even then, delay of about two years was condoned/ignored in wrong manner. Delay of two years has been imputed on the counsel alone, who expired on 4/7/2013. But this fact of death of the counsel was not

at all a sufficient explanation for the delay. According to Appellant Bank, Presiding officer has attached much weightage on the difference of signatures in two affidavits, which was clearly an after thought concept.

5. Per contra, Ld counsel for the respondent borrower supported the impugned order and challenged the appeal mainly on the ground that respondent had deposited a substantial sum of Rs.2.25 crores before Registry of DRAT, Chennai. Hence their remains no force in the order of dismissal of the SARFAESI Appeal for want of prosecution and a liberal approach has been adopted by the Presiding officer as per the prevailing law on the point.

6. Another challenge of the respondent borrower for this appeal is that the Bank has purchased the property in sale in illegal manner. In so far as the provisions of SARFAESI Act are concerned, Financial Institutions/Banks are entitled to purchase the property with effect from 15/1/2013. Property of Rs.10 crores had been purchased by the Bank for a sum of Rs.2.31 crores only, that too, in the year 2010 itself. Hence, on merits, Respondents borrower has a very good and strong case and such merits cannot be sacrificed on technical grounds of delay alone. Hence, order of restoration of S.A.No.313 of 2010 should be affirmed.

Respondent has placed reliance on the following ten citations

- (i). 1998 (II) CTC 533 [N.Balakrishnan Vs. M.Krishnamurthy]
- (ii). 2000 (III) CTC 727 [C.Subramaniam vs. Tamil Nadu Housing Board]
- (iii). 2005 (3) SCC 752 [State of Nagaland Vs. Lipokao and Others]
- (iv). 2001 (6) SCC 176 [M.K.Prasad Vs. T.Arumugam]
- (v). 2000 (3) SCC 54 [G.P.Srivastava Vs. R.K.Raizad and Others]
- (vi). 1994 Supp (2) SCC 399 [UCO Bank Vs. Iyyangar Consultancy Services Pvt ltd]
- (vii). 2005 (2) SCC 237 [Divisional Manager, Plantation Division vs. Munnu Barrick and Others]
- (viii). Supreme Court of India Civil Appeal Nos.450-452 of 2009 [Raj Kishore Pande vs. State of UP and Others].
- (ix). Supreme Court of India Civil Appeal No.8503 of 2001 (Davinder Pal Sehgal Vs. Pratap Steel Rolling Mills Pvt Ltd].

(x). 1987 (2) SCC 107 [The Collector, Land Acquisition vs. Katiji].

Ld counsel for respondent submitted that condonation of delay is a technical matter and technicalities should not prevail. Party having merits in the case should be permitted to address on merits irrespective of the delay.

7. On the other hand, Ld. Counsel for Appellant Bank placed reliance on (2012) 5 SCC 157 [Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai] and submitted that there should be an end to every litigation. Condonation is founded on the sufficient cause alone. What would be a sufficient cause for particular days of delay is a matter of fact which varies from case to case and in present case, where on eighth round of sale proceedings, with great difficulty Bank could purchase the property on fair price, in the name of litigation and further in the name of death of counsel, sympathy should not be extended. Sufficient cause is not a rule of law. It is a matter of fact and rule of prudence.

8. After considering the rival contentions of the counsel of the parties and on going through the citations, it becomes clear that after eighth round of sale notice under SARFAESI Act, S.A.No.313 of 2010 was filed by the respondent borrower. In aforesaid S.A., no interim protection was granted by DRT against the auction. In such background, S.A.No.313/2010 was dismissed for default on 29/11/2011. It is pertinent to note that on 29/11/2011 also, counsel of the respondent borrower made appearance before the Presiding Officer. Thereafter, on 12/9/2013, I.A.No.65/2013 application for condonation of 625 days delay was filed. On 29/11/2011, S.A.No.313/2010 was dismissed for default and fact of dismissal was in the knowledge of the counsel on the same day. Counsel made attempts for its restoration till 23/2/2012, when parties made appearance in DRAT in respect of hearing based on S.A.No.313/2010.

9. But after 23/2/2012 till 4/7/2013, i.e., the date of death of the counsel, that is for a period of about 17 months, nothing has been done by the respondent borrower. There is no explanation for the delay occurred between 23/2/2012 to 4/7/2013. Date of death of the counsel was on 4/7/2013, but prior to that, for last 17 months, borrower did not bother to take steps for revival of the reliefs prayed in

S.A.No.313/2010. In such a situation, delay of aforesaid period had been condoned without any sufficient case and this part of the order condoning the delay without sufficient cause is not permissible. From 23/2/2012 to the date of death of the counsel, i.e., 4/7/2013, nothing is on record which can make the borrower entitled for condonation.

10. Borrower has paid an amount of Rs.2.25 crores can hardly be a mitigating circumstance in this case at this stage, because it was made under compulsion under statutory deposit. This amount has not been adjusted by the Bank towards the loan account and Bank was forced to purchase the property after passing of the eighth round of sale proceedings. It is true that in the year 2013, Financial Institutions/Banks became entitled for purchase of properties in SARFAESI Act, but prior to that also, there had been no such bar for the Financial Institutions/Banks to go for purchase of the property in auction, if facts and circumstances demand so.

11. Accordingly, the impugned order deserves to be and is hereby set aside, because there is no explanation or sufficient cause for delay for the period from 23/2/2012 to 4/7/2013 on the part of the respondent.

12. In the result, Appeal is allowed. Impugned order of the DRT is set aside."

7. S.A.No.313 of 2010 has been filed to quash the auction sale notice, dated 10/11/2010, issued by Allahabad Bank, Chennai, respondent, in all the writ petitions. S.A.No.313 of 2010 has been dismissed, for non-prosecution, on 29/11/2011. Order of dismissal, dated 29/11/2011, passed in S.A.No.313 of 2010, is extracted hereunder:-

"Counsel for the respondent bank present and is ready for arguments. On 16/9/2011, by common consent, the matter was adjourned to 7/10/2011 and again posted today for disposal. SIA No.299 of 2011 filed. However, there is no representation by appellant/petitioner. If the petitioner is not serious to pursue the applications, the S.A is dismissed for default.

Later at 3.10 p.m., counsel for appellant wants to file application to restore the S.A., since respondent bank counsel is not present. He is at liberty to file the same by giving notice to the other side."

8. Thereafter, Application No.78/2015 has been filed to restore S.A.No.313 of 2010.

9. Written arguments filed on behalf of the petitioner, in I.A.No.68/2013, for condoning the delay of 625 days, to set aside the dismissal of S.A.No.313 of 2010, for default, sets out the entire facts of the case, in all the three writ petitions and therefore, we deem it fit to extract the same,

"S.A.No.313 of 2010 was filed to quash the sale notice dated 10/11/2010 by fixing the auction sale to take place on 22/12/2010. Immediately, the petitioner/applicant approached the bank for redemption, however, it was dragged by the bank till 20/12/2010. Thereafter, the petitioner was shocked to know from the respondent bank that S.A.No.313/2010 was closed by the Tribunal due to absence of petitioner/applicant's counsel. When the petitioner contacted her counsel, she came to know that her counsel expired on 4/7/2013 after a brief illness. The petitioner/applicant's case papers were searched in the residence-cum-office of her counsel and they were found to be lost.

2.1. Therefore, through a new counsel the petitioner/applicant verified the proceedings of this tribunal in S.A.No.313/2010 and gathered information. When the SA came up for enquiry on 29/11/2011, her previous counsel was not present at the time of calling and therefore, it was dismissed for default. However, in the afternoon by 3.10 p.m., her previous counsel represented and requested for restoration of the S.A. But the Tribunal vide order, dated 29/11/2011, granted liberty to her previous counsel to file restoration application. Since petitioner's counsel was not keeping well, the petitioner was not aware as to whether he had filed any IA for the restoration. In the meanwhile, the Hon'ble DRAT restrained the respondent from proceedings further under the provisions of the SARFAESI Act vide its order, dated 19/1/2011 made in MA (SA) 673/2010. The respondent bank claims that they have purchased the secured in the course of auction proceedings on 22/12/2010, which is false and illegal.

2.2. The property was grossly undervalued and to show the bonafides, the petitioner remitted a sum of Rs.2,25,00,000/- before the Hon'ble DRAT. The previous counsel did not inform the petitioner about the order, dated 29/11/2011 and thereafter, he expired on 4/7/2013, therefore, the IA for restoration

could not be filed by the petitioner. Moreover, the petitioner came to know about the dismissal order only on 30/8/2013. Therefore, there was delay of 625 days in filing the IA for restoration. The petitioner has ample chances of success in the SA and the delay is not wanton or wilful. If SA is not restored to file, serious prejudice and irreparable injury would be caused to the petitioner. For the above reasons, the petitioner/applicant prayed that the SIA may be allowed.

3. Brief of the counter of the respondent bank: The respondent bank denied all the allegations made in the affidavit filed in support of the petition and stated that the petitioner has not come out with clean hands before this Tribunal. The petitioner had filed the affidavit, dated 28/12/2011 along with a petition praying to recall the order dated 29/11/2011. Therefore, the petitioner is very much aware of the dismissal of the SA. The petitioner has not chosen to throw the blame on her advocate and his death. The each and every day delay has not been explained by the petitioner. The statement of the petitioner that she came to know about the dismissal only on 30/8/2013 is false. The affidavit lacks bonafides and the delay cannot be condoned. Therefore, the respondent bank prayed that the SIA may be dismissed with exemplary costs.

4. Point for consideration

"Whether the petitioner/applicant is entitled for the relief sought for in the petition?"

5. Point:

6. Heard both sides arguments.

7. The petitioner/applicant stated that the petitioner counsel was sick and died on 4/7/2013 after a brief illness. But, on 29/11/2011, the deceased counsel for the petitioner was not able to attend the Court in the morning, however, he appeared before the tribunal in the afternoon and prayed to set aside the dismissal order. But, this Tribunal advised the counsel to file an IA for restoration. The counsel neither filed the restoration petition nor informed the petitioner about the dismissal order. Thereafter, the counsel died. After knowing the death of the counsel, the petitioner went to his house cum office and searched his file. Thereafter, they engaged a new counsel to file the petition for restoration. Hence, there

was a delay of 625 days and prayed that the delay may be condoned.

8. The respondent bank counsel stated that the petitioner stating the dismissal order was known to him only on 30/8/2013 is false. The petitioner filed the restoration petition on 28/12/2011 itself and it was not proceeded further. Therefore, the above statement of the petitioner is false. Further stated that each and every day delay was not explained by the petitioner and that the statements made by the petitioner are absolutely false. Hence, the petition may be dismissed.

9. Ld. Counsel for the petitioner submitted that the alleged restoration petition dated 28/12/2011 was not filed by the petitioners and the signature found in the affidavit is not petitioner's signature. In fact, the dismissal order was known to the petitioner only on 30/8/2013 and not on 28/12/2011 as alleged by the respondent Bank.

10. On perusal of respondent's counter and documents (affidavit of Mrs.Amirthavalli, petitioner herein) reveals that the signature found in the affidavit is not tallying with the signature found in the petitioner's affidavit and other documents. It is entirely different. Therefore, it is doubtful that whether the petitioner had signed in the alleged affidavit or not. Further it is true that the petitioner has not given reason each and every day delay but he stated that the sale was not according to law. The valuation of the property is more than Rs.10.00 crores but it was sold for undervalue and the purchaser is the respondent bank itself, which is against law. Further stated that if the petition is not allowed, the petitioner will be put to serious prejudice and irreparable injury would be caused to the petitioner.

11. Therefore, in the interest of justice, I am inclined to allow this petition.

12. In the result, SIA filed to condone the delay of 625 days is allowed on a condition to pay a cost of Rs.5,000/- payable to the respondent bank on or before 15/12/2015. Call on 16/12/2015 for further proceedings."

10. Being aggrieved by the order made in S.I.A.No.65 of 2018 in S.A.No.313 of 2010, dated 8th December 2015, Bank has filed an appeal in M.A.No.3 of 2016.

11. While considering the rival contentions, on the aspect of condonation of delay, and while addressing the question as to whether it was permissible for the Bank, to purchase the mortgage property, when SARFAESI Act, 2002, was amended by insertion of Section 13 (5-A), with effect from 15/1/2013 and vide order, made in M.A.(SA).No.3 of 2016, dated 20/4/2017, at paragraph Nos.8 to 12, the Appellate Tribunal ordered as hereunder:-

"8. After considering the rival contentions of the counsel of the parties and on going through the citations, it becomes clear that after eighth round of sale notice under SARFAESI Act, S.A.No.313 of 2010 was filed by the respondent borrower. In aforesaid S.A., no interim protection was granted by DRT against the auction. In such background, S.A.No.313/2010 was dismissed for default on 29/11/2011. It is pertinent to note that on 29/11/2011 also, counsel of the respondent borrower made appearance before the Presiding Officer. Thereafter, on 12/9/2013, I.A.No.65/2013 application for condonation of 625 days delay was filed. On 29/11/2011, S.A.No.313/2010 was dismissed for default and fact of dismissal was in the knowledge of the counsel on the same day. Counsel made attempts for its restoration till 23/2/2012, when parties made appearance in DRAT in respect of hearing based on S.A.No.313/2010.

9. But after 23/2/2012 till 4/7/2013, i.e., the date of death of the counsel, that is for a period of about 17 months, nothing has been done by the respondent borrower. There is no explanation for the delay occurred between 23/2/2012 to 4/7/2013. Date of death of the counsel was on 4/7/2013, but prior to that, for last 17 months, borrower did not bother to take steps for revival of the reliefs prayed in S.A.No.313/2010. In such a situation, delay of aforesaid period had been condoned without any sufficient case and this part of the order condoning the delay without sufficient cause is not permissible. From 23/2/2012 to the date of death of the counsel, i.e., 4/7/2013, nothing is on record which can make the borrower entitled for condonation.

10. Borrower has paid an amount of Rs.2.25 crores can hardly be a mitigating circumstance in this case at this stage, because it was made under compulsion under statutory deposit. This amount has not been adjusted by the Bank towards the loan account and Bank was forced to purchase the property after passing of the eighth round of sale

proceedings. It is true that in the year 2013, Financial Institutions/Banks became entitled for purchase of properties in SARFAESI Act, but prior to that also, there had been no such bar for the Financial Institutions/Banks to go for purchase of the property in auction, if facts and circumstances demand so.

11. Accordingly, the impugned order deserves to be and is hereby set aside, because there is no explanation or sufficient cause for delay for the period from 23/2/2012 to 4/7/2013 on the part of the respondent.

12. In the result, Appeal is allowed. Impugned order of the DRT is set aside."

12. Being aggrieved by the order of the Debts Recovery Appellate Tribunal, made in M.A.(SA) No.3 of 2016, dated 20/4/2017, W.P.No.10928 of 2017 has been filed for the relief, as stated supra. Other writ petitions emanate from the orders extracted supra.

13. Inviting the attention of this Court to the Notice, issued under Section 13 (2) of the SARFAESI Act, 2002, dated 28/6/2007, Mr.Om Prakash, learned Senior Counsel for the petitioner submitted that a sum of Rs.250 lakhs was availed as loan. Properties have been mortgaged. Bank claimed a sum of Rs.2,41,19,461.44, as outstanding amount with interest, at the rate of 13.5% p.a. Thereafter, possession notice, dated 10/9/2007, was issued under Section 13 (4) of the SARFAESI Act, 2002. Tender-cum-Auction sale notice, was issued, on 10/11/2010, wherein outstanding amount was mentioned as on 9/11/2010 was Rs.3,48,56,779/-. Reserve price for the property was fixed at Rs.231.82 lakhs. Sale was fixed, on 22/12/2010.

14. Inviting the attention of this Court, to the letter, dated 9/12/2010, addressed to the Chief Manager, Allahabad Bank, Mount Road Branch, Chennai, learned Senior Counsel submitted that immediately, two Pay Order Nos.009196, dated 8/12/2010 for Rs.1,00,00,000/- and 009200 for Rs.1,25,00,000/-, drawn on Axis Bank Limited, Chennai, favouring Allahabad Bank towards the loan account of the petitioner was sent, but the Bank, refused to accept.

15. Learned Senior Counsel drew the attention of this Court to the order of the Debts Recovery Tribunal - I, Chennai, refusing to grant interim stay of further proceedings, in S.A.No.313 of 2010 and thereafter, referred to the order, made in M.A.(SA) No.673 of 2010, dated 27/12/2010, by the Debts Recovery Appellate Tribunal, Chennai and based on which Rs.2.25 crores was deposited in the Tribunal.

16. Order dated 27/12/2010, in M.A.(SA) No.673 of 2010,
<https://hcservices.ecourts.gov.in/hcservices/>

passed by the Debts Recovery Appellate Tribunal, Chennai, is extracted hereunder:-

"Ld. Counsel for the appellant Shri Umasuthan appearing on behalf of the appellant drew the attention of this Tribunal to the fact that the Ld. Presiding Officer, DRT - I, Chennai has failed to appreciate the fact that the appellant had made out a prima facie case before him for the grant of interim order and that the balance of convenience was in favour of the appellant. He further drew the attention of this Tribunal to the auction sale notice and stated that the same suffer from infirmities and the Authorised Officer proceeding further with the defective notice cannot be countenanced in law. He stated that the appellant is always ready and willing to settle the matter even today and produces two demand drafts both dated 8/12/2010 for a sum of Rs.2.25 crores and stated that the date on which the DDs were drawn would amply demonstrate the bonafide intention of the appellant in settling the matter with the bank. He further stated that it is very strange and rather shocking that the bank itself has purchased the property as the SARFAESI Act is not meant for such purchases by the secured creditor.

The Ld. Counsel further stated that the order of the Ld. Presiding Officer, DRT - I, Chennai is liable to be set aside as he has not considered the merits of the case of the appellant and prays for orders of restraint upon the Authorised Officer from in any way proceeding any further under the provisions of the SARFAESI Act to protect the interests of the appellant.

Ld. Counsel for the respondent bank Shri Rajendra stated that the appellant has been somehow delaying repayment of the sums due to the bank and has been resorting to filing a number of securitisation applications before the DRTs concerned. He drew the attention of this Tribunal to the "Prestige Light Case" and stated that parties who constantly disobey the orders of the judicial authorities are not entitled to grant of any relief much less the order of restraint upon the Authorised Officer. He stated that this Tribunal cannot pass any order restraining the Authorised Officer to proceed further under the provisions of the SARFAESI Act as every function under the SARFAESI Act has already been completed in this case.

Heard both sides.

In view of the facts and circumstances of the case more particularly in view of the fact that the appellant is willing deposit a sum of

Rs.2.25 crores into this Tribunal the following order is passed.

"The appellant is directed to deposit a sum of Rs.2.25 crores into this Tribunal within a period of one week from the receipt of a copy of this order and upon such deposit, the Authorised Officer shall stand restrained from in any way proceeding any further under the provisions of the SARFAESI Act.

Call this appeal for further proceedings on 19/1/2011."

17. Orders made in M.A.(SA) No.673 of 2010, dated 19/1/2011 are reproduced hereunder:-

"It is stated by the Ld. Counsel for the appellant Shri Sanjeevi that the conditional order dated 27/12/2010 has been complied with and that the appeal itself may be fixed for hearing at any convenient date.

Ld. Counsel for the respondent Bank Shri Rajendra states that the appellant has filed a number of Securitization applications and has been abusing the process of law for the purpose of delaying the recovery of the dues of the bank. He added that nothing survives in this appeal and that no interference by this Tribunal is warranted. He prayed that the Tribunal below may be directed to take up the SA itself and dispose of the same within a specified time frame to enable the bank to recover its lawful dues.

Heard both sides.

In view of the facts and circumstances of the case, it would be appropriate if the following order is passed.

"Ld. Presiding Officer, DRT - I, Chennai is directed to take up the S.A.313/10 itself for disposal and dispose of the same in accordance with law on or before 21/3/2011 and it is further directed that the Authorised Officer shall stand restrained from in any way proceeding any further under the provisions of the SARFAESI Act till 21/3/2011.

This M.A is disposed of accordingly."

18. Subsequently, another sale notice, dated 4/2/2011 has been issued. I.A.No.204 of 2011 has been filed, to punish the Bank, for contempt. On 21/3/2011, the following order has been passed,

"I.A.No.204 of 2011 (Contempt Petition);
Ld. Counsel for the petitioner states that the auction of the property situated at Casa Major Road, Egmore is brought for sale on 14/3/2011

and prays that unless this sale is stayed, the petitioner would be put to great hardship and suffering. Ld. Counsel for the respondent Bank states that if orders of stay are passed it will prejudice the bank in recovering the dues and states that there is no contempt committed by the officer concerned and prays that the contempt petition may be closed.

Heard both sides.

In view of the facts and circumstances of the case, it would be appropriate if orders of stay are passed restraining the Authorised Officer from proceeding with the proposed sale of the property situated at Casa Major Road, Egmore scheduled to be held on 14/3/2011. Accordingly, the Authorised officer shall stand restrained from proceeding with the sale of the property situated at Casa Major Road, Egmore, till 21/3/2011.

Call this I.A for further proceedings on 25/3/2011.

I.A.205/2011: Call with I.A.204 of 2011

I.A.206/2011 (stay): Call with

I.A.2014/2011"

19. Thereafter, on 29/11/2011, S.A.No.313 of 2010 has been dismissed. Petitioner has filed S.I.A.No.65 of 2013, for condoning the delay of 655 days.

20. Proceeding dated 26/11/2013, in S.I.A.No.313 of 2010, is extracted hereunder:-

"The present application filed SIA 65/2013 for condonation of delay of 655 days, whereas the SA was dismissed for default on 29/11/2011. The present SA is filed challenging the sale notice only. Counsel for the respondent bank Mr.Rajendra submitted that one of the property has already been sold and possession also taken by the respondent bank. Mr.Rajendra also refers to a affidavit filed by the applicant on 28/11/2012 for restoration. However, the same was not pressed for further hearing. In the meantime, the previous Advocate Mr.Venkatraman has expired, thereby the applicant has abandoned all rights under the SA knowing fully well that the SA was dismissed for default. For further proceedings call on 6/3/2014."

21. Proceeding dated 29/11/2011 in S.A.No.313 of 2010, is extracted hereunder:-

"Counsel for the respondent bank present and is ready for arguments. On 16/9/2011, by

common consent, the matter was adjourned to 7/10/2011 and again posted today for disposal. SIA 299/2011 filed. However, there is no representation by appellant/petitioner. If the petitioner is not serious to pursue the applications, the SA is dismissed for default.

Later at 3.10 p.m., counsel for appellant wants to file application to restore the SA since respondent bank counsel is not present. He is at liberty to file the same by giving notice to the other side."

22. Bank has filed a detailed counter affidavit, opposing the delay and submitted that there was no sufficient cause for condonation. Counter affidavit filed by the respondent Bank reads thus:-

"8. Bank has followed the procedure, as contemplated under the SARFAESI Act and in view of the fact that even after bringing the property for sale for nine times, there were no bidders and as such, the Bank itself opted to purchase the property in question and accordingly, in the auction sale held on 22/12/2010, the Bank had purchased the property for the upset price fixed namely Rs.2,31,82,000/-. The same was informed to the petitioner. The first respondent issued a sale certificate in faovur of the Bank dated 24/12/2010.

9. Challenging the sale notice, dated 10/11/2010, the petitioner had filed S.A.No.313 of 2010, challenging the same and also prayed for stay of the auction. The Hon'ble DRT - I was pleased to dismiss the prayer for stay by order dated 21/12/2010, challenging the same, the petitioner had filed M.A.(SA) No.673 of 2010 before the Hon'ble Debt Recovery Appellate Tribunal, Chennai and a conditional order was passed, directing the petitioner to deposit a sum of Rs.2.25 crores before the DRAT on 27/12/2010 and thereby restraining the Authorised officer from in any way proceeding under the provisions of SARFAESI Act. Subsequently, the Hon'ble DRAT. by order, dated 19/1/2011 was pleased to dispose M.A.(SA) No.673 of 2010, directing the Debts Recovery Tribunal - I, to dispose S.A.No.313 of 2010, on or before 21/3/2011 and continued the restrain order till then.

10. It is submitted that after giving credit to the sale amount of Rs.2,31,82,000/-, in the loan account, in order to realise the balance due amount, the sale notice, dated 4/2/2011 was issued in respect of the property situated at No.1/19, Casa Major Road, Egmore. The petitioner had filed I.A.No.204 of 2011 for contempt before

the Debts Recovery Appellate Tribunal in M.A.(SA) No.173 of 2010. S.A.No.313 of 2010 pending on the file of the Debts Recovery Tribunal - I, Chennai, was dismissed for default, on 29/11/2011.

11. It is submitted that the petitioner has not challenged the sale in favour of the bank and continued with the other proceedings. However, on 30/8/2013, she had given a letter for One Time Settlement for a total sum of Rs.3,81,00,000/-. Since the said offer was not acceptable to the Bank, the same was rejected and communicated to the petitioner through the letter, dated 16/8/2014. The petitioner had taken out an application in I.A.No.65 of 2013 in S.A.No.313 of 2010, to condone the delay of 625 days in filing the petition to restore the S.A. Subsequently, the petitioner had filed I.A.No.395 of 2014 before the DRAT praying for the refund of Rs.2.25 crores deposited before the DRAT. The said I.A was dismissed for default on 2/4/2014 by the Debts Recovery Appellate Tribunal, which was challenged by the petitioner in W.P.No.9904 of 2014. It is relevant to state that one of the sons of the petitioner has filed a writ petition in W.P.No.11377 of 2014, challenging the auction sale held on 22/12/2010 in which the bank has purchased the secured asset.

12. It is submitted that the bank had filed a detailed counter in respect of the condone delay petition, wherein the bank has clearly exposed the petitioner of false statement namely that she was not aware of the order of dismissing the SA for default and came to know recently, whereas the petitioner has sworn to an affidavit as early as on 28/12/2010 for restoration which was well within the knowledge of the petitioner and had made false averments against the counsel who is no more. The Debt Recovery Tribunal was pleased to allow the petition to condone the delay of 625 days in filing the restoration petition on payment of cost by order dated 8/12/2015.

13. It is submitted that the bank had filed an appeal against the order, dated 8/12/2015 made in S.I.A.No.65 of 2013 in S.A.No.313 of 2010 passed by the Debts Recovery Tribunal - I, in M.A.(SA) No.3 of 2016 before the Debts Recovery Appellate Tribunal, Chennai. The Hon'ble Debt Recovery Appellate Tribunal, Chennai, was pleased to allow the appeal by order dated 20/4/2017 which is challenged in the above petition.

14. It is submitted that no adverting to the averments made in the writ petition, 1 to 10

of the affidavit, the allegation that on the persuasion of the bank, the petitioner had applied for the loan under Alrent scheme is specifically denied. Further, the allegation that out of Rs.2.50 crores of loan sanctioned, only a sum of Rs.2.25 crores was disbursed reason being that the petitioner failed to submit fresh lease rental agreements to this extent, which was agreed upon at the time of sanction. The allegations made in paragraph 11 to 15 are borne out by records.

15. It is submitted that the allegation in paragraph 16 and 17 of the affidavit that on receipt of the sale notice, dated 10/11/2010, the petitioner approached for the OTS is correct however the bank has not accepted the payment offered towards full and final settlement for which the petitioner has not tendered the demand draft referred to in paragraph 17 of the affidavit. It is submitted that there is no bonafide on the part of the petitioner in settling the entire loan. The petitioner has been dragging on the issue by litigation after litigation either directly or through her children from the year 2007 onwards till date. The allegation in paragraph 18 of the affidavit that on the pretext of OTS, the first respondent backed the issue to the 11th hour is specifically denied. The averments made in paragraph 19 to 23 are borne out by records. The petitioner is put too strict proof in respect of averments made in paragraph 24 of the affidavit.

16. It is submitted that the averment made in paragraph 28 of the affidavit that the petitioner was totally in dark with regard to the proceedings in the SA No.313 of 2010 before DRT-I, Chennai, is specifically denied. The fact of filing an affidavit dated 28/12/2011 would clearly establish that the petitioner was aware of the entire proceedings and has come forward with the false allegation in the condonation petition. The averments in paragraph 31 that the purchase made by the first respondent on the auction held on 22/12/2010 is illegal is specifically denied. The averments made in paragraph 32 to 36 are narration of facts which are based on records. The allegation in paragraph 37 that the appeal was allowed without appreciating the fact is incorrect. The DRAT after analysing the entire facts, was pleased to allow the appeal by setting aside the order passed condoning the delay.

17. It is submitted that the ground is raised in paragraph 1 to 1 are not applicable to

the facts of the present case and as such merits no consideration. Further, as on date, there is a total dues of Rs.4,,43,36,389.00 including uncharged interest in the loan account as on 20/2/2017 which the petitioner will have to pay."

23. One of the main contentions in the instant writ petitions is that no sooner auction notice, dated 10/11/2010 was issued, bringing the property for auction, on 22/12/2010, by fixing the reserve price as Rs.231.82 lakhs, for a sum of Rs.3,48,56,779/-, due as on 9/11/2010, together with interest from 10/11/2010, expressing bona fide, the petitioner had rendered a sum of Rs.2,25,00,000/-, by way of two P.Os., on 8/12/2010 much before the date fixed for auction, but the Bank refused to accept the same, without any reasons.

24. Inviting the attention of this Court to Section 13 (5-A) of the SARFAESI Act, 2002, inserted with effect from 15/1/2013, contention has been made that statute did not permit the Bank to purchase the property and even taking it for granted that there were no bidders in all the auctions held, the conclusion of the Debts Recovery Tribunal in the Final Order made in M.A.(SA) No.3 of 2016, dated 28/4/2017, that prior to the amendment, there was no bar in the financial institutions/Bank to purchase the property in auction is contrary to the statute.

25. Yet another ground assailing the correctness of the orders impugned in all the writ petitions is that the delay in filing was due to the fact that counsel expired.

26. According to the learned Senior Counsel, the Appellate Tribunal should have applied the doctrine of "Equity and balance of convenience" which is in favour of the petitioners, whose property had been mortgaged and moreso, when the property had been purchased by the Bank at a low price.

27. Among the three grounds of challenge, we propose to advert to the first ground of challenge as to whether Bank had the right to purchase the mortgaged property and if so, as to when such right has been conferred by the legislature.

28. At this juncture, it is relevant to extract Section 13 (5-A) of the SARFAESI Act, 2002, which has been inserted by Act 1/13, with effect from 15/1/2013. Section 13 (5-A) reads thus:-

"Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured

creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale."

29. Though the Appellate Tribunal has observed that it is true from the year 2013, financial institutions/Banks are entitled to purchase the properties under SARFAESI Act, 2002, but prior to that also, there was no such bar for the financial institutions/Bank to purchase of the property in auction and though Mr.M.Devaraj, learned counsel for Bank, made submissions on the same lines, we are not inclined to accept the said contention for the reason that a statute has to be interpreted literally by giving effect to the same.

30. Section 13 (5-A), clearly sets out a specific date from which the said Section should be given effect to and if the submission of the learned counsel has to be accepted, then, Section will have to be given retrospective effect from the date of inception of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 and such interpretation would run contrary to the very Section itself, which has come into effect from 15/1/2013. Right to purchase property by the Bank, not provided in the statute, prior to 15/1/2013, cannot be recognised and ratified, by orders of Tribunal/Court.

31. In the light of the decisions and discussion, we are of the view that sale by the Bank is not supported by any statutory provision. Therefore, sale has to be set aside.

32. On the aspect of sufficiency of cause, petitioner has assigned reasons. Petitioner has made payment of Rs.82,81,804/-. Petitioner has deposited a sum of Rs.2,25,00,000/-, in the Registry of the Tribunal. Though, there is a delay, the petitioner has shown bona fide in depositing, at least after the issuance of sale notice. When sale has been effected without any statutory backing, delay ought to have been condoned.

33. On the aspect of condonation of delay, reasons to be assigned, contents of the supporting affidavit, the Hon'ble Supreme Court, in Esha Bhattacharjee v. Raghunathpur Nafar Academy, reported in (2013) 12 SCC 649, has broadly culled out the principles of law to be considered in the matter of condonation and it is suffice to extract paragraph No.21 from Esha Bhattacharjee's case,

"21. From the aforesaid authorities the principles that can broadly be culled out are;

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should

be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

34. Subsequently, after considering the Hon'ble Division Bench judgment of this Court in Tamilnadu Mercantile Bank Ltd., Vs. Appellate Authority, reported in (1990) 1 LLN 457 and decision of the Supreme Court in Esha Bhattacharjee v. Raghunathpur Nafar Academy, reported in (2013) 12 SCC 649, in H.Dohil Constructions Company Private Limited V. Nahar Exports Limited and Another, reported in 2015(1) Supreme Court cases 680, Hon'ble Supreme Court, at paragraph Nos.23 and 24, held as follows:

"23. We may also usefully refer to the recent decision of this Court in Esha Bhattacharjee [Esha Bhattacharjee v. Raghunathpur Nafar Academy, reported in (2013) 12 SCC 649], where several principles were culled out to be kept in Principles (iv), (v), (viii), (ix) and (x) of para 21 can be usefully referred to, which read as under: (SCC pp.658-59)

"21.4(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weight the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

24. When we apply those principles to the case on hand, it has to be stated that the failure of the Respondents in not showing due diligence in filing of the appeals and the enormous time taken in the refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bonafides as displayed on the part of the Respondents. Further, when the Respondents have not come forward with proper details as regards the date

when the papers were returned for refiling, the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the Respondents from not paying the Court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bonafides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the Respondents not deserving any indulgence by the Court in the matter of condonation of delay. The Respondents had filed the suit for specific performance and when the trial Court found that the claim for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the Respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered."

35. It is also useful to extract paragraph Nos.14 to 17 of the judgment in Tamilnadu Mercantile Bank's case.

"14. We are unable to agree with the reasoning of the learned Judge that no litigant ordinarily stands to benefit by instituting a proceeding beyond time. It is common knowledge that by delaying a matter, evidence relating to the matter in dispute may disappear and very often the party concerned may think that preserving the relevant records would be unnecessary in view of the fact that there was no further proceeding. If a litigant chooses to approach the Court long after the time prescribed under the relevant provisions of the law, he cannot say that no prejudice would be caused to the other

side by the delay being condoned. The other side would have in all probability destroyed the records thinking that the records would not be relevant as there was no further proceeding in the matter. Hence to view a matter of condonation of delay with a presupposition that no prejudice will be caused by the condonation of delay to the respondent in that application will be fallacious. In our view, each case has to be decided on the facts and circumstances of the case. Length of the delay is a relevant matter to be taken into account while considering whether the delay should be condoned or not. It is not open to any litigant to fix his own period of limitation for instituting proceedings for which law has prescribed period of limitation.

17.... Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long time, it cannot be presumed to be non-deliberate delay, and in such circumstances of the case, he cannot be heard to plead that substantial justice deserved to be preferred as against technical considerations. We are of the view that the question of limitation is not merely a technical consideration. Rules of limitation are based on principles of sound public policy and principles of equity. It is a litigant liable to have a Damocles' sword hanging over his head indefinitely for a period to be determined at the whims and fancies of the opponent?"

37. On the facts and circumstances of the case, it is also worthwhile to consider the decisions on 'equity and good conscience and balance of convenience'. What is justice, equity and good conscience is explained by the Hon'ble Supreme Court in Shri Rattan Lal Vs. Shri Vardesh Chander and Others, reported in 1976 (2) SCC 103, and in the words of Hon'ble Mr. Justice Krishna Iyer,

"The concept of 'justice, equity and good conscience' comes into play in the absence of any specific legislative provision. In India and in other colonies during the imperial era a tacit assumption had persuaded the courts to embrace English law (the civilizing mission of the masters) as justice, equity and good conscience."

38. Further, the Hon'ble Apex Court while considering the abovesaid concept of 'justice, equity and good conscience' an English common law, at paragraph No.21 held as follows:-

"This is the genesis of the idea that Indian 'good conscience' is English Common Law during the reign of Empress Victoria. The imperatives of Independence and the jural postulates based on the new value system of a developing country must break

off from the borrowed law of England received sweetly as 'justice, equity and good conscience'. We have to part company with the precedents of the British-Indian period tying our non-statutory area of law to vintage English law christening it 'justice, equity and good conscience'. After all, conscience is the finer texture of norms woven from the ethos and lifestyle of a community and since British and Indian ways of life vary so much that the validity of an anglophilic bias in Bharat's justice, equity and good conscience is questionable today. The great values that bind law to life spell out the text of justice, equity, and good conscience and Cardozo has crystallised the concept thus:

Life casts the mould of conduct which will some day become fixed as law.

Free India has to find its conscience in our rugged realities and no more in alien legal thought. In a larger sense, the insignia of creativity in law, as in life, is freedom from subtle alien bondage, not a silent spring nor hot-house flower."

39. Petitioner, who has availed a loan and offered collateral securities has challenged the auction notice, on the grounds inter alia that Bank has no right to purchase. Whereas, the Bank had refused to receive the Pay Orders, rejected OTS, purchased the property and seeks to retain the same.

40. Considering the right of the borrower over the property, vis-a-vis the Bank and on the principles of law stated supra, we are not inclined to accept the Bank's contention that when there was no bidder, Bank has the right to purchase. Sale in favour of the Bank is null and void. Consequently, Bank is entitled only to the balance amount towards principal and contracted interest.

41. At this juncture, learned Senior counsel for the petitioner submitted that deposit of Rs.2.25 crores would have earned a lesser interest and that at this length of time, if quarterly interest has to be calculated on the balance principal and interest, it would be huge. Learned Senior Counsel further submitted that suitable directions may also be issued to the Bank, to consider One Time Settlement. Bank had already declined One Time Settlement. In so far as the balance amount due and payable is concerned, Bank is stated to have filed O.A., which is pending. Petitioner is yet to file counter. Therefore, amount due and payable can very well be adjudicated before the Tribunal. Bank is directed to handover possession of the property taken after sale, within two weeks from the date of receipt of a copy of this order.

42. With the directions, impugned orders are set aside and all objections are allowed. No costs. Consequently, the

connected Miscellaneous Petitions are closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Chairperson
Debts Recovery Appellate Tribunal
4th Floor, Wellington Estate
No.55, Ethiraj Salai
Egmore
Chennai 600 008.
2. The Assistant General Manager-cum-
Authorised Officer
M/s. Allahabad Bank
Mount Road Branch
No.41 Anna Salai
Chennai 600 002.
- 3 The Presiding Officer
Debts Recovery Tribunal - I
6th Floor
Dewa Towers
770 Anna Salai
Chennai 600 002.

+3CC to M/s.M.Devaraj, Advocate SR.No.26178 to 26180

सत्यमेव जयते

Writ Petition Nos.9904, 11377 of 2014
a n d 10928 of 2017

SDR 28.05.2018

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