THE HON'BLE SRI JUSTICE SANJAY KUMAR
and
THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

WRIT PETITION No.19727 of 2018

ORDER: (per SK, J)

The prayer of the petitioner in this case reads as under:

> "For the reasons stated in the accompanying affidavit, the petitioner herein prays that this Hon'ble Court may be pleased to issue writ in the nature of Mandamus, declaring the Order Dt.11.05.2018 passed in I.A.No.2871 of 2016 in SA.IR.No.522 of 2016 on the file of Hon'ble Debts Recovery Tribunal-2, Hyderabad, and praying to declare the same as illegal, arbitrary and against the principles of natural justice and also oppose to Article 14 of the Constitution of India and consequently allow I.A.No.2871 of 2016 in SA.IR.No.522 of 2016 on the file of Hon'ble Debts Recovery Tribunal-2, Hyderabad, and pass such other order or orders as this Hon'ble Court deems fit and necessary in the justice and equity."

The petitioner, being a third party to the proceedings initiated by the State Bank of India under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act'), filed SA.IR.No.522 of 2016 before the Debts Recovery Tribunal-II, Hyderabad, under Section 17 of the SARFAESI Act. As there was delay on his part in filing the said Securitisation Application, he filed I.A.No.2871 of 2016 therein under Section 5 of the Limitation Act, 1963 (for brevity, 'the Act of 1963'), seeking condonation of the delay of 198 days in presenting the Securitisation Application against the sale notice dated 11.02.2016 issued by the bank. By the order dated 11.05.2018, the Tribunal opined that it had no power to entertain a condone delay petition under Section 5 of the Act of 1963 in relation to an application filed under Section 17 of the SARFAESI Act. Reliance in this

regard was placed by the Tribunal upon the recent judgment of the Supreme Court in INTERNATIONAL ASSET RECONSTRUCTION COMPANY OF INDIA LTD. v. THE OFFICIAL LIQUIDATOR OF ALDRICH PHARMACEUTICALS LTD.[1] However, a Division Bench of this Court comprising one of us, SK, J and another learned Judge, had occasion to consider this very issue in PORUS LABORATORY PRIVATE LIMITED v. INDIAN BANK, ASSET RECOVERY MANAGEMENT BRANCH, HYDERABAD[2] and held that the provisions of Section 5 of the Act of 1963 would be applicable to an application filed beyond time under Section 17(1) of the SARFAESI Act. This decision was rendered after duly considering the judgments of the Supreme Court in BALESHWAR DAYAL JAISWAL v. BANK OF INDIA[3] and INTERNATIONAL ASSET RECONSTRUCTION COMPANY OF INDIA LTD[1].

The Tribunal was therefore incorrect in misconstruing the judgment of the Supreme Court in INTERNATIONAL ASSET RECONSTRUCTION COMPANY OF INDIA LTD; which arose under the provisions of the Recovery of Debts and Bankruptcy Act, 1993, and pertained to filing of an appeal under Section 30 of the said Act. The order dated 11.05.2018 passed by the Tribunal dismissing I.A.No.2871 of 2016 in SA.IR.No.522 of 2016 holding to the effect that the provisions of Section 5 of the Act of 1963 are not applicable to an application filed under Section 17 of the SARFAESI Act is therefore incorrect and is accordingly set aside. Further, we find that though the Tribunal opined that the delay in filing of a Securitization Application cannot be condoned, it surprisingly made various observations in the order dated 11.05.2018 on the merits of the

[1] AIR 2017 SC 5013 = 2017 SCC OnLine SC 1245
[2] Writ Petition No.45198 of 2017 dated 15.06.2018
[3] (2016) 1 SCC 444

matter. These observations were wholly uncalled for and unjustified as the Tribunal non-suited the petitioner/applicant on the ground of delay.

The writ petition is accordingly allowed setting aside the order dated 11.05.2018 passed in SA.IR.No.522 of 2016 on the file of the Debts Recovery Tribunal-II, Hyderabad. The said I.A. shall stand restored to the jurisdictional Debts Recovery Tribunal for consideration afresh on its own merits in accordance with Section 5 of the Act of 1963. The observations made in the order dated 11.05.2018 on the merits of the matter shall stand deleted and shall not be binding on the Tribunal while undertaking consideration afresh of the Securitization Application in the event the delay is condoned. We also make it clear that neither this order nor the pendency of the proceedings before the Tribunal would preclude the petitioner from settling the loan account which is the subject matter of the SARFAESI proceedings with the State Bank of India.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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SANJAY KUMAR, J

20th JUNE, 2018.

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T. AMARNATH GOUD, J

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