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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 21519 of 2018
Date of decision: October 29, 2018**

M/s Oswal Spinning and Weaving Mills Limited and others

.....Petitioner

Vs.

UCO Bank and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Aalok Jagga, Advocate for the petitioner(s)
(in CWP Nos. 21519, 23057 and 23122 of 2018).

Mr. Amit Jhanji, Advocate for the petitioner (s)
(in CWP No. 4710 of 2018).

Mr. Munish Jolly, Advocate for the petitioner (s)
(in CWP No. 2134 of 2018).

Mr. Rajinder S. Rana, Advocate for the petitioner (s)
(in CWP No. 2338 of 2018).

Mr. Arav Gupta, Advocate for the petitioner (s)
(in CWP No. 6118 of 2018).

Mr. Dishant D. Tuteja, Advocate for the petitioner (s)
(in CWP Nos. 27382 & 28230 of 2017).

Mr. Ashish Verma, Advocate for the petitioner (s)
(in CWP No. 26380 of 2017).

Mr. Pankaj Gupta, Advocate for the petitioner (s)
(in CWP No. 19341 of 2018).

Mr. Praveen Chauhan, Advocate for the petitioner (s)
(in CWP No. 3689 of 2018).

Mr. Rakesh Gupta, Advocate for the petitioner (s)
(in CWP No. 18798 of 2018).

Mr. Onkar Rai, Advocate for the petitioner (s)
(in CWP No. 16889 of 2018).

Mr. Bakshish Singh, Advocate for Mr. Salil Bali, Advocate
for the petitioner (s) (in CWP No. 13848 of 2018).

Mr. Amit Aggarwal, Advocate for the petitioner (in CWP No.
26055 of 2018)

Mr. Sunil Chadha, Sr. Advocate with Mr. Sorabh Sharma, Advocate and Mr. Manat Kumar Arya, Advocate for the petitioner (in CWP No. 26487 of 2018)

Mr. Rajat Mor, Advocate for the petitioners (in CWP No. 18246 of 2018)

Mr. Barjinder Singh, Advocate for Mr. Rakesh Gupta, Advocate for the petitioners (in CWP No. 17893 of 2018)

Mr. Tegjeet Singh, Advocate for Mr. Atul Sharma, Advocate for the petitioner (in CWP No. 7790 of 2018)

Mr. Rajesh K. Kataria, Advocate for the petitioner (in CWP No. 9017 of 2018)

Mr. Arun Gupta, Advocate for the petitioner (in CWP No. 6118 of 2018)

Mr. Munish Jolly, Advocate for the petitioners (in CWP No. 2134 of 2018)

Mr. Sanjeev Sharma, Sr. Advocate with Mr. Shekhar Verma, Advocate and Ms. Manreet Kaur, Advocate for the petitioner (s) in (CWP No. 4335 of 2018).

Mr. Sanjeev K. Arora, Advocate for the respondent No.1 (in CWP No. 6118 of 2018).

Mr. Vikas Kumar, Advocate for Mr. Harsh Chopra, Advocate for respondent No.2 –DHFL (in CWP 2134 of 2018)

Mr. P.S. Sobti, Advocate for the respondent-OBC (in CWP No. 2338 of 2018).

Mr. C.S. Pasricha, Advocate for the respondent No.1 (in CWP No. 26380 of 2017).

Mr. Vikas Mohan Gupta, Advocate for respondent No.2. (in CWP No. 4335 of 2018).

Mr. Kamal Satija, Advocate for respondent No.2 (in CWP No. 3689 of 2018).

Mr. Shekhar Verma, Advocate and Ms. Daisy Sharma, Advocate for respondent No.5-HDFC (in CWP No. 3689 of 2018).

Mr. I.P. Singh, Advocate for respondent No.1 (in CWP No. 4710 of 2018).

Mr. Gaurav Goel, Advocate for respondent No.1 (in CWP Nos. 19341 & 18798 of 2018).

Mr. Gaurav Goel, Advocate for the respondent (in CWP No. 16889 of 2018).

Mr. Anil Kumar Garg, Advocate for the respondent Nos.1 & 2 (in CWP No. 13848 of 2018).

Mr. J.S. Mann, Advocate for respondent No.2
(in CWP No. 7790 of 2018).

Ms. Harpreet Kaur, Advocate for Mr. Shobit Phutela, Advocate
for respondent Nos. 8 & 9 (in CWP No. 7790 of 2018).

Mr. Shiv Kumar, Advocate for Ms. Geeta Sharma, Advocate for
respondent No.2 (in CWP No. 9017 of 2018).

Mr. D.K. Singal, Advocate for respondent No.2
(in CWP No. 23057 of 2018).

Mr. Sanjeev K. Aggarwal, Advocate for respondent No.1
(in CWP No. 6118 of 2018).

Mr. Vikas Kumar, Advocate for Mr. Harsh Chopra, Advocate for
respondent No.2-DHFL (in CWP No. 2134 of 2018).

Mr. Sandeep Suri, Advocate and Ms. Kriti Sharma, Advocate for
respondent No.2 (in CWP No. 18246 of 2018).

Mr. Vijay Parkash, Advocate for Mr. Nonish Kumar, Advocate
respondent No.1 (in CWP No. 17893 of 2018).

Ajay Kumar Mittal,(J)

1. This order shall dispose of a bunch of 23 petitions bearing CWP Nos.21519, 7790, 9017, 18798, 19341, 2134, 2338, 23122, 23057, 26055, 26487, 17893, 18246, 27310, 3689, 4335, 4710, 6118, 13848 and 16889 of 2018, 27382, 26380 and 28230 of 2017, as according to the learned counsel for the parties, the issue involved in all these petitions is identical. However, the facts are being extracted from CWP No. 21519 of 2018.

2. CWP No. 21519 of 2018 has been filed by the petitioners for quashing the impugned order dated 15.01.2018, Annexure P.6, passed by respondent No.2-Debt Recovery Tribunal-III (in short, “the DRT”) in SA No. 466 of 2017 vide which the Securitisation application (SA) filed by them under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, “the 2002 Act”) has been dismissed on the ground that the Tribunal does not have the power to condone the delay. Direction has also been sought to respondent No.2 to

consider the application for condonation of delay and thereafter decide the above mentioned application. Further prayer has been made for restraining the Bank from taking physical possession of the mortgaged property.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No. 21519 of 2018 may be noticed. Petitioner No.1 is a company incorporated under the provisions of the Companies Act, 1956. Similarly, petitioner No.5 is also a Public Limited Company. The petitioners are aggrieved by the order dated 15.01.2018 passed by the respondent No.1 vide which SA No. 466 of 2017 (*Oswal Spinning and Weaving Mills Limited Vs. UCO Bank*) has been dismissed on the ground that it does not have the power to condone the delay. The SA was filed along with the application, seeking condonation of 30 days of delay in filing the same along with an application seeking condonation of 15 days of delay in re-filing. The Tribunal relied upon the judgment of the Apex Court in *International Assets and Reconstruction Company of India Limited Vs. Official Liquidator, Aldrich*, CA No. 16962 of 2017 reported in AIR 2017 SC 5013.

4. Petitioner No.1 pleaded before the Tribunal that it was a company which was set up in 1992, having 100% export oriented cotton spinning unit with an installed capacity of 26208 spindles for manufacturing of cotton yarns at its unit located at Village Doraha, District Ludhiana. It had availed certain credit facilities from respondent No.1-Bank. Petitioner No.1 company was also engaged in the Vanaspati Ghee and Vegetable Oil. It was diversified in Steel Industries. On account of deep recession in the aforesaid two fields, the company ran into financial problems. It was also registered with Board for Industrial and Financial Reconstruction in March 2002 for rehabilitation under Sick Industries (Special Provisions) Act, 1985 (in short, “the 1985 Act”). As far as spinning unit was considered, it was doing

exceedingly well. In 2007-08 till 2009-10, it had an extensive turnover. Since it was an export oriented unit credit facility in the nature of packing credit was made available to the Company for preparation of export consignment and the recovery used to be effected through bill discounting facility which included the process of discounting of bills by the respondent Bank and consequent recoveries, which used to clear off the packing credit outstanding. In the first week of April 2010, respondent No.1 Bank suddenly refused to allow FBN facility and without any default from any of the reputed overseas customers of the petitioners. The said FBN facility was being allowed by the Bank for the last 15 years as per petitioners' requirement. Thus, the only source of recovery, was intentionally and willfully stalled by the Bank, forcing the account to turn into NPA. The petitioners made various efforts to convince the officers of the Bank but of no avail. Finally on 16.05.2016, respondent No.1 issued a demand notice under Section 13(2) of the 2002 Act claiming ₹ 16,82,99,955/49 as on 30.09.2015 vide Annexure P.1. The detailed objections were submitted on 14.07.2016 by the petitioners. The respondent-Bank issued a notice on 22.08.2016 under Section 13(4) of the 2002 Act vide which it took symbolic property i.e. property measuring 500 square yards at 92, Industrial Area A, Ludhiana. In the SA, it was pleaded by the petitioners that the possession notice dated 22.08.2016 was not served upon them, inspite of mandatory requirement under Rule 8(2) of the Security Interest (Enforcement) Rules, 2002 (in short, "the Rules") i.e. pasting on the conspicuous part of the property, publication in the newspaper etc. Therefore, there was certain delay in filing the SA. As against the requirement of 45 days, SA was filed 30 days beyond the limitation. Delay of 15 days also took place on account of removal of objections and a bulky paper book which had to be scrutinized to finalise the petition and remove objections. Notice was

issued in the SA on 18.04.2017. The reply of the Bank was yet to be received. On 15.01.2018, respondent No.2-the DRT passed the impugned order stating that the SA had been filed along with the application seeking condonation of 30 days delay under Section 5 of the Limitation Act, 1963. The petitioners relied upon the judgment in *Surinder Mahajan vs. Debts Recovery Appellate Tribunal and others*, (2013) 16 RCR (Civil) 204 that the DRT shall have the power to condone the delay while dealing with SA filed under Section 17 of the 2002 Act. Hence the instant petitions by the petitioners.

5. The issue that arises for consideration in these petitions is whether the Debt Recovery Tribunal has the power to condone the delay in filing the Securitisation application (SA) under Section 17 of the 2002 Act.

6. Before adjudicating the controversy involved, it would be expedient to reproduce the relevant statutory provisions. Section 17 of 2002 Act deals with filing of application assailing any of the measures adopted by the secured creditor under Section 13(4) of the 2002 Act. It reads thus:-

“17. Application against measures to recover secured debts.—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the

secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(4A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the

application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(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.

18. Appeal to Appellate Tribunal.-- (1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal. Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower.

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.

(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 and rules made thereunder.

35. The provisions of this Act to override other laws.-- The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

36.Limitation.-- No secured creditor shall be entitled to take all or any of the measures under subsection (4) of section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963.

37.Application of other laws not barred.-- The provisions of this Act or the rules made thereunder shall be in addition to and not in derogation of, the Companies Act, 1956, the Securities Contracts (Regulation ; Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or any other law for the time being in force.

Recovery of Debts due to Banks and Financial Institutions Act, 1993.

17. Jurisdiction, powers and authority of Tribunals.—(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

22. Procedure and Powers of the Tribunal and the Appellate Tribunal— (1) The Tribunal and the Appellate Tribunal shall not be bound the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate

Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

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24. Limitation.—The provisions of the Limitation Act, 1963 (36 of 1963), shall, as far as may be, apply to an application made to a Tribunal.

The Limitation Act, 1963

2. Definitions.—In this Act, unless the context otherwise requires,— (a) “applicant” includes— (i) a petitioner; (ii) any person from or through whom an applicant derives his right to apply; (iii) any person whose estate is represented by the applicant as executor, administrator or other representative; (b) “application” includes a petition;

29. Savings.—(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872). (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law. (3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law. (4) Sections 25 and 26 and the definition of “easement” in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend.”

7. The 2002 Act was enacted to regulate securitization and reconstruction of financial assets and enforcement of security interest and to provide for a central database of security interests created on property rights

and for matters connected therewith or incidental thereto. Section 17 of the 2002 Act has been amended w.e.f 1.9.2016, whereby the words “Application against measures to recover secured debts” are substituted in place of “Right to appeal”. A perusal of the above provisions shows that sub-section (1) of Section 17 of the 2002 Act entitles a person to file an application within 45 days to the Tribunal against any of the measures referred to in Section 13(4) thereof. By the use of the expression “aggrieved by any of the measures”, Section 17(1) makes it clear that the measures contemplated under Section 13(4) provide continuity to the cause of action. An Explanation has been added to [Section 17\(1\)](#) clarifying that the communication of reasons to the borrower in terms of [Section 13\(3-A\)](#) shall not constitute a ground for filing application under [Section 17\(1\)](#). Sub-section (2) of [Section 17](#) casts a duty on the Tribunal to consider whether the measures taken by the secured creditor for enforcement of security interest are in accordance with the provisions of the 2002 Act and the Rules made thereunder. If the Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that the measures taken by the secured creditor are not in consonance with sub-section (4) of [Section 13](#), then it can direct the secured creditor to restore management of the business or possession of the secured assets to the borrower. On the other hand, if the Tribunal finds that the recourse taken by the secured creditor under sub-section (4) of [Section 13](#) is in accordance with the provisions of the 2002 Act and the Rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor can take recourse to one or more of the measures specified in [Section 13\(4\)](#) for recovery of its secured debt. Sub-section (5) of [Section 17](#) prescribes the time-limit of sixty days within which an application made under [Section 17](#) is required to be disposed of. The

proviso to this sub-section envisages extension of time, but the outer limit for adjudication of an application is four months. If the Tribunal fails to decide the application within a maximum period of four months, then either party can move the Appellate Tribunal for issue of a direction to the Tribunal to dispose of the application expeditiously. Sub section (7) makes the provisions of the 1993 Act applicable to the DRT while dealing with an application under Section 17 of the 2002 Act.

8. There is a specific provision under Section 17(7) of the 2002 Act stating that the Debts Recovery Tribunal, as far as may be, dispose of the application in accordance with the provisions of the 1993 Act and the rules made thereunder. Further, Section 24 of the 1993 Act states that the provisions of the Limitation Act, 1963 would apply to an application made to the Tribunal. Hence the intention of the legislature clearly shows that the provisions of the Limitation Act, 1963 are specifically applicable to the 2002 Act. The legislature has not specifically excluded the provisions of the Limitation Act, 1963.

9. Having analysed the relevant statutory provisions, we now proceed to examine the case law on the subject. It is well settled that the Limitation Act, 1963 is procedural law. In *Hitendra Vishnu Thakur vs. State of Maharashtra*, (1994) 4 SCC 602, it has been held by the Supreme Court that law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

10. A Full Bench of this Court in *Jaswant Singh Bambha vs. Central Board of Direct Taxes and others*, ILR (2005) 1 P&H 302 examined the provisions of Section 239 of the Income Tax Act, 1961 and held that

Section 5 of the Limitation Act, 1963 shall apply to the claims of refund under Section 239 read with Section 119(2) of the said Act. The Bench observed as under:-

"(13.1) The above provision clearly shows that [Section 5](#) of the Limitation Act shall apply in cases of special or local laws to the extent to which they are not expressly excluded by such special or local laws. In other words, [Section 5](#) of the Limitation Act cannot be resorted to only when it is expressly excluded by a special or local law.

(13.2) [Section 239](#) of the Act has not expressly excluded the application of [Section 5](#) of the Limitation Act. In fact, a conjoint reading of [Sections 239](#) and [119\(2\)](#) of the Act clearly shows that the application of [Section 5](#) of the Limitation Act to the claims of refund has been specifically included in the Act.

(13.3) Thus, in our view the power given to the Board under [Section 119 \(2\)](#) of the Act to entertain a belated claim is nothing but incorporation of the provisions of [Section 5](#) of the Limitation Act, 1963.

(14) In view of the above, we are satisfied that by virtue of power conferred on the Board under [Section 119\(2\)](#) of the Act, it is fully competent to admit an application for refund even after the expiry of period prescribed under [Section 239](#) of the Act for avoiding genuine hardship in any case or class of cases."

11. In *State of Haryana vs. Hindustan Machine Tools Limited and others*, AIR 2015 Punjab 45, it was held by the Full bench of this Court that when any special statute prescribes certain period of limitation shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act, 1963 shall stand excluded. If none of them are excluded, then in that situation all of them would be

applicable. Examining Sections 5 and 29(2) of the Limitation Act, 1963, it was recorded as under:-

“5. Examining the first issue, [Sections 5](#) and [29\(2\)](#) of 1963 Act would be germane for the purpose of deciding the controversy which provide as follows:-

"5. Extension of prescribed period in certain cases.- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908) , may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.-- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

29. Savings.- (1) Nothing in this Act shall affect [section 25](#) of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of [section 3](#) shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in [sections 4 to 24](#) (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

6. [Section 5](#) of 1963 Act enables the Court to admit an appeal or an application after the expiry of prescribed period of limitation on sufficient cause being shown for the delay. It is meant to condone the delay. I attest to the accuracy and

integrity of this document High Court Chandigarh default of the party wherever it is able to satisfy that sufficient cause exists.

Thus, sufficient cause is sine qua non for exercise of discretion for condoning delay under this provision. The discretion, however, is to be judicial and not arbitrary. "Sufficient cause" has not been defined by the legislature in the 1963 Act but is to be ascertained on the individual facts of each case.

7. [Section 29\(2\)](#) of the 1963 Act, inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the schedule, the provisions of [section 3](#) shall apply as if such period was the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in [Sections 4 to 24](#) shall apply only in so far as, and to the extent, they are not expressly excluded by such special or local law. When any special statute prescribes certain period of limitation shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the 1963 Act shall stand excluded. If none of them are excluded, then in that situation all of them would be applicable. In our opinion, the language mentioned in [Section 29\(2\)](#) of the 1963 Act does not require that the special statute should expressly provide for exclusion of specific provision but it is to be gathered from the substance of the language mentioned in the statute whether the effect thereof is nothing but exclusionary. The Supreme Court in [*Union of India v. Popular Construction Company*](#), AIR 2001 SC 4010 while analyzing [Section 29\(2\)](#) of the 1963 Act in view of its earlier decision in [*Hukumdev Narain Yadav v. Lalit Narain Mishra*](#), AIR 1974 SC 480 had observed as under:-

"Apart from the language, 'express exclusion' may follow from the scheme and object of the special or local law.

"Even in a case where the special law does not exclude

the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law excluded their operation."

12. The Bombay High Court in ***UCO Bank, Mumbai s. M/s Kanji Manji Kothari and Co., Mumbai***, 2008(4) Mhlj 424 has held that Section 5 of the Limitation Act, 1963 applies to proceedings under Section 17 of the 2002 Act. Similar view has been expressed by the Madras High Court in ***Pannu Swami vs. The Debts Recovery Tribunal***, 2009(3) BJ 401 wherein it was held that Section 5 of the Limitation Act, 1963 applies to the proceedings under Section 17 of the 2002 Act. A Single Bench of Allahabad High Court in a judgment reported as ***State Bank of Patiala Vs. Chairperson, Debt Recovery Appellate Tribunal, Allahabad & others*** AIR 2012 Allahabad 1 following the judgment of Bombay High Court in ***UCO Bank's*** case (supra) has held that Sections 5 and 14 of the Limitation Act, 1963 would apply to the proceedings under Section 17 of the 2002 Act.

13. Gujarat High Court in ***Union of India vs. Chairperson, Debts Recovery Appellate Tribunal and others***, 2010(2) Bankers' Journal 976 had also expressed identical opinion that Section 5 of the Limitation Act, 1963 is applicable to proceedings under Section 17 of the 2002 Act in the following terms:-

"14. As observed earlier, even if the contention of the learned counsel is considered and accepted that it is a Tribunal and not the Court as per the view taken by the Apex Court in the case of ***Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Sanghai Banking Corporation*** 2009 (8) SCC 646, then also in view of the observations made hereinabove, it cannot be accepted that Section 5 of the Limitation Act would not apply

to the proceedings under Section 17 of the Securitisation Act before the Debt Recovery Tribunal. The reliance upon the decision of the Apex Court in the case of Consolidated Engineering Enterprises Vs. principal Secretary, Irrigation Department 2008 (7) SCC 169 is ill-founded inasmuch the observations off the Apex Court are to be considered and applied to the facts of that case. If such observation are considered, what is being held by the Apex Court that if there is express period prescribed in the special law, such would apply and not the prescription as provided under the Limitation Act, but the same cannot be read in absolute so as to excluded the applicability of other provisions of the Limitation Act which may apply, more particularly in view of the no express bar provided under the special law. Therefore, such a decision is of no help to the learned counsel for the petitioner."

The applicability of provisions of Section 5 of the Limitation Act, 1963 to the proceedings under Section 17 of the 2002 Act was held to be available to an aggrieved person by the Madhya Pradesh High Court in *M/s Seth Banshidhar Media Rice Mills Pvt. Limited s. State Bank of India*, AIR 2011 MP 205.

14. The issue has also been examined by this Court in detail in *Surinder Mahajan's* case (supra) where the question was whether the period of limitation for filing an application under Section 17 or filing of an appeal under Section 18 of the 2002 Act expressly or impliedly excludes the applicability of the provisions contained in Section 4 to 24 of the Limitation Act to such proceedings. After perusing the decisions rendered by various High Courts and the Supreme Court, it had been concluded that applicability of Limitation Act, 1963 to the proceedings before the DRT under Section 17 of the 2002 Act or under Section 18 of 2002 Act before the Debts Recovery

Appellate Tribunal seeking condonation of delay would be maintainable in the following terms:-

“Section 2 (l) of the Limitation Act defines a 'suit' for the purposes of Limitation Act. Such suit does not include an appeal and application for the purposes of the said Act. The 'application' in Section 2(b) of the said Act includes a petition for the purposes of the aforesaid Act. The Tribunal is not a Court to which the Limitation Act is applicable. Therefore, the action of the borrower in approaching the Debt Recovery Tribunal under Section 17 of the Act is not a suit as defined in Section 2 (l) of the Limitation Act nor such application is before the Court. It is like original proceedings against an action taken by the secured creditor as observed by Supreme Court in **Mardia Chemicals** Case (Supra). The right to approach the Debt Recovery Tribunal under Section 17 of the Act arises to the borrower only if the secured creditor takes an action or any of the measures under the Act. The entire process of recovery is vested with a secured creditor under the Act. The only right available with an aggrieved person is to seek recourse to his remedies contemplated under Section 17 of the Act. Thus it is not an original proceeding to be initiated by an aggrieved person to establish one's right. It is more akin to the objections filed to the action taken by the secured creditor, who is not only the beneficiary and also adjudicator to the large extent except to the rights of an aggrieved person under Section 17 of the Act. The right to approach the Tribunal arises on the initiation of proceedings by the secured creditor against the borrower or any aggrieved person. Therefore, though an application is to be filed by an aggrieved person including a borrower, but such application is an objection petition to the action taken by the secured creditor.

Though sub-sections (5) & (6) of Section 17 of the Act, prescribes the period for a decision on an application filed in terms of Section 17 of the Act, but sub-section (7) contemplates

that the Debt Recovery Tribunal shall dispose of the application filed in accordance with the provisions of the 1993 Act and the Rules made there under, save as otherwise provided under the Act. Similar provision is in respect of appellate proceedings contained in sub-section (2) of Section 18 of the Act. The right has been given to any person including borrower to invoke the jurisdiction of the Debt Recovery Tribunal in the matter within 45 days from the date on which such measures had been taken under sub-section (1) of Section 17. Section 37 of the Act contemplates that provisions of the Act or the Rules made there under are in addition to, and not in derogation of 1993 Act including some other Statutes.

There is no express exclusion of Sections 4 to 24 of the Limitation Act to the proceedings before the Debt Recovery Tribunal analogous to the provisions of the Arbitration and Conciliation Act, 1996, subject matter of consideration in ***Popular Construction Co.*** Case (Supra). Even though the proceedings before the Debt Recovery Tribunal are time bound, a directory provision, but such provisions will come into play only if the petition is filed before the Debt Recovery Tribunal. Sub-section (7) of Section 17 and/or sub-section (2) of Section 18 of the Act contemplate that the application shall be disposed of in terms of 1993 Act.

In the present set of cases, the right given to the secured creditor under the Act is not a complete code. The right given to the secured creditor under the Act is in addition to the rights conferred on the secured creditor in terms of Section 37 of the Act. Such right is in addition to many statutes including the 1993 Act. In fact, Sections 17(7) and 18(2) of the Act, prescribes the procedure before the Tribunal as that under the 1993 Act. The Limitation Act is extended to the proceedings under the said Act, while treating an application to be filed under Section 19 of the said Act as a suit. Therefore, the inference that the

limitation Act stands excluded in respect of the proceedings under the Act is not permissible to be drawn.

Therefore, in the absence of any provision under the Act excluding the applicability of the Limitation Act to the proceedings before the Debt Recovery Tribunal under Section 17 or before the Debt Recovery Appellate Tribunal under Section 18 of the Act, an application for condonation of delay would be maintainable before the Tribunal and the Appellate Tribunal. Therefore, we respectfully agree with the view of the Andhra Pradesh and Bombay High Court and unable to agree with the view expressed by Calcutta High Court.

In view of the above, we hold that:

- (i) The remedy provided to any person including a borrower under Section 17 of the Act is in response to the actions and measures taken by the secured creditor through an application which is in the nature of objections to the action taken by the secured creditor.
- (ii) The provisions of Sections 4 to 24 of the Limitation Act are applicable to the proceedings to be initiated by any person aggrieved including a borrower before the Debt Recovery Tribunal under Section 17 of the Act.
- (iii) The provisions of Sections 4 to 24 of the Limitation Act are applicable to an appeal to be preferred against an order passed by the Debt Recovery Tribunal before the Debt Recovery Appellate Tribunal under Section 18 of the Act.
- (iv) Whether sufficient cause is disclosed to seek condonation of delay, is a question of fact to be determined by the Debt Recovery Tribunal and/or the Debt Recovery Appellate Tribunal in the facts of each case.”

15. In all fairness to learned counsels for the Bank, we refer to the judgments relied upon by them. Support was drawn by them from the

decisions in *Om Parkash vs. Ashwani Kumar Bassi*, AIR 2010 SC 3791; *Ashwani Kumar Gupta vs. Siripal Jain*, 1998(2) RCR 222; *Prakash H.Jain vs. Marie Fernandes*, (2003) 8 SCC 431; AIR 2003 SC 459 and *Officer on Special Duty vs. Shah Mari Lal*, 1996 AIR SCW 941. Suffice it to notice that the principal of law enunciated therein is unquestionable but none of them relates to the provisions of 2002 Act or 1993 Act. Thus, no benefit can be derived by them from these pronouncements.

16. Further, it may be noticed that the Calcutta High Court in *Akshat Commercial Pvt. Ltd. and another vs. Kalpana Chakraborty and others*, AIR 2010 Calcutta 138, differed with the judgment of Bombay High Court in *UCO Bank's* case (supra) and held that Section 5 of the Limitation Act, 1963 does not apply to proceedings although the other relevant provisions of the Limitation Act, 1963 may apply. It was observed as under:

"22. On the same analogy, the proceedings under Section 17(1) should also be treated as a suit and thus, Section 5 of the Limitation Act at least does not apply to such proceedings although other relevant provisions of the said Act may apply.

The Calcutta High Court is the sole High Court taking different view in *Akshat Commercial Pvt. Ltd.* case (supra) that the Limitation Act is not applicable in respect of proceedings under Section 17 of the 2002 Act. With due respect, we are unable to subscribe to the aforesaid opinion of the Calcutta High Court.

17. The DRT relying upon the decision of the Apex Court in *International Assets and Reconstruction of India Limited's case* (supra), dismissed the SA on the ground that it does not have the jurisdiction to

condone the delay. The judgment in *Industrial Assets and Reconstruction of India Limited's* case (supra) is not applicable to the facts of the present case. Therein, the Apex Court was dealing with the issue of the competence of Tribunal in condoning the delay while adjudicating the appeal filed against an order passed by the recovery officer before the presiding officer under Section 30 of the 1993 Act. The Apex Court held that since there was no provision for condonation of delay under Section 30 of the 1993 Act, the presiding officer/Tribunal would not be competent to condone the delay in an appeal preferred against the order of the recovery officer. The said decision has been wrongly applied by the DRT to an application filed under Section 17 of the 2002 Act. The provisions of Section 30 of the 1993 Act do not contain any power to condone delay in filing the appeal against the order of the Recovery Officer whereas by virtue of Section 17(7) of the 2002 Act read with Section 24 of the 1993 Act, the DRT would have jurisdiction to condone the delay in filing an application under Section 17 of the 2002 Act.

18. From the discussion and reading of the judicial pronouncements as quoted above, the inevitable conclusion is that Section 17(1) of the 2002 Act is virtually a remedy in respect of a right of redemption. Hence the application of Section 5 of the Limitation Act, 1963 to proceedings under Section 17(1) of the 2002 Act would neither defeat the rights nor cause irreparable hardship to the secured creditor. The provisions of the Limitation Act, 1963 are applicable to the proceedings under Section 17 of 2002 Act before the DRT in view of Section 24 of the 1993 Act and therefore, the provisions of section 5 of the Limitation Act, 1963 are applicable to the provisions of the said Act. Further, 2002 Act does not expressly exclude the application of the provisions of the Limitation Act, 1963.

19. Accordingly, all the petitions are allowed. The impugned orders passed by the DRT dismissing the application under section 17 of the 2002 Act on the ground that the Debt Recovery Tribunal does not have the power to condone the delay, are quashed. The matter is remitted back to the DRT to decide the application for condonation of delay afresh on merits in accordance with the observations made hereinbefore.

(Ajay Kumar Mittal)
Judge

October 29, 2018
‘gs’

(Avneesh Jhingan)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes