

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-27863-2018

Date of Decision: 27.11.2018

Ravi Kant

...Petitioner

Versus

Debts Recovery Tribunal-III, Chandigarh and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. S.S. Swaich, Advocate for the petitioner.

Mr. Jasneet Singh, Advocate for respondent No.2.

AJAY KUMAR MITTAL, J.

1. By way of instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ of certiorari for quashing the order dated 15.3.2018 (Annexure P-5) passed by the Debts Recovery Tribunal-III, Chandigarh (in short “the Tribunal”) dismissing the application for setting aside the exparte order dated 9.8.2017 and the order dated 9.8.2017 (Annexure P-2) vide which the petitioner was proceeded against exparte by the Tribunal.

2. A few facts relevant for the disposal of the present writ petition as narrated therein may be noticed. Respondent No.2 filed OA-757-2017 (initially numbered as OA-440-2014) on 12.3.2014 (Annexure P-1) before the Tribunal under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as “the 1993 Act”)

for the recovery of ₹ 28,15,122/- along with pendente lite, future interest, costs and expenses. The petitioner did not appear and the Tribunal vide order dated 9.8.2017 (Annexure P-2) proceeded him against exparte and adjourned the case for 16.10.2017. Thereafter, the petitioner moved an application along with affidavit dated 16.10.2017 (Annexure P-3) before the Tribunal for setting aside the exparte proceedings. Respondent No.2 filed reply, Annexure P-4, to the said application. The Tribunal vide order dated 15.3.2018 (Annexure P-5) dismissed the said application. Hence, the present writ petition.

3. We have heard learned counsel for the parties and perused the paper-book with their assistance.

4. The issue that arises for consideration in this petition is whether the Tribunal has the power to condone the delay under Section 5 of the Limitation Act, 1963 (for brevity “the 1963 Act”) in respect of the proceedings under Section 19 of the 1993 Act?

5. Before adjudicating the controversy involved, it would be advantageous to reproduce the relevant statutory provisions of the 1993 Act and the Limitation Act, 1963 (in short “the 1963 Act”) which read thus:-

“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.

19. **Application to the Tribunal.**—(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction—

- (a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or
- (b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or
- (c) the cause of action, wholly or in part, arises.

(2) Where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under subsection (1) and against the same person another bank or financial institution also has claim to recover its debt, then, the later bank or financial institution may join the applicant bank or financial institution at any stage of the proceedings, before the final order is passed, by making an application to that Tribunal.

(3) Every application under sub-section (1) or sub-section (2) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed: Provided that the fee may be prescribed having regard to the amount of debt to be recovered: Provided further that nothing contained in this sub-section relating to fee shall apply to cases transferred to the Tribunal under sub-section (1) of section 31.

(4) On receipt of the application under sub-section (1) or sub-section (2), the Tribunal shall issue summons requiring the defendant to show cause within thirty days of the service of summons as to why the relief prayed for should not be granted.

(5) The defendant shall, at or before the first hearing or within such time as the Tribunal may permit, present a written statement of his defence.

(6) Where the defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set-off.

(7) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Tribunal to

pass a final order in respect both of the original claim and of the set-off.

(8) A defendant in an application may, in addition to his right of pleading a set-off under sub-section (6), set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

(9) A counter-claim under sub-section (8) shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter-claim.

(10) The applicant shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Tribunal.

(11) Where a defendant sets up a counter-claim and the applicant contends that the claim thereby raised ought not be disposed of by way of counter-claim but in an independent action, the applicant may, at any time before issues are settled in relation to the counter-claim, apply to the Tribunal for an order that such counter-claim may be excluded, and the Tribunal may, on the hearing of

such application, make such order as it thinks fit.

(12) The Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

(13) (A) Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him,--

(i) is about to dispose of the whole or any part of his property; or

(ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal; or

(iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest,

the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of

the debt, or to appear and show cause why he should not furnish security.

(B) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the defendant as appears sufficient to satisfy any certificate for the recovery of debt.

(14) The applicant shall, unless the Tribunal otherwise directs, specify the property required to be attached and the estimated value thereof.

(15) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property specified under sub-section (14).

(16) If an order of attachment is made without complying with the provisions of sub-section (13), such attachment shall be void.

(17) In the case of disobedience of an order made by the Tribunal under sub-sections (12), (13) and (18) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime

the Tribunal directs his release.

(18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order—

- (a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;
- (b) remove any person from the possession or custody of the property;
- (c) commit the same to the possession, custody or management of the receiver;
- (d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending application before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and
- (e) appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof.

(19) Where a certificate of recovery is issued against a company registered under the Companies Act, 1956 (1 of

1956) the Tribunal may order the sale proceeds of such company to be distributed among its secured creditors in accordance with the provisions of section 529A of the Companies Act, 1956 and to pay the surplus, if any, to the company.

(20) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due up to the date of realization or actual payment, on the application as it thinks fit to meet the ends of justice.

(21) The Tribunal shall send a copy of every order passed by it to the applicant and the defendant.

(22) The Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate.

(23) Where the Tribunal, which has issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated: Provided that in a case where the Tribunal to which the certificate of recovery is sent for execution finds that it has no jurisdiction to comply with

the certificate of recovery, it shall return the same to the Tribunal which has issued it.

(24) The application made to the Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

(25). The Tribunal may made such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

20 and 21. XX XX XX

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.

XX XX XX”

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.”

6. 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.

7. 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 1963 Act 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 1963 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 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."

8. In the present case, the Tribunal while relying upon the judgment of the Apex Court in **Civil Appeal No. 16962 of 2017, International Assets Reconstruction Company v. The Official Liquidatory of Aldrich Pharmaceuticals Ltd.**, dismissed the application for setting aside the exparte order dated 9.8.2017 on the ground that the Tribunal had no jurisdiction to condone the delay under Section 5 of the 1963 Act as the application was filed after the expiry of two months.

9. Similar issue came up before this Court in **CWP-21519-2018**

(M/s Oswal Spinning and Weaving Mills Limited and others v. UCO

Bank and another) and this Court vide order dated 29.10.2018 held that the Tribunal had the power to condone the delay under Section 5 of the 1963 Act to the proceedings under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The relevant observations recorded therein read thus:-

“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.”

10. From the plain reading of Section 24 of the 1993 Act and the judicial pronouncements as quoted above, the inevitable conclusion is that the provisions of Section 5 of the 1963 Act are applicable to the proceedings/application filed under Section 19 of the 1993 Act before the Tribunal. Once it is so held, the provisions of Section 5 of the 1963 Act are applicable to the application, therefore, the application seeking condonation

of delay shall also be maintainable. The Tribunal has wrongly rejected the condonation of delay application filed by the petitioner for setting aside exparte order holding that the Tribunal had no jurisdiction to condone the delay.

11. Accordingly, the present petition is allowed and the order dated 15.3.2018 (Annexure P-5) passed by the Tribunal dismissing the application for setting aside the exparte order dated 9.8.2017 on the ground that it had no power to condone the delay, is quashed. Consequently, the Tribunal shall decide the application for setting aside exparte order dated 9.8.2017 on merits in accordance with law before proceeding further in the matter.

(AJAY KUMAR MITTAL)
JUDGE

November 27, 2018
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes