

Sharayu Khot.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2765 OF 2018

**MSTC Limited,
A Government of India Enterprise
under the Administrative Control
of Ministry of Steel, New Delhi,
Incorporated under the provisions
of the Companies Act, 1956,
and having its Head Office at
225-C Acharya Jagadish Chandra,
Bose Road, Kolkata 700 002.**

...Petitioner

Versus

**Standard Chartered Bank,
A body incorporated under the
Provisions of the Royal Charter, 1853
With its principal office at 1,
Aldermanbury Square,
London EC2V7SB, and *inter alia*,
carrying on business at Kolkata
at 17 SA, Nalini Ranjan Avenue,
New Alipore, Kolkata 700 053.**

...Respondent

Mr. Gaurav Joshi, Senior Counsel, a/w Mr. Rohit Gupta, Mr. Darpan Bhatia, i/b Mr. Victor Basu, for the Petitioner.

Mr. Rafiq A. Dada, Senior Counsel, a/w Mr. Tushad Cooper, Mr. Kingshuk Banerjee, Ms. Radhika Gupta, i/b Wadia Ghandy & Co., for the Respondent.

**CORAM : A.A. SAYED &
R.I. CHAGLA, JJ.**

Reserved on : 12 February 2019

Pronounced on : 03 May 2019

JUDGMENT : (Per R.I. Chagla, J.)

1. Rule. Rule made returnable forthwith. Heard by consent of parties.

2. This Petition filed under Article 226 of the Constitution of India impugns the order dated 21st April 2018 passed by the Debts Recovery Tribunal -I at Mumbai (for short “**D.R.T.**”) dismissing the Miscellaneous Application for condonation of delay in filing the Review Application for review of the order dated 16th September 2017 in Interim Application No. 302 of 2017 passed by the D.R.T.

3. Learned Senior Counsel appearing for the Petitioner had during arguments stated that only prayer (a) in the Petition

is pressed and prayer (b) which challenges the order dated 16th September 2017 passed by the D.R.T. in the Interim Application No. 302 of 2017 in Original Application No. 43 of 2012 is not pressed.

4. The Petitioner is engaged in the business of export of gold jewellery to foreign countries in association with certain traders of gold jewellery. The Petitioner had entered into a Receivable Purchase Agreement with the Respondent whereby the Respondent was to factor invoices raised by the Petitioner on the foreign buyers and make payment thereof to the Petitioner. The Respondent had in turn availed of an insurance policy from ICICI Lombard General Insurance Company Limited. The Petitioner had made exports to the foreign buyers approved by the Respondent and raised bills accordingly, which were accepted by the foreign buyers. The bills were thereafter, placed before the Respondent for factoring and pursuant to which the Respondent was made a payment of 95 percent of the amount raised on the bill in favour of the Petitioner.

5. The Petitioner intimated to the Respondent upon the failure of the foreign buyers to make payment and urged the Respondent to file a claim in respect of such payments with ICICI Lombard. Upon a claim being made by the Respondent, ICICI Lombard refused to make payment of the insurance money as the payments from foreign buyers was not forthcoming. Instead of Respondent taking legal action against ICICI Lombard pursuant to its claim, the Respondent initiated proceedings under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (for short "*the said Act*") against the Petitioner before the D.R.T. by filing Original Application No. 43 of 2012. The Respondent filed Interim Application No. 302 of 2017 seeking an order from D.R.T. under Rule 12(5) of the Debts Recovery Tribunal (Procedure) Rules, 1993 directing the Petitioner to make payment of an amount of Rs. 222,51,00,000/- on the ground that same was admitted by the Petitioner in its Annual Report. On 16th September 2017, the D.R.T. by its order allowed the Interim Application No. 302 of 2017 filed by the Respondent. It was only on 23rd October 2017 that the order of

the D.R.T. was made available to the Petitioner. The Petitioner within prescribed time under the said Act filed an Appeal before the Debts Recovery Appellate Tribunal (for short “D.R.A.T.”). Subsequent to filing of the Appeal, the Petitioner filed Review Application before the D.R.T. on 18th December 2017 wherein it was stated that the Petitioner was taking steps to withdraw the Appeal. On 2nd January 2018, the Petitioner applied for withdrawal of the Appeal by stating that the Petitioner wished to pursue the Review Application and pursuant to the application, the D.R.A.T. by order dated 2nd January 2018, allowed the Petitioner to withdraw the Appeal. On 21st April 2018, the impugned order was passed by the D.R.T. rejecting the Miscellaneous Application for condonation of delay in filing the Review Application. The three Issues which fell for consideration before the D.R.T. are set out in paragraph 5 of the impugned order and which are as under:-

“(1) Whether the delay is properly calculated and whether there is a delay of more than 28 days in filing the Review Application?”

- (2) *Whether this Tribunal has power to invoke the provisions of Section 5 of the Limited Act?*
- (3) *Whether the Applicant is entitled for the benefit of Section 14 of the Limitation Act?”*

6. The above Issues were decided against the Petitioner by the D.R.T. in the impugned order whilst dismissing the Miscellaneous Application. Hence, the present Petition has been filed.

7. A preliminary objection has been raised by the Respondent as to the maintainability of the Writ Petition.

8. Shri. R.A. Dada, learned Senior Counsel appearing for the Respondent has submitted that this Petition is not maintainable since the impugned order is an appealable order and has placed reliance upon Section 20 of the said Act which provides that any person being aggrieved by “*any order*” passed by the D.R.T., can prefer an Appeal before the D.R.A.T. He has submitted that the Petitioner has an alternate remedy which has

not been availed of. He further submits that the impugned order is not an order rejecting the Review Application and in fact, the Review Application was still pending before the D.R.T. after the impugned order was passed.

9. In reply to the preliminary objection, Shri. Gaurav Joshi, learned Senior Counsel appearing for the Petitioner has submitted that the Petition is maintainable since no Appeal lies from an order rejecting the Review Application. He has placed reliance upon the judgment of this Court in ***Kotak Mahindra Bank Ltd. Vs. Mr. R.C. Shah (Deceased) through his legal heirs Ms. Samrudhi Sailesh Gandhi & Ors.***¹. He has submitted that dismissal of the Application of condonation of delay leads to the dismissal of the Review Application. In support of his contention, he places reliance upon the following judgments:-

(1) ***Chandrakant Govind Sutar Vs. M.K. Associates & Anr.***²

¹ WP(L) 2886 of 2011 Jt. dt. 23.01.2012.

² (2003) 1 Mah. LJ 1011

(2) *Rani Choudhury Vs. Lt. Col. Suraj Jit Choudhury*³

(3) *Chandu s/o Jagannath Ambekar & Anr. Vs. Digambar s/o Kisanrao Kulkarni & Ors.*⁴

10. Shri. Dada, learned Senior Counsel for the Respondent has in counter to the submissions, submitted that the decision of this Court in *Kotak Mahindra Bank Ltd.* (supra) is misconceived since in that case the D.R.T. decided the Review Application alongwith the condonation of delay Application and rejected it on merits as well as on the ground that it was barred by limitation. In the instant case, the D.R.T. has not gone into the merits of the Review Application. He has further submitted that if the Petitioner's contention that the dismissal of the condonation of delay Application amounts to rejection of the Review Application itself is accepted, it would mean that this Court in the present Petition would be called upon to look into the merits of the Review Application. In this context, he relies upon the express statement made by learned Senior Counsel for

³ (1982) 2 SCC 596

⁴ (2004) Mah LJ 69

the Petitioner to this Court that the Petitioner is not pressing prayer (b) of the Petition pertaining to the merits of the Review Petition which has been expressly and consciously given up by the Petitioner.

11. Having considered the submissions as to the maintainability of this Petition, we are of the view that an order of dismissal of the application for condonation of delay would be an order of dismissal passed in the Review Application. This has also been expressly held by the learned Single Judge of this Court in **Chandrakant Govind Sutar** (supra) at paragraphs 7 and 8 following the judgment of the Apex Court in **Rani Choudhury** (supra). An order of a Civil Court rejecting an application for review is not appealable as provided under Order XLVII Rule (7) of the Code of Civil Procedure, 1908 (“**C.P.C.**”). This provision would apply to orders of the D.R.T. as by virtue of Section 22(2)(e) of the said Act, the D.R.T. is vested with powers of a Civil Court under the C.P.C. whilst trying a suit, *inter alia*, in respect of civil matters, including reviewing its decision. The decision of the Division Bench of this Court in

Kotak Mahindra Bank Ltd. (supra) would apply and we do not accept the submission of the learned Senior Counsel for the Respondent that this decision is distinguishable on facts as in that case, the Review Application had been dismissed on merits and hence, the Writ Petition was held to be maintainable. In fact in that case this Court had remanded the matter back to the D.R.T. as they had not considered the application for condonation of delay independently of the Review Petition. Thereafter this Court had in the second round of proceedings and in exercise of its writ jurisdiction set aside the order of the D.R.T. which had rejected the application of condonation of delay and the delay was condoned and matter remanded back to the D.R.T. for considering the review application on merits. Reference is made to the decision of the Division Bench of this Court in **Kotak Mahindra** (supra) dated 30th August 2016. We are thus of the view that this Writ Petition is maintainable and that no appeal would lie from the rejection of the Review Application. The mere fact of the Review Application being shown on the board of the D.R.T. for a few days after rejection

of the condonation of delay application will make no difference to our above finding on maintainability.

12. We shall now consider the further submissions particularly on the power of the D.R.T. to condone delay in filing a review application. The learned Senior Counsel for the Petitioner has submitted that the impugned order has erroneously held that the D.R.T. does not have power to condone the delay in filing the Review Application. He has submitted that the order which is sought to be reviewed is an order passed under Section 19(5B) of the said Act i.e. a decree on admission. Section 24 of the said Act expressly applies Section 5 of the Limitation Act, 1963 to an Application made under Section 19 of the said Act. He submits that the only argument which appears to have been made by the Respondent before the D.R.T. is that, the review is under Section 22 and not under Section 19 of the said Act. He submits that a bare perusal of Section 22 shows that it only prescribes the procedure and the manner in which the D.R.T. will function and is not an

independent power of the D.R.T. In other words, the D.R.T. is to discharge its functions as per the procedure laid down under Section 22, which includes power to review, passing *exparte* order, restoration, etc. These orders are always passed under Section 19 and which would include the power to pass an order of review and for which condonation of delay provided for under Section 5 of the Limitation Act, 1963 applies by virtue of Section 24 of the said Act.

13. He has relied upon the decision of the Supreme Court in ***International Asset Reconstruction Company Of India Ltd. Vs. The Official Liquidator Of Aldrich Pharmaceuticals Ltd. & Ors***⁵. He submits that this decision is confined to an Appeal filed under Section 30 of the said Act i.e. the Appeal from Order of the Recovery Officer to the D.R.T. and for which there is no power to condone the delay. He has placed reliance on paragraph 14 of that decision wherein it has been concluded that Section 24 will apply to the proceedings

⁵ 2017 SCC Online SC 1245

“originating from Application under Section 19”, which is precisely the case here as the review proceedings originate from the Application under Section 19 i.e. Section 19(5)(B). He has further placed reliance upon the decision of the Apex Court in *Indian Bank Vs. Manilal Govindji Khona*⁶, in which it has been held that the Limitation Act is applicable to the proceedings of the D.R.T. in view of Section 24 of the said Act and that the provisions of Section 5 of the Limitation Act are applicable to the provisions of the said Act. He has accordingly submitted that the D.R.T. has power under Section 5 of the Limitation Act to condone the delay in filing the Review Application and that the D.R.T. ought to have exercised its power and condoned the delay.

14. He has submitted that in the present case, the Presiding Officer has completely erred in coming to the conclusion that the limitation will have to be computed upto the date of filing of the Application for condonation of delay. He submits that limitation prescribed for filing the review and not

⁶ (2015) 3 SCC 712

for filing of the Application for condonation of delay which is under consideration. He has further submitted that the delay in the present case is only of 28 days in filing the Review Application. He has submitted that the Petitioner had without any delay filed the Appeal and upon being advised that review would be a more appropriate proceeding against the order of the D.R.T. as certain procedures were not followed/certain aspects have not been considered by the D.R.T. in arriving at the decision, the Review Application was filed. The Petitioner had accordingly applied to the D.R.A.T. for withdrawal of the Appeal seeking liberty to pursue the Review Application. He has further submitted that the delay of 28 days in filing the Review Application was on account of the Petitioner relying upon the publication of the Professional's Bare Act, 2017, which had mentioned the period of limitation as 60 days and not 30 days for filing a Review Application. The said Bare Act had not reflected the amendment to the provision viz. Rule 6A(2) of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994, which prescribes the period of 30 days for filing the Review

Application. In fact, the time period has been reduced by way of amendment in 2016. He has produced the Bare Act of Professional's - 2017 before this Court where the error has been reflected. He has submitted that it was as a result of this inadvertent error by placing reliance upon the said Bare Act of 2017, a delay has resulted of 28 days. He has submitted that the justification for delay given in the Miscellaneous Application be accepted and the delay be condoned. He has also made submissions that in the event, this Court holds that there is no power of the D.R.T. to condone delay in filing the Review Application and that the provisions of the Limitation Act are not applicable to Review Applications, then principle analogues to Section 14 of the Limitation Act will apply to the proceedings before the D.R.T. He has placed reliance upon the decision of the Apex Court in *M.P. Steel Corporation Vs. Commissioner of Central Excise*⁷, wherein it was held that Section 14 principles would apply to proceedings of the like nature before the D.R.T. He has submitted that accordingly, the time spent in pursuing

⁷ (2015) 7 SCC 58

the Appeal of like nature will have to be excluded and upon such exclusion, the Review Application filed is within limitation.

15. Shri. Rafiq Dada, the learned Senior Counsel appearing for the Respondent has submitted that the D.R.T. has rightly held in the impugned order that it has no power to condone the delay in filing the Review Application. He has also placed reliance upon the Judgment of the Supreme Court in *International Asset Reconstruction Company Of India Ltd.* (supra). He has submitted that the D.R.T. is a Tribunal and not a Court and this is inspite of Section 22 of the said Act conferring powers of the Civil Court for the purpose of review, the D.R.T. is not vested with the status of a Civil Court. He has submitted that Section 5 of the Limitation Act confers on a Court, the power to condone delay and this inheres only in a Court and not in a statutory Tribunal. He has submitted that the statutory Tribunals have no power to condone delay unless expressly conferred by the statute creating it. He submits that although Section 24 of the said Act confers a power on the

D.R.T. to condone delay, the power is restricted to Original Applications under Section 19 as defined in Section 2(b) of the said Act. He submits that the Application for Review is not an Original Application under Section 19 of the said Act, but an Application under Section 22 of the said Act. He submits that the review proceeding is not an original proceeding and that Tribunals and other *quasi judicial* Authorities do not have inherent power to review their decisions and cannot review their decisions unless specific power to do so is conferred upon them under statute. He has placed reliance upon the decision of the Supreme Court in support of his contention including the decision of the Supreme Court in *Kapra Mazdoor Ekta Union Vs. Management of Birla Cotton*⁸ and *Lily Thomas Vs. Union of India*⁹. He submits that the D.R.T.'s power to review its decision does not flow from Section 19 of the said Act. D.R.T. derives its power to review its decision from Section 22 of the said Act and hence, there is no power to condone delay in respect of the Review Application under Section 22 of the said

⁸ (2005) 13 SCC 777

⁹ (2000) 6 SCC 224

Act. He has further made submissions with regard to the Review Application having been filed during the pendency of the Appeal and hence, not maintainable under Order XLVII Rule 1 of the C.P.C. Under the said provision, the Review Application cannot be filed, if an Appeal has been preferred. In the present case, the Appeal had already been preferred and hence, the Review Application of the Petitioner could not have been filed and hence, is not maintainable. This has been countered by the learned Senior Counsel for the Petitioner who has submitted that an Appeal can be said to have been preferred once the Petitioner had deposited the mandatory deposit under the said Act with the D.R.A.T. This had not occurred in the present case and the Appeal was withdrawn with liberty to pursue the Review. Hence, the Review Application is maintainable.

16. He has made submissions with regard to Section 14 of the Limitation Act and/or principle analogous thereto not applying to a Review Application before the D.R.T. He has submitted that presuming these principles apply, then

the pre-conditions for invoking of Section 14 of the Limitation Act are not met. This includes the pre-requisite of the prior proceeding being before a forum which lacked jurisdiction or was otherwise unable to entertain the matter due to other cause of like nature. In the present case, the Appeal which was filed before the D.R.T. which was a forum which had jurisdiction and hence, the pre-requisite of Application of Section 14 of the Limitation Act is clearly not met. He has further submitted that under Section 14 of the Limitation Act it is contemplated that prior proceeding must have ended anterior to the filing of the subsequent proceedings which is clearly not met in the present case, as the Appeal was pending when the Review Application was filed.

17. We have considered the submissions.

18. We shall firstly consider whether the D.R.T. has power to condone delay in filing the Review Application by virtue of Section 24 of the said Act which makes the provisions

of the Limitation Act applicable to an application made to a Tribunal. Under Section 2(b), an Application has been defined as an Application made to a Tribunal under Section 19. Section 19(5B) of the said Act under which the order for which review is sought, was passed provides thus :-

“Where a defendant makes an admission of the full or part of the amount of debt due to a bank or financial institution, the Tribunal shall order such defendant to pay the amount, to the extent of the admission within a period of thirty days from the date of such order failing which the Tribunal may issue a certificate in accordance with the provisions of sub-section (22) to the extent of the amount of debt due admitted by the defendant.”

19. Further, Section 22 of the said Act provides for the procedure and powers of the Tribunal and Appellate Tribunal as under:-

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

- (1) *The Tribunal and the Appellate Tribunal shall not be bound by 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.*
- (2) *The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:--*
 - (a) *summoning and enforcing the attendance of any person and examining him on oath;*
 - (b) *requiring the discovery and production of documents;*
 - (c) *receiving evidence on affidavits;*
 - (d) *issuing commissions for the examination of witnesses or documents;*
 - (e) ***reviewing its decisions;***

- (f) dismissing an application for default or deciding *it ex parte*;
- (g) *setting aside any order of dismissal of any application for default or any order passed by it ex parte*;
- (h) *any other matter which may be prescribed.*”

20. Thus, from these provisions it is clear that although the procedure and the manner in which the D.R.T. will function is provided under Section 22 of the said Act viz. that the D.R.T. shall have for the purpose of discharging their functions under the said Act, the same powers vested in the Civil Court under the C.P.C. while trying a Suit in respect of *inter alia* reviewing its decisions, the review would be of an order passed by the D.R.T. under Section 19(5B) of the said Act. The order passed in the Review Application would originate from an order passed under Section 19 of the said Act as per the procedure prescribed under Section 22 of the said Act. We therefore, find that Section 22 of the said Act is not independent to that of Section 19 and hence, Section 24 of the said Act clearly applies

Section 5 of the Limitation Act to a Review Application. Thus, the D.R.T. has power to condone delay in filing the Review Application. The decision of the Supreme Court in *International Asset Reconstruction Company Of India Ltd.* (supra) is restricted to deciding the issue of applicability of the Limitation Act to an Appeal under Section 30 of the said Act and in that context has held that there is no power to condone delay. This is made clear from paragraph 14 of the decision of the Supreme Court, which reads thus :-

“14. *The RDB Act is a special law. The proceedings are before a statutory Tribunal. The scheme of the Act manifestly provides that the Legislature has provided for application of the Limitation Act to original proceedings before the Tribunal under Section 19 only. The appellate tribunal has been conferred the power to condone delay beyond 45 days under Section 20(3) of the Act. The proceedings before the Recovery officer are not before a Tribunal. Section 24 is limited in its application to proceedings before the Tribunal originating under Section 19 only. The exclusion*

of any provision for extension of time by the Tribunal in preferring an appeal under Section 30 of the Act makes it manifest that the legislative intent for exclusion was express. The application of Section 5 of the Limitation Act by resort to Section 29(2) of the Limitation Act, 1963 therefore does not arise. The prescribed period of 30 days under Section 30(1) of the RDB Act for preferring an appeal against the order of the Recovery officer therefore cannot be condoned by application of Section 5 of the Limitation Act.”

21. Thus, this decision cannot be relied upon by the learned Senior Counsel for the Petitioner in support of his contention that Section 24 of the said Act will not apply to a Review Application. This apart from our finding that the Review Application originates from an Application under Section 19 of the said Act.

22. Having arrived at a finding that the D.R.T. has the power to condone the delay in filing the Review Application, we find that in the present case, the delay was only of 28 days

i.e. the Review Application was filed 58 days from the impugned order. We find that the D.R.T. should have exercised this power of condonation of delay and condoned the delay, as the Petitioner had made out sufficient justification for the delay in the Miscellaneous Application. The Petitioner had placed reliance upon a Professional's Bare Act publication of 2017 wherein the limitation prescribed is stated to be 60 days, as the amended provision has not been reflected in the 2017 publication, though the time period was reduced in 2016. We are satisfied from perusal of the said Bare Act of 2017 which was tendered in Court that such an error has been made in the Bare Act. This resulted in the delay in filing the Review Application. We also find that the Petitioner had prior to filing the Review Application, filed an Appeal from the Order of D.R.T. However, upon receiving advise from its Advocates, an application was made before the D.R.A.T. to withdraw the Appeal so as to pursue the Review Application. We further find from the impugned order that the learned Presiding Officer had erred in concluding that the limitation will have to be computed

till the date of filing the Application for condonation of delay. This finding is clearly erroneous, as the limitation will have to be computed till the filing of the review which was under consideration and not the filing of the Application for condonation of delay. We find that the Presiding Officer of the D.R.T. should have condoned the delay and answered the issues in favour of the Petitioner. This considering the fact that the order being reviewed is a decree on the basis of what has been considered to be an admission of more than Rs. 200 Crores and since the Petitioner is a Government of India Undertaking, no personal interest is involved.

23. Having arrived at the finding that the D.R.T. had the power to condone the delay in filing of the Review Application by the Petitioner and that the delay is to be condoned, as sufficient justification for the delay had been made out in the Miscellaneous Application, it is not necessary to decide the other issues. The issue as to whether Review Application is maintainable, as it has been filed during the

pendency of an Appeal, which is stated to have been preferred before the D.R.A.T. and disputed by the Petitioner is an issue which has not been raised by the Respondent before the D.R.T. The impugned order had merely dismissed the Miscellaneous Application by holding that there is no power to condone the delay. Hence, this issue is kept open to be decided by the D.R.T. whilst considering the review on merits.

24. We accordingly, pass the following order:-

1. The impugned order of the D.R.T. is quashed and set aside.
2. We condone the delay in filing the Review Application.
3. We restore the Review Application to the file of the D.R.T. by keeping open the issue of the maintainability of the Review Application.

4. Rule is partially made absolute in the above terms.
5. There shall be no order as to costs.

[R.I. CHAGLA, J.]

[A.A. SAYED, J.]