IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.07.2019

Delivered on : 26.07.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.No.10053 of 2019 and
W.M.P.Nos.10628, 10629 & 15968 of 2019

Central Bank of India,
Asset Recovery Branch,
48/49, Ground Floor,
Montieth Road, Egmore,
Chennai-8. .. Petitioner

Vs.

1.The Registrar,
DRAT, Chennai,
Ethiraj Salai,
Egmore, Chennai - 8.

2.The Presiding Officer,
DRT - II, Chennai,
VI Floor, Dewa Towers,
Anna Salai, Chennai – 2.

3.M/s.Emayam enterprises
rep. by its Proprietor R.Veeramani
No.48/73, AryaGowda Road,
West Mambalam,
Chennai-33.

4.R.Veramani
5.M/s.Emayam Aqua Products,
rep. by its Proprietor V.Meenadevi,
No.221/6-A3 Erumapatti Village,
Tirupathur Taluk,
Sivagangai District - 630 211.
6.V.Meenadevi
7.Mijesh Jain .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to quash the impugned order dated 21.03.2019 passed in M.A.(SA).No.72 of 2018 by the 1st respondent and consequently allow the same.

For Petitioner : Mr.M.L.Ganesh

For Respondents : R1 & R2 - Tribunal
Mr.N.G.R.Prasad
for Mr.R.Dhinesh Kumar (R3 to R6)
R7 – not ready in notice

O R D E R

THE HON'BLE CHIEF JUSTICE

AND
M.DURAISWAMY, J.

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari to call for the records pertaining to the order dated 21.03.2019 made in M.A.(SA).No.72 of 2018 passed by the 1st respondent and to quash the same.

2.Challenging the sale held on 09.04.2018, the respondents 3 to 6 filed an un-numbered appeal in S.A.(SR).No.4855 of 2018 along with an application in S.I.A.No.569 of 2018 under Section 5 of the Limitation Act to condone the delay of 108 days in filing the appeal before the 2nd respondent, the Debts Recovery Tribunal – II, Chennai.

2.1.The Debts Recovery Tribunal, by order dated 31.08.2018, condoned the delay on payment of costs of Rs.25,000/-. Aggrieved over the order passed by the Debts Recovery Tribunal, the petitioner – Bank preferred an appeal in M.A.(SA).No.72 of 2018 before the Debt Recovery Appellate Tribunal, Chennai and the Debt Recovery Appellate Tribunal, by order dated 21.03.2019, dismissed the appeal on the ground that the appeal was preferred against an interim order of condonation of the delay in filing the SARFAESI Application and that the Debts Recovery Tribunal can decide all the issues in the SARFAESI Application and the petitioner – Bank shall have a right to raise all these issues in the appeal to be filed against the final order passed by the Debts Recovery Tribunal. Challenging the order passed by the Tribunals below, the petitioner – Bank has filed the above Writ Petition.

3.The learned counsel appearing for the petitioner – Bank submitted that under Section 17 of the SARFAESI Act, the respondents 3 to 6 should have filed the SARFAESI Application within 45 days and that the said period cannot be extended and the delay cannot be condoned under Section 5 of the Limitation Act.

4.Countering the submissions made by the learned counsel for the petitioner, the learned counsel appearing for the respondents 3 to 6 submitted that the Tribunal has rightly condoned the delay, which was also confirmed by the Appellate Tribunal and therefore, there is no necessity for interfering with the said orders.

5.On a perusal of Section 17 of the SARFAESI Act, it is clear that there is no provision made under the said Section for condoning the delay in filing the SARFAESI Application. The SARFAESI Application must be filed within 45 days.

6.There being a specific time-limit of 45 days for invoking the original jurisdiction of Section 17 of the SARFAESI Act, which has been found to be, in essence, a suit and a further tentative time-limit of 60 days for disposal of the proceedings, and giving a right to the party to complain before the Appellate Forum for compliance of such provisions alleging violation thereof if not completed within four months, it was never the intention of the legislature to apply Section 5 of the Limitation Act to such original proceedings by giving power to entertain the application under Section 17(1) of the SARFAESI Act by merely showing sufficient cause for the delay without putting any restriction upon the Tribunal and we, therefore, hold that the time period of 45 days provided in Section 17 of the SARFAESI Act which is original in nature cannot be extended by taking aid of Section 5 of the Limitation Act.

6.1.The SARFAESI Application filed under Section 17(1) of the Act is like that of a suit and that the Limitation Act applies as far as may be applicable by virtue of Sections 17(7) and 24 of the two Special Laws, therefore, Section 5 of the Limitation Act has no application in the original proceedings like a suit before Debts Recovery Tribunal. Going by the amended Section, the proceedings under Section 17 of the Act is not an appellate proceeding, but rather an original proceeding, which is brought before a Forum prescribed under the Act and is like a suit under the Code of Civil Procedure, 1908. Thus, as a matter of fact the proceedings under Section 17 of the Act are in lieu of the Civil Suit, which remedy is ordinarily available, but for the bar under Section 34 of the SARFAESI Act and an application under Section 19(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 are similar provisions in its non-applicability of Section 5 of the Limitation Act. The Debts Recovery Tribunal exercises original jurisdiction while entertaining an application filed under Section 17(1) of the SARFAESI Act.

7.The learned counsel appearing for the petitioner relied upon an un-reported judgment dated 03.05.2019 made in Civil Appeal No.4582 of 2019 [Ganesan rep by its Power Agent G.Rukmani Ganesan Vs. The Commissioner, The Tamil Nadu Hindu Religious and Charitable Endowments Board & Ors.] wherein the Hon'ble Supreme Court held as follows:

> "...
>
> 39.The most elaborate judgment holding that the Limitation Act applies only to courts and not to the Tribunals is the judgment of this Court in M.P.Steel Corporation Vs. Commissioner of Central Excise, 2015(7) SCC 58, Rohinton Fali Nariman, J. speaking for the Court reviewed all earlier judgments of two-Judge and three-Judge Benches of this Court. In paragraphs 11 to 35 all earlier judgments have been considered. In the above case Commissioner of Customs (Appeals) dismissed the appeal filed by the appellant on the ground that appeal is barred by time and the Commissioner (Appeals) had no power to condone delay beyond the period specified in Section 128 of the Customs Act. In the above case, benefit of Section 14 of the Limitation Act was sought. It was contended before this Court that while Section 2 of the Limitation Act, Section 14 of the Limitation Act was also applied to criminal, special or local law. This Court noticed the ingredients of applicability of Section 14. Two-Judge Bench has held that relying on earlier judgments of this Court that provisions of the Limitation Act are applicable only to suits, appeals and applications filed in Courts. Section 29(2) was also considered by this Court and following was laid down in paragraph 33:
>
> "33 ... Section 29(2) states:
>
> "29. Savings – (1) * * *
>
> (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 insofar as, and to the extent to which, they are not expressly excluded by such special or local law."
>
> A bare reading of this Section would show that the special or local law described therein should prescribe

for any suit, appeal or application a period of Limitation different from the period prescribed by the Schedule. This would necessarily mean that such special or local law would have to lay down that the suit, appeal or application to be instituted under it should be a suit, appeal or application of the nature described in the Schedule. We have already held that such suits, appeals or applications as are referred to in the Schedule are only to courts and not to quasi-judicial bodies or tribunals. It is clear, therefore, that only when a suit, appeal or application of the description in the Schedule is to be filed in a Court under a special or local law that the provision gets attracted. This is made even clearer by a reading of Section 29(3). Section 29 (3) states:

"29. Savings – (1) (2) * * *

(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."

When it comes to the law of marriage and divorce, the section speaks not only of suits but other proceedings as well. Such proceedings may be proceedings which are neither appeals nor applications thus making it clear that the laws relating to marriage and divorce, unlike the law of limitation, may contain proceedings other than suits, appeals or applications filed in Courts. This again is an important pointer to the fact that the entirety of the Limitation Act including Section 29 (2) would apply only to the three kinds of proceedings mentioned all of which are to be filed in Courts.""

8.The ratio laid down by the Hon'ble Supreme Court in the judgment relied upon by the learned counsel for the petitioner applies to the present case.

9.When the application filed under Section 17(1) of the SARFAESI Act before the Debts Recovery Tribunal is an original proceeding, Section 5 of the Limitation Act is not applicable for condoning the delay in filing the application under Section 17.

10.The Debts Recovery Tribunal – II, Chennai erroneously condoned the delay of 108 days in preferring the application under Section 17. When there is no provision for condonation of the delay, the Debts Recovery Tribunal should not have condoned the delay. The Appellate Tribunal also erroneously confirmed the order of the Debts Recovery Tribunal without giving any reason.

11.In these circumstances, the order passed by the Debt Recovery Appellate Tribunal in M.A.(SA).No.72 of 2018 and the order passed by the Debts Recovery Tribunal in S.I.A.No.569 of 2018 in S.A.(SR).No.4855 of 2018 are set aside. The application in S.I.A.No.569 of 2018 in S.A.(SR).No.4855 of 2018 stands dismissed. The Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

va

To

1.The Registrar,
Debt Recovery Appellate Tribunal, Chennai,
Ethiraj Salai,
Egmore, Chennai - 8.

2.The Presiding Officer,
Debts Recovery Tribunal - II, Chennai,
VI Floor, Dewa Towers,
Anna Salai, Chennai – 2.

+1cc to Mr.M.L.Ganesh, Advocate SR.No.64352

+1cc to Mr.R.Dhinesh Kumar, Advocate SR.No.64639

W.P.No.10053 of 2019 and
W.M.P.Nos.10628, 10629 & 15968 of 2019

BS(CO)
GMY(21/08/2019)