

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.3190 of 2014

The Authorized Officer,
 ICICI Bank Ltd.,
 DSMG - HL, 2nd Floor,
 West Wing, Plot No.24, South Phase,
 Arihant Insight,
 Ambattur Industrial Estate,
 Ambattur,
 Chennai - 600 058.

... Petitioner

Vs.

1.P.S.Savithri

2.V.Nisha

3.The Assistant General Manager,
 State Bank of India - Retail
 Asset Central Processing Centre,
 5th Floor, 157,
 Anna Salai,
 Chennai - 600 002.

... Respondents

Petition filed under Article 227 of the Constitution of India against the order dated 22.10.2013 passed in AIR (SA).No.680 of 2013 on the file of the Debt Recovery Appellate Tribunal, Chennai thereby dismissing the petition to condone the delay in filing the appeal against the order dated 25.07.2012 passed in S.A.No.236 of 2011 on the file of the Debts Recovery Tribunal - III, Chennai.

For Petitioner : M/s.T.Srinivasa Raghavan Associates

For Respondents : no appearance

ORDER

(Order of the Court made by M.DURAI SWAMY,J.)

Though the names of the respondents have been printed in the cause list, none appeared for the respondents.

2.The petitioner has filed the above Civil Revision Petition challenging the order passed by the Debt Recovery Appellate Tribunal, Chennai in I.A.No.882 of 2013 in AIR.(SA).No.680 of 2013.

3.Challenging the possession notice issued under Section 13(4) of the SARFAESI Act, the respondents 1 & 2 filed S.A.No.236 of 2011 on the file of the Debts Recovery Tribunal - III, Chennai and the Debts Recovery Tribunal allowed the said S.A. Aggrieved over the same, the petitioner preferred an appeal before the Debt Recovery Appellate Tribunal and there was a delay of 396 days in filing the appeal. The petitioner filed an application in I.A.No.882 of 2013 in AIR.(SA).No.680 of 2013 under Section 5 of the Limitation Act to condone the delay of 396 days in filing the appeal.

4.The Debts Recovery Tribunal, by order dated 22.10.2013, dismissed the application relying upon the order passed by a Division Bench of this

Court reported in **2012-4-L.W. 493 [1.Dr.Zubaida Begum 2.Dr.Akthar Hussain Vs. Indian Bank rep by its Manager, Guindy Branch, Chennai and another]**.

5.The learned counsel appearing for the petitioner submitted that the Hon'ble Supreme Court in the judgment reported in **2015 (4) CTC 809 [Baleshwar Dayal Jaiswal Vs. Bank of India & others]** held that the Debt Recovery Appellate Tribunal has the power to condone the delay in filing the appeal under Section 18(2) of the SARFAESI Act and proviso to Section 20(3) of the RDB Act. The relevant paragraph in the said judgment reads as follows:

“...

8.The first point for consideration is the applicability of Proviso to Section 20(3) of the RDB Act to the disposal of an Appeal by the Appellate Tribunal under Section 18(2) of the SARFAESI Act. A bare perusal of the said Section 18(2), makes it clear that the Appellate Tribunal under the SARFAESI Act has to dispose of an Appeal in accordance with the provisions of the RDB Act. In this respect, the provisions of the RDB Act stand incorporated in the SARFAESI Act for disposal of an Appeal. Once it is so, we are unable to discern any reason as to why the SARFAESI Appellate Tribunal cannot entertain an Appeal beyond the prescribed period even on being satisfied that there is sufficient cause for not filing such Appeal within that period. Even if power of condonation of delay by virtue of Section 29(2) of the Limitation Act were held not to be applicable, the Proviso to Section 20(3) of the RDB Act is

applicable by virtue of Section 18(2) of the SARFAESI Act. This interpretation is clearly borne out from the provisions of the two statutes and also advances the cause of justice. Unless the scheme of the statute expressly excludes the power of condonation, there is no reason to deny such power to a Appellate Tribunal when the statutory scheme so warrants. Principle of legislation by incorporation is well known and has been applied *inter alia* in **Ram Kirpal Bhagat vs. The State of Bihar**, 1969 (3) SCC 471; **Bolani Ores Ltd. v. State of Orissa**, 1974 (2) SCC 529; and **Onkarlal Nandlal v. State of Rajasthan**, 1985 (4) SCC 404, relied upon on behalf of the Appellants. We have thus no hesitation in holding that the Appellate Tribunal under the SARFAESI Act has the power to condone the delay in filing an Appeal before it by virtue of Section 18(2) SARFAESI Act and Proviso to Section 20(3) of the RDB Act.”

From the above judgment, it is clear that the Debt Recovery Appellate Tribunal has got power to condone the delay in filing the Appeal. However, in the case on hand, the Debt Recovery Appellate Tribunal, following the judgment of a Division Bench of this Court, erroneously declined to entertain the application for condonation of delay.

6. Therefore, following the ratio laid down by the Apex Court in **2015**

(4) CTC 809 [Baleshwar Dayal Jaiswal Vs. Bank of India & others], we

<http://www.judis.nic.in> are of the considered view that the Debt Recovery Appellate Tribunal has got powers to condone the delay in filing the appeal. In view of the same,

the order passed by the Debt Recovery Appellate Tribunal is liable to be set aside. Accordingly, the same is set aside. The matter is remitted back to the Debt Recovery Appellate Tribunal for fresh consideration. The Debt Recovery Appellate Tribunal is directed to decide the application in I.A.No.882 of 2013 in AIR.(SA).No.680 of 2013 on merits and in accordance with law, after giving due opportunity of hearing to all the parties as expeditiously as possible.

7. In the result, the Civil Revision Petition is allowed. No costs.

(MRS.V.K.TAHILRAMANI, CHIEF JUSTICE)

(M.DURAI SWAMY)

21.01.2019

Index : Yes/No

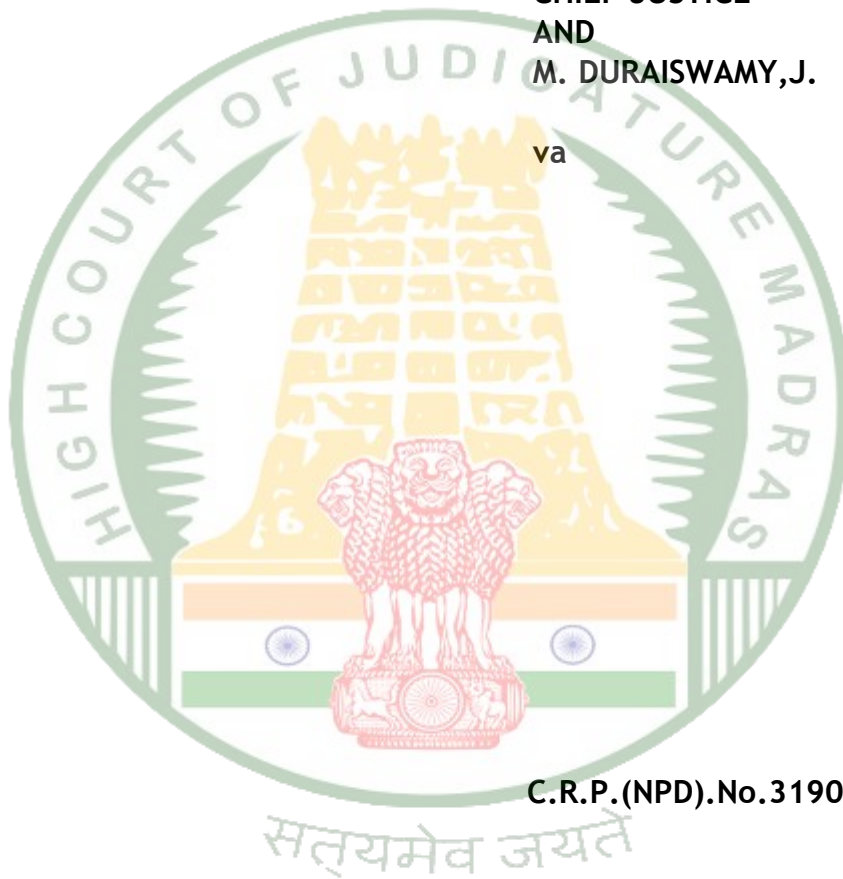
Internet : Yes

Speaking / Non Speaking Order

va

THE HON'BLE
MRS.V.K.TAHILRAMANI
CHIEF JUSTICE
AND
M. DURAISWAMY,J.

va



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