HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No. 5321 OF 2019

ORDER: *(per V. Ramasubramanian, J)*

1) Aggrieved by the dismissal of an application for condonation of the delay of 80 days in filing an appeal before the Debts Recovery Tribunal under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Securitization Act"), the borrower has come up with the above writ petition.

2) Heard Mr.Gopala Rao, learned counsel for the petitioner and Mr.E.Madan Mohan Rao, learned counsel appearing for the respondent-bank.

3) The petitioner availed credit facilities, but committed default in making repayments. Therefore, the bank issued a demand notice dated 15.06.2016 under Section 13 (2) of the Securitization Act followed by a possession notice dated 12.07.2017 under Section 13 (4) of the Securitization Act. Challenging the possession notice the petitioner filed an appeal under Section 17 of the Securitization Act in SAIR No.333 of 2017. There was a delay of 80 days in filing the

application. Therefore, the petitioner filed I.A.No.2775 of 2017 for condonation of the delay of 80 days. This application was dismissed by the Tribunal, forcing the petitioner to come up with the above writ petition.

4) The main ground on which the Tribunal dismissed the condone delay application is that no sufficient cause was shown by the petitioner for condonation of delay. It is seen from the affidavit filed by the petitioner in support of the condone delay application that the possession notice was misplaced and that it was traced only on 05.09.2017. But the Tribunal held that the petitioner did not explain every day's delay.

5) What the Tribunal omitted to take note of is that the measures under Section 13 (4) of the Securitization Act are continuous. At every stage, the petitioner will have a cause of action. Even if the petitioner had failed to challenge the possession notice under Section 13 (4) of the Securitization Act, within the period of limitation, he would have been entitled to come up before this Court or before the Tribunal after an order is obtained under Section 14 of the Securitization Act. The measures taken under Section 13 (4) of the Securitization Act are in continuum, giving raise to causes of action at every stage. If viewed from such an angle the delay cannot really be put against the petitioner.

6) Therefore, the Writ Petition is allowed, the impugned order is *set aside* and the application for condonation of delay is allowed. The Tribunal may number the appeal and endeavor to dispose of it expeditiously.

7) Consequently, miscellaneous petitions if any pending in the writ petition shall stand closed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

March 20, 2019
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HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No. 5321 of 2019

Date: 20.03.2019

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