

**THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND**

THE HON'BLE SRI JUSTICE P.KESHAHA RAO

WRIT PETITION No.6873 of 2019

ORDER: (*per VRS,J*)

Aggrieved by the dismissal of an application for condonation of the delay of 228 days in filing an appeal under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Securitization Act, 2002'), the borrower and the guarantors have come up with the above writ petition.

2. Heard Mr.Vedula Srinivas, learned counsel for the petitioners, and Mr.Ambadipudi Satyanarayana, learned counsel for the respondent-Bank.

3. As against the measures initiated by the Bank under Section 13 (4) of the Securitization Act, 2002, the petitioners filed an appeal in S.A.I.R.No.622 of 2015 along with an application for condonation of the delay of 228 days in filing the appeal. The said application was dismissed by the Debts Recovery Tribunal forcing the petitioner to come up with the above writ petition.

4. The Writ Petition is opposed by Mr.Satyanarayana, learned counsel for the Bank, primarily on three grounds *viz.*, (1) that the writ petition is filed after three years (2) that the petitioners have already gone before the Debts Recovery Appellate Tribunal without making necessary pre-deposit as required under Section 18 of the Securitization Act, 2002, and hence they are not entitled to approach this Court and (3) that no sufficient cause is shown for condonation of delay.

5. We have carefully considered the above objections.

6. It is true that the petitioners went before the Debts Recovery Appellate Tribunal and filed Tender No.82/2016, but the appeal was not entertained on the ground that 50% of the amount demanded in the notice under Section 13 (2) of the Securitization Act, 2002, ought to have been paid. Therefore, the petitioner came up with a separate writ petition in W.P.No.39320 of 2017. In the said writ petition, the petitioners raised a plea that in an appeal arising out of interlocutory order, the Appellate Tribunal cannot demand 50% of the dues. But this plea is resisted by the Bank on the basis of few decisions of the High Courts.

7. In the light of the objection taken to W.P.No.39320 of 2017, the petitioner has now come up with the present writ petition. In such circumstances, the petitioners cannot be held guilty of delay and laches.

8. The second contention of the learned counsel for the Bank cannot also be accepted since the learned counsel for the petitioners has today sought to withdraw W.P.No.39320 of 2017. Therefore, challenge made by them to the order of the Debts Recovery Tribunal before the Debts Recovery Appellate Tribunal today stands withdrawn. Hence, the second contention goes.

9. Insofar as the third contention is concerned, the application for condonation of delay proceeds on the basis that the petitioners came to know about the auction held on 09.03.2015, only on 15.11.2015. But, according to the learned counsel for the Bank, the petitioners had knowledge of the auction.

10. The question whether the petitioners had knowledge of the auction or not, is actually a question of fact. In the order dismissing the application for condonation of delay, the Tribunal has not recorded a finding that the petitioners had knowledge of the sale immediately. Therefore, it cannot be said that there was no sufficient cause for condonation of delay.

11. Another contention advanced by Mr.Satyanarayana, learned counsel for the Bank, is that despite knowing the name of the auction purchaser, the petitioner failed to implead the auction purchaser in the appeal. But, this is actually a curable defect. The appeal has not even been numbered so far in view of pendency of delay petition. Therefore, we can as well put a condition that they should implead the auction purchaser.

12. In view of the above, the Writ Petition is allowed and the impugned order is set aside. The delay in filing the appeal is condoned and the petitioner is directed to implead the auction purchaser as a party. Thereafter, the appeal may be numbered and it may be decided in accordance with law.

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

V. RAMASUBRAMANIAN, J

P.KESHAHA RAO, J

29th April, 2019
sur