

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-903-2019

Date of Decision: 7.3.2019

Smt. Minakshi Khipal

...Petitioner

Versus

The Debt Recovery Tribunal-I, Chandigarh and others

...Respondents

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.**

PRESENT: Mr. Atul Sharma, Advocate for the petitioner.

None for respondent No.2.

AJAY KUMAR MITTAL, J.

1. By way of instant petition filed under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ of certiorari for quashing the order dated 28.4.2018 (Annexure P-1) passed by respondent No.1-The Debts Recovery Tribunal (in short “the Tribunal”) vide which Securitization Application (SA) No. 254-2017 filed by her under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, “the 2002 Act”) has been dismissed on the ground that the Tribunal does not have the power to condone the delay.

2. Put shortly, the necessary for adjudication of the present writ petition as mentioned therein may be noticed. The petitioner along with her husband, namely, Shri Ashok Khipal took a loan of ₹ 27 lakhs from respondent No.2 by mortgaging the property as mentioned in para 3 of the

amount, respondent No.2 issued a notice dated 27.10.2014 (Annexure P-2) under Section 13(2) of the 2002 Act raising a demand of ₹ 28,49,309/-. Against the said notice, the petitioner filed CWP-21326-2016 and this Court vide order dated 7.10.2016 (Annexure P-3) dismissed the said writ petition. Thereafter, the petitioner filed SA-254-2017 under Section 17 of the 2002 Act before the Tribunal. Since the SA was time barred, IA-1834-2016 was filed for condonation of delay. The Tribunal vide order dated 28.4.2018 (Annexure P-1) dismissed the said IA holding that the Tribunal had no power to condone the delay and as such the SA was dismissed being time barred. The petitioner filed CWP-27098-2018 for quashing the actions of respondent No.2. The said writ petition was dismissed as withdrawn by this Court vide order dated 5.12.2018 (Annexure P-4) with liberty to the petitioner to take recourse to the remedies as may be, available to her, in accordance with law. Hence, the present writ petition.

3. We have heard learned counsel for the petitioner.

4. The issue that arises for consideration in this petition is whether the Tribunal has the power to condone the delay in filing the SA under Section 17 of the 2002 Act.

5. The matter is no longer *res integra*. The similar issue came up before this Court in **CWP No. 21519 of 2018 (M/s Oswal Spinning and Weaving Mills Limited and others v. UCO Bank and another)** decided on 29.10.2018 wherein it was concluded that applicability of Limitation Act, 1963 to the proceedings before the Tribunal under Section 17 of the 2002 Act or under Section 18 of 2002 Act before the Debts Recovery Appellate Tribunal seeking condonation of delay would be maintainable.

This Court had observed as under:-

“18. From the discussion and reading of the judicial pronouncements as quoted above, the inevitable conclusion is that Section 17(1) of the 2002 Act is virtually a remedy in respect of a right of redemption. Hence the application of Section 5 of the Limitation Act, 1963 to proceedings under Section 17(1) of the 2002 Act would neither defeat the rights nor cause irreparable hardship to the secured creditor. The provisions of the Limitation Act, 1963 are applicable to the proceedings under Section 17 of 2002 Act before the DRT in view of Section 24 of the 1993 Act and therefore, the provisions of section 5 of the Limitation Act, 1963 are applicable to the provisions of the said Act. Further, 2002 Act does not expressly exclude the application of the provisions of the Limitation Act, 1963.

19. Accordingly, all the petitions are allowed. The impugned orders passed by the DRT dismissing the application under section 17 of the 2002 Act on the ground that the Debt Recovery Tribunal does not have the power to condone the delay, are quashed. The matter is remitted back to the DRT to decide the application for condonation of delay afresh on merits in accordance with the observations made hereinbefore.”

6. In view of the above, the present writ petition is allowed. The impugned order dated 28.4.2018 (Annexure P-1) passed by the Tribunal dismissing the application under section 17 of the 2002 Act on the ground

that the Tribunal does not have the power to condone the delay, is quashed.
The matter is remitted back to the Tribunal to decide the application for
condonation of delay afresh on merits in accordance with the observations
made hereinbefore.

(AJAY KUMAR MITTAL)
JUDGE

March 7, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No