

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.2754 of 2020 and
W.M.P.No.3203 of 2020

- 1.Bensan Exim Corporation
rep by its Partner Jayashree Rao
No.1, Sivaswamy Avenue,
MGR Road, Palavakkam,
Chennai - 600 041.
 - 2.Chennai Cashew Company
rep by its Partner Syed Afsar Zaman
Regency House, II Floor,
No.341, Anna Salai,
Teynampet, Chennai - 600 006.
 - 3.Shaikh Sophia Zeenath
 - 4.Syed Afsar Zaman
 - 5.Jayashree Rao
- ... Petitioners

Vs.

- 1.The Presiding Officer,
The Debts Recovery Tribunal - II,
4th Floor, Dewa Tower,
770-A, Anna Salai,
Chennai - 600 002.
 - 2.The Authorized Officer,
ReligareFinvest Ltd., Bascon IT Park,
12th Floor, New Door No.10/2, Old Floor No.56L,
VenkatNarayana Road, T.Nagar, Chennai - 600 017.
and also at
29, First Floor,
Nair Road, T.Nagar,
Chennai - 600 017.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari calling for the records of the 1st respondent pertaining to the order dated 04.01.2020 dismissing the Condonation Petition in S.A.SR.No.12943 of 2019 by the 1st respondent and quash the same.

For Petitioners : Mr.George Cheriyan

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

The Writ Petition is preferred against the order dated 04.01.2020 in S.A.(SR).No.12943 of 2019 by the Debts Recovery Tribunal - II, Chennai holding that Section - 5 of the Limitation Act have no application to the proceedings under Section 17(1) of the SARFAESI Act.

2.This Court has perused the order and since the appeal is rejected on the threshold, in the light of the reasons assigned above, notices to the respondents are not necessary.

3.The petitioner Concern availed financial assistance from Religare SME Loans and in view of the default committed by them in repaying the dues, action under the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 [in short "SARFAESI" Act, 2002] was initiated by issuing a notice under Section 13(2) dated 14.12.2017, making a demand of Rs.4,72,15,504/- as on 30.03.2016 with subsequent interest and costs. The petitioner had responded to the said notice by sending a reply dated 12.02.2018. The 1st respondent also initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881 and also issued a possession notice dated 14.08.2019 under Section 13(4) of the SARFAESI Act, 2002.

4. The petitioner, challenging the legality of the measures taken under Section 13(4) of the SARFAESI Act, filed an appeal in S.A.(SR).No.12943 of 2019 on the file of the DRT - II, Chennai and there was a delay of one day in filing the said appeal and therefore, the petitioners filed Miscellaneous Application for condonation of the delay of one day in filing the said appeal. The Tribunal had found that as per Sub-section (1) of Section 17, the application has to be preferred within 45 days from the date on which the measures had been taken and also in the light of the judgment rendered by a Division Bench of this Court dated 26.07.2019 in W.P.No.10053 of 2019 [Central Bank of India, Asset Recovery Branch, Chennai - 8 Vs. The Registrar, DRAT, Chennai and 6 others], found that such application is not maintainable and accordingly, rejected the main appeal/petition. The petitioner, aggrieved by the same, has filed the present Writ Petition.

5. The learned counsel appearing for the petitioner has drawn the attention of this Court to the judgment of the Hon'ble Supreme Court of India reported in Manu/SC/0073/2020 [Standard Chartered Bank Vs. MSTC Limited] and would submit that the question that arose before the Hon'ble Supreme Court was as to the condonation of the delay in filing the Review Application and the Apex Court, in the said judgment, had taken note of it's earlier judgment reported in (2017) 16 SCC 137 [International Asset Reconstruction Company of India Limited Vs. Official Liquidator of Aldrich Pharmaceuticals Limited and Ors.] and found that an application filed before the Debts Recovery Tribunal under Section 5 of the Limitation Act, is maintainable and in the light of the said judgment, prays for interference.

6. This Court has carefully considered the rival submissions and perused the records placed before it.

7. The issue that arise for consideration as to the power of the Tribunal to condone the delay in filing an application under Section 17 of the SARFAESI Act, is no longer res integra in the light of the following judgments:

(i) In 2016-2-L.W. 97 [Baleshwar Dayal Jaiswal Vs. Bank of India & others], the question arose as to the power of the DRAT to condone the delay and in paragraph-14, it was held by the Hon'ble Supreme Court that the power of condonation of delay was expressly applicable by virtue of Section 18(2) of the SARFAESI Act read with proviso to Section 20(3) of the RDB Act and to that extent, the provisions of Limitation Act having been expressly incorporated under the special Statutes in question, Section 29(2) stands impliedly excluded.

(ii) In (2017) 16 SCC 137 [International Asset Reconstruction Company of India Limited Vs. Official Liquidator of Aldrich Pharmaceuticals Limited and Ors.] (referred supra), in paragraph - 14, it was held as follows:

"...

F. The RDB Act is a special law. The proceedings are before a statutory Tribunal. The scheme of the Act manifestly provides that the Legislature has provided for application of the Limitation Act to original proceedings before the Tribunal under Section 19 only. The appellate tribunal has been conferred the power to condone the delay beyond 45 days under Section 20(3) of the Act. The proceedings before the Recovery Officer are not before a Tribunal. Section 24 is limited in its application to proceedings before the Tribunal originating under Section 19 only. The exclusion of any provision for extension of time by the Tribunal in preferring an appeal under Section 30

of the Act makes it manifest that the legislative intent for exclusion was express. The application of Section 5 of the Limitation Act by resort to Section 29(2) of the Limitation Act, 1963 therefore does not arise. The prescribed period of 30 days under Section 30(1) of the RDB Act for preferring an appeal against the order of the Recovery Officer therefore cannot be condoned by application of Section 5 of the Limitation Act."

The said judgment was referred to and followed in Manu/SC/0073/2020 [Standard Chartered Bank Vs. MSTC Limited] (cited supra). The decision rendered in International Asset Reconstruction Company of India Limited case was referred to and was affirmed.

8. In the case on hand, the petitioner, challenging the measures initiated under Section 13 of the SARFAESI Act, especially, challenging the possession notice dated 14.08.2019, filed an appeal before the DRT - II, Chennai with a delay of one day and it came to be rejected based upon the decision rendered by the Division Bench in the Central Bank of India case.

9.A perusal of the judgment rendered by the Division Bench of this Court in the above said decision would disclose that the decisions of the Apex Court in Baleshwar Dayal Jaiswal Vs. Bank of India & others as well as International Asset Reconstruction Company of India Limited Vs. Official Liquidator of Aldrich Pharmaceuticals Limited and Ors. have not been brought to the knowledge of the said Bench. In the considered opinion of the Court, the above cited decisions are in full application to the case on hand and therefore, the Tribunal ought to have condoned the delay in filing the application under Section 17 of the SARFAESI Act.

10. In the result, the Writ Petition is allowed and the impugned order dated 04.01.2020 in S.A.(SR).No.12943 of 2019 on the file of the DRT - II, Chennai, is set aside. The Tribunal is directed to consider the application for condonation of delay of one day in filing the appeal on it's own merits as expeditiously as possible. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

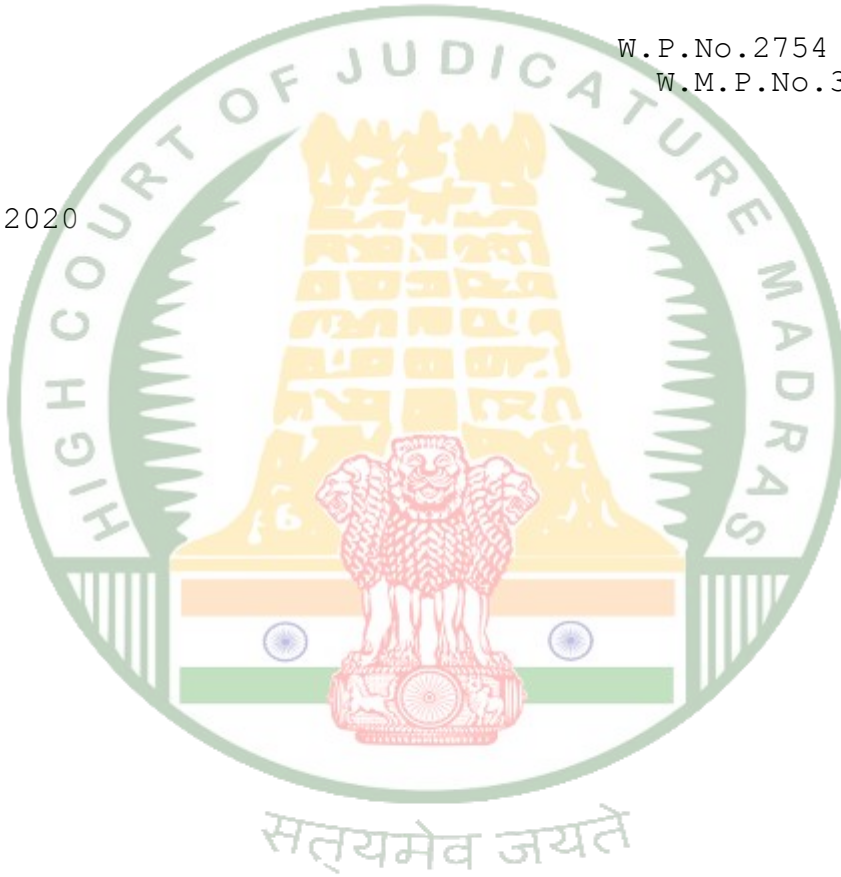
To

The Presiding Officer,
The Debts Recovery Tribunal - II,
4th Floor, Dewa Tower,
770-A, Anna Salai,
Chennai - 600 002.

+lcc to M/s.George Cheriyan, Advocate Sr.9815

W.P.No.2754 of 2020 and
W.M.P.No.3203 of 2020

ad[co]
srg 19/02/2020



WEB COPY