

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-22700-2018

Date of Decision: 07.01.2020

Dr. Vikram Mehra and another

. Petitioners

Vs.

Debts Recovery Tribunal, Chandigarh and others

. Respondents

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ARUN KUMAR TYAGI**

Present: - Mr. A. S. Gill, Advocate,
for the petitioners.

Mr. Mahesh Dheer, Advocate, with
Mr. A. S. Jaswal, Advocate,
for respondent No.2.

RAKESH KUMAR JAIN, J.

The petitioners are aggrieved against the order dated 19.4.2018 passed by the Debt Recovery Tribunal-I, Chandigarh [for short 'the DRT'] by which IA No.769 of 2005 filed in APRR No.03 of 2017, seeking condonation of delay of 285 days in filing the securitization application, has been dismissed and consequently APRR No.03 of 2017 has also been dismissed.

In brief, the petitioners have claimed that they are the joint owners of an immoveable property measuring 3 kanal 18 marla falling in khasra Nos.3180/2356/5 and 3181/2356/5, bearing plot No.446-D-XIV, known as 'Alka Kothi', situated at Macleod Road, Amritsar. They came to know that the said property is under sale by way of Court auction because some part of it was mortgaged by respondent No.4 with respondent No.2 and in default of payment of the amount of loan, recovery suit filed by

respondent No.2 bearing OA No.366/2000 (old No.260/1998) against respondent No.4 was allowed by the DRT on 04.10.2001 and the Recovery Officer-II, DRT, Chandigarh has passed the order of the sale of the property in question. The petitioners made an application for setting aside the notice of sale but it was dismissed on 31.10.2002. The petitioners challenged that order by way of an appeal before the DRT, Chandigarh but it was dismissed on account of non-appearance on 21.03.2003. However, an application filed by the petitioners for recalling of the said order was allowed and the Appeal No.32/2002 was restored but in the meanwhile, the sale of the property in dispute was confirmed by the Recovery Officer on 04.04.2003 and the sale certificate was issued on 07.04.2003. The petitioners withdrew their appeal in order to challenge the order of Recovery Officer but it is alleged that due to wrong advice the appeal was filed before the Debt Recovery Appellate Tribunal, New Delhi [for short 'the DRAT'] which was returned on 21.1.2004 on account of the fact that it had no jurisdiction to hear the appeal against the order of the Recovery Officer. Thereafter, the petitioners filed an appeal against the orders dated 4.4.2003 and 7.4.2003 before the DRT, Chandigarh along with an application filed under Section 5 of the Limitation Act, 1963 [for short the 'Act of 1963'] for condonation of delay of 285 days. The said application was contested by respondent No.2 by way of a reply and vide impugned order dated 19.4.2018, the application for condonation of delay bearing IA No.769/2005 was dismissed on the ground that the DRT-I, Chandigarh had no jurisdiction to consider the application filed under Section 5 of the Act of 1963 in view of the decision rendered by the Supreme Court in ***Civil Appeal No.16963 of 2017*** titled as ***"Iridium India Telecom Ltd. Vs. Doha Bank QSC and another"*** decided on 24.10.2017.

Learned counsel for the petitioners has submitted that even if the application under Section 5 of the Act of 1963 was not maintainable and the period prescribed for filing of the appeal could not have been extended by assigning the sufficient cause in view of the decision of the Supreme Court in the case of ***Iridium India Telecom Ltd. (Supra)***, the petitioners could have been given the advantage of Section 14 of the Act of 1963 because they were pursuing their remedy before a Court having no jurisdiction to entertain the appeal. In this regard, reliance has been placed upon a decision of the Supreme Court rendered in the case of ***“State of Goa Vs. M/s Western Builders” 2006 (3) RCR (Civil) 475.***

On the other hand, counsel appearing on behalf of respondent No.2 has submitted that firstly the appeal was not filed immediately before the DRT after it was returned on 21.1.2004 as the same was filed before the DRT on 17.2.2004 and secondly, reliance has been placed upon a decision of the Supreme Court rendered in the case of ***“Ganesan Represented by its Power Agent G. Rukmani Ganesan Vs. Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board and others” (2019) 7 Supreme Court Cases 108*** to contend that even Section 14 of the Act of 1963 shall not apply to the DRT.

We have heard learned counsel for the parties and perused the record with their able assistance.

The question for determination is as to whether Section 14 of the Act of 1963 is independent from Section 5 of the Act of 1963 and can be applied for seeking condonation of delay in case the litigation had been *bonafidely* seeking his remedy before the Court having no jurisdiction?

In the case of ***State of Goa (Supra)***, the question was as to whether Section 14 of the Act of 1963 would be applicable in the

proceedings arising from the Arbitration and Conciliation Act, 1996 [for short the 'Act of 1996']. In the said case, on account of a dispute between the parties therein, the matter was referred to the Sole Arbitrator, who rendered his award against the State of Goa which was taken to the Civil Court for making the award as a rule of the Court but an objection was raised that after coming into force of the Act of 1996, the Civil Court had no jurisdiction for making the award as a rule of the Court because as per the Act of 1996, the award can be executed as a decree. Thereafter, the State of Goa filed a petition before the District Judge with an application filed under Section 14 read with Section 5 of the Act of 1963 for setting aside the award of the Arbitrator in terms of Section 34 of the Act of 1996, seeking condonation of delay on the ground that the time spent in the proceedings before the Court having no jurisdiction may be excluded. The said application was rejected, *inter alia*, on the ground that Section 14 of the Act of 1963 is not applicable. The appeal of the State of Goa was dismissed by the High Court of Bombay, Panaji Bench at Goa holding that the application under Section 14 of the Act of 1963 is not maintainable in view of Section 34(3) of the Act of 1996. The matter was then taken to the Hon'ble Supreme Court by the State of Goa raising an issue as to whether the provision of Section 14 of the Act of 1963 is applicable to the Act of 1996 or not. It was held by the Supreme Court that Section 14 of the Act of 1963 is applicable to the Act of 1996.

However, in the case of ***Ganesan (Supra)***, relied upon by counsel for respondent No.2, an application was filed by Ganesan under Section 63 of the T.N. Hindu Religious and Charitable Endowments Act, 1959 [for short 'the Act of 1959'] claiming his ambalam right. The Joint Commissioner of Hindu Religious and Charitable Endowments Board, vide

his order dated 3.12.2010, held that Ganesan was entitled for ambalam right and to receive first respect as an ambalam in the village. Writ petitions filed before the High Court challenging the order dated 31.12.2010 were dismissed. The 3rd respondent therein filed an appeal under Section 69 of the Act of 1959 against the order dated 31.12.2010 which was disposed of by the High Court vide order dated 7.3.2013 with a direction to the Commissioner to dispose of the appeal within a prescribed time. The 3rd respondent therein filed the appeal along with an application for condonation of delay of 266 days alleging that he could not file the appeal in time because he was unwell. The application for condonation of delay in filing of appeal was contested by Ganesan on the ground that the Act of 1963 is not applicable. However, the delay was condoned by the Commissioner against which a writ petition was filed by the appellant which was dismissed by the High Court holding that the Act of 1959 does not exclude the applicability of the Act of 1963.

The Hon'ble Supreme Court framed various questions in the said case of ***Ganesan (Supra)*** and while deciding questions No.2 & 3 framed therein, dealt with Section 14 of the Act of 1963 as well and made the following observations: -

“We have already noticed above that a three-Judge Bench of this Court in The Commissioner of Sales Tax, U.P. Lucknow vs. M/s. Parson Tools and Plants, Kanpur (supra) had considered the question of applicability of Limitation Act, 1963 before Revision Authority under U.P. Sales Tax Act, 1948. This Court in paragraph 9 of the judgment has categorically

held that Judge(Revisions) Sales Tax exercising jurisdiction under Section 10 are not courts but mere administrative tribunals. In CST, U.P. vs. M/s. Parson Tools and Plants, the question was with regard to applicability of Section 14 of the Limitation Act. The three-Judge Bench categorically held that the Judge(Revision) being not a Court, Section 14 of the Limitation Act does not apply to the proceedings before such tribunal. Before three-Judge Bench which heard CST, U.P. vs. M/s. Madan Lal Das & Sons (supra) unfortunately the earlier judgment of equal strength i.e. three-Judge Bench in CST, U.P. vs. M/s. Parson Tools and Plants was not cited. CST, U.P. vs. M/s. Parson Tools and Plants judgment was on the same issue i.e. applicability of the Limitation Act in reference to Judge(Revision) exercising the jurisdiction under the U.P. Sales Tax Act, CST, U.P. vs. M/s. Parson Tools and Plants(supra) has held that Limitation Act is not applicable to such authority. Thus, three-Judge judgment was neither noticed and a contrary view was expressed in CST, U.P. vs. M/s. Madan Lal Das & Sons. We have also noticed that there has also been earlier three-Judge Bench judgment in Nityananda, M. Joshi and others. vs. Life Insurance Corporation of India and others(supra)

where it was held that Limitation Act applies only to suits, applications and appeals filed in Courts. The judgment of this Court in CST, U.P. vs. M/s. Madan Lal Das & Sons having not referred to earlier judgments of equal strength, we are persuaded to follow the earlier three-Judge Bench judgment of this Court in CST, U.P. vs. M/s. Parson Tools and Plants.”

The Hon’ble Supreme Court has held that Section 29(2) of the Act of 1963 shall apply where the suit, appeal or application is filed in Court and not before the statutory authority, quasi judicial authority or the Tribunal/DRT.

Thus in view of the aforesaid discussion, it is held that the provision of Section 14 of the Act of 1963 shall not be applicable before the DRT and hence, we do not find any merit in the present petition for the purpose of interference.

Dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

07.01.2020

Vivek

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*