BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **11.06.2024**

Pronounced on : **30.08.2024**

CORAM :

JUSTICE **N.SESHASAYEE**
and
JUSTICE **L.VICTORIA GOWRI**

C.R.P.(MD)No.1212 of 2024
and
C.M.P(MD)No.6996 of 2024

Vedhanayaga Pandiyan ...Petitioner/Petitioner/Applicant

Vs.

The Authorized Officer,
M/s. Sriram Finance Ltd.,
No.27/5, Simma Towers,
Canara Bank Upstairs,
Ettayauram Road,
Kovilpatti – 628 501. ...Respondent/Petitioner/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to call for the records pertaining to impugned order made in NDN.No.647 of 2024 in SA. SR. No.5299 of 2024 dated 09.05.2024 on the file of the Debt Recovery Tribunal, Madurai and set aside the same.

For Petitioner : Mr.S.Saravanan

For Respondent : Mr.Ananth C.Rajesh

ORDER

[Order of the Court was delivered by **L.VICTORIA GOWRI, J.**]

As against the steps taken by the respondent under Section 13(4) of the SARFAESI Act, the revision petitioner herein has approached the Debts Recovery Tribunal, Madurai, under Section 17 of the SARFAESI Act. An application under Section 17 of the SARFAESI Act, however, was not filed within the stipulated time of 45 days and hence, the appellant herein had also taken out an application for condonation of delay in NDN.No.647 of 2024 in SA. SR. No.5299 of 2024, which came to be dismissed by the Debts Recovery Tribunal, Madurai. This revision is filed against the same.

2. The learned counsel for the respondent submitted that the order passed under Section 17 of the SARFAESI Act is appealable under Section 18 of the SARFAESI Act.

3. However, the issue is not against any final order passed under Section 17 of the SARFAESI Act, but against the order passed in condonation of delay application filed under Section 5 of the Limitation

Act. Whether Section 5 of the Limitation Act is applicable to the SARFAESI Act is a crucial point.

4. A Division Bench of this Court in the case of ***P. K. Radhakrishnan and others vs. the Central Bank of India, Asset Recovery Branch and others reported in Manu/TN/0827/2020*** has dealt with a writ petition which had arisen challenging the debt recovery appellate tribunals power to condone the delay beyond 45 days in the light of the self-contained provision under Section 17 of the SARFAESI Act. The relevant portion of the aforesaid case applicable to the facts and circumstances of the instant case is extracted as follows:

> "*(13)In the decision reported in MANU/SC/0835/2015: 2016 [1] SCC 444 [Baleshwar Dayal Jaiswal V. Bank of India and Others], the question that arose for consideration before the Hon'ble Supreme Court of India is to the power of the Appellate Tribunal under Section 18[2] of the SARFAESI Act to condone the delay beyond prescribed period of limitation and held as follows:-*
>
> > *"A bare perusal of Section 18[2] of the SARFAESI Act makes it clear that the Appellate Tribunal under the SARFAESI Act has to dispose of an appeal in accordance with the provisions of the RDDB Act. In*

this respect, the provisions of the RDDB Act stand incorporated in the SARFAESI Act for disposal of an appeal. Once it is so, there is no reason as to why the SARFAESI Appellate Tribunal cannot entertain an appeal beyond the prescribed period even on being satisfied that there is sufficient cause for not filing such appeal within that period. Even if power of condonation of delay by virtue of Section 29[2] of the Limitation Act were held not to be applicable, the proviso to section 20[3] of the RDDB Act is applicable by virtue of Section 18[2] of the SARFAESI Act. This interpretation is clearly borne out from the provisions of two statutes and also advances the cause of justice. Unless the scheme of the statute expressly excludes the power of condonation, there is no reason to deny such power to an Appellate Tribunal when the statutory scheme so warrants. Thus, the Appellate Tribunal under the SARFAESI Act has the power to condone the delay in filing an appeal before it by virtue of Section 18[2] of the SARFAESI Act and the proviso to Section 20[3] of the RDDB Act. Further, the RDB Act and the SARFAESI Act being complementary to each other, support this view.

The period of limitation for filing an appeal under section 18 of the SARFAESI Act is 30 days as against 45 days under section 20 of the RDDB Act. To this extent, legislative intent may be deliberate. However, the absence of an express provision for *condonation, when Section 18[2] expressly adopts and incorporates the provisions of the RDDB Act which contains provision for condonation of delay in filing of an appeal, cannot be read as excluding the power of condonation. The proviso to Section 20[3] which provides for condonation of delay [45 days under the RDDB Act] stands extended to disposal of appeal under the SARFAESI Act [to the extent that condonation is of delay beyond 30 days]. There is no reason to exclude the proviso to Section 20[3] in dealing with an appeal under the SARFAESI Act. Taking such a view will be nullifying Section 18[2] of the SARFAESI Act."*

(16)A Division Bench of the Andhra Pradesh High Court, in the decision reported in MANU/AP / 0240 /2018 [Porus Laboratory case], after considering the decisions reported in 2016 [1] SCC 44 and MANU / SC /1330 /2017 : 2017 [12] SCALE 748 [cited supra], has observed as follows:-

"20.More importantly, it may be noted that if an aggrieved person, including a borrower, is prevented from availing the statutory remedy provided under Section 17[1] of the SARFAESI Act merely because the application thereunder was not presented within the stipulated 45 days, the hierarchy of remedies provided under the SARFAESI Act would be denied to him and rendered nugatory on that short ground. Such an aggrieved person would then be left with no remedy but

to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution. As the very purpose of creating statutory Tribunals and Appellate Tribunals is to provide efficacious alternative means of resolution of disputes so as to lessen the burden that would otherwise be visited upon the High Court in exercise of its extraordinary jurisdiction under Article 226, the statutory remedy provided under Section 17[1] of the SARFAESI Act cannot be interpreted in such a narrow and pedantic compass. Be it noted, by virtue of proviso to Section 20[3] of the RDDB Act, the Appellate Tribunal has been held to have the power to condone the delay in the presentation of an appeal under Section 18 of the SARFAESI Act beyond the 30 day period stipulated therein. There is no logic or rationale in not extending the same power to the Tribunal while entertaining a belated application under section 17 of the SARFAESI Act, by taking recourse to Sections 17[7] and 37 of the SARFAESI Act read with section 24 of the RDDB Act.

21.On the above analysis, this Court finds that the law laid down by the Calcutta High Court in AKSHAT COMMERCIAL PVT.LTD does not constitute good law for the reasons stated above and in the light of the principles spelt out by the Supreme Court in BALESHWAR DAYAL JAISWAL AND INTERNATIONAL ASSET RECONSTRUCTION COMPANY OF INDIA LTD. The provisions of Section 5 of the Act of 1963 *would therefore be very much applicable to an application filed beyond time under Section 17[1] of the SARFAESI Act."*

5. In the instant case, the Debt Recovery Tribunal, Madurai in an interim application filed with a delay of 29 days in preferring Appeal under Section 17 of the SARFAESI Act against the respondent bank has dismissed the interim application filed for the purpose of condoning the delay of 29 days on the ground that when a specific provision for limitation is available under the SARFAESI Act, Section 5 of the Limitation Act is not applicable and on that basis rejected the aforesaid condone delay petition.

6. Thus for deciding the controversy in question, it would be relevant to extract Section 17 (1) of SARFAESI Act and Section 29 of the Limitation Act 1963 which are as hereunder:

Section 17 (1) of SARFAESI Act:

"17. Application against measures to recover secured debts - (1) Any person (including borrower), aggrieved by any of the measures referred to in sub- section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, (may make an application along with such fee, as may

be prescribed) to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:-

> *[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]*
>
> *[Explanation.-For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section*
>
> *[(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction-*
>
> *(a) the cause of action, wholly or in part, arises;*
>
> *(b) whether secured asset is located; or*
>
> *(c) the branch or any other officer of a bank or financial institution is maintaining an account in which debt claim is outstanding for the time being.]*

Section 29 of the Limitation Act, 1963:

"29. Savings.-(1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in Section 2 shall not apply to cases arising in the territories to which the Indian

Easements Act, 1882, may for the time being extend."

7. A Division Bench of the Honourable High Court of Madhya Pradesh (Jabalpur Bench) in the case of ***Anirudh Singh vs. Authorised Officer, ICICI Bank Limited reported in Manu/MP/0012/2024*** dealt with a similar case which decided the short question as to whether benefit of provisions of Limitation Act, in particular Section 5, are available in respect of an application preferred under Section 17(1) of SARFAESI Act or not? and the relevant portion of the same is extracted as follows:

"6.1. The Limitation Act of 1963 is a complete Code providing for limitation of suits and other proceedings and for all purposes connected therewith.

6.2. The SARFAESI Act is also a complete Code to regulate securitization and reconstruction of financial assets and enforcement of security interest and to provide for central data base of security interest created on property rights and for matters connected therewith or incidental thereto.

6.3. Section 17 of SARFAESI Act is a remedy available to any person aggrieved by the recourse taken by creditor to any means u/5.13(4). This remedy is available before DRT by filing an *application which is on ordinarily termed as securitisation application (SA) to be filed within 45 days from the date on which any of the measures u/5.13(4) are taken.*

6.4. Section 17 of SARFAESI Act does not confer DRT with discretion to extend the period of limitation of 45 days.

6.5. Noticeably, Section 17 or any other provision of SARFAESI Act does not expressly exclude the operation of beneficial provisions under the Limitation Act.

7. This Court need not go into the prolixity of considering various judicial pronouncements of different Courts to resolve the controversy herein because the answer to the question framed above lies in the bare reading of Section 29(2) of the Limitation Act. (Reproduced above).

7.1. Section 29 containing saving clause lays down various contingencies in which different nature of causes of action arising under different enactments can be prevented from becoming time barred.

7.2. Section 29(2) inter alia stipulates that if the special law does not expressly exclude the application of Sections 4 to 24 of Limitation Act, then these provisions of Limitation Act shall apply qua all causes raised under the Special Law.

7.3. The special law i.e. SARFAESI Act does not expressly exclude the application of the provisions from Sections 4 to 24 of the

Limitation Act (including Section 5) and therefore the benefit u/S. 5of Limitation Act shall be available to the cause of action raised in an application u/S 17 of SARFAESI Act.

8. Now applying the aforesaid principle of law to the fact situation attending the present case, it is obvious from plain reading of SARFAESI Act that while prescribing the period of 45 days for filing an application u/S.17(1) this special Act does not expressly bar the application of Section 5 of Limitation Act.

8.1. Consequent upon the above discussion, it is obvious tha provisions of Section 5 of the Limitation Act would apply with full force and are available for making a prayer for condonation of delay before the DRT in applications u/S.17(1) which are filed after expiry of 45 days."

8. In the light of the above discussion, we are of the considered view that the benefit of the provisions from Section 4 to Section 24 of Limitation Act is available to the causes raised under Section 17(1) of the SARFAESI Act before the Debt Recovery Tribunal.

9. Accordingly this civil revision petition stands allowed with the following directions:

(i) The impugned order of DRT Madurai dated 09.05.2024 passed in proceeding NDN 647/24 (S.A.SR.No.5299 of 2023) is set aside.

(ii) A delay of 25 days in preferring appeal under Section 17(1) of SARFAESI Act against the respondent bank by the applicant is hereby condoned.

(iii) The Debt Recovery Tribunal Madurai is directed to number the securitization application in the light of this order and proceed to consider and decide the same. No costs. Consequently, connected civil miscellaneous petition is closed.

(N.S.S., J.) **(L.V.G., J.)**
30.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
CM / Sml

To

1. The Debt Recovery Tribunal, Madurai

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

N.SESHASAYEE, J.
and
L.VICTORIA GOWRI, J.

CM / Sml

Pre-delivery ORDER MADE IN
C.R.P.(MD)No.1212 of 2024
and C.M.P(MD)No.6996 of 2024

30.08.2024