



Sr. No.138

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-29587-2024 (O&M)

Date of Decision: 29.10.2024

M/S HI MECH INDUSTRIES AND OTHERS

...Petitioners

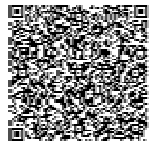
Versus

DEBT RECOVERY TRIBUNAL-I AND ANOTHER ...RespondentsCORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE LAPITA BANERJIPresent : Mr. Harsh Chopra, Advocate,
for the petitioners.Ms. Puja Chopra, Advocate,
for the caveator/respondent No.2.

ANUPINDER SINGH GREWAL, J. (Oral)

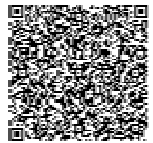
The petitioners have challenged the order dated 17.10.2024 (Annexure P-20) whereby the DRT-I, Chandigarh has dismissed the Securitization Application preferred by the petitioners on the ground of limitation. The respondent No.2 is a private non-banking financial institution. Instead of challenging the order dated October 17, 2024, the petitioners have filed the instant writ petition.

2. Learned counsel submits that the petitioners had earlier preferred a writ petition before this Court which was dismissed as withdrawn with the liberty to the petitioners to seek recourse to the alternative remedy in accordance with law. The petitioners had thereafter approached the DRT and, therefore, the SA of the petitioners ought to have



been heard and decided on merits instead of being dismissed on the ground of delay and laches. He also submits that as the order under Section 14 of the SARFAESI Act had been passed on 21.08.2023 (Annexure P-8) and he came to know about it only on 26.10.2023 the same gives him a continuing cause of action and thus he is deemed to have approached the Tribunal within the period of limitation. He further submits that question of law as to whether the limitation act would be applicable to the proceedings under the SARFAESI Act is pending adjudication before this Court in CWP No. 5223 of 2024 and the matter is now listed on 28.01.2025.

3. In support of his submissions, he has relied upon these judgments; “**Surinder Mahajan v. Debts Recovery Appellate Tribunal and others**” 2013 (16) RCR (Civil) 204 decided on April 05, 2013, “**Anirudh Singh v. Authorized Officer, ICICI Bank Ltd.,**” 2024 AIR Madhya Pradesh 92, decided on January 01, 2024, “**Dr. Kashyap Vyas v. M/S Aditya Birla Finance Limited**” decided on April 18, 2023, “**Corporation Bank v. Jayshreeben and others**” 2012 (42) RCR (Civil) 196, decided on December 12, 2012, “**C. Bright v. District Collector and others**” (2021) 2 SCC 392, decided on November 05, 2020, “**Indian Overseas Bank v. G. S. Rajashekar**”, 2008 SCC online Mad 1195, decided on February 21, 2008, “**M/S Alpine Pharmaceuticals Pvt. Ltd. And another v. Andhra Bank and others**” 2020 (4) BC 112, decided on January 24, 2020, “**Arce Polymers Private Limited v. Alphine Pharmaceuticals Private Limited and others**” (2022) 2 Supreme Court Cases 221, decided on December 03, 2021, “**M/S Godrej Sara Lee Ltd. V. The Excise and Taxation Officer-cum-Assessing Authority and others**” 2023 AIR Supreme Court 781, decided on February 01, 2023, “**PHR Invent Educational Society v. UCO**

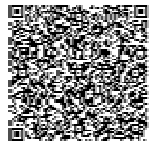


Bank and others” (2024) 6 SCC 579, decided on April 10, 2024, “***Sohan Singh v. Debt Recovery Tribunal-III, Chandigarh and others***” passed in CWP No.5223 of 2024 on April 02, 2024, “***Purni Devi and another v. Babu Ram and another***” 2024 SCC Online SC 482.

4. Heard.

5. The petitioners have challenged the order passed by the Tribunal dismissing their Securitization Application on the ground of limitation. It is true that the petitioners had approached this Court on an earlier occasion by preferring CWP No.26058 of 2023 which was dismissed as withdrawn with liberty to the petitioners to seek recourse to the alternative remedy in accordance with law on 05.08.2024. The writ petition had been preferred challenging the action of respondent No.2 which is a private non-banking financial institution and, therefore, in such circumstances writ petition would not be maintainable in view of the law laid down by the Supreme Court in the case of “***Phoenix ARC Pvt. Ltd. v. Vishwa Bharati Vidya Mandir***” (2022) 1 SCR 950 and “***Federal Bank Ltd. v. Sagar Thomas***” AIR 2004 SC 3264. The notice under Section 13(4) of the SARFAESI Act had been passed on 13.07.2023 and order under Section 14 of the SARFAESI Act was passed on 21.08.2023. Even accepting that the petitioners had come to know about the order passed under Section 14 only on 26.10.2023, there was an ample opportunity for the petitioners to have approached the Tribunal within the period of 45 days from 26.10.2023, as prescribed under the Act. However, they had filed SA on 04.08.2024.

6. The judgments relied upon by counsel for the petitioners are distinguishable on facts and not applicable to the instant case. There is no

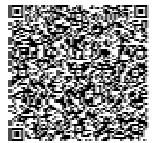


denying the proposition of law laid down in the judgments *Surinder Mahajn's* case (supra), *Anirudh Singh* (supra) *Dr. Kashyap Vyas's case* (supra) and *Corporation Bank's case* (supra) that the provisions of Section 5 of the Limitation Act would be applicable to proceedings under the SARFAESI Act and the Tribunal has the power to condone the delay if the litigant has sufficiently explained the delay. However, in the instant case, the petitioners have not been able to satisfactorily explained the huge delay in preferring the application.

7. The judgment in *C. Bright's case* (supra), pertains to the limitation of 30 days provided under Section 14 of SARFAESI Act for the District Magistrate to pass the order. There is no denying this principle but it does not help the case of the petitioners in any manner.

8. In the case of “*Indian Overseas Bank v. G. S. Rajashekaran*” (supra), it was held that the cause of action started when the possession was taken followed by subsequent cause of action when the auction sale notice was published by the secured creditor and the cause of action was a continuous one. The writ petition was filed before the prescribed period of 45 days under Section 17 of the Act. Apart from that the High Court under Article 226 of the Constitution of India could have entertained the writ petition to determine the case on merits as the SARFAESI Act could not have taken that jurisdiction away. The observations were made in respect of writ petition filed under Article 226 of the Constitution of India.

9. The judgment of the Telangana High Court in *Alpine Pharmaceuticals Pvt. Ltd.* (supra) has been reversed by Supreme Court in *Arce Polymers Private Limited* (supra) and is not applicable to the present case as the DRT in that case had allowed the possession and sale of



the secured asset which had been upheld by the Supreme Court whereas in the instant case, the possession of the secured asset is yet to be obtained.

10. In ***M/S Godrej Sara Lee Ltd.***, it was held that if pure question of law is raised in a writ petition, the High Court could entertain the same in its discretion, even though an alternative remedy is available.

11. In the case of ***PHR Invent Educational Society's case (supra)***, it was held that the High Court could entertain the writ petitions despite availability of alternative remedy only under certain circumstances which are reproduced herein below:

“xxx

37. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:

(i) Where the statutory authority has not acted in accordance with provisions of the enactment in question;

(ii) It has acted in defiance of the fundamental principles of judicial procedure:

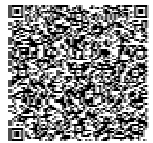
(iii) It has resorted to invoke the provisions which are repealed; and

(iv) When an order has been passed in total violation of the principles of natural justice.”

However, counsel for the petitioners has not been able to point out as to whether their case falls in any of these categories.

12. The counsel for the petitioners have cited the order dated 02.04.2024 in CWP No.5223-2024 titled as ***Sohan Singh Vs. Debt Recovery Tribunal-III, Chandigarh and others*** but it is an interim order.

We do not approve of the counsel citing an interim order as a precedent.



13. The judgment in the case of ***Purni Devi and another v. Babu Ram and another*** (*supra*) relates to an exemption application which has got nothing to do with the SARFAESI Act. Section 14 of the Limitation Act was discussed there and it was held that the time spent in contesting the *bona fide* litigation at a wrong forum, is to be excluded while computing limitation. The relevant extract is reproduced hereunder:-

“xxx

35. The judgments in Consolidated Engg. Enterprises (supra) and M.P.Steel (supra) have been followed consistently by this Court. For instance in Sesh Nath Singh v. Baidyabati Sherophuli Coop. Bank Ltd. (2021) 7 SCC 313 (2-Judge Bench), while holding Section 14 to be applicable to applications under Section 7 of the Insolvency and Bankruptcy Code, 2016 and the SARFAESI Act, it was observed :

*“75 Section 14 of the Limitation Act is to be read as a whole. A conjoint and careful reading of sub-sections (1), (2) and (3) of Section 14 makes it clear that an applicant who has prosecuted another civil proceeding with due diligence, before a forum which is unable to entertain the same on account of defect of jurisdiction or any other cause of like nature, is entitled to exclusion of the time during which the applicant had been prosecuting such proceeding, in computing the period of limitation. The substantive provisions of sub-sections (1), (2) and (3) of Section 14 do not say that Section 14 can only be invoked on termination of the earlier proceedings, prosecuted in good faith.
xxx”*

14. In view of the above, we do not find any illegality in the order of the DRT dismissing the Securitization Application on account of delay. The Tribunal passed a detailed order refusing to condone the delay on merits and also distinguished all the judgments referred to by the learned counsel appearing on behalf of the petitioners. In any event, if the petitioners were aggrieved by an order passed by the DRT, the appropriate procedure would have been to challenge it before the DRAT instead of filing the instant writ petition.



15. Consequently, we do not find any merit in this petition which stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

October 29, 2024
vandana/shalini

Whether speaking/reasoned :	Yes
Whether reportable :	Yes