



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

MISC. PETITION No. 6432 of 2023

RAMESH PAL AND OTHERS

Versus

IDFC FIRST BANK LIMITED AND OTHERS

WITH

MISC. PETITION No. 4104 of 2023

*M/S SHIV INDUSTRIES THROUGH ITS PROPRIETOR SHANKAR
PRASAD SHARMA*

Versus

PUNJAB NATIONAL BANK AND OTHERS

REVIEW PETITION No. 453 of 2024

*UNION BANK OF INDIA THROUGH ITS AUTHORIZED OFFICER/
MANAGER MR. MANOJ KUMAR SONI AND OTHERS*

Versus

SMT. KIRAN TURAKHIYA AND OTHERS

Appearance:

*Shri Aviral Vikas Khare along with Shri Sachin Patel, learned counsel for the
petitioners in M.P. No.6432 of 2023.*

*Shri Kishore Shrivastava, learned Senior Counsel assisted by Shri Mallikarjun Khare,
learned counsel for respondent No.1 in M.P. No.6432 of 2023.*

*Shri Satish Agrawal along with Shri Kunj Khandelwal, learned counsel for the
petitioners in M.P. No.4104 of 2023.*

*Shri Shrey Raj Saxena along with Shri Rishabh Singh Chouhan, learned counsel for
respondents No.1 & 2 in M.P. No.4104 of 2023.*

Shri Mayank Agrawal on behalf of Shri Gaurav Chhabra, learned counsel for



M.P. Nos.6432 of 2023 & 4104 of 2023
with R.P. No.453 of 2024

respondent No.3 in M.P. No.4104 of 2023.

*Shri Vivek Phadke & Shri Hariom Sharma on behalf of Mehul Shukla, learned counsel
for the petitioner in R.P. No.453 of 2024.*

Shri Ritesh Kumar Sone, learned counsel for respondent No.1 in R.P. No.243 of 2024.

Reserved on : 25th September, 2025

Delivered on : 03rd November, 2025

Acts referred : Recovery of Debt & Bankruptcy Act, 1993; Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2005; & Limitation Act, 1963.

Cases referred : Vishal N. Kalsaria v/s Bank of India & Others reported in AIR 2016 SC 30; Mardia Chemicals Limited & Others v/s Union of India & Others reported in (2004) 4 SCC 311; Transcore v/s Union of India & Another reported in (2008) 1 SCC 125; Consolidated Engineering Enterprises v/s Principal Secretary, Irrigation Department & Others reported in (2008) 7 SCC 169; M.P. Steel Corporation v/s Commissioner of Central Excise reported in (2015) 7 SCC 58; Baleshwar Dayal Jaiswal v/s Bank of India & Others reported in AIR 2015 SC 2881; International Asset Reconstruction Company India Limited v/s Official Liquidator of Aldrich Pharmaceuticals Limited & Others reported in (2017) 16 SCC 137 Ganesan v/s Tamil Nadu Hindu Religious & Charitable Endowments Board & Others reported in (2019) 7 SCC 108; Superintending Engineer / Dehar Power House Circle Bhakra Beas Management Board v/s Excise & Taxation Officer reported in (2020) 17 SCC 692; K.V. Rao v/s B.N Reddi reported in AIR 1969 SC 872; Chhattisgarh SEB Central Electricity Regulatory Commission reported in (2010) 5 SCC 23; and Gopal Sardar v/s Karuna Sardar reported in (2004) 4 SCC 252 & M/s Fair Style Embroidery Works & Another v/s Debts Recovery Tribunal III Chandigarh & Others (CWP-20243-2025) (Punjab & Haryana High Court); and M/s Oswal Spinning and Weaving Mills Limited & Others v/s UCO Bank & Another (CWP No.21519 of 2018).

ORDER

Per : Justice Vivek Rusia

Since the issues involved in these petitions are identical in nature, with the joint request of the parties, these M.P.s and R.P. are finally heard and being decided by this common order.

A. Miscellaneous Petition No.6432 of 2023

This Miscellaneous Petition is filed under Article 226 / 227 of the Constitution of India challenging the order dated 02.09.2023 passed by the Debt Recovery Tribunal, Jabalpur (in short 'DRT') in S.A. No.299/2013, whereby the application under section 5 of the Limitation Act, 1963 filed for condonation of delay has been dismissed *inter alia* on the ground that its provision does not apply consequently the S.A. has also been dismissed.

B. Miscellaneous Petition No.4104 of 2023



This Miscellaneous Petition is filed under Article 226 / 227 of the Constitution of India, challenging the order dated 05.07.2023 passed by the DRT in S.A. No.567/2022, whereby the application filed under Section 5 of the Limitation Act, as well as S.A., has been dismissed.

C. **Review Petition No.453 of 2024**

This Review Petition is filed under Order XLVII Rule 1 of the Code of Civil Procedure, 1908 seeking review of the order dated 12.02.2024 passed in Writ Petition No.202 of 2024 (Smt. Kiran Turakhiya v/s Union Bank of India & Another), whereby the order dated 08.12.2023 passed by the DRT rejecting the application under Section 5 of the Limitation Act and S.A. No.955/2022 has been set aside and the matter has been remitted back to the learned DRT to decide the S.A. afresh by observing that the provisions of Section 5 of the Limitation Act applies with full force.

FACTS OF THE CASE

F-1. Common facts in all three petitions are to the effect that the Bank / Financial Institution advanced the loan to the borrower by mortgaging its immovable property by executing a mortgaged deed. When the borrower defaulted in repaying the loan/ EMI, the Bank / Financial Institution initiated proceedings by taking measures under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the SARFAESI Act'). By invoking the provisions of 13(4) of the SARFAESI Act, the Bank / Financial Institution took possession (symbolic/physical) and thereafter, put the property into auction. After the finalisation of auction sale proceedings, the mortgaged



property was sold to a third party.

F-2. Thereafter the borrowers approached the DRT by way of filing a Saucerisation Application / Petition under Section 17 of the SARFAESI Act (in short "SA"). Since there was a delay in filling the SA beyond the prescribed period of 45 days, hence they filed an application under Section 5 of the Limitation Act for condonation of delay.

F-3. The Bank / Financial Institution appeared and filed an objection in respect of the power of DRT under Section 5 of the Limitation Act to condone the delay beyond 45 days . In all three matters, the learned DRT has held that the period of delay beyond 45 days cannot be condoned as the provisions of Section 5 of the Limitation Act do not apply to the provisions of Section 17 of the SARFAESI Act, and, as a result, dismissed all the S.As.

F-4. The SARFAESI Act provides the remedy of appeal to approach the Debt Recovery Appellate Tribunal against the dismissal of S.A., even on the ground of limitation, but the petitioners have approached this Court by way of miscellaneous petitions under Article 226 / 227 of the Constitution of India. After notice, the Bank / Financial Institution have filed a reply to support the order passed by the DRT.

F-5. Taking into consideration the reasons given in the impugned orders by the learned DRT, grounds raised by the petitioners and contentions of the respondents, the core issue emerges for our consideration is “*whether the provisions of the Limitation Act apply to an application filed under Section 17 of the SARFAESI Act 2002* and if answer is affirmative then whether Section 5 or 14 of the



Limitation Act will apply to an application/petition under Section 17 of the SARFEASI Act for condonation of delay ?

SUBMISSION OF PETITIONERS IN M.P. NO.4104 OF 2023

P-1. Shri Satish Agrawal, learned counsel, appearing on behalf of borrowers submitted that the negative view taken by the DRT about the non-applicability of Section 5 of the Limitation Act for condonation of delay is not based on any cogent and persuasive reasonings. By plain reading of Sections 17 of the SARFAESI Act & Section 24 of the Recovery of Debts and Bankruptcy Act, 1993 (in short 'the RDB Act'), there cannot be an iota of doubt that there is no express prohibition of filing SA beyond a period of 45 days as there is no exclusion of the provisions of the Limitation Act. The SARFAESI Act does not eclipse the provisions of the RDB Act. By reading Section 37, it is clear that the SARFAESI Act would be in addition to and not in derogation of various acts, including the RDB Act.

P-2. In support of the aforesaid submissions, Shri Agrawal, learned counsel, has placed reliance on a judgment delivered by the Apex Court in the case of *Transcore v/s Union of India & Another reported in (2008) 1 SCC 125*, wherein it has been held that the provisions contained in the SARFAESI Act are complementary to the provisions of the RDB Act. Shri Agrawal, learned counsel, has placed reliance upon provisions of sub section (2) of Section 29 of the Limitation Act to buttress his argument that, in the absence of any express provisions curtailing the applicability of the provisions of the Limitation Act, same would be applicable to the SARFAESI Act. In support of his contention, learned counsel has placed reliance upon a



judgment delivered in the case of ***Superintending Engineer / Dehar Power House Circle Bhakra Beas Management Board v/s Excise & Taxation Officer*** reported in (2020) 17 SCC 692.

P-3. Shri Agrawal, learned counsel submitted that the application filed under Section 17 of the SARFAESI Act even if is not like a suit as the word 'suit' is defined in Section 2(l) of the Limitation Act. It is like an original proceeding by way of petition/objection to the action taken by the Bank / Financial Institution or the secured creditors as observed by the Apex Court in the case of ***Mardia Chemicals Limited & Others v/s Union of India & Others*** reported in (2004) 4 SCC 311. According to learned counsel, this is the only right and remedy available to the aggrieved persons to protect their property from arbitrary action taken by the secured creditor. In these proceedings, the DRT is not required to decide the title between the parties like a Civil Court; therefore, these proceedings are not akin to a civil suit seeking declaration of title or that the action of Bank / Financial Institution be declared void.

P-4. Shri Satish Agrawal, learned counsel, further submitted that Section 29(2) of the Limitation Act makes the provision of Sections 4 to 24 applicable to special or local laws prescribing a different period of limitation for suit, appeal or application, unless expressly excluded. Since there is no express exclusion of applicability of Sections 4 to 24 of the Limitation Act in the SARFAESI Act, the delay is liable to be condoned under Section 5 of the Limitation Act as well.

P-5. It is further submitted by learned counsel that Section 24 of the RDB Act makes the Limitation Act applicable to the DRT; hence,



impliedly, the provisions of the Limitation Act apply to the application under Section 17 of the SARFAESI challenging the measures taken under Section 13(4). Therefore, there is an implied inclusion of the Limitation Act and no exclusion of such Act.

P-6. Shri Agrawal, learned counsel, further submitted that Sections 17(7) & 18(2) of the SARFAESI Act contemplate that the application shall be disposed of in terms of the provisions of the RDB Act. The RDB Act gives a remedy and right to the Bank to apply before the DRT to recover the debts, whereas the SARFAESI Act gives the right and remedy to the borrower to approach the DRT; therefore, the provisions of the Limitation Act available under the RDB Act would be available in the application filed under Section 17 of the SARFAESI Act by the borrower. In support of his contention, learned counsel has placed reliance upon paragraph 13.7 of the recent judgment passed by the Division Bench of the High Court of Punjab & Haryana at Chandigarh in the case of *M/s Fair Style Embroidery Works & Another v/s Debts Recovery Tribunal III Chandigarh & Others (CWP-20243-2025) Neutral Citation 2025 PHHC 125959-DB*. In the aforesaid case, the Division Bench has held that provisions of the Limitation Act are available to the DRT, while dealing with an application under Section 17(1) filed after the prescribed period of 45 days, provided the same is accompanied by an application under Section 5 of the Limitation Act.

SUBMISSIONS OF THE PETITIONER IN M.P. NO.6432 OF 2023

P-7. Shri Aviral Vikas Khare, learned counsel for the petitioner, in addition to the aforesaid , argued that the issue as to whether the



provisions of the Limitation Act apply to the proceedings under the provisions of the SARFAESI Act had already been settled by the Apex Court in the case of *Baleshwar Dayal Jaiswal v/s Bank of India & Others reported in AIR 2015 SC 2881* in which it is held **that** even though Section 5 of the Limitation Act may be impliedly inapplicable, principle of Section 14 of the Limitation Act can be held to be applicable even if Section 29(2) of the Limitation Act does not apply. The learned Presiding Officer has not appreciated the fact that due to the COVID-19 Pandemic, there was a complete lockdown in the entire country; therefore, the petitioners could not approach the DRT within the period of limitation. When the Apex Court has condoned the delay to all the litigants, then the DRT ought to have condoned the delay in the present case.

P-8. Shri Khare has placed reliance upon a judgment delivered by the Apex Court in the case of *N. Balakrishnan v/s M. Krishnamurthy reported in (1998) 7 SCC 123*, wherein the Apex Court has observed that it must be remembered that in every case of delay, that can be a due to some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor.

P-9. It is further submitted that after taking possession of the mortgaged property, most of the time borrowers approach the Bank / Financial Institution for settlement of the loan account or submit One Time Settlement (OTS), and the Bank consumes most of the time either does not entertain the borrowers or forwards the proposal to the



higher authorities, due to which 45 days get expired in approaching the DRT. These aspects are liable to be considered for condonation of delay; hence, the period of 45 cannot be applied in the strict sense and the litigant cannot be non-suited.

P-10. Shri Khare, learned counsel, has referred to Section 3 of the Limitation Act, which applies to every suit instituted, appeal preferred, and application made, but the proceedings initiated under Section 17 of the SARFAESI Act cannot be described as a suit, as the suit is ordinarily instituted by presentation of a plaint.

P-10. Learned counsel appearing on behalf of the borrowers in R.P. No.453 of 2024 has adopted the arguments advanced by Shri Satish Agrawal & Shri Aviral Vikas Khare.

P-11. Shri Akshat Agrawal, learned counsel who normally represents the borrower before the DRT and DRAT as well as the High Court, has been permitted to address on the issue in support of the counsel appearing for the borrower. Learned counsel has criticised the view taken by the learned the Debt Recovery Tribunal about the applicability of the Limitation Act in proceedings under Section 17 of the SARFAESI Act. Shri Agrawal learned counsel has relied upon the latest judgment delivered by the Division Bench of Punjab & Haryana High Court in the case of *M/s Fair Style Embroidery Works (supra)*, wherein the Division Bench has followed the earlier judgment of *M/s Oswal Spinning and Weaving Mills Limited & Others v/s UCO Bank & Another reported in 2019 (1) 193 PLR 6* and held that the remedy of Limitation Act, if applicable to the Bank / Financial Institution under Section 19 of the RDB Act should also be made applicable to the application / aggrieved person



including the borrower under Section 17 of the SARFAESI Act.

P-12. Shri Akshat Agrawal learned counsel argued that this Court has rightly taken a view in the case of *Anil Agrawal v/s The State of Madhya Pradesh & Others Neutral Citation No.2025:MPHC-IND:18693* that the Bank / Financial Institution, in order to recover the debts amount takes the measure provided under Section 13(4) of the SARFAESI Act and each measures give separate cause of action to challenge before the DRT. In most cases, the borrower either files a separate SA under Section 17 of the SARFAESI Act, challenging each measure or separate applications to challenge the subsequent measures in a pending S.A. Therefore, the Division Bench of this Court has held that all the measures should be examined under Section 17 of the SARFAESI Act by the DRT by clubbing all the S.As. in such circumstances, the delay beyond the period of 45 days either impliedly condoned or liable to be condoned to decide the validity of all the measures cumulatively. Shri Akshat Agrawal, learned counsel, also submitted that provisions of the Limitation Act have not been impliedly excluded by the lawmakers to entertain the application made under Section 17 of the SARFAESI Act.

P-13. It is further submitted that the RDB Act as well as the SARFAESI Act both exclude the remedy of the Civil Court; therefore, the borrower has only one remedy to approach the DRT to protect his property by challenging the arbitrary action of the Bank/ Financial Institution/Secured creditors. The borrowers or guarantors cannot be non-suited by strictly applying the limitation period of 45 days without the authority given to the DRT to condone the delay under Section 5 or 14 of the Limitation Act, as the case may be.



P-14. Shri Akshat Agrawal, learned counsel, further submitted that the proviso to Section 19 of the RDB Act gives liberty to the Bank / Financial Institution to withdraw the application filed under Section 19 before the DRT for the purpose of taking action under the provisions of the SARFAESI Act; therefore, there is an interplay between the RDB Act and the SARFAESI Act. Hence, the Limitation Act, which has been made applicable to the proceedings before the DRT under the RDB Act, shall also be made applicable to the proceedings under Section 17 of the SARFAESI Act.

P-15. Shri Akshat Agrawal, learned counsel, further added in his submissions that the proceedings under Section 17 of the SARFAESI Act are a proceeding for restoration of possession, not like a regular suit; therefore, the limitation under Articles 127 & 128 of the Limitation Act is 60 & 30 days respectively, and have not been made applicable. Section 17(7) of the SARFAESI Act mandates the DRT to dispose of the application filed under the provisions of the RDB Act and rules made thereunder; therefore, Section 24 of the RDB Act shall also be applicable, by which provisions of the Limitation Act have been made applicable as a whole.

P-16. Finally, it is submitted that by virtue of Section 29(2) of the Limitation Act, as in the SARFAESI Act, there is no express exclusion of the Limitation, especially therefore Sections 4 to 24 (inclusive) apply to the application to be filed under Section 17 of the SARFAESI Act despite the limitation of 45 days therein.

SUBMISSIONS OF RESPONDENT / BANK / FINANCIAL INSTITUTION

R-1. *Per contra*, Shri Kishore Shrivastava, learned Senior Counsel



appearing on behalf of respondent / Bank / Financial Institution contended that the remedy is always a creature of statute and if the statute creates a remedy with some restriction and limitation than Court cannot add or subtract in it. The remedy of Section 17 of the SARFAESI Act would be available to the borrower if the application is preferred within a period of 45 days. The validity of a fixed period of limitation of 45 days to approach the DRT without power to condone or extension is not under challenge in these writ petitions ; therefore, the learned DRT has not committed any jurisdictional error while dismissing the SA on the ground of filing beyond 45 days. It is further submitted that if this Court concludes that the provisions of the Limitation Act apply to an application under Section 17, then in his considered opinion only Section 14 applies, not Section 5 of the Limitation Act because the proceedings under Section 17 are the original proceedings like a suit before the Tribunal.

R-2. Shri Kishore Shrivastava, learned Senior Counsel, further submitted that the SARFAESI Act is a complete code in itself, which provides limitation only to the secured creditor to take measures within the period prescribed in the Limitation Act. Learned Senior Counsel has drawn the attention of this Court to the language of Section 36 of the SARFAESI Act, which provides the limitation for a secured creditor to take all or any of the measures under Section 13(4) of the SARFAESI Act unless his claim in respect of financial assets is within the period prescribed under the Limitation Act. By virtue of Section 36 of the SARFAESI Act, a dead claim cannot be made alive because the secured creditor is not entitled to approach either the Civil Court or DRT under the RDB Act.



R-3. Learned Senior Counsel also placed reliance on Section 35 of the SARFAESI Act, which says that this Act shall have overriding effect over any other law which is inconsistent with the provisions of the SARFAESI Act, and the Limitation Act is one of the laws.

R-4. Shri Kishore Shrivastava, learned Senior Counsel, has referred to Section 37 of the SARFAESI Act which makes applicable the Companies Act, 1956; the Securities Contracts (Regulation) Act, 1956; Security and Exchange Board of India Act, 1992 and RDB Act and any other law for the time being in force, to the SARFAESI Act, therefore, any other law includes Limitation Act also. Accordingly Section 37 shall be applicable to the SARFAESI Act in addition to, and not in derogation of. Hence, the limitation provided under Section 17 of the SARFAESI Act shall prevail over the limitation provided under the Limitation Act by way of addition not in derogation. By virtue of Section 36 of the SARFAESI Act, a dead claim cannot be made alive because the secured creditor is not entitled to approach either the Civil Court or DRT under the RDB Act.

R-5. Learned senior counsel has also referred to Section 35 of the SARFAESI Act, which says that the provisions of this Act shall have overriding effect, notwithstanding anything inconsistent therewith in any other law for the time being in force, which includes the Limitation Act also. Hence the prescribed limitation under the SARFAESI Act would prevail over the limitation provided in the Limitation Act.

R-6. Shri Kishore Shrivastava, learned Senior Counsel, has referred to Section 24 of the RDB Act, by which the Limitation Act



has been made applicable to “the application” made to the Tribunal under Section 19 only. To buttress his submission, learned Senior Counsel has placed reliance upon a judgment delivered by the Apex Court in the case of ***Pegasus Assets Reconstruction Private Limited v/s Haryana Concast Limited & Another reported in (2016) 4 SCC 47***, in which it has been held that some other statute enumerated in Section 37 can play a supplemental role along any other law for the time being in force including the Companies Act, but obviously only till they are consistent with the provisions of the SARFAESI Act. Had there been an intention to include the Limitation Act with all its provisions also, the same would have been mentioned in Section 37 of the SARFAESI Act.

R-7. Learned Senior Counsel submitted that the Apex Court in the case of ***Patel Brothers v/s The State of Assam & Others reported in (2017) 2 SCC 350*** had clearly held that there can be legislative intent to exclude the extent of the Limitation Act or, in the alternative, there can be a legislative intent to apply only one or a few provisions restricting the application. As is clear by reading Sections 35, 36 and 37, the Limitation Act as a whole has not been made applicable but in a very restrictive mode, i.e. not to revive the dead claims.

R-8. Shri Kishore Shrivastava, learned Senior Counsel further submitted that Section 24 of the RDB Act confines applicability of provisions of entire Limitation Act as it is made applicable only to an application defined under Section 2(b) filed under Section 19 of the RDB Act and by virtue of Section 36 of the SARFAESI Act, the action can be taken only in respect of a live claim. Shri Shrivastava, learned Senior Counsel has placed reliance upon a judgment of three



Judges' Bench in the case of ***International Asset Reconstruction Company India Limited v/s Official Liquidator of Aldrich Pharmaceuticals Limited & Others*** reported in (2017) 16 SCC 137, in which the Apex Court has held that the RDB Act is a special law and as per the scheme of the Act, 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 delay beyond 45 days under Section 20(3) of the Act. 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. Further reliance has been placed in the case of ***Standard Chartered Bank v/s MSTC Limited*** reported in (2020) 13 SCC 618, in which the Apex Court has held that the clear *ratio decidendi* of this judgment makes it absolutely clear that the only application referred to in Section 24 is an application filed under Section 19 and to no other.

R-9. Shri Shrivastava, learned Senior Counsel, further addressed us on the issue whether the DRT is a Civil Court or Court or simply a forum to deal with an application under Section 17 of the SARFAESI Act. The proceedings under Section 19 of the RDB Act are considered to be judicial proceedings by virtue of Section 22(3) of the RDB Act but there is no such similar provision in the SARFAESI Act. It is further submitted that when the RDB Act was enacted, the SARFAESI had not seen the light of day. The SARFAESI Act nowhere says that the proceedings under Section 17 are deemed to be judicial proceedings. Since DRT is not a Court, the Limitation Act as



a whole would not apply. Learned senior counsel relies on the cases of *Consolidated Engineering Enterprises v/s Principal Secretary, Irrigation Department & Others* reported in (2008) 7 SCC 169, *M.P. Steel Corporation v/s Commissioner of Central Excise* reported in (2015) 7 SCC 58 & *Ganesan v/s Tamil Nadu Hindu Religious & Charitable Endowments Board* reported in (2019) 7 SCC 108, in which the Apex Court held that the Limitation Act apply only to the Court and no to the Tribunal or *quasi-judicial* authority.

R-10. Shri Kishore Shrivastava, learned Senior Counsel, concluded his arguments by summarising all the above submissions that the Limitation Act does not apply to the proceedings under the SARFAESI Act, and if this Court comes to the conclusion that the Limitation Act applies, then may hold that Section 14 applies, not Section 5. The DRT is neither a Court nor a Civil Court. No one has challenged the *vires* of any provisions of the SARFAESI Act; therefore, by way of the order passed by this Court, provisions of the Limitation Act cannot be made applicable to the Debt Recovery Tribunal. Lastly, Section 36 of the SARFAESI Act provides a limitation for a secured creditor to take any of the measures, unless his claim in respect of financial assets is within the limitation prescribed under the Limitation Act; therefore, the Limitation Act has been made applicable only for the secured creditor, not for the borrower.

R-11. Learned counsel appearing for the Bank in the review petition has adopted the submissions made by Shri Shrivastava and prayed for review of the order passed by this Court earlier.

APPRECIATION



A-1. As per the statement of objects and reasons of the RDB Act, the existing procedure for recovery of debts due to the Bank / Financial Institution had blocked a significant portion of their fund in unproductive assets; therefore, a recommendation was made to the Central Government for the constitution of a special Tribunal with a special power for adjudication of such matters and speedy recovery. The Tiwari Committee suggested setting up a Special Tribunal for the recovery of dues of the Bank / Financial Institution by following a summary procedure; therefore, the Recovery of Debt Due to the Bank & Financial Institution Act, 1993 (51 of 1993) was enacted by the Parliament. Later on, by way of Act 31 of 2016, the words 'Due to the Bank & Financial Institution' have been replaced by the word 'Bankruptcy', and since then, this Act became “the Recovery of Debts & Bankruptcy Act, 1993” (in short 'the RDB Act'). The Apex Court in the case of *Union of India v/s Satyawati Tondon reported in (2010) 8 SCC 110* upheld the object of the RDB Act by observing that it creates special machinery for the speedy recovery of dues of Bank & Financial Institution.

A-2. Section 2(b) of the RDB Act defines ***application*** which is an application made to a Tribunal under Section 19. Section 2(d) defines the "bank" and Section 2(e) defines the "banking company". Section 2(g) explains the word "debt" and Section 2(ga) deals with the definition of "debt securities". Section 2(h) defines the "financial institution". According to the definition of "property" under Section 2(jb), it includes immovable property, movable property, etc. The definition of "secured creditor" under Section 2(la) is similar to the definition in Clause (zd) of sub-section (1) of Section 2 of the



SARFAESI Act. Section 2(lb) defines the " security interest" as a mortgage, charge, hypothecation assignment or any other right, title or interest of any kind whatsoever upon property, created in favour of the bank or financial institution, which is like the Definition 2(1)(zf) of the SARFAESI Act. CHAPTER II deals with the "Establishment of Tribunal & Appellate Tribunal". CHAPTER III deals with the "Jurisdiction, Powers & Authority of Tribunals. As per the definition of Section 17(1) of the RDB Act, the Tribunal shall exercise the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debt due to such banks and financial institutions. Section 18 creates a bar on the Court or other authority in relation to any matter specified in Section 17 by the Tribunal, except the Supreme Court and the High Court exercising jurisdiction under Articles 226 & 227 of the Constitution of India.

A-3. Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal under Section 19 of the RDB Act, within its local limit. The proviso inserted by the Act 30 of 2004 gives an option to the bank and financial institution to make an application to seek permission from DRT to withdraw the application made under Section 19 of the RDB Act for taking action under the SARFAESI Act. The Tribunal may grant or refuse such permission, as the case may be. If the permission is refused, then the Tribunal shall decide the application by following the procedure prescribed in sub-sections (2) to (25) of Section 19. Section 19 also gives the right to the borrower or guarantor arrayed as defendant to submit a written statement, counterclaim, cross suit,



set off, etc.

A-4. Before switching to the provisions of the SARFAESI Act, it would be relevant to examine other sections/ provisions of the RDB Act related to issues before us. Section 19 nowhere provides the period of limitation because by virtue of Section 24, the provisions of the Limitation Act have been made applicable, as far as may be, to an application made under Section 19 to the Tribunal [Definition 2(b)]. Section 20(3) provides thirty days' period of limitation for filing an appeal to the Appellate Tribunal against the order of Tribunal and as per the proviso, the Appellate Tribunal may entertain the appeal after expiry of thirty days if it is satisfied that there was sufficient cause for not filing it within that period i.e. by filing an application under Section 5 of the Limitation Act. The Appellate Tribunal has been given the power to condone the delay under Section 5 of the Limitation Act. Section 22 says that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, shall be guided by the principle of natural justice and shall have the power to regulate their own procedure. In certain matters, namely summoning and enforcing the witness, discovery and production of documents, receiving evidence on affidavit, issuing commissions, reviewing its decisions, dismissing in default, etc. The Tribunal shall have the same powers which are vested in the Civil Court. By virtue of Section 22(3), any proceedings before the Tribunal or Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 & 228, and for the purpose of Section 193 of the Indian Penal Code. It further says that the Tribunal or Appellate Tribunal shall be deemed to be a



Civil Court for all purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Therefore, the Tribunal or Appellate Tribunal established under the RDB Act are the Court and the proceedings shall be deemed to be judicial proceedings. Section 24 deals with the limitation, according to which the provisions of the Limitation Act, 1963, shall, as far as may be, apply to an application made to the Tribunal. Therefore, there is no quarrel on the issue that the provisions of the Limitation Act have been made applicable to the Tribunal in an application made under Section 19.

A-5. CHAPTER – V deals with the Recovery of Debt Determined by the Tribunal or by the Recovery Officer on receipt of a copy of the certificate under sub-section (7) of Section 19. Section 30 gives a remedy of appeal against the order of the Recovery Officer that is preferred within thirty days from the date of the order. Section 34 gives an overriding effect over the Act mentioned in sub-section (2), if there is no inconsistency. The Act mentioned in sub-section (2) of Section 34 deals with the issue between the borrower and the financial institution, i.e. the same field on which the RDB Act has been made applicable. The Debt Recovery Tribunal Procedural Rules, 1993 confer power upon the Tribunal and Appellate Tribunal and prescribe procedure to decide the application and appeal.

A-6. As per the statement of object and reasons of the SARFAESI Act, 2002, Narasimham Committee I & II and Andhyarujina Committee constituted by the Central Government suggested enactment of new legislation for securitisation and empowering the bank and financial institution to take possession of the security and to sell them without the intervention of the Court. The Securitization



and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was promulgated on the 21st June, 2002 *inter alia* empowering the bank/financial institution/ secured creditor to take possession of the securities given for financial assistance and sale or lease the same or take over management in the event of default i.e. classification of borrowers' account as NPA in accordance with the direction given by the Reserve Bank of India from time to time. The aforesaid Ordinance and Bill came on the Statutes Book as the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 w.e.f. 21st June, 2002, after getting the assent of the President on 17th December, 2002.

A-7. The SARFAESI Act also provides a remedy of an appeal/ application against the action of the bank / financial institution to the concerned DRT and a second appeal to the Appellate Tribunal. As per definition 2(1) of the SARFAESI Act, the Appellate Tribunal is the same Tribunal established under Section 8(1) of the RDB Act. Section 2(f) defines "borrower" which is missing in the RDB Act as a person who has been granted financial assistance by the bank or financial institution or who has given any guarantee, created any mortgage or pledge as a security for such financial assistance. The definition of "debt" under 2(ha) is identical to the definition under 2(g) under the RDB Act. As per definition 2(i), "Debt Recovery Tribunal" means the Tribunal established under sub-section (1) of Section 3 of the RDB Act. Definition 2(ia) is "debt securities", 2(j) is "default", 2(k) is "financial assistance", 2(l) is "financial asset", 2(m) "financial institution" etc. Therefore, by virtue of these definitions, the DRT and DRAT constituted under the RDB Act shall have the



same meaning as the Tribunal and Appellate Tribunal under the SARFAESI Act.

A-8. CHAPTER II deals with the Regulation of Securitisation and Reconstruction of Financial Assets of Banks and Financial Institutions and they are not concerned with the issue involved in this case. CHAPTER III, which deals with the Enforcement of Security Interest, comprises Sections 13 to 19.

A-9. If the bank or financial institutions had already approached the DRT by filing an application under Section 19 to recover debts from any persons, then during pendency of such application if the bank decides to invoke the provisions of SARFAESI Act, 2002 for enforcement of security interest, then an application is liable to be moved under first proviso of sub-section (1) of the Section 19 to seek permission from the Tribunal and if no such application under Section 19 is filed or pending, then the bank / financial institution / secured creditor may directly invoke the provisions of Section 13 of the SARFAESI Act. By virtue of Section 13(10), when the secured creditor is not fully satisfied with the sale proceeds of secured assets, the secured creditor may file an application in the Form and manner as may be prescribed to the DRT having jurisdiction or competent, as the case may be, for recovery of the balance amount from the borrower. Therefore, the bank / financial institution / secured creditor shall have the option to proceed against the borrower or guarantor to recover a debt under the RDB Act as well as the SARFAESI Act. After invoking the provisions of the SARFAESI Act, if the due/debt is not fully satisfied, then again the bank / financial institution can approach the Tribunal under the RDB Act. The forum under both the



enactments is common, i.e. DRT and DRAT, and the purpose of both the Acts is the same, i.e. to facilitate the bank / financial institution to recover the debts from the defaulter/borrower.

A-10. Under Section 13 of the SARFAESI Act, any security interest created in favour of any secured creditor may be enforced, without the intervention of the Court or Tribunal, by such creditor in accordance with the provisions of this Act. In case of any default in making repayment of secured debts or any instalment thereof, and his account in respect of such debt is classified as a non-performing asset (NPA), then the secured creditor is required to send a notice in writing to the borrower to discharge in full his liabilities to the secured creditor within sixty days. In the event of non-discharging his liability in full, the secured creditor may take recourse to one or more measures provided under sub-section (4), which are as under:-

"(a) take possession of the secured assets of the borrower, including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower, including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is related to the security or the debt."

A-11. In between, if on receipt of notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall and if comes to the conclusion that the same is not acceptable or tenable, it shall communicate the reasons within 15



days and such reasons/rejection are not liable to be challenged by way of an application under Section 17 of the SARFAESI Act before the DRT as per proviso to sub-section (3A) of Section 13. At this stage, the borrower has no remedy to approach the DRT challenging the demand after declaration of NPA and proposed action under sub-section (4) and non-consideration or rejection of the reply. In the event of non-discharging of liabilities in full within sixty days if the secured creditor takes possession of the secured assets including right to transfer by way of lease, assignment or sale, the secured assets shall be at the discretion of the secured creditor to sale by following the procedure prescribed under Rules 6, 7, 8 and 9 of the Security Interest (Enforcement) Rules, 2002.

A-12. As per Section 13(6) of the SARFAESI Act, any transfer of a secured asset after taking possession thereof or taking over the management by the secured creditor, as the case may be, the transferee shall have all rights as if the transfer had been made by the owner of such secured asset. Section 14 gives the option to the secured creditor to take assistance from the District Magistrate / CJM for taking possession or control of such secured asset by filing an appropriate application before the auction sale. For the purpose of securing the compliance with the provision of sub-section (1), the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary, and such an act shall not be called in question in any Court or before any authority. Section 15 deals with the Manner and effect of take over of management.

A-13. Now Section 17 of the SARFAESI Act comes into play, under



which any person including borrower, aggrieved by any or all of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor or its authorized officer may make an application to the DRT having jurisdiction in the matter within 45 days from the date on which such measure has been taken. Under Section 13(4), there are as many as four types of the measures which the secured creditor may take to recover his secured debt (i) possession (either symbolic or physical); (ii) lease; (iii) assignment; (iv) sale; (v) taking over management of the business including the same right to transfer by way of lease, assignment or sale. Therefore, the application under Section 17 lies to challenge every measure or all within 45 days from the date on which such measure has been taken separately, independently or cumulatively or collectively.

A-14. Section 17(2) casts obligation upon the DRT to consider and decide whether any of the measures referred to in sub-section (4) of Section 13 are in accordance with the provisions of this Act and rules made thereunder and if the DRT after examining the fact and circumstances of the case and evidence produced by the parties concludes that any of the measures referred to in sub-section (4) of Section 13 are not in accordance with the provisions of this Act and the rules, may pass an order of restoration of the management or restoration of possession of the secured asset of the borrower or any other aggrieved persons by declaring recourse to any one or more measure as invalid along with restoration of possession to borrower or any such person who has made an application under sub-section (1) or pass other direction as it may consider appropriate and necessary. Under sub-section (4), if the DRT declares the recourse



taken by a secured creditor is in accordance with the provisions of this Act and the rules, then the secured creditor shall be entitled to take recourse to any one or more of the measures specified under sub-section (4) of Section 13 to recover his secured debt. There is confusion under sub-section (1) that if the recourse under sub-section (4) of Section 13 had already been taken by the secured creditor and such recourse had been upheld by the Tribunal, then further recourse is available, which the secured creditor shall be entitled to take.

A-15. The controversy before the DRT is whether the delay in filing the application under Section 17(1) beyond 45 days is liable to be condoned under the provisions of the Limitation Act or not?

A-16. Section 36 of the SARFAESI Act is about the applicability of the Limitation Act, under which no secured creditor shall be entitled to take all or any of the measures under sub-section (4) of Section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act. Therefore, the Limitation Act has been made applicable only for secured creditors for taking measures under sub-section (4) of Section 13 because under this Act any proceeding are liable to be initiated by the bank / FI/ secured creditors only. The borrower only get remedy after taking all or any measures by the security creditor. The applicability of the Limitation Act comes into operation to borrower after the steps are taken by the secured creditor.

A-17. Shri Kishore Shrivastava, learned Senior Counsel, is right in making the submission that the dead claim cannot be made alive under the SARFAESI Act. It is also important to take note that there is no specific exclusion of the Limitation Act under the SARFAESI



Act, and by virtue of Section 24 of the RDB Act, the provisions of the Limitation Act apply to the DRT for all the applications to be filed.

A-18. Under the RDB Act or SARFAESI Act, the process for recovery of debt is liable to be initiated by the secured creditor alone. Under the RDB Act, the process starts after filing of an application under Section 19, for which the Limitation Act as a whole has been made applicable. Under the SARFAESI Act, the proceedings are liable to be set into motion by issuing notice under Section 13(2) followed by measures/recourses under sub-section (4), for which also the Limitation Act has been made applicable. By virtue of Section 36, the borrower becomes a defendant and contests the proceedings by filing a written statement, counterclaim, etc., for which the limitation is also applicable. The proceedings under Section 19 of the RDB Act are the original proceedings and judicial proceedings. As discussed above, an option is available to the secured creditor to exercise the power under the SARFAESI Act to recover the debts. By such measures, the aggrieved person, including the borrower, can challenge such action by filing an application under Section 17 of the SARFAESI Act before the DRT. These proceedings under Section 17 shall be the original and judicial proceedings and for recovery of the balance amount, the secured creditor may approach the DRT and as per Rule 11 of the Security Interest (Enforcement) Rules, 2002, the provisions of the Debts Recovery Tribunal (Procedure) Rules, 1993 shall mutatis mutandis apply to the application filed under sub-rule (1) of Rule 11. Such an application shall be decided as an application under Section 19 of the RDB Act. Therefore, in order to recover the



complete debts, the secured creditor can switch the remedies between these two acts. Both the proceedings are liable to be treated as judicial proceedings, and the Tribunal is the only forum available to secured creditors as well as borrowers to adjudicate the issue related to the recovery and realisation of debt. Therefore, it cannot be said that the Limitation Act does not apply to the proceedings of the DRT. If the limitation Act has been made applicable for secured creditors/banks/financial institutions to approach the DRT or to realise the secured debt under the SARFAESI Act then the issue whether, the DRT is a Court or the proceedings under Section 17 are judicial proceedings for applicability of the Limitation Act becomes redundant.

A-19. The Limitation Act, 1963, deals with the law of limitation of suit and further proceedings. Section 2(a) defines 'applicant', which includes the petitioner or any other person through whom the applicant derives his right and whose estate is represented. As per Section 2(b), 'application' includes a petition. Section 2(j) defines 'period of limitation', according to which period of limitation is prescribed for any suit, appeal or application by the Schedule, and **'prescribed period' means the period of limitation computed in accordance with the provisions of this Act.** The 'suit' is defined in Section 2(l), which does not include an appeal or an application. Therefore, the prescribed period is different from the computation of prescribed period. The prescribed period is fixed period provided under the statute or in limitation Act, but how such period is to be calculated or counted is also provided in the limitation Act under Part III.

A-20. Section 3 of Part – II puts a bar of limitation for every suit



instituted, appeal preferred, and application made after the prescribed period shall be dismissed, subject to the provisions contained in Sections 4 to 24. Where the prescribed period expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the date when the Court reopens. Therefore, by virtue of Section 4, the prescribed period gets extended due to the closure of the Court. Section 5 of the Limitation Act deals with the extension of the prescribed period for appeal or any application which may be admitted after the prescribed period, if the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. In normal terms, it is called the delay in preferring the appeal or making an application, which is liable to be condoned by the Court under Section 5, if sufficient causes are shown. Under this provision, the prescribed period of limitation gets extended by the Court.

A-21. Part III of the Limitation Act deals with the Computation of the Period of Limitation. Under Section 12, in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded. As per Section 13, the period consumed in getting the leave to sue as a pauper is liable to be excluded. Under Section 14, the period during which the plaintiff has been prosecuting with due diligence another civil proceeding related to the same matter shall be excluded. Sections 15 to 21 provide various circumstances under which time consumed shall be excluded while computing the period of limitation; therefore, only under Section 5, the Court has the power to extend the period in preferring the appeal or making any application by condoning the



period of delay. But under Sections 12 to 21 of Part III, the period of limitation remains the same, but it gets paused for a certain period or eventuality therein. Section 5 applies only in case of appeal or application, whereas Part III applies in every proceeding of suit, appeal or application where the period of limitation is prescribed.

A-22. The Schedule appended to the Limitation Act prescribes the period of limitation divided into three divisions; the first division deals with the period of limitation in respect of suits; the second division prescribes the limitation for appeals; and the third division prescribes the limitation in specified cases.

A-23. Section 29(2) of the Limitation Act is reproduced below:-

"29. Savings

(1) ****

(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 in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

[Emphasis Supplied]

A-24. It is clear from the above provision that any suit filed, appeal preferred and application made under any special or local law, the provisions contained in Sections 4 to 24 (inclusive) of the Limitation Act shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law. Meaning thereby the Limitation Act applies to all the laws unless expressly excluded. The aforesaid Section 29(2) has been relied by the learned counsel for the petitioners by submitting that as per sub-section (2), the



provisions contained in Sections 4 to 24 of the Limitation Act shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law and Section 17 of the SARFAESI Act nowhere excludes the applicability of Sections 4 to 24 of the Limitation Act. Whereas learned Senior counsel for the respondent argued that Section 17(5) specifically provides a period of 45 days to apply the DRT by the aggrieved person. By virtue of Section 36 of the SARFAESI Act, the Limitation Act has been made applicable only for the secured creditor for taking all or any of the measures under sub-section (4) of Section 13, but not excluded in the Section 17(1) proceedings. Hence, we can safely hold that the provisions of the Limitation Act apply to the proceedings under section 17 of the SARFAESI Act.

A-25. Shri Kishore Shrivastava, learned Senior Counsel, has argued that by virtue of Section 35, the provisions of the SARFAESI Act shall have overriding effect over any other law including the limitation; therefore, the period of limitation prescribed in the SARFAESI Act shall prevail over the Limitation Act.

A-26. In the case of *Vishal N. Kalsaria v/s Bank of India & Others reported in AIR 2016 SC 30*, the Apex Court has held that the expression '**any other law for the time being in force**' cannot mean to extend to each and every law. It can only extend to the laws operating in the same field, hence the contention of learned senior counsel is hereby rejected.

A-27. Section 37 says that the provisions of the SARFAESI Act and the rules made thereunder shall be in addition to any other law for the time being in force, which means the law operating in the same field.



For the applicability of the Limitation Act, Section 36 is already there; therefore, Sections 35 & 37 will not affect the applicability of the Limitation Act.

A-28. As held above, the bank / financial institution / secured creditor has a choice to initiate the proceedings against the borrower/guarantor either under the RDB Act or the SARFAESI Act. The proceedings get initiated under the SARFAESI Act only at the instance of the secured creditor by taking measures under CHAPTER III. Only after taking such measures, the borrower gets an occasion to challenge the same by applying Section 17(1) before the DRT, and if such an application is filed, under Section 17(7), the DRT shall, as far as may be, dispose of the application in accordance with the provisions of the RDB Act and the rules made thereunder.

A-29. Under the RDB Act, the proceedings get initiated by filing an application under Section 19 by the financial institution for recovery of any debt from any person, for which the Limitation Act has been made applicable by virtue of Section 24. If the financial institution/bank / secured creditor initiates the proceedings under the RDB Act, then the process starts by filing an application before the Tribunal. After following the procedure prescribed under Section 19 or the rules made thereunder, the Tribunal makes an order and gives a direction, as may be necessary for recovery of the debt and after getting such an order, the recovery of the debt determined by the Tribunal is liable to be recovered under CHAPTER V by a Recovery Officer. The order passed by the Recovery Officer is liable to be challenged under Section 30 of the RDB Act by way of appeal before the Tribunal.



A-30. The aforesaid entire process from Sections 19 to 30 of the RDB Act get cut short or bypassed if the secured creditor decides to proceed by taking measures under Section 13 of the SARFAESI Act. After issuing notice under Section 13(2), the secured creditor takes possession of the secured property or takes over the management of the business with the right to sell. After realising the debt by sale of the secured assets by way of auction or other mode, the bank only needs to approach under Section 19 of the RDB Act if the debt remains. After taking action under Section 13 of the SARFAESI Act, the only remedy available to the borrower is to approach the DRT under Section 17. If the bank initiates a proceeding under the RDB Act, the borrower gets a complete opportunity to submit a written statement, counterclaim, cross suit, set off, etc., and thereafter, both parties are required to adduce evidence. But the measures taken under Section 13 of the SARFAESI Act, the borrower does not even get an opportunity to challenge these proceedings until the measures are taken under Section 13. Section 34 bars the jurisdiction of the Civil Court to grant an injunction. Therefore, in such a situation, when the bank / financial institution / secured creditor initiates the proceedings under the SARFAESI Act by taking all or any of the measures, then the borrower cannot be non-suited after 45 days if he fails to make an application under Section 17 of the SARFAESI Act.

A-31. The borrower whose entire property's possession has been taken and sold is required to travel all the way from the Principal Seat of the DRT which is established in one city of the state for filing an application. At present in the State of Madhya Pradesh, there is only one seat of the DRT at Jabalpur at present, which is vacant, and the



DRT at Allahabad has been given charge of M.P. and Chhattisgarh. Therefore, the borrower has to travel all the way from one part of the state to another part even to other state to file an application under Section 17 of the SARFAESI Act within 45 days. As we have noticed most of the time, before taking legal recourses the borrower approaches the concerned secured creditors/banks/financial institutions for settlement of the loan amount by way of OTS etc , and the bank doesn't take any decision or refers the matter to the head office, and by that time, the period of 45 days gets consumed. All these grounds can be taken in order to get the delay condoned or extension of the period of limitation. There could be various reasons, as enumerated under Sections 12 to 21 of the Limitation Act, or other which cannot be imagined at this stage (like covid-19 pandemic) for extension of the prescribed period of limitation by excluding several days within a period of 45 days of limitation. Therefore, the entire limitation Act cannot be excluded for entertaining the application under Section 17 by the DRT in the interest of justice.

A-32. Now we are required to consider the judgments relied on by the learned counsel of the parties. In the case of *Mardia Chemicals Limited (supra)*, the Apex Court has held that the appeal / application lies to the Tribunal by the borrower only after some measure has been taken under Section 13(4) of the SARFAESI Act and not before the stage of taking such measure. The jurisdiction of the Civil Court is very limited within a narrow scope and on limited grounds entertain, it entertains suits relating to the subject matter of recovery of secured assets by the secured creditors. The Apex Court has further held that the proceedings under Section 17 of the SARFAESI Act, in fact, are



not the appellate proceedings, but a proceeding like filing a suit in the Civil Court. In fact, the proceedings under Section 17 are, instead of the civil suit, the remedy of which is ordinarily available but for the bar under Section 34 of the SARFAESI Act in the present case.

A-33. In the case of *Transcore (supra)*, the Apex Court has held that the Tribunal under Section 17(1) exercises original jurisdiction by confirming the view taken in the case of *Mardia Chemicals Limited (supra)*.

A-34. In the case of *Consolidated Engineering Enterprises (supra)*, the Apex Court while dealing with the applicability of the provisions of Limitation Act in a proceedings under Section 34(4) of the Arbitration & Conciliation Act, 1996 held that proviso to Section 5 of the Limitation of Act would not be available because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions under Section 29(2) of the Limitation Act. It is also held that merely because Section 5 of the Limitation Act is not applicable, one need not conclude that provisions of Section 14 of the Limitation Act would also not be applicable because Section 14 of the Limitation Act deals with exclusion of time of proceeding *bona fide* in a Court without jurisdiction. Justice R.V. Ravindran added his one reasoning in the judgment by saying that there is no express exclusion of any provisions of Limitation to the proceedings under the Arbitration & Conciliation Act. The object of Section 29(2) of the Limitation is to ensure that the principle contained in Sections 4 to 24 of the Limitation Act applies to a suit, appeal or application filed in the Court under special or local law also even if it prescribes the period of limitation different from it prescribed under the Limitation



Act, except to the extent to express exclusion of the application of any or any of those provisions.

A-35. In the case of *M.P. Steel Corporation (supra)*, the Apex Court held that the principle of Section 14 of the Limitation Act, which is a principle based on advancing the cause of justice, would certainly apply to exclude time taken in prosecuting proceedings which are *bonafide* and with due diligence pursued on the merits of the case.

A-36. In the case of *Baleshwar Dayal Jaiswal (supra)*, the Apex Court has held that 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. It is also held that the RDDB Act and the SARFAESI Act are complementary to each other, as held by this Court in the case of *Transcore (supra)*. Paragraphs – 7, 13, 14 & 15 of *Baleshwar Dayal Jaiswal (supra)* are reproduced below:-

7. The first point for consideration is the applicability of proviso to Section 20(3) of the RDDB Act to the disposal of an appeal by the Appellate Tribunal under Section 18(2) of the SARFAESI Act. A bare perusal of the said Section 18(2) 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, we are unable to discern any 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 the 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. Principle of legislation by incorporation is well known and has been applied, inter alia, in *Ram Kirpal Bhagat v. State of Bihar* [(1969) 3 SCC 471 : 1970 SCC (Cri) 154], *Bolani Ores Ltd. v. State of Orissa* [(1974) 2 SCC 777], *Mahindra and Mahindra Ltd. v. Union of India* [(1979) 2 SCC 529] and *Onkarlal Nandlal v. State of Rajasthan* [(1985) 4 SCC 404 : 1986 SCC (Tax) 34] relied upon on behalf of the appellants. We have thus no hesitation in holding that 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.

13. The Andhra Pradesh High Court in *Sajida Begum* case [2012 SCC OnLine AP 195 : AIR 2013 AP 24] in holding the Tribunal to be court, has relied on Sections 22 and 24 of the RDDB Act. Section 22 vests powers of civil court in the Tribunal only for purposes mentioned therein, such as summoning witnesses, discovery and production of documents, receiving evidence, issuing commission for examining witnesses, etc. and deems the Tribunals to be courts for specified purposes, such as for Sections 193, 196 and 228 of the Penal Code, 1860 and Section 195 of the Criminal Procedure Code. These provisions may not be conclusive of the question of the Tribunal being court for Section 29(2) of the Limitation Act without further examining the scheme of the statutes in question. In *Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corpn.* [(2009) 8 SCC 646 : (2009) 3 SCC (Civ) 481], this Court examined the scheme of the two Acts in question and held that the Tribunal was a court but not a civil court for the purposes of Section 24 CPC. We are of the view that for the purposes of decision of these appeals, it is not necessary to decide the question whether the Tribunal under the banking statutes in question is court for purposes of Section 29(2) of the Limitation Act.

14. We have already held 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 RDDB Act and to that extent, the provisions of the Limitation Act having been expressly incorporated under the special statutes in question, Section 29(2) stands impliedly excluded. To this extent, we differ with the view taken by the Andhra



Pradesh High Court as well as the Madras and Bombay High Courts. We are also in agreement with the principle that even though Section 5 of the Limitation Act may be impliedly inapplicable, principle of Section 14 of the Limitation Act can be held to be applicable even if Section 29(2) of the Limitation Act does not apply, as laid down by this Court in *Consolidated Engg. Enterprises v. Irrigation Deptt.* [(2008) 7 SCC 169] and *M.P. Steel Corpn. v. CCE* [(2015) 7 SCC 58 : (2015) 3 SCC (Civ) 510] .

15. As a result of the above discussion, the question is answered in the affirmative by holding that delay in filing an appeal under Section 18(1) of the SARFAESI Act can be condoned by the Appellate Tribunal under proviso to Section 20(3) of the RDDB Act read with Section 18(2) of the SARFAESI Act. The contrary view taken by the Madhya Pradesh High Court in *Seth Banshidhar Kedia Rice Mills (P) Ltd.* Case [AIR 2011 MP 205] is overruled."

A-37. The Apex Court has held that even though Section 5 of the Limitation Act may be impliedly inapplicable, principle of Section 14 of the Limitation Act can be held to be applicable even if Section 29(2) of the Limitation Act does not apply, as laid down by this Court in *Baleshwar Dayal Jaiswal (supra)*, *Consolidated Engineering Enterprises (supra)*, & *M.P. Steel Corporation (supra)*.

A-38. So far as the case of *International Asset Reconstruction Company of India Limited (supra)* is concerned, the Apex Court held that delay in an appeal filed under Section 30 of the RDB Act cannot be condoned. But in the present case, we are dealing with the applicability of the Limitation Act in an appeal filed under Section 17 of the SARFAESI Act, which is the first and only remedy for the borrower to take back his property.

A-39. In the case of *Ganeshan (supra)*, the Apex Court has held that Section 29 of the Limitation Act also came up for consideration before this Court in several cases. There is another set of cases where



it was held that no provisions of the Limitation Act are to be applied even for a suit, application or an application under a special law, which is to be filed before the statutory authority and the Tribunal. The Apex Court finally concluded that the suit, appeal or application referred to in the Limitation Act are suits, appeals or applications which are to be filed in Court and not before a statutory authority, like a Commissioner under the Act of 1959. Operation of Section 29(2) of the Limitation Act is confined to the suit, appeal or application referred to in special or local law to be filed in a Court and not before the statutory authority. However, special or local law vide statutory scheme can make applicable any provision of the Limitation Act or exclude the applicability of the Limitation Act, which can be decided after looking at the scheme of particular, special or local law.

A-40. In the case of *Superintending Engineer / Dehar Power House Circle (supra)*, the Apex Court has held that the key principle for determining the applicability of provisions of the Limitation Act to a special law is to consider the scheme of each special law in detail to determine whether there is any express or implied exclusion of provisions of Limitation Act or not?

A-41. The High Court of Punjab & Haryana in the cases of *M/s Fair Style Embroidery Works (supra)* & *M/s Oswal Spinning and Weaving Mills Limited & Others v/s UCO Bank & Another (CWP No.21519 of 2018) Neutral Citation: 2018:PHHC:124488-DB* has held that the provisions of Limitation Act are available to the DRT while dealing with an application under Section 17(1) of the SARFAESI Act after the prescribed period of 45 days.



A-42. In the case of *K.V. Rao v/s B.N. Reddi reported in AIR 1969 SC 872*, the Apex Court considered the express exclusion of the Limitation Act by interpreting Section 29(2) and the same reads thus:-

"12.It is well settled that amendments to a petition in a civil proceeding and the addition of parties to such a proceeding are generally possible subject to the law of limitation. But an election petition stands on a different footing. The trial of such a petition and the powers of the court in respect thereof are all circumscribed by the Act. The Indian Limitation Act of 1963 is an Act to consolidate and amend the law of limitation of suits and other proceedings and for purposes connected therewith. The provisions of this Act will apply to all civil proceedings and some special criminal proceedings which can be taken in a court of law unless the application thereof has been excluded by any enactment : the extent of such application is governed by Section 29(2) of the Limitation Act. In our opinion however the Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act."

A-43. In the case of *Chhattisgarh SEB v/s Central Electricity Regulatory Commission reported in (2010) 5 SCC 23*, the Apex Court held as under :-

28. In *Hukumdev Narain Yadav v. Lalit Narain Mishra [(1974) 2 SCC 133]* this Court interpreted Section 29(2) of the Limitation Act in the backdrop of the plea that the provisions of that Act are not applicable to the proceedings under the Representation of the People Act, 1951. It was argued that the words "expressly excluded" appearing in Section 29(2) would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. While rejecting the argument, the three-Judge Bench observed: (SCC p. 146, para 17)

"17. ... what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the



legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.”

A-44. In the case of *Gopal Sardar v/s Karuna Sardar reported in (2004) 4 SCC 252* has again held as under:-

"9. An important departure is made in Section 29 sub-section (2) of the Limitation Act of 1963. Under the Indian Limitation Act, 1908 Section 29(2)(b) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law the application of Section 5 of the Limitation Act was specifically and in clear terms excluded, but under Section 29(2) of the present Limitation Act, Section 5 shall apply in case of special or local law to the extent to which it is not expressly excluded by such special or local law. In other words, application of Section 5 of the Limitation Act stands excluded only when it is expressly excluded by the special or local law. The emphasis of the argument by the learned counsel, who argued for the proposition that Section 5 of the Limitation Act is applicable to an application made for enforcement of rights of pre-emption under Section 8 of the Act was on the ground that the Act has not expressly excluded the application of Section 5 of the Limitation Act."

A-45. In Section 17(1) of the SARFAESI Act, there is no such expression or words like that “the Tribunal shall not entertain application beyond 45 days” or application shall be dismissed” hence, there is neither express nor implied exclusion of Limitation Act therein.

A-46. As discussed above, in order to recover the debts amount that the Banks / Financial Institutions/ secured creditors ,takes the



measures as provided under Section 13(4) of the SARFAESI Act and each measures give separate cause of action to challenge before the DRT by any person. In most cases, the borrower either files a separate SA under Section 17 of the SARFAESI Act, challenging each measure or separate amendment applications to challenge the subsequent measures in a pending S.A. as held by us (supra) that all the measures should be examined under Section 17 of the SARFAESI Act by the DRT by clubbing all the S.As. in such circumstances, hence, the delay beyond the period of 45 days either impliedly condoned or liable to be condoned to decide the validity of all the measures cumulatively by the Debt Recovery Tribunal.

CONCLUSIONS

C-1. The borrower's sole remedy lies before the Debts Recovery Tribunal (DRT) under sub-section (1) of Section 17 of the SARFAESI Act to challenge any or all the measures of the secured creditor and to seek recovery of the property from the purchaser. Consequently, if the borrower intends to protect or reclaim the property, no other Court, forum, or authority—other than the DRT—has jurisdiction in this matter. The borrower is barred from approaching the Civil Court under Section 34 of the SARFAESI Act and is also precluded from invoking the writ jurisdiction of the High Court under Article 226 of the Constitution of India, owing to the availability of an alternative statutory remedy. Therefore, the DRT remains the only competent forum available to the borrower for redressal of grievances and for restoration of the property. The provision before the DRT, at the instance of borrower or any person shall be an original proceeding, hence, provisions of Sections 4 to 24



(both inclusive) of the Limitation Act, 1963 shall apply.

C-2. In light of the above discussion, it is held that the delay in filing an application / appeal / petition under Section 17(1) of the SARFAESI Act can be condoned by the DRT by invoking the provisions of the Limitation Act, 1963

C-3. M.P. No.6432 of 2023, M.P. No.4104 of 2023 are hereby allowed and R.P. No.453 of 2024 is hereby dismissed. The impugned orders passed by the DRT in both Miscellaneous Petitions are hereby set-aside and the respective S.As. are remanded back for deciding the application filed under Section 5 of the Limitation Act afresh on merit.

(VIVEK RUSIA)
J U D G E

(BINOD KUMAR DWIVEDI)
J U D G E

Ravi