

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE VIVEK JAIN

M.P. No.5324 OF 2023

BETWEEN:-

**ANIRUDDH SINGH, S/O LATE SHRI LAXMAN
SINGH, AGED ABOUT 56 YEARS, OCCUPATION
BUSINESS, R/O H. No.746/5, RAMNAGAR, NEAR
SARSWATI SHISHU MANDIR, ADHARTAL,
JABALPUR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SACHIN JAIN & Ms. SURBHI JAIN, ADVOCATES)

AND

**AUTHORIZED OFFICER, ICICI BANK LTD.,
BRANCH OFFICE 983, SHASTRI BRIDGE BLOOM
SQUARE, NAPIER TOWN, JABALPUR
(MADHYA PRADESH)**

.....RESPONDENT

***(BY SHRI SHASHANK VERMA, MS. ADITI SHRIVASTAVA, SHRI MALIKARJUN
KHARE AND SHRI VEDANT AGRAWAL – ADVOCATES FOR RESPONDENT)***

Reserved on : 08/11/2023

Pronounced on : 03/01/2024

This petition having been heard and reserved for orders, coming on for pronouncement this day, Hon'ble Shri Justice Sheel Nagu pronounced the following :

ORDER

This petition filed under Article 227 of Constitution of India invoking supervisory jurisdiction of this Court, assails final order dated 02.09.2023 (Annexure-P/9) passed in S.A. No.806/2022 by Debt Recovery Tribunal, Jabalpur (for brevity “**DRT**”) dismissing the said SA filed u/S.17 of *the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (for brevity “**SARFAESI Act**”) for being barred by limitation, having been filed beyond the period of 45 days stipulated in Section 17(1) of SARFAESI Act.

2. Learned counsel for rival parties are heard extensively on the short question as to whether benefit of provisions of Limitation Act, in particular Section 5, are available in respect of an application preferred u/S.17(1) of the SARFAESI Act or not ?

3. The judgments of Apex Court as well as various High Courts have been cited for and against the said question.

4. Short facts giving rise to the present dispute are that petitioner on 16.09.2022 filed an application (S.A. No.806/2022) u/S.17(1) of SARFAESI Act assailing demand notice, possession notice and auction notice issued in respect of the secured assets in question.

4.1 Along with the aforesaid S.A. No.806/2022, petitioner had moved an application u/S 5 of Limitation Act seeking condonation of delay in preferring the same. Delay sought to be condoned was of 46 days.

4.2 DRT by the impugned order dismissed S.A. No.806/2022 for being time barred. It was held by DRT that an application u/S.17 is in the nature of suit and, therefore, the provisions of Section 5 of Limitation Act are inapplicable. Thus, by relying upon Apex Court's decision in the case of ***Bank of Baroda & Another Vs. M/s Parasaadilal Tursiram Sheetgrah Pvt. Ltd. and Ors.*** (C.A. No.5240/2022) judgment dated 11.08.2022, DRT declined to interfere.

5. The Apex Court in ***Bank of Baroda (supra)*** did not decide the question which is posed herein. Instead, Apex Court was required to answer the question as to whether High Court of Allahabad was correct in staying the order of DRAT which had set aside the order of DRT passed in review jurisdiction. DRT had allowed the review application on the ground that one of the Directors of the Company had expired on 18.09.2012 which was before the date of auction, without his legal representative being noticed. Relevant paragraphs 8, 9 & 14 of the said judgment in the case of ***Bank of Baroda (supra)*** are explicit about the issue therein. Relevant extracts are reproduced hereinbelow:

“8. The above referred order was challenged in review. The DRT by its order dated 08.08.2016 allowed the review on the ground that Shri Rakesh Sharma had expired before the auction had taken place and that his legal representatives were not issued notice. It is rather strange that the DRT not only entertained the Review Petition, but has allowed the same on the aforesaid ground.

9. The order in review was challenged before the DRAT, which found no difficulty in allowing the appeal on the ground that there has never been an error apparent on the face of record for exercising the review jurisdiction. It is this order of DRAT that was challenged before the High Court in

the Writ Petition filed by the Company, its Directors and also the legal representatives of the deceased Director. This very same ground was raised, that one of the Directors had expired and that his legal representatives were not given notice before the secured asset was brought to sale.

14. For the reasons stated above, we are of the opinion that the High Court was not justified in staying the operation of the order of the DRAT which came to the conclusion that there was no error apparent on the face of record for the DRT to invoke the review jurisdiction and recall its order dismissing the application under Section 17 of the Act.”

5.1 From the aforesaid, it is evident that the issue of applicability of provisions of Limitation Act to an application u/S.17 of SARFAESI Act were not under consideration of the Apex Court.

5.2 Thus, reliance placed by DRT for dismissing S.A. No.806/2022 as barred by limitation by relying upon the said decision in ***Bank of Baroda (supra)*** is misplaced.

6. For deciding the controversy in question, it is apt to reproduce Section 17 of SARFAESI Act and Section 29 of the Limitation Act, 1963, which are as under:

Section 17 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.]*

[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower, or other aggrieved person, it may by order, -

[(a) declare the recourse to any one or more measures referred to in-sub-section (4) of section 13 taken by the secured creditor as invalid and

(b) restore the possession of the secured assets or management of the secured assets to the borrower, or such other aggrieved person, who has made an application under sub-section (1) as the case may be;

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]

(4) If the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

[(4-A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; or

(b) is contrary to Section 65-A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of Section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]

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.”

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/S.13(4). This remedy is available before DRT by filing an application which is ordinarily termed as securitisation application (SA) to be filed within 45 days from the date on which any of the measures u/S.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.5 of 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 that 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.

9. This Court is bolstered in its aforesaid view by the decision of Apex Court in *Baleshwar Dayal Jaiswal vs. Bank of India and Others [(2016) 1 SCC 444]*, relevant extract of which is reproduced below:-

“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 RDDDB 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].

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 RDDDB 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.”

10. In conspectus of above discussion, it is held that benefit of the provisions from Section 4 to Section 24 (both inclusive) of Limitation Act is available to the causes raised u/S.17(1) before DRT.

11. Accordingly, this petition stands **allowed** to the following extent:

- (i) Impugned order of DRT dated 02.09.2023 passed in S.A. No.806/2022 is set aside.
- (ii) DRT is now expected to proceed to consider and decide the application for condonation of delay filed by petitioner along with S.A. No.806/2022.

(iii) Interim order passed by this Court on 14.09.2023 shall continue till the Tribunal decides the application for condonation of delay whereafter decision of the Tribunal shall prevail.

12. This Court hastens to add that no comment herein is made as regards the tenability of claim for condonation of delay in preferring S.A. No.806/2022, which is left for the Tribunal to go into.

13. No cost.

(SHEEL NAGU)
JUDGE

(VIVEK JAIN)
JUDGE