IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17999 of 2017

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Rahmatullah, Son of late Nabi Hasan, Proprietor M/S R.T. Enterprises, Resident of Mohalla- Kadamkuan, Patliputra Building, Police Station- Kadamkuan, District- Patna

... ... Petitioner/s

Versus

1. The Authorized Officer-Cum-Chief Manager, Central Bank Of India, Regional Office, B-Block, 2nd Floor, Maurya Lok Complex, Patna.
2. Branch Manager, Central Bank of India, Jhauganj Branch, Patna City, Patna.
3. Satish Kumar, Son of Sri Raghunandan Prasad, Resident of Nehru Tola, Police Station- Chowk, Post- Begumpur, District- Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. T.N. Maitin, Sr.Adv.
Mr.Md. Kamil Akhtar, Adv.
For the Bank : Mr.Ajay Kumar Sinha, Adv.
For the Respondent no.3 : Mr. Sanjeev Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 26-08-2019

Petitioner in the present case is an auction purchaser of a property which was subjected to a proceeding under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act 2002'). He is challenging the order dated 22.09.2017 passed by learned Presiding Officer, Debts Recovery Tribunal, Patna (hereinafter referred to as the 'Tribunal') in SARFAESI Application no.44 of 2017 as contained in Annexure-'7' to the writ application. By the impugned order, the learned Tribunal has been pleased to reject the preliminary objection taken

by the respondent bank that the SARFAESI application is hopelessly barred by limitation. It was contended on behalf of the bank that the limitation petition has been filed by the applicant after filing of the SARFAESI application which is contrary to the order dated 04.02.2017 passed by the Hon'ble High Court in CWJC No.15510 of 2015. The petitioner has however raised a wider issue by taking a plea that the Debts Recovery Tribunal ('DRT') while entertaining an application under Section 17(1) of the Act of 2002 has no power to condone the delay.

Brief Facts

It is the case of the petitioner before this Court that he had purchased a portion of the land of plot no.172 and portion of plot no. 169 under khata no. 570, Tauzi no.814, Thana no.12, total area 6-3/8 decimal situated at Mauza-Kumhrar, P.S.-Sultanganj, District Patna in the auction sale for consideration of Rs.21,35,000/-. The bank accepted the offer of the petitioner and directed him to deposit 25% of the bid amount after adjusting the earnest money deposit of Rs.98,000/-. The petitioner deposited Rs.4,36,000/- in cash with the respondent-bank on 28.06.2011 and thereafter he deposited balance amount of Rs.16,01,000/- through two bank drafts, thereby he deposited the entire consideration amount of Rs.21,35,000/- on time.

It is his further case that even after deposit of the entire amount when he was not getting the possession of the property, he filed CWJC No.19421/12 with a prayer to direct the bank to deliver actual physical possession over the property. By the order dated 10.12.2013 (Annexure-1) the Court fixed 13th December, 2013 for taking over possession of the property and handing it over to the bank officials. The petitioner claims to have constructed boundary wall, room etc. on the said property. It is alleged that there had been some collusion which led to filing of two SARFAESI appeals by two different persons namely Tapeshwari Devi who filed SARFAESI appeal no.13 of 2014 in which the learned tribunal has passed the order dated 05.05.2014 which is subject matter of appeal at the instance of the petitioner before the appellate tribunal at Allahabad being Appeal no.212/14 which is still pending. In appeal no.13/14 it was claimed by Tapeshwari Devi that plot no.169 belongs to her and it was wrongly mortgaged to the bank and another SARFAESI Appeal No.101/14 was filed by one Ramashish Singh on the ground that plot no.172 belongs to him and the respondent no.3 has played a fraud by mortgaging it to the bank. SARFAESI Appeal no.101/14 came to be dismissed by the learned Tribunal vide order as contained in Annexure- ‘2’ to the writ application.

The respondent no.3 came to this Court in CWJC No.15510 of 2015 stating that no notice under Section 13(2) of the SARFAESI Act, 2002 was served upon him. It is the case of the petitioner that the respondent no.3 had full knowledge of the proceeding under the SARFAESI Act, 2002 but he chose to file writ petition on 11.09.2015 after a lapse of about ten months from the date of expiry of 45 days period which is prescribed period of limitation for filing SARFAESI application under sub-section (1) of Section 17 of the SARFAESI Act, 2002. Annexure-4 dated 24.10.2014 to the writ application is an application submitted by respondent no.3 before the Certificate Officer, Patna City in Certificate Case No.117/2009-10 in which he had informed the certificate officer that the bank had sold the mortgaged land for a sum of Rs.21,00000/-, however till date he had not been informed about this fact. He had requested the certificate officer to call upon the bank to show cause as to why no information was given to him about auction sale of the property.

The writ application being CWJC No.15510 of 2015 brought by the respondent no.3 was disposed of by a learned coordinate Bench of this Court vide order dated 14.02.2017. The Hon'ble Court granted four weeks time for filing SARFAESI application before the Tribunal. It is the submission of the

petitioner that by virtue of the order passed by this Court in the writ application, the respondent no.3 filed a securitisation application within the given period but did not file any application for condonation of delay which was ultimately filed on 15.06.2017 i.e. after expiry of four weeks. A copy of the petition filed under Section 5 of the Limitation Act for condonation of delay has been brought on record as Annexure-5 to the writ application. The respondent no.3 claimed therein that for the first time he came to know about the sale of the property in the year 2014 in the certificate court and after that he had given an application for supply of details under the Right to Information Act, but he did not succeed to get any detail information. In CWJC No.19421 of 2012 filed by the purchaser the respondent no.3 was not made a party. He submitted that after all efforts he preferred writ application before the High Court vide CWJC No.15510/15 in which he had been given liberty to raise his grievance before the learned Tribunal.

In view of the order of the learned writ Court in CWJC No.15510 of 2015, the Tribunal has considered the preliminary objection and rejected the same.

Submission of the petitioner

The main argument of the petitioner is that the learned Tribunal has wrongly condoned the delay of 2080 days. Reliance has been placed on the judgment of the Hon'ble Supreme Court in

the case of **International Asset Reconstruction Company of India Ltd. Vs. Official Liquidator of Aldrich Pharmaceuticals Ltd.** reported in **AIR 2017 SC 5013** to submit that the Debts Recovery Tribunal cannot condone the delay in case of an application under Section 17 of the Act of 2002. It is submitted that Section 24 of the Act of 1993 makes the provision of the Limitation Act applicable only to an original application made by the bank under Section 19 of the Act of 1993 only.

Mr. T.N. Maitin, learned senior counsel representing the petitioner has in order to support his contentions mainly relied upon the judgment of the Hon'ble Apex Court in the case of International Asset (supra). Learned senior counsel has further submitted that Section 5 of the Limitation Act, 1963 applies only to the proceedings in "Courts" and not to the Tribunal. He has relied upon a judgment of the Apex Court in the case of Sakuru Vs. Tanaji reported in AIR 1985 SC 1279 in which by placing reliance upon the earlier judgments in the case of Town Municipal Council, Athani Vs. Presiding Officer,Labour Court, Hubli (AIR 1969 SC 1335), Nityananda M. Joshi Vs. Life Insurance Corporation of India (AIR 1970 SC 209) and Sushila Devi Vs. Ramanandan Prasad (AIR 1976 SC 177), the Hon'ble Apex Court held that the provisions of the Limitation Act, 1963 applies only to

proceedings in “Courts” and not to appeals or applications before the Bodies other than the Courts such as quasi-judicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Codes of both civil or criminal.

Mr. Maitin, learned Advocate has also relied upon a judgment of the Hon’ble Apex Court in the case of N. Balakrishnan Vs. M. Krishanmurthy reported in (1998) 7 SCC 123 to submit that the law of limitation is founded on a sound public policy, however a party who is negligent and does not approach the court of law in time cannot be permitted to seek condonation of delay. Learned senior counsel has relied upon a judgment of the Hon’ble Supreme Court in the case of The Bharat Bank Ltd., Delhi Vs. the Employees of the Bharat Bank Ltd., Delhi and the Bharat Bank Employee’s Union reported in AIR 1950 SC 188 in which after going into the functions and duties of the industrial tribunal, the Hon’ble Apex Court took a view that the Tribunal is discharging the functions very near those of a court although it is not a Court in the technical sense of the word. The Hon’ble Apex Court then examined the scope of an appeal under Article 136 of the Constitution of India arising out of an order passed by the Tribunal held in paragraph 68 of the judgment as under:-

"68. Where the direction is committed to any body or a tribunal exercising quasi-judicial functions which are not lettered by ordinary rules of law, the tribunal should in the absense of any provision to the contrary be deemed to have the final authority in the exercise of that discretion. We cannot sit in appeal over their decision and substitute our own discretion for theirs. Questions, however, may and do arise where such quasi-judicial body attempts to usurp jurisdiction which it does not possess. It may assume jurisdiction under a mistaken view of law or refuse to exercise jurisdiction properly by adoption of extraneous or irrelevant considerations; or there may be cases where in its proceedings the tribunal violates the principles of natural justice. In all such cases the most proper and adequate remedy would be by writs of certiorari or prohibition and the court having authority may direct that the decision of the body or tribunal might be brought up to be quashed for lack of jurisdiction or for mistake apparent on the face of it; and if the proceedings had not terminated at that time, a writ of prohibition may also be issued for preventing the tribunal from exceeding its jurisdiction. The issuing of such writs would not be an exercise of appellate powers which means the rehearing of the case and passing of such judgment which in the opinion of the appellate court the original tribunal should have made. The object of these writs is simply to keep the exercise of powers by these quasi-judicial tribunals within the limits of jurisdiction assigned to them by law and to restrain them from acting in excess of their authority. These principles are well-settled and require no elucidation [Rex v. Electricity Commissioners, (1924) 1 KB 171; Board of Education v. Rice, (1911) AC 179;.] . Our conclusion, therefore, is that Article 136 of the Constitution does not contemplate a determination given by the Industrial Tribunal."

Learned senior counsel has again relied upon a recent judgment of the Hon'ble Supreme Court in the case of Ganesan Rep. By its Power Agent G. Rukmani Vs. Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board and others reported in AIR 2019 SC 2343 wherein the Hon'ble Apex Court framed one of the questions for consideration in the following terms:-

"(2) Whether applicability of Section 29 (2) of the Limitation Act is with regard to different limitation prescribed for any suit, appeal or application to be filed only in a court or Section 29(2) can be pressed in service with regard to filing of a suit, appeal or application before the statutory authorities and Tribunals provided in a special or local law."

The Hon'ble Apex Court discussed the various provisions of the Limitation Act, 1963 and the judicial pronouncements on the subject. Mr. Maitin has further relied upon the judgment of the Hon'ble Supreme Court in the case of International Asset Reconstruction Company of India Ltd. (supra) to submit that Section 24 of the Act of 1993 applies the Limitation Act 1963 only to the application under Section 19 of the Act of 1993.

Learned counsel representing the Bank has supported the argument of Mr. T.N. Maitin, learned senior advocate and endorsed the same on behalf of the bank.

Submission of the Respondent No. 3

The writ application has been opposed by Mr. Sanjeev Kumar, learned counsel for respondent no.3 who has filed a counter affidavit stating inter alia that the petitioner has not moved this Court with clean hands. The learned Tribunal has passed the impugned order dated 22.09.2017 after considering the securitisation application in the light of the judgment of this Court passed on 14.02.2017 in CWJC No.15510/15. He has drawn the attention towards paragraph 8 of the judgment of this Court which reads as under:-

> *" In such view of the matter, this Court directs the present petitioner to approach the Debt Recovery Appellate Tribunal, Patna under Section 17 of the SARFAESI Act. If the petitioner approaches the Debt Recovery Appellate Tribunal, Patna, within four weeks from today, the Tribunal will be obliged to look into the claim of the petitioner and pass appropriate order in accordance with law without being influenced by the earlier orders passed by this Court. The Tribunal, while considering the Limitation Petition, will take into consideration the fact that the petitioner was not made a party in any proceeding in the past as he has submitted that he has not received any notice. It is clarified that this Court is not giving any opinion on the merit of the case."*

It is further submitted that the order passed by the learned Tribunal is an appealable order. Under Section 18 of the SARFAESI Act, 2002 the order dated 22.09.2017 which was passed in presence of the petitioner could have been challenged within a period of 30 days but instead of filing the appeal the petitioner chose to move this Court in writ application much after the expiry of the period of limitation.

It is further stated that during pendency of the present writ application the petitioner filed a Letters Patent Appeal vide LPA No.735 of 2018 on 18.05.2018 challenging the order dated 14.02.2017 passed in CWJC No.15510/15. In the said LPA the petitioner did not think it just and proper to place before the Hon'ble Division Bench that in pursuance to the order dated 14.02.2017 passed in CWJC No.15510/15 the learned Tribunal had already acted upon and condoned the delay in filing of the SARFAESI application and the order of the DRT/Tribunal has also been challenged in the present writ application. As a result of this no notice was issued to the present respondent no.3 and the order was passed in the Letters Patent Appeal disposing of the said LPA with a direction to the DRT to follow the law laid down by the Hon'ble Apex Court without being influenced by the order dated 14.02.2017 passed in CWJC No.15510/15. It is submitted that the

conduct of the petitioner in approaching this Court in the Letters Patent Appeal and then getting an observation without disclosing that the DRT had already passed the order is required to be deprecated.

It is submitted that in the case of International Asset (supra), the Hon'ble Apex Court was considering a case where an appeal had been preferred before the Tribunal against an order of the recovery officer beyond the period of limitation of 30 days. In the said context, the Hon'ble Apex Court took a view that the Tribunal had no power to condone the delay in filing of Appeal against the order of the recovery officer and further that Section 24 of the Act of 1993 would apply to the original proceeding before the Tribunal under Section 19 only. It is his submission that issue as to the applicability of the Limitation Act in condoning the delay by the Tribunal in the SARFAESI Act had arisen for consideration by the Hon'ble Apex Court in the case of International Asset (supra).

Respondent no.3 has went on to state that no demand notice dated 03.09.2008 under Section 13(2) of the Act of 2002, no possession notice under Section 13(4) and no sale notice under Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 was served upon respondent no.3 at any stage of the proceeding. It is

submitted that the petitioner has tried to show service of demand notice by annexing a postal receipt dated 13.10.2008 but that does not show service of notice rather it only shows the casual approach taken by the bank in initiating the SARFAESI action as even the date of dispatch in the postal receipt would take this Court to show that the notice dated 03.09.2008 is said to have been dispatched 40 days thereafter on 13.10.2008.

Learned counsel for the respondent no.3 has then referred to Rule 9(1) of the SARFAESI Rules and relied upon Section 60 of the Transfer of Property Act, 1882 to claim that while Rule 9(1) is mandatory in nature and it requires compliance with the principles of natural justice, the right to redemption as contained in Section 60 of the Transfer of Property Act, 1882 has not been snatched away under the SARFAESI Act of 2002 rather the provisions of the Act of 2002 fortifies and in various judgments the Hon'ble Apex Court has held this right of redemption at the stage of confirmation and registration of sale. It is stated in paragraph 13 of the counter affidavit that the petitioner is still ready to pay the bank's dues and as per his knowledge the sale certificate issued in favour of the petitioner has not been registered till date, therefore right to redemption survives.

Learned counsel representing the borrower (respondent no.3) has submitted before this Court that the present case is one of those cases in which there is a complete violation of principles of natural justice inasmuch as neither any notice under Section 13(2) nor the possession notice under Section 13(4) of the Act of 2002 and sale notice in terms of Rule 9 (1) of the Act of 2002 could be served upon the petitioner. It is his submission that the law of limitation being a procedural law as has been held in the case of Hitendra Vishnu Thakur & ors. vs. State of Maharashtra & Ors. (1994) 4 SCC 602, T. Kaliamurthi & Anr. vs. Five Gori Thaikkal Wakf & Ors. (2008) 9 SCC 306 and Thirumalai Chemicals Ltd. vs. Union of India (2011) 6 SCC 739, the provisions of the Limitation Act shall apply in respect of the applications under Section 17 of the Act of 2002. Learned counsel has submitted that sub-section (7) of Section 17 of the Act of 2002 clearly mandates that the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Act of 1993 and the Rules made thereunder. It is thus submitted that if this provision is taken care of then an application under Section 17(1) has to be disposed off in accordance with the provisions of the Act of 1993 as applicable to an application under Section 19 of the Act of 1993. It is his submission that even though

the word ‘application’ has been defined under the Act of 1993 to mean and understand an application made to a Tribunal under Section 19, by virtue of sub-section (7) of Section 17 of the Act of 2002 the provisions of the Act of 1993 and the Rules made thereunder with regard to the application under Section 19 shall equally apply to an application under Section 17(1) of the Act of 2002.

Learned counsel submits that before the Hon’ble Supreme Court in the case of International Asset Reconstruction Company of India Ltd. (supra) the provisions of the Act of 2002 had not fallen for consideration and the Hon’ble Apex Court had no occasion to consider the scope and ambit of sub-section(7) of Section 17 and other provisions of the Act of 2002. This being the position, learned counsel relies upon a judgment of the Hon’ble Apex Court in the case of Bharat Petroelum Corporation Ltd. & Anr. vs. N.R. Vairamani & Others reported in (2004) 8 SCC 579 that the judgments of the Court cannot be cited like euclid’s theorems because the slightest of change in the facts of the case would make a sea difference. It is submitted that in the case of Ganesan (supra) the fourth proposition discussed by the Hon’ble Apex Court clearly lays down that whether special or local law vide statutory scheme has made applicable any provisions of the

Limitation Act or exclude applicability of any provisions of Limitation Act can be decided only after looking into the scheme of particular special or local law. It is apparent that the provisions of the Act of 2002 lays down the applicability of the provisions of the Act of 1993 and the Rules framed thereunder for purpose of an application under sub-section(1) of Section 17 of the Act of 2002, therefore under the statutory scheme of the Act of 2002 the provision of Limitation Act as applicable to an application under Section 19 of the Act of 1993 would equally apply in respect of the application under Section 17 of the Act of 2002.

Consideration

Having heard learned counsel for the parties and on perusal of the records, this Court deems it just and proper to reproduce some of the relevant provisions of the Act of 1993 and then the Act of 2002 hereunder:-

Act of 1993

> "Section 2(b) "application" means an application made to a Tribunal under section 19."
>
> Chapter IV lays down the Procedure of Tribunals. Section 19 to Section 24 are falling under Chapter IV. Section 19 provides for "Application to the Tribunal" by a bank or financial institution to recover any debt from any person. Under sub-section(3) of Section 19 every application under sub-section(1) or sub-section(2) shall be in such form,

and shall be accompanied with true copies of all documents relied on in support of the claim along with such fee, as may be prescribed. On receipt of an application under sub-section(1) or sub-section(2), the Tribunal shall issue summons to the defendant in terms of sub-section(4) of Section 19. The defendant shall within a period of thirty days from the date of service of summons, present a written statement of his defence including claim for set-off or a counter claim. Proviso to sub-section(5) of Section 19 provides that "where the defendant fails to file the written statement within the said period of thirty days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, extend the said period by such further period not exceeding fifteen days to file the written statement of his defence". The written statement containing a claim for set-off or counter claim shall have the same effect as a plaint in a cross-suit so as to enable the Tribunal to pass a final order in respect of both the claims.

Sub-section (25) of Section 19 reads as under:-

"19(25). The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."

Section 20 provides for an appeal to the appellate tribunal. Under sub-section (3) of Section 20 every appeal under sub-section(1) shall be filed within a period of thirty days from the date on which a copy of the order made, or deemed to have been

made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed. Proviso to sub-section(3) states that "Appellate Tribunal may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period."

Section 22 provides the procedure and powers of the Tribunal and the Appellate Tribunal stating that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings. The Tribunal and the Appellate Tribunal have been conferred with the power vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the matters enumerated under clause(a) to (h) of sub-section (2) of Section 22.

Section 24 reads as under:-

"24. Limitation.- The provisions of the Limitation Act, 1963, shall, as far as may be, apply to a application made to a Tribunal.

The Central Government has in exercise of its power conferred by sub-sections(1) and (2) of Section 36 of the Act of 1993 framed rules called "Debts Recovery Tribunal (Procedure) Rules, 1993 (hereinafter referred to as the 'Rules of 1993'). Under

the definition clause of the Rules of 1993 the two words "applicant" and "application" are defined as under:-

> "applicant means a person making an application under section 19 or under section 31-A and also includes an "applicant" who files an appeal under section 30(1) of the Act.
>
> application means an application filed under section 19 or under section 31-A and includes an "appeal" filed under section 30(1) of the Act."

The rules provide for procedure for filing application, presentation and scrutiny of the application, application fee and documents to be accompanied with the application under section 19 or section 31-A.

The Act of 2002 has been amended by Insolvency and Bankruptcy Code, 2016 (31 of 2016). Chapter III deals with Enforcement of Security Interest. It starts with Section 13. Under sub-section (2) of Section 13 where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of

notice failing which the secured creditor shall be entitled to exercise all or any other rights under sub-section(4). Once the secured creditor exercises its right under sub-section (4) of Section 13 by taking any one of the measures enumerated therein, the borrower gets a cause of action to raise his objection by filing a securitisation application in terms of sub-section (1) of Section 17 of the Act of 2002. Section 17(1) and (1-A) are quoted hereunder for a ready reference:-

> "17(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, 1[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 this sub-section.
> [(1-A) 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) where the secured asset is located; or
> (c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

Sub-section (7) of Section 17 reads as under:-

> "17 (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."

Sections 35, 36 and 37 of the Act of 2002 are quoted hereunder for a ready reference:-

> "35. **The provisions of this Act to override other laws**.- The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.
>
> 36. **Limitation**.- 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, 1963 (36 of 1963).
>
> 37. **Application of other laws not barred**.- The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."

From a bare reading of the aforesaid provisions of the two special statutes having similar kind of aims and objects, it would appear that both the statutes are complimentary to each other. The Act of 2002 shall by virtue of Section 35 take effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. There would be no doubt that the Act of 1993 being a law operating in the same field, the word and expression 'any other law' shall take within its fold the Act of 1993.

Section 36 creates an embargo at the right of secured creditor 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. To this Court therefore it appears that Section 36 may be invoked by a borrower while raising his objection against the action taken by the secured creditor in terms of sub-section(4) of Section 13 of the Act of 2002. Section 37 makes it clear that the provisions of the Act of 2002 or the rules made thereunder shall be in addition to, and not in derogation of interalia the Act of 1993 or any other law for the time being in force.

The bone of contention is as to whether a reading of sub-section (7) of Section 17 of the Act of 2002 together with Section

24 of the Act of 1993 may be construed in a manner so as to hold and declare that the provisions of the Limitation Act, 1963 as applicable to an application under Section 19 of the Act of 1993 would equally apply to an application filed before the Debts Recovery Tribunal in terms of sub-section(1) of Section 17 of the Act of 2002.

Judgment of Hon'ble Apex Court

Learned counsel for the petitioner has relied upon a judgment of the Hon'ble Apex Court in the case of International Asset Reconstruction Company of India Ltd. (supra). In the said case the Hon'ble Supreme Court was considering a question of law as to whether Section 5 of the Limitation Act, 1963 can be invoked to condone the prescribed period of 30 days, under Section 30(1) of the Act of 1993, for preferring an appeal before the Tribunal against an order of the Recovery Officer.

The Hon'ble Apex Court went through the various provisions of the Act of 1993, referred the judgments of the Hon'ble Supreme Court in the case of Sakuru Vs. Tanaji (1985) 3 SCC 590: (AIR 1985 SC 1279) and after noticing Section 2(b) of the Act of 1993 which defined the word "application" and Section 30 of the said Act held in paragraph 13 and 14 as under:-

> "13. A comparative study of Section 30, pre and post-amendment in the year 2000, reveals that the deemed status of proceedings before the Recovery Officer, as a Tribunal, stands denuded. Had the proceedings before

the Recovery Officer deemed to be before a Tribunal, entirely different considerations may have arisen**.**

Old Section 30 before the 2000 Amendment	*Section 30 after the 2000 Amendment*
"**30. *Orders of Recovery Officer to be deemed as order of Tribunal***.—Notwithstanding anything contained in Section 29, an order made by the Recovery Officer in exercise of his powers under Sections 25 to 28 (both inclusive), shall be deemed to have been made by the Tribunal and an appeal against such orders shall lie to the Appellate Tribunal."	"**30. *Appeal against the order of Recovery Officer***.—(1) Notwithstanding anything contained in Section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal. (2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under Sections 25 to 28 (both inclusive)."

14. The RDB Act is a special law. The proceedings are before a statutory Tribunal. The scheme of the Act manifestly provides that 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 proceedings before the Recovery Officer are not before a Tribunal. Section 24 is limited in its application to proceedings before the Tribunal originating under Section 19 only. The exclusion of any provision for extension of time by the Tribunal in preferring an appeal under Section 30 of the Act makes it manifest that the legislative intent for exclusion was express. The application of Section 5 of the Limitation Act by resort to Section 29(2) of the Limitation Act, 1963 therefore does not arise. 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."

Recently once again the Hon'ble Apex Court had occasion in the case of Ganeshan Rep. By its Power Agent G. Rukmani Ganesan Vs. Commissioner, Tamil Nadu Hindu

Religious and Charitable Endowments Board and others (AIR 2019 SC 2343) to consider the following questions:-

> "1) Whether The Commissioner while hearing the appeal under Section 69 of Act, 1959, is a Court?
> 2) Whether applicability of Section 29(2) of Limitation Act is with regard to different limitation prescribed for any suit, appeal or application to be filed only in a Court or Section 29(2) can be pressed in service with regard to filing of a suit, appeal or application before statutory authorities and tribunals provided in Special or Local Laws?
> 3) Whether the Commissioner while hearing the appeal under Section 69 of the Act 1959 is entitled to condone a delay in filing an appeal applying the provisions of Section 5 of the Limitation Act, 1963?
> 4) Whether the statutory scheme of Act 1959 indicate that Section 5 of Limitation Act is applicable to proceedings before its authorities?"

The Hon'ble Apex Court extensively dealt with the previous case laws on the subject wherein it has been held that the provisions of the Limitation Act, is to be applied even for suit, appeal or application under special/local law which is to be filed before the statutory authorities and tribunal. The Hon'ble Supreme Court then noticed the judgment in the case of Town Municipal Council, Athani Vs. Presiding Officer, Labour Courts, Hubli (1969) 1 SCC 873: (AIR 1969 SC 1335), Nityananda M. Joshi and others Vs. Life Insurance Corporation of India and others (1965) 2 SCC 199: (AIR 1970 SC 209), The Commissioner of Sales Tax Act, 1948, U.P. Lucknow Vs. M/s Parson Tools and Plants, Kanpur

(1975) 4 SCC 22: (AIR 1975 SC 1039), The Kerala State Electricity Board, Trivandrum V. T.P. Kunhaliumma (1976) 4 SCC 634: (AIR 1977 SC 282), Sakuru V. Tanaji (supra), Officer on Special Duty (Land Acquisition) and another V. Shah Manilal Chandulal and others (1996) 9 SCC 414: (1996 AIR SCW 941), Consolidated Engineering Enterprises V. Principal Secretary, Irrigation Department and others (2008) 7 SCC 169. These are the judgments in which the Hon'ble Supreme Court opined that Section 3 and 29(2) of the Limitation Act will not apply to proceedings before the tribunal, to appeals or applications before the tribunals, unless expressly provided. The Hon'ble Supreme Court then said that the most elaborate judgment holding that the Limitation Act applies only to courts and not to the tribunals is the judgment of this Court in M.P. Steel Corporation v. Commissioner of Central Excise, 2015(7) SCC 58 which reviewed all earlier judgments of two-Judge and three-Judge Benches of this Court and held in paragraph 39 as under:-

> "39. The most elaborate judgment holding that the Limitation Act applies only to courts and not to the tribunals is the judgment of this Court in *M.P. Steel Corpn.* v. *CCE* [*M.P. Steel Corpn.* v. *CCE*, (2015) 7 SCC 58 : (2015) 3 SCC (Civ) 510] . Rohinton Fali Nariman, J. speaking for the Court reviewed all the earlier judgments of two-Judge and three-Judge Benches of this Court. In paras 11 to 35 all the earlier judgments have been considered. In the above case, the Commissioner of Customs (Appeals) dismissed the appeal filed by the

appellant on the ground that the appeal is barred by time and the Commissioner (Appeals) had no power to condone the delay beyond the period specified in Section 128 of the Customs Act. In the above case, benefit of Section 14 of the Limitation Act was sought. It was contended before this Court that while Section 2 of the Limitation Act, Section 14 of the Limitation Act was also applied to criminal, special or local law. This Court noticed the ingredients of applicability of Section 14. The two-Judge Bench has held relying on earlier judgments of this Court that provisions of the Limitation Act are applicable only to suits, appeals and applications filed in courts. Section 29(2) was also considered by this Court and the following was laid down in para 33:

> "*33*. … Section 29(2) states:
>
> '**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 insofar as, and to the extent to which, they are not expressly excluded by such special or local law.'
>
> A bare reading of this section would show that the special or local law described therein should prescribe for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule. This would necessarily mean that such special or local law would have to lay down that the suit, appeal or application to be instituted under it should be a suit, appeal or application of the nature described in the Schedule. We have already held that such suits, appeals or applications as are referred to in the Schedule are only to courts and not to quasi-judicial bodies or tribunals. It is clear, therefore, that only when a suit, appeal or application of the description in the Schedule is to be filed in a court under a special or local law that the provision gets

> attracted. This is made even clearer by a reading of Section 29(3). Section 29(3) states:
>
> '**29. *Savings***.—(1)-(2)***
>
> (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.'
>
> When it comes to the law of marriage and divorce, the section speaks not only of suits but other proceedings as well. Such proceedings may be proceedings which are neither appeals nor applications thus making it clear that the laws relating to marriage and divorce, unlike the law of limitation, may contain proceedings other than suits, appeals or applications filed in courts. This again is an important pointer to the fact that the entirety of the Limitation Act including Section 29(2) would apply only to the three kinds of proceedings mentioned all of which are to be filed in courts."

The Hon'ble Apex Court thereafter found that in one set of cases, a three-judge Bench in the case of Commissioner of Sales Tax, U.P. V. M/s. Madan Lal Das & Sons, Bareilly, (1976) 4 SCC 464 held that Section 12(2) of the Limitation Act can be relied upon in computing the period of limitation prescribed for filing the revision. The Hon'ble Apex Court in Ganeshan case found that the revisional authority under the U.P. Sales Tax Act, 1948 was not a 'Court' and the earlier three-judge Bench judgment of the Apex Court in the case of M/s Parson Tools and Plants was not brought to the notice of the Hon'ble Bench of the Apex Court considering the case of M/s Madan Lal Das (supra). For this reason in the case

of Ganesan the Hon'ble Apex Court followed the earlier three-Judge Bench Judgment rendered in the case of M/s Parson Tools and Plants (supra). The Hon'ble Apex Court held that the judgment of the Hon'ble Apex Court in the case of Mukri Gopalan vs. Cheppilat Puthanpurayil Aboobacker (1995) 5 SCC 5 :(AIR 1995 SC 2272) was out of step with at least five earlier binding judgments of the Court and it was not even square with the subsequent judgment in the case of Consolidated Engineering Enterprises (supra). The Hon'ble Apex Court held that Parson Tools is an authority for the proposition that the Limitation Act will not apply to quasi-judicial bodies or tribunals and to that extent Mukri Gopalan was in conflict with the judgment of the Hon'ble Apex Court in the case of Consolidated Engineering Enterprises and is no longer a good law. Having dealt with all the previous case laws, in the Ganesan's case the Hon'ble Supreme Court laid down the ratio of the judgment of the three-Judge Bench as under:-

> "54. The ratio which can be culled from above noted judgments, especially judgment of three-Judge Benches, as noted above, is as follows:
>
> (1) The suits, appeals and applications referred to in the Limitation Act, 1963 are suits, appeals and applications which are to be filed in a Court.
>
> (2) The suits, appeals and applications referred to in the Limitation Act are not the suits, appeals and applications which are to be filed

before a statutory authority like Commissioner under Act, 1959.

(3) Operation of Section 29(2) of the Limitation Act is confined to the suits, appeals and applications referred to in a special or local law to be filed in Court and not before statutory authorities like Commissioner under Act, 1959.

(4) **However, special or local law vide statutory scheme can make applicable any provision of the Limitation Act or exclude applicability of any provision of Limitation Act which can be decided only after looking into the scheme of particular, special or local law.**

55. We, thus, answer question nos.2 and 3 in the following manner:

(i) The applicability of Section 29(2) of the Limitation Act is with regard to different limitations prescribed for any suit, appeal or application when to be filed in a Court.

(ii) Section 29(2) cannot be pressed in service with regard to filing of suits, appeals and applications before the statutory authorities and tribunals provided in a special or local law. The Commissioner while hearing of the appeal under Section 69 of the Act, 1959 is not entitled to condone the delay in filing appeal, since, provision of Section 5 shall not be attracted by strength of Section 29(2) of the Act.

Question No.4

56. A special or local law can very well provide for applicability of any provision of Limitation Act or exclude applicability of any provision of Limitation Act. The provisions of Limitation Act including Section 5 can very well be applied in deciding an appeal by statutory authority which is not a Court by the statutory scheme of special or local law. We, thus, need to notice the provisions of the Act, 1959 as to whether the scheme under Act, 1959 shows that enactment intended to apply Section 5 of the Limitation Act."

In view of the discussions made hereinabove, this Court would come to a conclusion that the Debts Recovery Tribunal admittedly being a 'tribunal' and not a 'court' the provisions of the Limitation Act, 1963 cannot be applied to it by virtue of sub-section(2) of Section 29 of the said Act unless special statute provides for applicability of the same under the statutory scheme. Thus the present case is to be decided by considering the statutory scheme of the Act of 1993 and that of the Act of 2002.

Judgment of the Hon'ble High Courts in India

The Hon'ble Division Bench of the Punjab and Haryana High Court had occasion to review the case laws of the different High Courts on the point as to whether the Debts Recovery Tribunal has power to condone the delay in filing of the application under Section 17 of the Act of 2002. Hon'ble Mr. Justice Hemant Gupta (as His Lordship then was) in the case of Surinder Mahajan Vs. Debts Recovery Appellate Tribunal & Others in C.W.P.No.22567 of 2011 (O&M) and Sat Narain Sharma Vs. Union of India & others decided on 05.04.2013 went through the judgments of the Hon'ble Division Bench of Bombay High Court in UCO Bank Vs. Kanji Manji Kothari 2008 (3) Bankers' Journal 438 (Bombay) wherein the following views were taken:-

> In UCO Bank's case (supra), a Division Bench of Bombay High Court considered the question as to what extent the Limitation Act is

applicable to the proceedings under Section 17 of the Act. The Court held that Legislature has not excluded the application of the Limitation Act to the applications made by the borrower or the aggrieved persons under Section 17 of the Act. It was held as under:

71. Therefore, the Legislature has made two different provisions for the borrower and the secured creditor so far as period of limitation is concerned. On a proper reading of the NPA Act and the DRT Act, we are unable to come to a conclusion that this indicates that the legislature has consciously excluded the application of the Limitation Act to applications made by the borrower or the aggrieved person under section 17 of the NPA Act.

xxx xxx xxx

73. Section 17(7) states that the DRT shall, as far as may be, dispose of the applications in accordance with the DRT Act and the Rules made thereunder. Under section 22 of the DRT Act, the DRT is not bound by the procedure laid down by the Civil Procedure Code, but shall be guided by the principles of natural justice and shall have power to regulate its own procedure. Under the said section, Debts Recovery Tribunal, Maharashtra & Goa Regulations of Practice, 2003 have been enacted. Under Regulation 3(7), “interlocutory application” inter alia means application for condonation of delay.

74. Section 24 of the DRT Act states that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to an application made to a Tribunal. In Transcore's Vs. Union of India AIR 2007 SC 712, the Supreme Court has, after considering the statement of objects and reasons of the NPA Act, the scheme of the NPA Act and the nature of its provisions, held that the enactment of NPA Act is not in derogation of the DRT Act. Their object is recovery of debts by nonadjudicatory process and they provide cumulative remedies to the secured creditor. In fact, section 37 of the NPA Act states that the provisions of the NPA Act shall be in addition to and not inderogation to the DRT Act. If we examine the relevant provisions of the NPA Act

> and the observations of the Supreme Court in Transcore's case (supra), the conclusion is irresistible that section 5 of the Limitation Act is applicable to the NPA Act. There is no express exclusion of the Limitation Act. So far as borrower's applications under section 17(1) are concerned, a different period of limitation is prescribed. Hence, on a bare reading of section 29 (2), section 5 of the Limitation Act would be applicable to them. So far as the secured creditor is concerned, he can take measures under section 13(4) within the period prescribed under the Limitation Act. Though section 35 gives overriding effect to the NPA Act, section 37 states that application of other laws is not barred and the NPA Act is in addition to DRT Act and not in derogation thereof. It is important to note that under section 17(7), the DRT has to dispose of the applications in accordance with the DRT Act and the rules made thereunder and section 24 of the DRT Act makes provisions of the Limitation Act applicable to the application before the DRT. Since after considering the scheme, provisions and object of the NPA Act, the NPA Act and the DRT Act are held complementary to each other by the Supreme Court in Transcore's case (supra)….”

Again in the case of Punnusamy & another Vs. the Debts Recovery Tribunal 2009 (3) Bankers’ Journal 401 (Madras) the views expressed by the learned single Judge of the Madras High Court has been quoted and the same reads as under:-

> “36. Therefore, it is clear that Section 5 would apply even to some types of applications, though it may not apply to suits. The proceedings before the D.R.T. under Section 17 of SRFAESI Act, though original in nature, should be treated as applications and not strictly like suits. Therefore, the provisions of Section 5 of the Limitation Act, in my considered view, would apply to applications under Section 17 of SRFAESI Act.

> But the same logic cannot be extended to applications filed under Section 19 of RDDBFI Act, 1993, since Section 24 of RDDBFI Act, 1993 makes the provisions of the Limitation Act, 1963 applicable to an application under the Act, meaning thereby that an application under Section 19 of RDDBFI Act, 1993 is to be treated as a suit."

Similarly, the Hon'ble Division Bench took note of the Division Bench judgment of the Andhra Pradesh High Court in Writ Petition No.22317 of 2012 (Sajida Begum Vs. State Bank of India & others) decided on 04.09.2012 which held as under:-

> "12. In view of that, we are of the view that Section 29(2) of the Limitation Act is clearly attracted and thereby Sections 4 to 24 (inclusive) of the Limitation Act would be applicable to proceedings under Sections 17 and 18 of the SARFAESI Act before the DRT as well as DRAT. Consequently, therefore, the order impugned passed by the DRAT rejecting the petitioner's application for condonation of delay for want of jurisdiction is liable to be set aside."

The Hon'ble Division Bench then referred the learned Single Judge judgment of the Allahabad High Court in the case of State Bank of Patiala Vs. Chairperson, Debt Recovery Appellate Tribunal, Allahand and others (AIR 2012 Allahabad 1) in which the UCO Bank's judgment of the Hon'ble Bombay High Court has been relied upon.

The another learned single Judge judgment of the Gujarat High Court in the case of Chairperson, Debts Recovery

Appellate Tribunal has been taken note of and the observations made thereunder have been quoted as under:-

> "As observed earlier, even if the contention of the learned counsel is considered and accepted that it is a Tribunal and not the Court as per the view taken by the Apex Court in the case of Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Sanghai Banking Corporation 2009 (8) SCC 646, then also in view of the observations made hereinabove, it cannot be accepted that Section 5 of the Limitation Act would not apply to the proceedings under Section 17 of the Securitisation Act before the Debt Recovery Tribunal. The reliance upon the decision of the Apex Court in the case of Consolidated Engineering Enterprises Vs. principal Secretary, Irrigation Department 2008 (7) SCC 169 is ill-founded inasmuch the observations off the Apex Court are to be considered and applied to the facts of that case. If such observation are considered, what is being held by the Apex Court that if there is express period prescribed in the special law, such would apply and not the prescription as provided under the Limitation Act, but the same cannot be read in absolute so as to excluded the applicability of other provisions of the Limitation Act which may apply, more particularly in view of the no express bar provided under the special law. Therefore, such a decision is of no help to the learned counsel for the petitioner."

The Hon'ble Division Bench then found that only judgment which takes a different view is that of Hon'ble Kolkata High Court in the case of Akshat Commercial Pvt. Ltd's case.

> "22. On the same analogy, the proceedings under Section 17(1) should also be

> treated as a suit and thus, Section 5 of the Limitation Act at least does not apply to such proceedings although other relevant provisions of the said Act may apply.
>
> 23. So far as the Division Bench decision of the Bombay High Court in the case of Uco Bank Vs. M/s Kanji Manji Kothari & Co. & others reported in 2008 (1) Bank CLR 773 is concerned, which was strongly relied upon by Mr. Chatterjee, the learned senior advocate appearing on behalf of the writ petitioner, we find that the Division Bench in the said case did not take note of the aforesaid decision of the Supreme Court in the case of Gopal Sardar Vs. Karuna Sardar (2004) 4 SCC 252 as also the point as to whether a proceeding under Section 17(1) of the SARFAESI Act should be treated to be suit for the purpose of application of 21 Section 5 of the Limitation Act. Therefore, the said decision cannot be relied as a precedent in the facts of the present case."

The Hon'ble Division Bench then looked into the judgment of the Apex Court in the case of Mardia Chemicals Ltd. & Others Vs. Union of India Others (2004) 4 SCC 311 wherein the Hon'ble Supreme Court observed that the proceedings under Section 17 of the Act of 2002 are not appellate proceedings. It is in fact initial action which is brought before a forum as prescribed under the Act, raising grievance against the action and measures taken by one of the parties to the contract. It was held that it is stage of initial proceeding like filing a suit in civil court. The same is quoted hereunder for a ready reference:-

> "We may like to observe that proceedings under Section 17 of the Act, in fact, are not appellate proceedings. It seems to be a misnomer. In fact it is the initial action which is brought before a forum as prescribed under the Act, raising grievance against the action or measures taken by one of the parties to the contract. It is the stage of initial proceeding like filing a suit in civil court. As a matter of fact proceedings under Section 17 of the Act are in lieu of a civil suit which remedy is ordinarily available but for the bar under Section 34 of the Act in the present case."

Thereafter the Hon'ble Division Bench relied upon the judgment of the Hon'ble Apex Court in the case of Hitendra Vishnu Thakur Vs. State of Maharashtra (1994) 4 SCC 602, T. Kalimurthi Vs. Five Gori Thaikkal Wakf (2008) 9 SCC 306 and Thirumalai Chemicals Limited Vs. Union of India (2011) 6 SCC 379 to reiterate that the law relating to forum and limitation is procedural in nature and the law of limitation being a procedural law is retrospective in operation and will apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter. The Hon'ble Division Bench in its concluding paragraph held as under:-

> "In the present set of cases, the right given to the secured creditor under the Act is not a complete code. The right given to the secured creditor under the Act is in addition to the rights conferred on the secured creditor in terms of Section 37 of the Act. Such right is in addition to many statutes including the 1993 Act. In fact, Section 17(7) and 18(2) of the Act, prescribes the

procedure before the Tribunal as that under the 1993 Act. The Limitation Act is extended to the proceedings under the said Act, while treating an application to be filed under Section 19 of the said Act as a suit. Therefore, the inference that the limitation Act stands excluded in respect of the proceedings under the Act is not permissible to be drawn.

Therefore, in the absence of any provision under the Act excluding the applicability of the Limitation Act to the proceedings before the Debt Recovery Tribunal under Section 17 or before the Debt Recovery Appellate Tribunal under Section 18 of the Act, an application for condonation of delay would be maintainable before the Tribunal and the Appellate Tribunal. Therefore, we respectfully agree with the view of the Andhra Pradesh and Bombay High Court and unable to agree with the view expressed by Calcutta High Court.

In view of the above, we hold that:

(i) The remedy provided to any person including a borrower under Section 17 of the Act is in response to the actions and measures taken by the secured creditor through an application which is in the nature of objections to the action taken by the secured creditor.

(ii) The provisions of Sections 4 to 24 of the Limitation Act are applicable to the proceedings to be initiated by any person aggrieved including a borrower before the Debt Recovery Tribunal under Section 17 of the Act.

(iii) The provisions of Sections 4 to 24 of the Limitation Act are applicable to an appeal to be preferred against an order passed by the Debt Recovery Tribunal before the Debt Recovery Appellate Tribunal under Section 18 of the Act.

(iv) Whether sufficient cause is disclosed to seek condonation of delay, is a question of fact to be determined by the Debt Recovery Tribunal and/or the Debt Recovery Appellate Tribunal in the facts of each case.

In the light of the findings above, the order dated 23.09.2011 passed by the Debts Recovery Appellate Tribunal in CWP No.22567 of

> 2011 is set aside and the matter is remitted back to the Appellate Tribunal to decide the appeal on merits. The orders dated 31.05.2011 and 19.09.2011 in CWP No.17894 of 2011 are also set aside and the matter is remitted to the Debt Recovery Tribunal to decide the application for condonation of delay afresh on merits in accordance with the observations made hereinbefore."

Having discussed the aforesaid judgments of the Hon'ble Apex Court and that of the Hon'ble Division Bench of the Punjab and Haryana High Court dealing with all previous case laws on the subject laying down the views expressed by the different High Courts, this Court is of the considered opinion that by virtue of sub-section (7) of Section 17 of the Act of 2002 an application under Section 17(1) has to be disposed off in accordance with the provisions of the Act of 1993 and the rules made thereunder. The procedures for dealing with an application under the Act of 1993 are provided under Chapter IV with the heading of the Chapter as "Procedures of Tribunals". Section 19 to Section 24 of the Act of 1993 are falling under Chapter IV of the Act of 1993. By virtue of Section 24 the provisions of the Limitation Act, 1963 have been made applicable to an application made to a tribunal. The word "application" has been defined under Section 2(b) to mean and understand an application under Section 19. The meaning of the word application as envisaged under

Section 2(b) of the Act of 1993 is not an issue and the only thing which this Court is required to consider is as to whether the same procedures which are applicable to an application under Section 19 read with Section 2(b) of the Act of 1993 will be applicable in respect of an application under Section 17 (1)of the Act of 2002. By virtue of sub-section (7) of Section 17 there would be no difficulty in answering this issue because it is crystal clear that the entire provisions right from Section 19 to Section 24 of the Act of 1993 would as far as may be applicable in respect of an application under sub-section (1) of Section 17 of the Act of 2002. Any departure from this position will render sub-section(7) of Section 17 of the Act of 2002 redundant in the eye of law.

To this court it appears that the view taken by Hon'ble Division Bench that an application under Section 17(1) of the Act of 2002 is in the nature of objections to the action taken by the Bank is required to be followed.

It is well settled rule of interpretation of Statute that a provision of law should be given it's literal meaning unless the same gives rise to an absurdity. This Court finds no absurdity in giving effect to sub-section(7) of Section 17 of the Act of 2002 by taking a view that it adopts the procedure prescribed under the Act of 1993 for disposal of an application under Section 17(1) in the

same way as those provisions of the Act of 1993 apply to the application under Section 19 of the said Act. Even a purposive interpretation would lead this Court to the same conclusion. Section 35 of the Act of 2002 makes it clear that provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. This Court takes a view that a reading of Section 17 with various sub-sections and scheme of the Act of 2002 and that of Sections 19 to 24 of the Act of 1993 would lead to a conclusion that there is no inconsistency in the provisions of the Act of 2002 and the Act of 1993 rather inconsistency would arise if a view is taken otherwise saying that the provision of Section 24 of the Act of 1993 would not apply in respect of an application under Section 17(1) of the Act of 2002. This Court say so because while providing for a specific period of limitation for filing an application under Section 17(1) of the Act of 2002 the legislatures did not expressly exclude the applicability of the Limitation Act rather knowing fully well that Section 24 of the Act of 1993 provides for applicability of the Limitation Act in relation to an application under the said Act went on to legislate that the Debts Recovery Tribunal shall as far as may be dispose off application in accordance with the provisions of the Act of 1993. The real import of sub-section(7) of Section 17 of the

Act of 2002 is thus in favour of the applicability of the Limitation Act being a procedural law by virtue of Section 24 of the Act of 1993 falling under Chapter IV of the said Act.

Now this court would proceed to consider the impugned order whereby the learned Presiding Officer, Debts Recovery Tribunal, Patna has allowed the application preferred by respondent no.3 and has condoned the delay. The reasoning and rationale provided in the impugned order for condonation of delay are recorded as under:

> "8. The present SARFAESI application has been filed by the applicant on 6.3.2017, in compliance of the judgment dated 14.02.2017, passed by the Hon'ble High Court of Patna in CWJC No. 15510 if 2015 and he directions of the Hon'ble High Court of Patna reads as under-
>
> > "In such view of the matter, this court directs the present petitioner to approach the Debt Recovery Appellate Tribunal, Patna under Section 17 of the SARFAESI Act. If the petitioner approaches the Debt Recovery Appellate Tribunal, Patna, within four weeks from today, the Tribunal will be obliged to look into the claim of the petitioner and pass appropriate order in accordance with law without being influenced by the earlier orders passed by this Court. The Tribunal, while considering the Limitation Petition, will take into consideration the fact that the petitioner was not made a party in any proceeding in the past as he has submitted that he has not received any notice. It is clarified that this Court is not giving any opinion on the merit of the case."
>
> 9. During the course of arguments, ld. Counsel of auction purchaser has objected that the applicant was well aware

about the SARFAESI Action since 24.10.2014, however, the letter dated 24.10.2014 has already been considered by the Hon'ble High Court of Patna in the said writ and thereafter, the direction was given to hear the matter on merit, the applicant has filed the SARFAESI application on 6.3.2017, which is within four weeks from the judgment dated 14.02.2017, as directed by Hon'ble High Court of Patna.

10. In that view of the matter and having regard to the judgments of Hon'ble High Court of Patna, as cited by ld. Counsel of applicant, the delay, if any, in filing the SA is condoned."

It appears that the Debts Recovery Tribunal was of the view that once the Hon'ble High Court passed an order in the writ application after considering the letter dated 24.10.2014 and a direction has been issued to the Tribunal to hear the matter on merit and that the applicant had filed the SARFAESI application within four weeks from the date of the judgment and order of the Hon'ble High Court, the delay is to be condoned regard being had to the judgment of the Hon'ble High Court. The judgment of the High Court in the writ petition is available on the record. The relevant part of the judgment of the Hon'ble High Court in C.W.J.C. No. 15510 of 2015 may be found in paragraph '8' of the judgment which reads as under: -

"8. In such view of the matter, this Court directs the present petitioner to approach the Debt Recovery Appellate Tribunal, Patna under Section 17 of the SARFAESI Act. If the petitioner approaches the Debt Recovery Appellate

> Tribunal, Patna, within four weeks from today, the Tribunal will be obliged to look into the claim of the petitioner and pass appropriate order in accordance with law without being influenced by the earlier orders passed by this Court. The Tribunal, while considering the Limitation Petition, will take into consideration the fact that the petitioner was not made a party in any proceeding in the past as he has submitted that he has not received any notice. It is clarified that this Court is not giving any opinion on the merit of the case."

In it's judgment, the learned writ court had noticed that the auction purchaser (the present petitioner) had approached this court for handing over the property by filing CWJC No. 19421/2012 in which the present respondent no. 3 was not impleaded, therefore, an observation has been given in paragraph '4' of the judgment that the order passed by the writ court in CWJC No. 19421/2012 cannot be said to have the binding effect.

As regards the plea of the present respondent no. 3 that he had not received any notice under Section 13(2) of the Act of 2002, it is apparent that the Hon'ble Writ Court has not recorded any finding and only observation that has been made is "If that be so, the entire proceeding will vitiate." To this Court, it appears that while considering the limitation petition the Tribunal had to take into consideration these submissions, but because the Hon'ble High Court had not given any finding or opinion on the merit of the plea, therefore, the Tribunal is not correct in giving observation in paragraph '9' of the impugned order passed in SA No. 44/2017 that letter dated 24.10.2014 had already been considered by the Hon'ble High Court, and thereafter the direction was

given to hear the matter on merit. It appears that the Tribunal has not considered the limitation petition independently keeping in view the direction on it's own merit.

Since the impugned order lacks an independent consideration it is liable to be set aside and is accordingly set aside. The matter is remitted to the Presiding Officer, Debts Recovery Tribunal, Patna for a fresh consideration of the limitation petition keeping in view the observation of this court in CWJC No. 15510/2015.

The plea of the petitioner with reference to the order dated 12.07.2018 passed in LPA No. 735/2018 is concerned, this Court finds that in LPA No. 735/2018 the Hon'ble Division Bench (to which I was a member) has only taken note of the submissions of the petitioner-appellant and observed that the Tribunal is bound to follow the law laid down by the Hon'ble Supreme Court and without being influenced by the impugned direction of the writ court to decide the limitation etc. shall proceed to decide the question of limitation in accordance with law. By the date L.P.A. was filed and heard, the Tribunal had already disposed of the Limitation Petition and the petitioner had challenged the same in the present writ petition. It appears that present respondent no. 3 was not noticed in the Letters Patent Appeal and the Hon'ble Division Bench was given to understand that the Tribunal has yet to pass an order. For this absence of information, in course of hearing the Hon'ble Division Bench

gave an observation that while deciding the application for condonation of delay the Tribunal would be bound to follow the law laid down by Hon'ble Supreme Court without being influenced by the direction of the writ court however the Hon'ble Division Bench did not set-aside the order of the writ court. Once this court, after discussing the various case laws on the subject has decided the issue of competence of the Tribunal to condone the delay in the matter of an application under Section 17(1) of the Act of 2002, the Tribunal will proceed to decide the Limitation Petition by taking an independent exercise and shall dispose of the limitation petition within a period of 60 days from the date of receipt/production of a copy of this order.

The Writ Application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

arvind/-

AFR/NAFR	**AFR**
CAV DATE	08.07.2019
Uploading Date	
Transmission Date	