IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA
Appeal No. 16 of 2020
(Arising out of M.A. No. 51 of 2019, DRT-1 Visakhapatnam)

THE HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON

14.03.2023

1. Authorized officer, State Bank of India, Central Office at Mumbai, Local Head Office at Bank Street, Koti, Hyderabad.
2. Branch Manager, State Bank of India, Stressed Assets Recovery Branch, Administrative Office Campus, Balaji Nagar, Siripuram Junction, Visakhapatnam, PIN 530003.

… Appellants

-Vs-

1. Sri Kallam Peri Reddy, D. No. 26-19-178, Main Road, A.T. Agraharam, Guntur – 522004. Mayuru Cenrtre, Besides Over Bridge, Mamillagudem, Khammam.
2. M/s. Safe Emergency Hospital, Rep. by its Managing Partner, Chakrapani, D. No. 26-19-178, Main Road, A.T. Agraharam, Guntur – 522004.

… Respondents

Mr. S. Pal Chowdhury, ld. Counsel with Ms. S. Sikdar, ld. counsel for the appellant.
None for the respondent.

THE APPELLATE TRIBUNAL :

Instant appeal has arisen against the order dated 08.01.2020 passed by learned DRT, Visakhapatnam in M.A. No. 51 of 2019 arising out of SARFAESI Application (S.A.) [Sri Kallam Peri Reddy Vs. A.O., State Bank of India & Ors.] wherein learned DRT has allowed the M.A. for condonation of delay of 103 days in filing the S.A.

2. As per pleadings of the parties it is admitted fact that S.A. was filed u/s 17 of the SARFAESI Act of 2002 (the Act of 2002) along with M.A. 51 of 2019 for condoning the delay of 103 days. After hearing the parties learned DRT has allowed the M.A. filed u/s 5 of the Limitation Act and condoned the delay placing reliance on the judgement of Hon'ble Apex Court in **Baleshwar**

Dayal Jaiswal Vs. Bank of India & Ors reported in (2016)1 SCC 444.

3. Feeling aggrieved the appellant bank has preferred the appeal. Notices were issued to the respondents which were duly served, but none appeared for the respondents.

4. Heard learned counsel for the appellant and perused records.

5. Learned DRT has allowed the M.A. filed u/s 5 of the Limitation Act by placing reliance of the judgement of the Hon'ble Apex Court passed in Baleshwar Dayal Jaiswal case (supra). At the very outset it would be relevant to observe that in the case of Baleshwar Dayal Jaiswal (supra) Hon'ble Apex Court had dealt with an issue relating to condonation of delay in filing appeal u/s 18(1) of the Act of 2002. In Paragraph 9 of the judgement Hon'ble Apex Court has placed reliance on the case of **Transcore Vs. Union of India** reported in (2008)1 SCC 125 and it was held that RDB Act and the SARFAESI Act are complimentary to each other. It was further held that power of condonation of delay was expressly applicable by virtue of Section 18(2) of the Act of 2002 read with proviso to Section 20(3) of the RDB Act. Learned DRT has wrongly placed reliance upon the judgement and wrongly interpreted the ratio of the judgement by holding that DRT has power to condone the delay in filing S.A. u/s 17 of the Act of 2002.

6. As far as question of condonation of delay in filing application u/s 17 of the Act of 2002 is concerned it was held by the Hon'ble Apex Court in **Bank of Baroda & Anr. Vs. M/s. Parasaadilal Tursiram Sheetgrah Pvt. Ltd. & Ors** reported in 2022 SCC OnLine SC 1006 decided on 11.08.2022 that reason for providing a time limit of 45 days for filing an application u/s 17 of the Act of 2002 can be inferred for the purpose and object of enactment, SARFAESI Act is enacted for quick enforcement of the security. Hence, it is clear that period of limitation of 45 days for filing an application u/s 17 of the Act of 2002 is mandatory which cannot be extended or delay in filing the application u/s 17 of the Act of 2002 cannot be condoned.

7. In WP(C) No. 8100 of 2019 **The Urban Cooperative Bank Vs. Registrar, Debts Recovery Tribunal & Anr.** Decided on 12.05.2021 by the Division Bench of Hon'ble Orissa High Court at Cuttack reliance was placed upon the judgement decided by Three Judge Bench of Hon'ble Apex Court in **International Asset Reconstruction Co. of India Ltd. Vs. Official Liquidator of Aldrich Pharmaceuticals Ltd.** wherein it was held by the Hon'ble Apex Court that Section 5 of the Limitation Act applies only to original applications u/s 19 of the RDB Act and not to an appeal u/s 30 thereof. It was further observed by the Hon'ble Apex Court in Paragraph 14 that :

> "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."

Accordingly, it was held that DRT has no power to condone the delay in filing the appeal u/s 17(1) of the Act of 2002 or application u/s 30(1) of RDB Act.

8. Accordingly, it is clear that learned DRT had wrongly interpreted the provision contained in Section 17(1) of the Act of 2002 and the ratio of the judgement of the Hon'ble Apex Court, as such, the order passed on 08.01.2020 condoning the delay in filing the application u/s 17 of the Act of 2002 is against the provision of law.

8. Accordingly, impugned order is liable to be set aside and the instant appeal is deserved to be allowed.

O R D E R

10. Appeal is allowed. Impugned order dated 08.01.2020 passed by learned DRT, Visakhapatnam is set aside. Impugned S.A. filed by the respondents stands dismissed as time barred. No costs.

File be consigned to record room.

Copy of the order be supplied to the appellant and the respondents and a copy be also forwarded to the concerned DRT.

Copy of the judgement/Final Order be uploaded in the Tribunal's website.

Order dictated, signed and pronounced by me in the open Court on this the 14th day of March, 2023.

(Anil Kumar Srivastava,J)
Chairperson

Dated: 14 March, 2023
/pkb