

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI
Present: Mr Justice Ashok Menon, Chairperson

Misc. Appeal No. 41/2013

Between

Navrang Plastic ... Appellant/s

V/s.

Bank of Baroda & Anr. ... Respondent/s

Ms Sonali Jain, Advocate for Appellant.

Mr Anant B. Shinde, Advocate for Respondent No. 1.

:- Order dated: 09/02/2023:-

The Appellant, a sole proprietor representing his proprietorship, is in appeal impugning the judgment dated 20/05/2011 in Misc. Application No. 06 of 2011 on the files of the Debts Recovery Tribunal-II, Ahmedabad (DRT) rejecting the application for condonation of delay in filing the Appeal under Sec. 30 of the Recovery of Debts to Banks and Financial Institution Act, 1993 ('RDBB & FI Act', for short) challenging the order of the Ld. Recovery Officer in Recovery Proceedings No. 67/2008 dated, 28/09/2010 ordering forfeiture of the initial 25% of the bid amount deposited by the Appellant as the successful auction purchaser.

2. The facts can be encapsulated thus:

The 1st Respondent bank is the creditor and had filed Original Application (O.A.) No. 104 of 2003 for recovery of the amount from the borrower before the DRT. A recovery certificate was issued in favour of the bank and property belonging to the certified

debtor was attached in the recovery proceedings initiated by the certificate holder bank against the certified debtor as R.P. No. 67 of 2008 pending before the Recovery Officer. The attached properties were put up for sale in the Appellant participated in the auction held on 30/08/2011, and was declared the successful bidder. The reserve price of the property auctioned was ₹76,03,000/-and the Appellant had bid the property for ₹1 crore as the highest bidder. Immediately, the Appellant deposited ₹25 lakhs and had to deposit the balance 75% of the bid amount on or before 13/09/2010.

3. Before depositing the balance amount, when the Appellant went to the site to have a closer look at the property on 08/09/2010 together with an Officer of the 1st Respondent bank, he was shocked to notice a security guard posted by the 2nd Respondent bank on the road leading to the property. The guard informed the Appellant that the auctioned property was in the possession of the 2nd Respondent bank and hence, prevented him from entering the property. Before conducting the auction of the property, the Appellant had inspected the property which was purportedly in the possession of the certified debtor M/s Satkar Fertilisers there was no indication of anyone other than the certified debtor being in possession of the property. It is now understood that the 2nd Respondent, a cooperative bank is also claiming the right over the property. The officers of the 1st Respondent bank did not interfere in the matter and did not take any steps to remove the obstructions caused by the 2nd Respondent. The sale proclamation did not show any encumbrance over the property in favour of the 2nd

Respondent. On 25/08/2010, the 2nd Respondent had raised an objection stating that the property proceeded against was in their possession and that they have a claim over the property. The Ld. Recovery Officer dismissed the claim put forth by the 2nd Respondent. The 2nd Respondent filed an appeal before the DRT under section 30 of the RDB&FI Act. On 23/09/2010, the DRT passed an interlocutory order restraining the 1st Respondent bank from appropriating the money deposited by the Appellant in the auction sale. Since the Appellant was not able to deposit the balance consideration within the stipulated time, on 28/09/2010, the Ld. Recovery Officer passed orders forfeiting the amount of ₹ 25 lakhs deposited by the Appellant as advance. Aggrieved by this order of the Ld. Recovery Officer, the Appellant preferred an appeal under section 30 of the RDBB & FI Act before the Presiding Officer, DRT.

4. There was a delay in filing the appeal under section 30 and therefore, the Appellant filed Misc. Application No. 06 of 2011 for condoning it. The Appellant contended that he was undergoing treatment from 01/09/2010 to 15/09/2010 and was further advised to rest for three weeks due to back pain.

5. The Ld. Presiding Officer considered the application for condonation of delay and found that a major part of the delay is still not explained. It is observed that the Applicant should have been vigilant to prosecute his cause. The application for condonation was, therefore, dismissed on the ground that the delay is not sufficiently explained. Aggrieved by the dismissal, the Appellant is

before this Tribunal.

6. The only question that arises for consideration in this appeal is whether the delay in filing the appeal under section 30 of the RDBB & FI Act could be condoned.

7. The Ld. Counsel appearing for the Appellant Ms Sonali Jain vociferously argues that the Appellant has a very good case on merits and the Ld. Presiding Officer has erroneously dismissed the application for condonation of delay holding that the delay is not properly explained. The Ld. Counsel submits that when the Appellant has a good case on merits, the delay needs to be condoned and the appeal has to be disposed of on its merits. Being a meritorious case, the Ld. Presiding Officer ought to have allowed the application for condonation of delay.

8. Per contra, the learned counsel appearing for the Respondent bank Mr Anant B Shinde submits that the question of entertaining an application for condonation of delay Under Sec. 5 of the Limitation Act by considering an appeal under section 30 of the RDBBI & FI Act, is no longer as Integra and the Hon'ble Supreme Court has in *International Asset Reconstruction Company of India Ltd. Vs. Official Liquidator of Aldrich Pharmaceuticals Ltd. and Ors (2017) 16 SCC 137* held that the exclusion of any provision for extension of time by the Tribunal, in preferring an appeal under section 30 of the RDB Act makes it manifest that the legislative intent for exclusion is express. Therefore, the prescribed period of 30 days for preferring an appeal against the order of the Recovery Officer under sections 25 to 28 cannot be condoned by application of Sec. 5 of the

Limitation Act.

9. Ms Sonali Jain would submit that the legal position when the application for condonation of delay was filed by the Appellant together with the appeal under Sec. 30 was otherwise, and an application under Sec. 5 of the Limitation Act could then have been entertained and that the decision of the Hon'ble Supreme Court has come only in the year 2017. The Ld. Counsel relies on the decision of the Hon'ble Supreme Court in *Asst. Excise Commissioner, Kottayam & Ors. vs. Esthappan Cherian & Ano.* (2021) 9 SCC 210 in support of the argument.

10. The Hon'ble Supreme Court had occasion to consider the application of the provisions of the Limitation Act, 1963 to proceedings before Quasi-Judicial Tribunals or executive authorities and it was held in *Sakuru vs. Tanaji* (1985) 3 SCC 590 that notwithstanding the fact that such bodies authorities may be vested with certain specified powers conferred on records under the Code of Civil Procedure the provisions of Limitation Act applied only to proceedings in "courts" and not to appeals and applications before bodies other than courts. Relying upon the said decision, in *International Asset Reconstruction Company* (supra) the Hon'ble Supreme Court held that 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 the application of the Limitation Act only to original proceedings before the Tribunal under section 19. The Appellant Tribunal has been conferred the power to condone the delay beyond 45 days

under Sec. 20 (3) of the Act. The exclusion of any provision for extension of time by the Tribunal in preferring an appeal under Sec. 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 resorting to Sec. 29 (2) of the Limitation Act, therefore, does not arise. The prescribed period of 30 days Under Sec. 30 (1) of the RDB Act for preferring an appeal against the order of the Recovery Officer cannot, therefore, be condoned by application of Sec. 5 of the Limitation Act

Under the circumstances, this appeal lacks merit and is, therefore, dismissed.

Sd/-
Chairperson

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