

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

**Misc. Appeal No. 06/2018**

**Between**

M/s Abhishek Traders & Ors. ... Appellant/s

V/s.  
IDBI Bank Ltd. ...Respondent/s

**And**

**Misc. Appeal No. 07/2018**

**Between**

M/s. Shree Sudarshan Marketing & Ors. ... Appellant/s

V/s.  
IDBI Bank Ltd. ...Respondent/s

Mr S. N. Fuladi along with Mr Radhe Aggarwal, Advocate for Appellants.

Mr Chetan Akerkar, Advocate for Respondent.

**-: Common Order dated: 02/01/2023:-**

These Misc. Appeals are filed under Section 20 (1) of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as 'RDB Act') filed by the defendants in Original Application (O.A) Nos. 207 & 208 of 2014 respectively, on the files of Debts Recovery Tribunal, Nagpur (DRT) challenging the dismissal of I.A. Nos. 338 & 339 of 2016 vide orders dated 14/12/2017 and 15/12/2017 respectively. The applications were filed by the Appellants seeking permission to

receive the written statement out of time. The Appellants are different, but the Respondent IDBI Bank is the common original applicant in both the O.As filed for recovery of debts due from the Appellants.

2. The common and short point that arises for consideration in both these appeals is whether the Debts Recovery Tribunal is empowered to condone the delay in filing the written statement which is not filed within the stipulated time.

3. The learned counsel for the Appellants submits that the Appellants have very serious contentions in the Original Application. Therefore, the recording of 'no written statement' by the Ld. Presiding Officer has been prejudicial to them and needs to be set aside, and an opportunity is given to the Appellants to file a written statement. The reasons for the delay in filing the written statement have been explained in the applications. The Ld. Presiding Officer, however, opined that the applications for receiving the written statement out of time should have been accompanied by an application to condone the delay under section 5 of the Limitation Act, without which, it cannot be entertained. It is the contention of the Appellants that there is no provision in the RDB Act to file an application for condonation of delay. Hence, in the interest of justice, the Appellants be given an opportunity to plead their defence and the O.A. be disposed of after considering the pleadings of the defendants and hearing them on merits. The learned counsel, therefore, seeks interference of this Tribunal to set aside the impugned order.

4. Per contra, the contention of the Respondent Bank is that the Appellants have not made out any reason for getting the delay condoned in filing the written statement. That apart, the DRT is not empowered to condone the delay in filing written statements.

5. The Ld. Presiding Officer had in the impugned order rejected the prayer to receive the written statements out of time for the reason that delay cannot be condoned without there being an application with such a prayer filed under Sec.5 of the Limitation Act. The Applications were dismissed with costs ₹ 5000/-to be adjusted towards the loan account.

6. It is the argument of the Ld. counsel for the Appellants that when the reasons for the delay are stated in the applications for receiving the written statements out of time, a separate application under Sec. 5 of the Limitation Act may not be required and therefore, the Ld. Presiding Officer went wrong in holding that the application could be entertained only on filing a separate application for condonation of delay under Sec.5 of the Limitation Act.

7. Rule 12 (1) of the Debts Recovery Tribunal (Procedure) Rules, 1993 states that the defendant shall within a period of 30 days from the date of service of summons, file a written statement including the claim for set-off or counter claim, if any, along with documents in a paper book form. If the defendant fails to file the written statement of his defence, including the claim for set-off or counter claim under sub-rule (1), if any, within the period of 30 days, sub-rule (3) empowers the Presiding Officer in exceptional cases

and special circumstances to be recorded in writing, to extend the said period, by such further period, not exceeding 15 days.

8. The Hon'ble Supreme Court settles that Sec. 5 of the Limitation Act, 1963 does not speak of any application. The Section enables the Court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although it is the general practice to make a formal application under Sec. 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant/applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone the delay, in the absence of a formal application.

9. A plain reading of Sec. 5 of the Limitation Act makes it amply clear that it is not mandatory to file an application in writing before relief can be granted under the said section. Had such an application been mandatory, Sec. 5 of the Limitation Act would have expressly provided so. Sec. 5 would then have read that the Court might condone delay beyond the time prescribed by limitation for filing an application or appeal, if on consideration of the application of the appellant or the applicant, as the case may be, for condonation of delay, the Court is satisfied that the appellant/applicant had sufficient cause for not preferring the appeal or making the application within such period. Alternatively, a proviso or an

Explanation would have been added to Sec. 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay. However, the Court can always insist that an application or an affidavit showing cause for the delay be filed. No applicant or appellant can claim condonation of delay under Sec. 5 of the Limitation Act as of right, without making an application. (See *Sesh Nath Singh & Anr vs. Baidyabati Sheoraphuli Cooperative Bank Ltd.* & Anr Live Law 2021 SC 177).

10. Hence, the finding of the Ld. Presiding Officer that a formal application is required to be filed under Sec. 5 of the Limitation Act to condone the delay, is apparently, erroneous. Even if the Ld. PO finds it essential to file a separate application to condone the delay, in the absence of the same, an opportunity ought to have been granted to the applicants to make good the defect, rather than dismissing the applications for that reason.

11. Be that as it may, the main question that arises for consideration in these appeals is whether the DRT has the power to condone the delay in exercising jurisdiction under the Limitation Act. The law on this point is no longer res integra. The Hon'ble Supreme Court had in *International Asset Reconstruction Company of India vs. Official Liquidator of Aldrich Pharmaceuticals Ltd.* (2017) 16 SCC 137 held that the delay in filing an appeal under Sec. 30 of the RDB Act before the DRT cannot be condoned resorting to Sec. 5 of the Limitation Act. This decision has been followed in a number of subsequent decisions of the Hon'ble Apex Court. in *Standard Chartered Bank Ltd vs. MSTC Ltd.* (2020) 13 SCC 618, it was held that

delay in filing a review application under Rule 5 A of the DRT (Procedure) Rules, 1993('Rules' for short) cannot be condoned under Sec. 5 of the Limitation Act. In the latest decision of the Hon'ble Apex Court in *Avneesh Chandan Gadgil vs. Oriental Bank of Commerce Live Law 2021 SC 679*, it is reiterated that Sec. 5 of the Limitation Act has no application before the DRT to condone the delay.

12. The learned counsel for the Appellants relies on a Division Bench decision of the Hon'ble Bombay High Court reported in *Madhao Somaji Sarode vs. Jotiba Dhyani Upasak Shikshan Sanstha Dudhala 2004 (3) MbLJ 1078* to argue that it was necessary for the Ld. Tribunal to have given an opportunity to the Appellants to make an application for condonation of delay before entering into the merits of the matter in rejecting the application for receiving a written statement.

13. The decision relied upon by the learned counsel for the Appellants will not be applicable to the facts and circumstances of this case because the Division Bench of the Hon'ble Bombay High Court was considering the application of Sec. 5 of the Limitation Act in Appeal coming under the provisions of the Code of Civil Procedure, and not before the DRT. What we are concerned with here is the application of the Limitation Act in proceedings before the DRT. In view of the decisions of the Hon'ble Apex Court referred to above, it has to be held that the delay in filing the written statement beyond the period stipulated under Rule 12 (1) of the DRT Rules cannot be condoned. The maximum period of

extension that is permissible, that too on reasons to be recorded in writing is only 15 days and nothing beyond.

14. I find no reason to allow the appeal and therefore, the impugned orders of the Ld. PO cannot be interfered with though for a different reason.

15. However, it is made clear that since the defendants have appeared in the O.A., although they have not filed written statements, the learned counsel appearing for the defendants is at liberty to argue the matter on all legal issues. Since there are no pleadings regarding the facts, no arguments based on factual matters which ought to have been pleaded could be entertained.

As a result, the appeals are dismissed, though without costs.

Sd/-  
Chairperson

mks-1 & 2.