



2024:GAU-AS:11262-DB

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WP(C) No.7135 of 2023

1. M/s Baruah C.C. Block Industry,
represented by its Proprietor Smti. Anju
Barua, resident of Bengpukhuri, Manik
Hazarika Road, District: Tinsukia, Assam,
PIN – 786125.

2. Smti. Anju Barua,
Wife of Late Rajen Barua,
Resident of Bengpukhuri, Manik Hazarika
Road, District: Tinsukia, Assam, PIN –
786125.

.....Petitioners

-Versus-

1. State Bank of India, Head Office, Madam
Cama Road, Mumbai, PIN – 400021.

2. The Authorised Officer, State Bank of
India, Stressed Assets Recovery Branch, Na-
Ali, M.G. Road, Jorhat, Opposite ASEB
Building, Assam.

3. The Chief Manager, State Bank of India,
RMSE HUB, Tinsukia Branch, 3rd Floor, Near
ASTC Bus Stand, PO: Tinsukia, District:
Tinsukia, Assam, PIN – 786125.

.....Respondents

- BEFORE -
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioners : Mr. S. Mitra, Advocate.

For the Respondents : Mr. K.K. Nandi, Advocate.

Date of Hearing : 05.11.2024.

Date of judgment : **20.11.2024.**

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

Heard Mr. S. Mitra, learned counsel for the petitioners. Also heard Mr. K.K. Nandi, learned counsel appearing for all the respondents.

2. The petitioner No.1 herein is a proprietorship firm, which is represented by its sole Proprietor Smti. Anju Barua, i.e. the petitioner No.2. They have preferred this writ petition challenging the notice dated 19.05.2023 issued by the respondent Bank under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter to be referred as "SARFAESI Act") and the subsequent notices dated 25.07.2023 and 05.08.2023 issued by the respondent Bank under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 (hereinafter to be referred as "Rules of 2002"). The petitioner's loan account was declared as a Non-Performing Asset (NPA) on 28.02.2023.

3. Initially the petitioners have challenged the action of the respondent Bank by way of filing an application under Section 17(1) of the SARFAESI Act before the Debts Recovery

Tribunal, Guwahati Bench, Guwahati (hereinafter to be referred as "DRT"). However, the said application came to be dismissed vide order dated 20.11.2023 primarily on the ground that the same was barred by limitation as per the provisions of Section 17 of the SARFAESI Act. The request made on behalf of the petitioners to condone the delay of 19 days, though DRT had calculated it as 23 days, was turned down by the DRT mainly by relying on the decision rendered by a Division Bench of the High Court of Calcutta in ***Akshat Commercial Private Limited & Anr. -Vs- Kalpana Chakraborty & Ors.***, reported in ***AIR 2010 Cal 138*** as well as the order dated 11.08.2022 passed by the Hon'ble Supreme Court in Civil Appeal No.5240/2022 (***Bank of Baroda & Anr. -Vs- M/s Parasaadilal Tursiram Sheetgrah Private Limited & Ors.***), while holding that the statutory time period of 45 days provided under Section 17(1) of the SARFAESI Act is mandatory and no discretion has been conferred upon the DRT to extend such period. The order dated 20.11.2023 as such is not under challenge in this writ petition and the petitioner No.2 has claimed that she has not challenged the order passed by the DRT before the Debts Recovery Appellate Tribunal, Kolkata by filing an appeal under Section 18 of the SARFAESI Act as it may not yield favourable result due to the judgment passed by the High Court of Calcutta in ***Akshat Commercial Private Limited*** (supra).

4. Be that as it may, though the order passed by the DRT is not under challenge in this writ petition but the question that arises in this writ petition is whether the DRT can condone the

delay in filing an application under Section 17(1) of the SARFAESI Act preferred on behalf of a borrower by giving the benefit of the provisions of the Limitation Act, 1963. Therefore, we proceed to answer this question after taking into consideration the arguments advanced on behalf of the parties.

5. Mr. S. Mitra, learned counsel for the petitioners has argued that the DRT can extend the benefit of the provisions of the Limitation Act while entertaining an application under Section 17 of the SARFAESI Act. It is argued that an application under Section 17 can be preferred by any person including the borrower aggrieved by any measure referred to in sub-section (4) of Section 13 of the SARFAESI Act, within 45 days from the date on which such measures is taken by the secured creditor. Referring to sub-section (7) of Section 17 of the SARFAESI Act, learned counsel for the petitioners has argued that as per sub-section (7) of Section 17, the DRT is obliged to dispose of the application preferred under Section 17 of the SARFAESI Act in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (now Recovery of Debts and Bankruptcy Act, 1993) (hereinafter to be referred as "RDB Act"). It is contended that under Section 19 of the RDB Act, a Bank or financial institution can move an application to the DRT to recover any debt, and Section 24 of the RDB Act provides that the provisions of the Limitation Act shall, as far as may be, apply to an application made to the Tribunal. It is contended that as per sub-section (7) of Section 17 of the SARFAESI Act when the DRT is obliged to dispose of an application in accordance with the provisions of

the RDB Act, the provisions of Limitation Act can also be taken into consideration for the purpose of condoning the delay in filing Section 17 application under the SARFAESI Act.

6. Mr. Mitra, learned counsel for the petitioners has submitted that the Hon'ble Supreme Court in ***Baleswar Dayal Jaiswal -Vs- Bank of India & Ors.***, reported in ***(2016) 1 SCC 444***, while taking into consideration the provisions of the SARFAESI Act as well as the RDB Act has, in unequivocal terms, held that the DRT as well as the Debts Recovery Appellate Tribunal have the power to condone the delay by applying the provisions of the Limitation Act while adjudicating the application moved under Section 17 of the SARFAESI Act, or an appeal under Section 18 of the SARFAESI Act. The learned counsel has also placed reliance on the decision rendered by the Division Bench of the Andhra Pradesh High Court in ***Porus Laboratory Private Limited -Vs- Indian Bank, Asset Recovery Management Branch, Hyderabad & Anr.***, reported in ***2018 SCC OnLine Hyd 161***; the decision of a Division Bench of the High Court of Judicature at Madras dated 13.01.2020 passed in W.P. Nos.34860/2019 (***P.K. Radhakrishnan -Vs- Central Bank of India & Ors.***); the decision of the High Court of Judicature at Patna dated 26.08.2019 rendered in Civil Writ Jurisdiction Case No.17999/2017 (***Rahmatullah -Vs- Authorized Officer -cum- Chief Manager, Central Bank of India & Ors.***); the decision of the Division Bench of the Madhya Pradesh High Court rendered in ***Aniruddh Singh -Vs- Authorized Officer, ICICI Bank Limited, Jabalpur***, reported in ***2024 0 Supreme (MP)***

4 and has argued that all the above High Courts have expressed the same view that the DRT in appropriate case can condone the delay in filing an application under Section 17 of the SARFAESI Act. It is submitted that the view expressed by the Calcutta High Court in **Akshat Commercial Private Limited** (supra) has not been followed in the aforesaid judgments.

7. The learned counsel for the petitioners has, therefore, argued that the DRT has erred in not condoning the delay in filing the application under Section 17 of the SARFAESI Act. It is, therefore, contended that this Court should interfere with the action of the DRT and the DRT be directed to consider the prayer of the petitioners for condoning the delay in filing the application under Section 17 of the SARFAESI Act and if a case is made out for condoning the delay, the same be condoned and the application filed on behalf of the petitioners be decided on merits.

8. Per contra, Mr. K.K. Nandi, learned counsel appearing for the respondents has vehemently opposed the submissions made on behalf of the petitioners and has argued that the DRT has no power to extend the benefit of the provisions of the Limitation Act to any person, including the borrower, while adjudicating an application filed with a delay, under Section 17 of the SARFAESI Act. The learned counsel has submitted that the Hon'ble Supreme Court in **Mardia Chemicals Limited -Vs- Union of India & Ors.**, reported in **(2004) 4 SCC 311** and in **M/s Transcore -Vs- Union of India & Anr.**, reported in

(2008) 1 SCC 125 has categorically held that proceedings under Section 17 of the SARFAESI Act is a state of initial proceedings, such as filing of suit in the Civil Court and, therefore, there is no application of the Limitation Act in the proceedings under Section 17 of the SARFAESI Act.

9. Mr. Nandi has further placed reliance on the order passed by the Hon'ble Supreme Court in **Bank of Baroda & Anr. -Vs- M/s Parasaadilal Tursiram Sheetgrah Private Limited & Ors.** (supra) and has argued that the Hon'ble Supreme Court in the above referred order has clearly held that the reason for providing time limit for filing an application under Section 17 of the SARFAESI Act can easily be inferred from the purpose and object of the enactment, as SARFAESI Act is enacted for quick enforcement of the security. It is contended that since the object of the SARFAESI Act is for quick enforcement of the security, the concept of condonation of delay is alien to it and cannot be applied in such proceedings. The learned counsel has further placed reliance on the decision of the Hon'ble Supreme Court rendered in **International Asset Reconstruction Company of India Limited -Vs- Official Liquidator of Aldrich Pharmaceuticals Limited & Ors.**, reported in **AIR 2017 SC 5013** and the decision of the Calcutta High Court in **Akshat Commercial Private Limited** (supra) as well the judgment dated 12.05.2021 rendered by a Division Bench of the High Court of Orissa in WP(C) No.8100/2019 (**BM, Urban Co-operative Limited, Cuttack - Vs- Registrar, DRT & Anr.**). The learned counsel appearing for the respondents has, therefore, submitted that the DRT has

rightly refused to condone the delay in filing the application by the petitioners under Section 17 of the SARFAESI Act. Hence, the learned counsel for the respondents has contended that no case for interference is made out and the writ petition filed on behalf of the petitioners may be dismissed.

10. Heard the learned counsel appearing for the parties.

11. For proper adjudication of the matter, it is gainful to reproduce the relevant provisions of the SARFAESI Act; RDB Act as well as the provisions of the Limitation Act, 1963.

**SECURITISATION AND RECONSTRUCTION OF FINANCIAL
ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT,
2002**

“2. Definitions. – (1) *In this Act, unless the context otherwise requires, –*

(i) ‘Debts Recovery Tribunal’ means the Tribunal established under sub-section (1) of section 3 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993);

17. [Application against measures to recover secured debts].— (1) *Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application along with such fee, as may be prescribed] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measures had been taken:*

(2)

(3)

(4)

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

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in

writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

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

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of 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.”

RECOVERY OF DEBTS AND BANKRUPTCY ACT, 1993

“3. Establishment of Tribunal.— (1) The Central Government shall, by notification, establish one or more Tribunals, to be known as the Debts Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

[(1A) The Central Government shall by notification establish such number of Debts Recovery Tribunals and its benches as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under the Insolvency and Bankruptcy Code, 2016.]

(2) The Central Government shall also specify, in the notification referred to in sub-section (1), the areas within which the Tribunal may exercise jurisdiction for entertaining and deciding the applications filed before it.

24. Limitation.— The provisions of the Limitation Act, 1963 (36 of 1963), shall, as far as may be, apply to an application made to a Tribunal.”

LIMITATION ACT, 1963

“29. Savings.— (1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of 'easement' in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend."

12. Before proceeding further, survey of the divergent views of the High Courts and the judgments of the Hon'ble Supreme Court (touching the issue), is required.

(i) Judgments of the various High Courts, wherein it is held that the provisions of the Limitation Act, 1963 are applicable in the proceedings filed under Section 17 of the SARFAESI Act.

13. The Andhra Pradesh High Court in ***Porus Laboratory Private Limited*** (supra), while taking into consideration the judgments passed by the Hon'ble Supreme Court in ***Baleswar Dayal Jaiswal*** (supra) and ***International Asset Reconstruction Company of India Limited*** (supra), has held as under:-

"13. It is therefore manifest that an application filed under Section 17(1) of the SARFAESI Act, though unlike an application under Section 19 of the RDDB Act, has to be dealt with in accordance with the provisions of the RDDB Act, as per

Sections 17(7) and 37 of the SARFAESI Act. Therefore, Section 24 of the RDDB Act which makes the Act of 1963 applicable to an application would come into play as it cannot be denied that what is presented to the Tribunal under Section 17 of the SARFAESI Act is also an application. It is therefore amply clear that the provisions of Section 5 of the Act of 1963 would be applicable to a belated application made under Section 17 of the SARFAESI Act.

14.

15.

18. Though the aforesaid judgment dealt only with the provisions of the RDDB Act, the Supreme Court categorically held therein that by virtue of Section 24 thereof, the Act of 1963 would have application to original proceedings before the Tribunal. In consequence, there can be no doubt that a belated application under Section 17(1) of the SARFAESI Act, being one such original proceeding before the Tribunal, would attract the provisions of Section 5 of the Act of 1963, by virtue of Section 17(7) and Section 37 of the SARFAESI Act read with Section 24 of the RDDB Act.

19.

20. More importantly, it may be noted that if an aggrieved person, including a borrower, is prevented from availing the statutory remedy provided under Section 17(1) of the SARFAESI Act merely because the application thereunder was not presented within the stipulated 45 days, the hierarchy of remedies provided under the SARFAESI Act would be denied to him and rendered nugatory on that short ground. Such an aggrieved person would then be left with no remedy but to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India. As the very purpose of creating statutory Tribunals and Appellate Tribunals is to provide efficacious alternative means of resolution of disputes so as to lessen the burden that would otherwise be visited upon the High Court in exercise of its extraordinary jurisdiction under Article 226, the statutory remedy provided under Section 17(1) of the SARFAESI Act cannot be interpreted in such a narrow and pedantic compass. Be it noted, by virtue of the proviso to Section 20(3) of the RDDB Act, the Appellate Tribunal has been held to have the power to condone the delay in the presentation of an appeal under Section 18 of the SARFAESI Act beyond the 30 day period stipulated therein. There is no logic or rationale in not extending the same power to the Tribunal while entertaining a belated application under Section 17 of the SARFAESI Act, by taking recourse to Sections 17(7) and 37 of the SARFAESI Act read with Section 24 of the RDDB Act.”

14. The Division Bench of the Madras High Court in **P.K. Radhakrishnan** (supra) has held as under:-

“(20) In the considered opinion of the Court, the Division Bench of the Andhra Pradesh High Court in the decision reported in 2018 [5] ALT 108 : 2018 SCC OnLine Hyd 161 [cited supra], had taken into consideration, the judgments in Baleshwar's case and International Asset's case [cited supra] reported in 2016 [1] SCC 444 and 2017 [12] SCALE 748. On an exhaustive analysis of the legal submissions, this Court is of the considered view that in the absence of any specific exclusion as to the applicability of the Limitation Act to the application filed before DRT, it is inclined to follow the said judgments.

(21)

(22)

(23) As already observed, in the light of any express bar as to the applicability of the limitation and that apart, there is no self contained period of limitation provided under the relevant provisions of the SARFAESI Act, as observed by the Andhra Pradesh High Court in the above cited Division Bench Judgment, this Court is of the considered view that the DRT was right in entertaining the application. As rightly pointed out by the learned counsel for the petitioner in WP No.34860/2019 / 1st respondent in WP No.251/2020, DRAT had increased the cost from Rs.10,000/- to Rs.5 Crores.”

15. In **Rahmatullah** (supra), while relying on the decision of the Division Bench of the Punjab & Haryana High Court in **Surinder Mahajan -Vs- Debts recovery Appellate Tribunal & Ors.** [CWP No.22567/2011 (O&M)], the learned Single Judge of the High Court of Patna has held as under:-

“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.”

16. A Division Bench of the Punjab & Haryana High Court in **Surinder Mahajan** (supra), while taking into consideration the conflicting judgments of the various High Courts on the point in issue and the various decisions of the Hon'ble Supreme Court disagreeing with the judgment passed by the Calcutta High Court in **Akshat Commercial Private Limited** (supra), has held as under:-

*“Section 2(l) of the Limitation Act defines a 'suit' for the purposes of Limitation Act. Such suit does not include an appeal and application for the purposes of the said Act. The 'application' in Section 2(b) of the said Act includes a petition for the purposes of the aforesaid Act. The Tribunal is not a Court to which the Limitation Act is applicable. Therefore, the action of the borrower in approaching the Debt Recovery Tribunal under Section 17 of the Act is not a suit as defined in Section 2(l) of the Limitation Act nor such application is before the Court. It is like original proceedings against an action taken by the secured creditor as observed by Supreme Court in **Mardia Chemicals Case** (supra). The right to approach the Debt Recovery Tribunal under Section 17 of the Act arises to the borrower only if the secured creditor takes an action or*

any of the measures under the Act. The entire process of recovery is vested with a secured creditor under the Act. The only right available with an aggrieved person is to seek recourse to his remedies contemplated under Section 17 of the Act. Thus it is not an original proceeding to be initiated by an aggrieved person to establish one's right. It is more akin to the objections filed to the action taken by the secured creditor, who is not only the beneficiary and also adjudicator to the large extent except to the rights of an aggrieved person under Section 17 of the Act. The right to approach the Tribunal arises on the initiation of proceedings by the secured creditor against the borrower or any aggrieved person. Therefore, though an application is to be filed by an aggrieved person including a borrower, but such application is an objection petition to the action taken by the secured creditor.

Though sub-sections (5) & (6) of Section 17 of the Act, prescribes the period for a decision on an application filed in terms of Section 17 of the Act, but sub-section (7) contemplates that the Debt Recovery Tribunal shall dispose of the application filed in accordance with the provisions of the 1993 Act and the Rules made there under, save as otherwise provided under the Act. Similar provision is in respect of appellate proceedings contained in sub-section (2) of Section 18 of the Act. The right has been given to any person including borrower to invoke the jurisdiction of the Debt Recovery Tribunal in the matter within 45 days from the date on which such measures had been taken under sub-section (1) of Section 17. Section 37 of the Act contemplates that provisions of the Act or the Rules made there under are in addition to, and not in derogation of 1993 Act including some other Statutes.

There is no express exclusion of Sections 4 to 24 of the Limitation Act to the proceedings before the Debt Recovery Tribunal analogous to the provisions of the Arbitration and Conciliation Act, 1996, subject matter of consideration in Popular Construction Co. Case (supra). Even though the proceedings before the Debt Recovery Tribunal are time bound, a directory provision, but such provisions will come into play only if the petition is filed before the Debt Recovery Tribunal. Sub-section (7) of Section 17 and/or sub-section (2) of Section 18 of the Act contemplate that the application shall be disposed of in terms of 1993 Act.

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.”

17. Recently a Division Bench of the Madhya Pradesh High Court in **Aniruddh Singh** (supra) has held as under:-

“6.2 The SARFAESI Act is also a complete Code to regulate securitization and reconstruction of financial assets and enforcement of security interest and to provide for central data base of security interest created on property rights and for matters connected therewith or incidental thereto.

6.3 Section 17 of SARFAESI Act is a remedy available to any person aggrieved by the recourse taken by creditor to any means u/S. 13(4). This remedy is available before DRT by filing an application which is ordinarily termed as securitisation application (SA) to be filed within 45 days from the date on which any of the measures u/S. 13(4) are taken.

6.4 Section 17 of SARFAESI Act does not confer DRT with discretion to extend the period of limitation of 45 days.

6.5 Noticeably, Section 17 or any other provision of SARFAESI Act does not expressly exclude the operation of beneficial provisions under the Limitation Act.

7. This Court need not go into the prolixity of considering various judicial pronouncements of different Courts to resolve the controversy herein because the answer to the question framed above lies in the bare reading of Section 29(2) of the Limitation Act. (Reproduced above).

7.1 Section 29 containing saving clause lays down various contingencies in which different nature of causes of action arising under different enactments can be prevented from becoming time barred.

7.2 Section 29(2) *inter alia* stipulates that if the special law does not expressly exclude the application of Sections 4 to 24 of Limitation Act, then these provisions of Limitation Act shall apply qua all causes raised under the Special Law.

7.3 The special law i.e. SARFAESI Act does not expressly exclude the application of the provisions from Sections 4 to 24 of the Limitation Act (including Section 5) and therefore the benefit u/S. 5 of Limitation Act shall be available to the cause of action raised in an application u/S 17 of SARFAESI Act.

8. Now applying the aforesaid principle of law to the fact situation attending the present case, it is obvious from plain reading of SARFAESI Act that while prescribing the period of 45 days for filing an application u/S. 17(1) this special Act does not expressly bar the application of Section 5 of Limitation Act.

8.1 Consequent upon the above discussion, it is obvious that provisions of Section 5 of the Limitation Act would apply with full force and are available for making a prayer for condonation of delay before the DRT in applications u/S. 17(1) which are filed after expiry of 45 days.

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

‘14. We have already held that the power of condonation of delay was expressly applicable by virtue of Section 18(2) of the SARFAESI Act read with proviso to Section 20(3) of the RDDB Act and to that extent, the provisions of the Limitation Act having been expressly incorporated under the special statutes in question, Section 29(2) stands impliedly excluded. To this extent, we differ with the view taken by the Andhra Pradesh High Court as well as the Madras and Bombay High Courts. We are also in agreement with the principle that even though Section 5 of the Limitation Act may be impliedly inapplicable, principle of Section 14 of the Limitation Act can be held to be applicable even if Section 29(2) of the Limitation Act does not apply, as laid down by this Court in *Consolidated Engg. Enterprises v. Irrigation Deptt.* [(2008) 7 SCC 169] and *M.P. Steel Corpn. v. CCE* [(2015) 7 SCC 58].

15. As a result of the above discussion, the question is answered in the affirmative by holding that delay in filing an appeal under Section 18(1) of the SARFAESI Act can be condoned by the Appellate Tribunal under proviso to Section 20(3) of the RDDB Act read with Section 18(2) of the SARFAESI Act. The contrary view taken by the Madhya Pradesh High Court in *Seth Banshidhar Kedia Rice Mills (P) Ltd. Case* [AIR 2011 MP 205] is overruled.’

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

(ii) Judgments of High Courts wherein it is held that the Limitation Act will not apply into the proceedings initiated under Section 17 of the SARFAESI Act.

18. The High Court of Calcutta in **Akshat Commercial Private Limited** (supra), while taking into consideration the decisions rendered by the Hon’ble Supreme Court in **Mardia Chemicals Limited** (supra) and **M/s Transcore -Vs- Union of India &** (supra) and other decisions of the Hon’ble Supreme Court, has held as under:-

“Therefore, the only question that arises for determination in this appeal is whether the provision of Section 5 of the Limitation Act for condonation of delay applies to a proceeding under Section 17 of the SARFAESI Act.

In view of sub-section (7) of Section 17 of the SARFAESI 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 and the rules made thereunder.

It further appears that according to Section 24 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the provisions of the Limitation Act, 1963 shall, as far as may be, apply to an application made to a Tribunal.

The conjoint effect of Section 17(7) of the SARFAESI Act and Section 24 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is that in a proceeding under Section 17(1) of the SARFAESI Act which is entertained by a Debts Recovery Tribunal, the provisions of the Limitation Act, 1963 shall, as far as may be, apply.

Although Section 17 of the SARFAESI Act has been described in the said Act as the one conferring right of appeal, as held by the Supreme Court in the case of Mardia Chemicals Ltd. & Anr. vs. Union of India & Ors. reported in 2004 (4) SCC 311 and also in the case of M/s. Transcore vs. Union of India & Anr. reported in AIR 2007 SC 712, the proceedings under Section 17 of the SARFAESI Act in fact are not appellate proceedings and it seems to be a misnomer. According to the

Supreme Court, 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. Therefore, according to the Supreme Court, it is the stage of initial proceeding like filing a suit in Civil Court. It has further been pointed out by Supreme Court that as a matter of fact the proceedings under Section 17 of the Act are in lieu of a civil suit which remedy is ordinarily available but for the bar created under Section 34 of the Act.

.....

In view of the decision of the Supreme Court in the aforesaid two matters there is no controversy that a proceeding under Section 17(1) is in the nature of original proceeding and in such a case, even though the other relevant provisions of the Limitation Act applies, Section 5 thereof at least has no application in view of the fact that the said section is not applicable to the original proceeding like suit. We have already pointed out that the Limitation Act in general will be applied in the proceedings under Section 17(1) of the SARFAESI Act "as far as may be".

We, therefore, hold that although in a proceeding under Section 17(1) of the SARFAESI Act, the provisions of the Limitation Act applies in general "as far as my be", yet, Section 5 of the Limitation Act in particular, however, has no application in view of the fact that the proceeding is original in nature like suit and Section 5 of the Limitation Act has no application to a suit.

.....

We have already pointed out that the by virtue of the provisions contained in Sections 17(7) of the SARFAESI Act and Section 24 of the Recovery of the Debts Due to Banks and Financial Institutions Act, the provisions of the Limitation Act would "as far as may be" applicable but not all the provisions of the said Act. The legislature having consciously applied the provisions of the Limitation Act "as far as may be" by conjoint effect of Sections 17(7) and 24 of the two Special Acts, there is no scope of further application of Section 29(2) of the Limitation Act to the proceedings before the Tribunal so as to apply Sections 4 to 29 thereof over again.

Our aforesaid interpretation of Section 17(1) gets support from the intention of the legislature as reflected in the said Section itself where in sub- section (5) thereof, a time-limit of 60 days has been given for the disposal of such application and according to sub-section (6), if the application is not disposed of by the Tribunal within 4 months, any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts

Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal.

Therefore, there being specific time-limit of 45 days for invoking the original jurisdiction of Section 17 of the SARFAESI Act, which has been found to be, in essence, a suit and a further tentative time-limit of 60 days for disposal of the proceedings, and giving a right to the party to complain before the appellate forum for compliance of such provisions alleging violation thereof if not completed within four months, it was never the intention of the legislature to apply Section 5 of the Limitation Act to such original proceeding by giving power to entertain the application under Section 17(1) of the SARFAESI Act by merely showing sufficient cause for the delay without putting any restriction upon the Tribunal and we, therefore, hold that the time period of 45 days provided in Section 17 of the SARFAESI Act which is original in nature cannot be extended by taking aid of Section 5 of the Limitation Act.”

19. A Division Bench of the High Court of Orissa in **BM, Urban Co-operative Limited, Cuttack** (supra) has held as under:-

“30. As can be seen Section 17(7) of the SARFAESI Act expressly states that the DRT shall dispose of an application under Section 17(1) thereof in accordance with the provisions of the RDB Act. Neither Section 17(1) SARFAESI Act nor Section 30(1) of the RDB Act permits the DRT to condone the delay in filing an appeal beyond the prescribed period. In that view of the matter, in the present case the DRT was in error in condoning the delay and allowing Opposite Party No.2 to proceed with the appeal filed by her before it.”

(iii) Judgments of the Hon’ble Supreme Court

20. The Hon’ble Supreme Court in **Baleswar Dayal Jaiswal** (supra), while examining the question of applicability of the provisions of the Limitation Act in the proceedings before the DRT, has observed as under:-

“7. The first point for consideration is the applicability of proviso to Section 20(3) of the RDDB Act to the disposal of an appeal by the Appellate Tribunal under Section 18(2) of the SARFAESI Act. A bare perusal of the said Section 18(2) makes it clear that the Appellate Tribunal under the SARFAESI Act

has to dispose of an appeal in accordance with the provisions of the RDDB Act. In this respect, the provisions of the RDDB Act stand incorporated in the SARFAESI Act for disposal of an appeal. Once it is so, we are unable to discern any reason as to why the SARFAESI Appellate Tribunal cannot entertain an appeal beyond the prescribed period even on being satisfied that there is sufficient cause for not filing such appeal within that period. Even if power of condonation of delay by virtue of Section 29(2) of the Limitation Act were held not to be applicable, the proviso to Section 20(3) of the RDDB Act is applicable by virtue of Section 18(2) of the SARFAESI Act. This interpretation is clearly borne out from the provisions of the two statutes and also advances the cause of justice. Unless the scheme of the statute expressly excludes the power of condonation, there is no reason to deny such power to an Appellate Tribunal when the statutory scheme so warrants. Principle of legislation by incorporation is well known and has been applied, inter alia, in Ram Kirpal Bhagat v. The State of Bihar, (1969) 3 SCC 471, Bolani Ores Ltd. v. State of Orissa, (1974) 2 SCC 777, Mahindra and Mahindra Ltd. v. Union of India, (1979) 2 SCC 529 and Onkarlal Nandlal v. State of Rajasthan, (1985) 4 SCC 404 relied upon on behalf of the appellants. We have thus no hesitation in holding that the Appellate Tribunal under the SARFAESI Act has the power to condone the delay in filing an appeal before it by virtue of Section 18(2) SARFAESI Act and proviso to Section 20(3) of the RDDB Act.”

21. The Hon’ble Supreme Court in ***International Asset Reconstruction Company of India Limited*** (supra) has observed as under:-

“12. An ‘application’ is defined under Section 2(b) of the RDB Act as one made under Section 19 of the Act. The latter provision in Chapter IV, deals with institution of original recovery proceedings before a Tribunal. An appeal lies against the order of the Tribunal under Section 20, before the Appellate Tribunal within 45 days, which may be condoned for sufficient cause under the proviso to Section 20(3) of the Act. The Tribunal issues a recovery certificate under Section 19(22) to the Recovery officer who then proceeds under Chapter V for recovery of the certificate amount in the manner prescribed. A person aggrieved by an order of the Recovery officer can prefer an appeal before the Tribunal under Rule 4, by an application in the prescribed Form III. Rule 2(c) defines an ‘application’ to include a memo of appeal under Section 30(1). The appeal is to be preferred before the Tribunal, as distinct from the appellate tribunal, within 30 days. Section 24 of the RDB Act, therefore, manifestly makes the provisions of

the Limitation Act applicable only to such an original 'application' made under Section 19 only. The definition of an 'application' under Rule 2(c) cannot be extended to read it in conjunction with Section 2(b) of the Act extending the meaning thereof beyond what the Act provides for and then make Section 24 of the RDB Act applicable to an appeal under Section 30(1) of the Act. Any such interpretation shall be completely contrary to the legislative intent, extending the Rules beyond what the Act provides for and limits. Had the intention been otherwise, nothing prevented the Legislature from providing so specifically."

22. Having surveyed the above referred judgments, we respectfully disagree with the view expressed by the Calcutta High Court and the Orissa High Court. The Calcutta High Court as well as the Orissa High Court have failed to take note the difference between the application under Section 19 of the RDB Act and the application under Section 17 of the SARFAESI Act. Application under Section 19 of the RDB Act is like a recovery suit, wherein ordinary law of limitation as per the Limitation Act applies. However, in case of application under Section 17(1) of the SARFAESI Act, the situation is not the same. As a matter of fact, a borrower has an opportunity to file an application before the DRT under Section 17 only when the secured creditor takes an action or any measure under Section 13(4) or 14 of the SARFAESI Act, meaning thereby filing an application under Section 17 are not original proceedings but actually it is like filing of objection against the action taken by the secured creditor.

23. In *Hitendra Vishnu Thakur & Ors. -Vs- State of Maharashtra & Ors.*, reported in (1994) 4 SCC 602, the Hon'ble Supreme Court has held that right to forum and

limitation is procedural in nature. Relevant portion of the said judgment is reproduced hereunder:-

“26.

(ii) *Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.”*

24. In Section 2(1)(i) of the SARFAESI Act, “Debts Recovery Tribunal” is defined, which means the Tribunal established under sub-section (1) of Section 3 of the RDB Act. Section 17(1) of the SARFAESI Act provides that any person, including the borrower, can file an application under Section 17 against the measures taken by the secured creditor under sub-section (4) of Section 13 of the SARFAESI Act before the DRT established under the RDB Act. Sub-section (7) of Section 17 provides that the DRT is required to dispose of the application in accordance with the provisions of the RDB Act. Section 24 of the RDB Act provides that the provisions of the Limitation Act, as far as may be applied, to an application made to a Tribunal. A conjoint reading of the above provisions make it clear that the DRT is required to dispose of an application filed under Section 17 of the SARFAESI Act as per the provisions of the RDB Act, wherein by virtue of Section 24 of the RDB Act, the provisions of Limitation Act are applicable.

25. The principle of legislation by incorporation is well recognized in India. As the provisions of the RDB Act are incorporated in the SARFAESI Act for disposal of an application filed under Section 17 and in such circumstances, in our view, there is no reason to hold that the DRT cannot entertain an

application filed under Section 17 of the SARFAESI Act beyond the period of limitation even on being satisfied that there is sufficient cause for not filing such application within the time limit prescribed.

26. The Hon'ble Supreme Court in *International Asset Reconstruction Company of India Limited* (supra), considering the provisions of the RDB Act, has held that Section 24 of the RDB Act provides that the provisions of the Limitation Act are applicable only to the original applications and the same could not be extended to an appeal filed against the order of the Recovery Officer under Section 30 of the RDB Act. The Hon'ble Supreme Court has concluded that legislature provided for application of the provisions of the Limitation Act to original proceedings before the Tribunal under Section 19 only and not to the appeals filed under Section 30 of the RDB Act. Since the Hon'ble Supreme Court has categorically held that by virtue of Section 24 of the RDB Act the Limitation Act would have application to the original proceedings before the Tribunal, it is clear that an application under Section 17 of the SARFAESI Act, being one such original proceedings before the DRT filed after the period of limitation, as prescribed, can be entertained while applying the provisions of the Limitation Act by virtue of Section 24 of the RDB Act.

27. In view of the above discussion, we hold that the DRT can condone the delay in filing the application under Section 17 of the SARFAESI Act while applying the provisions of Sections 4 to 24 of the Limitation Act, 1963, of course, only if it is satisfied

that the delay in filing the application under Section 17 is sufficiently explained.

28. Hence, we are of the view that the learned DRT has erred in dismissing the application filed by the petitioners under Section 17 of the SARFAESI Act without considering the application for condonation of delay. Therefore, the order dated 20.11.2023 passed by the learned DRT, Guwahati Bench, Guwahati is set aside.

The matter is remitted back to the learned DRT to consider the application filed by the petitioners for condonation of delay in filing the application under Section 17 of the SARFAESI Act and if the delay is satisfactorily explained, the same may be condoned and the application filed by the petitioners under Section 17 of the SARFAESI Act be decided on merits.

29. With the above observations and directions, the writ petition stands disposed of.

JUDGE

CHIEF JUSTICE

Mukut

Comparing Assistant