

(2017) 07 CAL CK 0019
In the Calcutta High Court
Case No : 16511 (W) of 2016

Dr. Dipankar Chakraborty

APPELLANT

Vs

Allahabad Bank & Ors.

RESPONDENT

Date of Decision : 07-07-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs
[Code of Civil Procedure, 1908](#), [Order 7 Rule 11](#) -
[Order 7 Rule 11\(d\)](#) -
[Lan](#)

Citation : (2017) 07 CAL CK 0019

Hon'ble Judges : Debangsu Basak

Bench : SINGLE BENCH

Advocate : Om Narayan Rai

Judgement

1. The petitioner has assailed the invocation of the provisions of Securitization and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 (SARFAESI Act) by the bank on the ground that at the time of invocation, the same was barred by the laws of limitation.

2. The petitioner appearing in person has submitted that, the petitioner had enjoyed credit facilities from the bank. The bank not having acted in terms of its obligations, the petitioner was obliged to file a suit for damages being Money Suit No. 120 of 2000 before the learned City Civil Court at Calcutta against the bank. The bank had filed a proceeding under Section 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 against the petitioner

being O.A. No. 137 of 2001 before the Debts Recovery Tribunal-1, Kolkata. The Civil Suit was also transferred to the Debts Recovery Tribunal-1. Both the proceedings are pending adjudication. The bank has, thereafter, issued the impugned notice dated March 3, 2016 purportedly under the Act of 2002. The petitioner had replied thereto by a writing dated March 21, 2016. The bank is now proceeding wrongfully under the Act of 2002 as on the date of issuance of the notice under Section 13(2) of the Act of 2002, the claim of the bank was barred by the laws of limitation. He has referred to Section 36 of the Act of 2002 and submitted that, the claim of the bank has to be within the period of limitation at the time of initiation of the proceedings under the Act of 2002. He has submitted that, the mortgage of the immovable property concerned was created in 1995. In terms of the provisions of the Limitation Act, 1963, a suit for mortgage could have been instituted by 2007. The petitioner had paid the last installment in respect of the loan account in October 1995. Taking such fact into consideration the notice under the provisions of the Act of 2002 cannot be said to be within the period of limitation. In support of his contention that, when a claim of a bank or a financial institution is barred by the laws of limitation, such bank or financial institution is not entitled to invoke the provisions of the Act of 2002, the petitioner has relied upon 2014 Volume 135 All India Cases page 550 (Abhay Ram v. Mahant Rambali Das & Anr.), All India Reporter 2014 Supreme Court page 1612 (Brijesh Kumar v. State of Haryana & Ors .), 2005 Volume 7 Supreme Court Cases page 510 (Popat and Kotecha Property v. State Bank of India Staff Association) and 2010 Volume 5 Supreme Court Cases page 459 (Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation & Anr .).

3. Referring to 2012 Volume 129 DRJ page 654 (Somnath Manocha v. Punjab and Sindh Bank & Anr .), the petitioner has submitted that, since the proceedings under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 are not a proceeding for mortgage, therefore, a period of 12 years is not available to the bank for the purpose of invoking the provisions of the Act of 2002. In any event, a period in excess of 12 years has elapsed prior to the invocation of Section 13(2) of the Act of 2002, in the facts of the present case. Consequently, the Authorized Officer of the bank has exercised a jurisdiction not vested upon it by law. The proceedings initiated by the Authorized Officer of the bank under the Act of 2002 commencing from the issuance of the notice under Section 13(2) of the Act of 2002 should be quashed.

4. Learned Advocate for the bank has submitted that, the claim of the bank is within the period of limitation. He has submitted that, the period of limitation had stopped on the date when the bank had filed the proceedings under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 in 2001. The proceeding before the Debts Recovery Tribunal-1, Kolkata is within the period of limitation. Such proceedings are yet to be disposed of. Consequently, the bank is entitled to invoke the provisions of the Act of 2002 since the limitation had stopped in 2001.

5. Referring to 2012 Volume 129 DRJ page 654 (Somnath Manocha v. Punjab and Sindh Bank & Anr .), learned Advocate for the bank has submitted that, the period of limitation had stopped on the date of filing of the proceedings under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Authorized Officer of the bank, therefore, did not act irregularly or without jurisdiction in invoking the provisions of the

Act of 2002. He has referred to the word "claim" as used in Section 36 of the Act of 2002 and has submitted that, such word is not defined under the Act of 2002. He refers to the word "financial asset" used in Section 36 of the Act of 2002. He has submitted that, the word "financial asset" is defined in Section 2(l) of the Act of 2002. He has referred to the definition of the word "debt" as defined in Section 2(ha) of the Act of 2002 and the definition of the word "debt" used in Section 2(g) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. He has submitted that, the proceedings under Section 19 of the Act of 1993 are yet to attain finality. Once such proceedings culminate into a certificate, the bank would have a period of 12 years to execute such certificate. That being the position, and more particularly in view of the fact that the Section 19 proceedings are yet to be disposed of, it cannot be said that, the bank has acted beyond jurisdiction or beyond the period of limitation for invoking the provisions of the Act of 2002. He has emphasized on the fact that, any other interpretation of Section 36 of the Act of 2002, in the facts of the present case, would lead to an irreconcilable and anomalous situation in that, a bank after obtaining a certificate under Section 19 of the Act of 1993 would be in a position to invoke the provision of the Act of 2002 but at the same time would not be entitled to invoke the provisions of the Act of 2002 in the interregnum when there does not exist a certificate under Section 19 of the Act of 2002. The provisions of Section 36 of the Act of 2002 read with the definition of "financial asset" and "debt" as given in the respective Acts should be taken into consideration for the purpose of returning a finding that, the bank has invoked the provisions of the Act of 2002 within the period of limitation. He has submitted that, no word used in the statute should be considered to be superfluous. In respect of such

contention he has relied upon 2002 Volume 4 Supreme Court Cased page 97 (Grasim Industry Limited v. Collector of Customs, Bombay).

6. Relying upon All India Reporter 2011 Delhi page 196 (Sand Plast (India) Ltd. v. Punjab National Bank & Anr .) and Punjab Law Reports 2008 (149) Punjab and Haryana page 550 (Varun

Steels v. Canara Bank & Anr .) he has submitted that, the proceedings initiated by the bank under the Act of 2002 are within the period of limitation.

7. The following issues have arisen for consideration in the instant proceedings:-

(i) Whether the period of limitation stops on the filing of a proceeding under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 for a bank or a financial institution to invoke the provisions of the Act of 2002 in respect of the same claims as in the Section 19 proceedings?

(ii) To what reliefs if any, are the parties entitled to?

The petitioner as a medical professional had started a medical diagnostic center and had obtained a loan from Canara bank. The petitioner has claimed to have repaid such loan. The petitioner had, thereafter, approached Punjab National Bank for credit facility.

According to the petitioner, the bank had sanctioned a credit facility. Subsequent to the sanction, the bank did not discharge its obligations. Rather, the bank had caused loss and damages to the petitioner due to the various unlawful activities. The petitioner had filed a civil suit being Money Suit No. 120 of 2000 against the bank before the learned City Civil Court for recovery of the loss and damages suffered by him. The bank had filed a proceeding under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 being O.A. No. 137 of 2001 before the Debts

Recovery Tribunal, Kolkata. The Civil Suit was transferred to the Debts Recovery Tribunal for adjudication. Both the proceedings are pending.

8. The parties had taken various steps against each other in several other proceedings. The bank had issued a notice under Section 13(2) of the Act of 2002 on February 4, 2011. The petitioner had moved the High Court for quashing such notice. Such proceeding was dismissed on the ground that, the petitioner had a statutory alternative efficacious remedy. On April 13, 2011 the bank had invoked the provisions of Section 13(4) of the Act of 2002. A possession notice in respect of the residential house of the petitioner was published on April 27, 2011 and a sale notice was published on May 10, 2011. The petitioner had applied under Section 17 of the Act of 2002 before the Debts Recovery Tribunal. The bank had then taken a stand that, it would withdraw the notices under Sections 13(2) and 13(4) of the Act of 2002. The bank had done so by publication of a notice in a newspaper on June 6, 2011. The bank had, thereafter, issued another notice dated July 5, 2011 under Section 13(2) of the Act of 2002. This notice was issued to the guarantor. A reply under Section 13(3A) of the Act of 2002 was sent on July 29, 2011. The bank had dealt with the same by their letter dated August 9, 2011.

9. In such fact scenario the question is whether the invocation of the provisions of the Act of 2002 on July 5, 2011 through the issuance of the notice under Section 13(2) is within the period of limitation as envisaged under Section 36 of the Act of 2002 or not.

10. The provisions of the Sections 2(ha), 2(l) and 36 Act of 2002 and Section 2(g) of the Act of 1993 that have been placed for consideration are follows:-

"2(ha). "debt" shall have the meaning assigned to it in clause (g) of section 2 of

the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and includes - (i) unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract;

(ii) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable any borrower to acquire the intangible asset or obtain licence of such asset; "

"2(l). "financial asset" means debt or receivables and includes-

(i) a claim to any debt or receivables or part thereof, whether secured or unsecured; or

(ii) any debt or receivables secured by, mortgage of, or charge on, immovable property; or

(iii) a mortgage, charge, hypothecation or pledge of movable property; or

(iv) any right or interest in the security, whether full or part underlying such debt or receivables; or

(v) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or

(va) any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or

(vb) any right, title or interest in any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset; or

(vi) any financial assistance."

"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)."

2(g). "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank of a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or

assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application."

Sections 4, 14 and 15 of the Limitation Act, 1963 are also relevant.

They are as follows:-

"4. Expiry of prescribed period when court is closed.--Where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the date when the Court re-opens.

Explanation.-- A Court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day."

"14. Exclusion of time of proceeding bona fide in Court without jurisdiction. --

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908, the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the Court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the Court or other cause of a like nature.

Explanation.-- For the purposes of this section,--

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

"15. Exclusion of time in certain other cases.--

(1) In computing the period of limitation of any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

(2) In computing the period of limitation for any suit of which notice has been given, or for which the previous consent or sanction of the Government or any other authority is required, in accordance with the requirements of any law for the time being in force, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded. Explanation.-- In excluding the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be counted.

(3) In computing the period of limitation for any suit or application for execution of a decree by any receiver or interim receiver appointed in proceedings for the adjudication of a person as an insolvent or by any liquidator or provisional liquidator appointed in proceedings for the winding up of a company, the period beginning with the date of institution of such proceeding and ending with the expiry of three months from the date of appointment of such receiver or liquidator, as the case may be, shall be excluded.

(4) In computing the period of limitation for a suit for possession by a purchaser at a sale in execution of a decree, the time during which a proceeding to set aside the sale has been prosecuted shall be excluded.

(5) In computing the period of limitation for any suit the time during which the defendant has been absent from India and from the territories outside India under the administration of the Central Government, shall be excluded."

11. Section 36 of the Act of 2002, bars a secured creditor from taking all or any measure under Section 13(4), unless the claim of such secured creditor is within the period of limitation prescribed under the Limitation Act, 1963. The provisions of the Limitation Act, 1963 are, therefore, applicable when a secured creditor seeks to initiate a proceeding under the Act of 2002. At least at the time of taking a measure under Section 13(4), the Limitation Act, 1963 would come into operation, that is to say that, the secured creditor is permitted by the Act of 2002 to take a measure under Section 13(4) only and

only if, the measure sought to be taken is within the period of limitation as prescribed under the Limitation Act, 1963. The secured creditor is required to make his claim in respect of the financial asset within the period of limitation prescribed under the Limitation Act, 1963. Would lodging a proceeding under Section 19 of the Act of 1993 be construed to be making by a claim in respect of the financial asset within the period of limitation prescribed under Limitation Act, 1963 is another question which arises for consideration.

12. In the facts of the present case, the petitioner has not contended that, the claim made by the secured creditor before the Debts Recovery Tribunal under Section 19 of the Act of 1993 is barred by the laws of limitation. In any event, the issue of limitation of the proceedings under Act of 1993 is an issue which is to be decided by the Debts Recovery Tribunal before which such proceedings are pending. A Writ Court in a collateral proceeding is not required to answer such an issue. Such an issue also does not fall for consideration in the present case. Rather the issue as to whether the lodging of the proceedings under Section 19 of the Act of 1993 continues the period of limitation, or in other words, stops the running of the period of limitation on and from the date of lodging of such proceedings has arisen for consideration in the present case.

13. The issue of limitation in the context of Section 36 of the Act of 2002 was looked at and considered in Somnath Manocha (supra). The Division Bench of the Delhi High Court in Somnath Manocha (supra) has held that,

"15. The requirement of Section 36 is that the claim in respect of "financial asset" is made within the period of limitation prescribed under the Limitation Act . Claim in respect of "financial asset" is defined as defined by Section 29(1) of the SARFAESI Act means debt or receivables and includes a claim to any debt or receivables or part thereof, whether secured or unsecured, and also any

beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent. Section 2(1)(t) which defines "property" is also relevant. This definition reads as under:

"(t) "property" means--

(i) immovable property;

(ii) movable property;

(iii) any debt or any right to receive payment of money, whether secured or unsecured;

(iii) receivables, whether existing or future;

(iv) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature;"

16. So far so good. The question is as to whether in the facts of this case, the claim had become time barred. The property in question is mortgaged with the bank. However, the bank did not file Suit for recovery under Order XXXIV of the CPC. Instead, in para 17 of the plaint, specific averment was made that it was not claiming any relief against the mortgaged immovable property in the said suit and right was reserved to proceed against the said mortgaged property as provided under provisions of Order XXXIV Rule 14 of the CPC.

17. It could not be disputed that under ordinary law, the respondent bank has lost the remedy of enforcing the aforesaid security by way of mortgage as limitation of 12 years as provided in Article 62 of the Schedule to the Limitation Act, 1963 has expired. The bank chose to file only a suit for recovery of money and in spite of averment made in Para 17 of the plaint, it did not file any suit under Order XXXIV of the CPC. No doubt, in terms of order XXXIV Rule 14, the bank was entitled to bring the mortgaged property to sale by instituting a suit for sale in enforcement of the mortgage whereafter obtaining a decree for payment of money, in satisfaction of the claim under mortgage. However, such a suit could be filed within the period of limitation prescribed under Article 62 in the Schedule to the Limitation Act . Thus, under the ordinary law, the bank is precluded from filing a mortgage suit in respect of the aforesaid property.

18. Thus, on the date of notice issued under Section 13(2) of SARFAESI Act, there was no such existing or subsisting right qua mortgage. We agree with the contention of the appellant that the remedy provided under SARFAESI Act is simply a new means of enforcing a preexisting right, i.e., one that existed before the SARFAESI Act came into existence. That remedy is the right to sell a mortgage property and recover the sum which it secures from the sale proceeds. In the present case, since right to file a suit or proceedings stood extinguished, the SARFAESI Act would not revive this extinguished claim.

19. Position would have been different if the bank had filed mortgage suit and

such a suit was pending. In *Ivee Injectaa Ltd. (supra)*, mortgage suit has already been filed and therefore, claim for enforcing mortgage rights was subsisting as it was pending adjudication. If the period of 12 years had not expired under Article 62 in the Schedule to the Limitation Act and there was still time to file the proceedings of mortgage suit, even that would have saved the right of the Bank to enforce the provision of SARFAESI. But even that action has become time barred. In the facts of this case, we hold that the claim is barred under Section 36 of SARFAESI Act and therefore, it was not open to the bank to proceed under this Act. We, thus, allow this appeal and quash the impugned notice under Section 13(2) and 13(4) of SARFAESI Act issued by the bank."

14. *Varun Steels (supra)* has held that, the question of limitation being a mixed question of fact and law, the same cannot be gone into in a proceeding under Article 226 of the Constitution of India more particularly in view of the facts scenario obtaining in that case.

There was a proceeding pending before the Debts Recovery Tribunal which according to the Court was better-equipped to decide such question of limitation.

15. *Sand Plast (India) Ltd. (supra)* has considered the point of limitation on a prima facie view. A final decision on the point of limitation has not been returned therein. *Sand Plast (India) Ltd. (supra)* has relied upon a Supreme Court decision reported at 2008 Volume 1 Supreme Court Cases page 125 (*Transcore v. Union of India & Anr .*). It has held that, the same was not a conclusive opinion on the point and that a final decision on such issue was to be taken by the Debts Recovery Tribunal.

16. *Oriental Aroma Chemical Industries Ltd. (supra)* has considered condonation of four years delay in filing the appeal. The ratio laid down therein has no manner of application in the facts of the present case. *Abhay Ram (supra)* has considered an application of Section 5 of the Limitation Act, 1963 for condoning a delay of 1689 days in filing the second appeal. The ratio has no manner of application in the facts of the present case. *Brijesh Kumar (supra)* has considered a condonation of delay of ten years under Section

54 of the Land Acquisition Act. Popat and Kotecha Property (supra) has considered an application under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 claiming that, the suit was barred by limitation. It has held that, a plaint must be read as a whole. It is not permissible to cull out a sentence or passage of a judgment and to read it out of the context in isolation. The real object of Order VII Rule 11 of the Code of Civil Procedure, 1908 is to keep out of Courts irresponsible law suits. In the facts of that case, upon consideration of the statements made in the plaint, their Lordships had found that, the claim made therein was not barred by the laws of limitation. The ratio laid down therein is not attracted to the facts of the present case.

17. Section 4 of the Limitation Act, 1963, is based on the principle that, the law does not compel a man to do that which he cannot possibly perform and an Act of Court shall prejudice no man. This section has no manner of application in the facts of the present case. The initiation of a proceeding under Section 13(2) of the Act of 2002 is an original proceeding and Section 5 of the Limitation Act, 1963 would have no manner of application at the point of initiation of the proceedings. It applies to an appeal under Section 17 of the Act of 2002. Section 14 of the Limitation Act, 1963, permits exclusion of time for proceeding bona fide in a Court without jurisdiction. Three conditions have to co-exist for Section 14 to be attracted and applied. Firstly, the plaintiff must satisfy that, he was prosecuting another civil proceeding with due diligence. Secondly, the earlier and the latter proceeding must be founded on the same cause of action. Thirdly, the Court in which the former proceeding was prosecuted suffers from defect of jurisdiction or other cause of the nature rendering it incapable of entertaining such proceeding.

18. Section 14 of the Limitation Act, 1963 saves the period of limitation

in the event of a new proceeding being filed when the Court in which the former proceeding was being prosecuted suffers from defect of jurisdiction or defect of like nature. It does not contemplate two proceedings on the same cause of action at the same time. In the present case, the bank has not withdrawn the proceeding under Section 14 under the RDB Act, 1993, for defect in jurisdiction of the Tribunal to decide the same or otherwise. Rather the bank is proceeding under Section 19 of the RDB Act, 1993. It can proceed parallelly by under the Act of 2002 provided that, the proceedings under the Act of 2002 are within the period of limitation. Pendency of the proceedings before the DRT, under the RDB Act, 1993, will not save the period of limitation for a proceeding under the Act of 2002, if the proceeding under the Act of 2002, is by itself barred by the laws of limitation. In other words, a bank cannot take the benefit of the pendency of the proceedings before the DRT to claim that, a proceeding under the Act of 2002, which is otherwise barred by limitation to be validly instituted within the period of limitation. Section 4, Section 14 and Section 15 of the Limitation Act, 1963, does not assist a bank to initiate a proceeding under Act of 2002 which is otherwise barred by limitation on the date of its initiation premised upon of a pendency of a proceeding under Section 19 of the RDB Act, 1993 before the DRT.

19. Section 14 of the Limitation Act, 1963 permits exclusion of the time taken to proceed bona fide in a Court without jurisdiction. Such section permits a plaintiff to present the same suit, if the Court of the first instance, returns a plaint from defect of jurisdiction or other causes of like nature, being unable to entertain it. In the present case, a secured creditor is not withdrawing a proceeding pending before the Debts Recovery Tribunal under Section 19 of the

Act of 1993 to invoke the provisions of the Act of 2002. Rather the secured creditor is proceeding, independent of its right to proceed under the Act of 1993, while invoking the provisions of the Act of 2002. This choice of the secured creditor to invoke the Act of 2002 is independent of and despite the pendency of the proceedings under the Act of 1993, has to be looked at from the perspective of whether or not such an action meets the requirement of Section 36 of the Act of 2002, when the secured creditor is proposing to take a measure under Section 13(4) of the Act of 2002. Although, a secured creditor, as held in *Transcore* (supra), is entitled to take a remedy or a measure as available in the Act of 2002, despite the pendency of other proceedings, including a proceeding under Section 19 of the Act of 1993, in respect of the self-same cause of action, in my view, the invocation of such independent right under the Act of 2002, has to be done within the period of limitation prescribed under the Limitation Act, 1963 in terms of Section 36 of the Act of 2002. The Act of 2002 gives an independent right to a secured creditor to proceed against its financial assets and in respect of which such asset the secured creditor has security interest. The right to proceed, however, is subject to the adherence to the provisions of limitation as enshrined in the Limitation Act, 1963. The provisions of the Limitation Act, 1963 are, therefore, attracted to a proceeding initiated under the Act of 2002. That being the legal position, the invocation of the provisions of the Act of 2002 in the facts of the present case, on July 5, 2011, without there being an extension of the period of limitation by the act of the parties cannot be sustained.

20. Section 15 of the Limitation Act, 1963, allows exclusion of time in certain cases specified therein. Section 15 adds the period excluded therein to the period of limitation prescribed in the Schedule in the

Act of 1963. In the facts of the present case, the bank has not contended that, it had suffered from any legal disability from invoking the provisions of the Act of 2002, within the period of limitation prescribed for the institution of a suit for recovery of money or for enforcement of mortgage. In the facts of the present case, divorced of the fact that, there are earlier proceedings pending, the secured creditor could not have issued a notice under Section 13(2) of the Act of 2002 on July 5, 2011 as the same was barred by limitation on such date. There was no transaction between the petitioner and the secured creditor at least subsequent to 2001 to enlarge the period of limitation till July 5, 2011. The time to file a suit for recovery of money had expired in 2001 and a suit for mortgage in 2013, taking twelve years from 2001, being the date for limitation of the money suit. Then also the notice under Section 13(2) of the Act of 2002, dated March 3, 2013 is barred by limitation.

21. A proceeding under Section 19 of the RDB Act of 1993 may result in a certificate in favour of the bank. Such a certificate can be put into execution by invoking the provisions of the Act of 2002. This does not lead to an anomalous situation as the bank has contended. The laws of limitation do not take away a subsisting right, it merely postpones the enforcement of an existing right to be revived for enforcement upon happening of a future event. The bank on receiving a certificate under Section 19 of RDB Act, 1993, has its right to proceed under the Act of 2002 revived. It then needs to proceed under the Act of 2002, within the period of limitation, from the date of such certificate.

22. The issues raised are, therefore, answered by holding that, the initiation of the proceedings by the bank was barred by the laws of limitation on July 5, 2011 and all proceedings taken by the bank

consequent upon and pursuant to the notice under Section 13(2) of the Act of 2002 dated July 5, 2011 are quashed including such notice.

23. W.P. No. 16511 (W) of 2016 is disposed of accordingly.

24. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.