

(2012) 08 MAD CK 0089

In the Madras High Court

Case No : Writ Petition No's. 15386, 8099, 8381, 12970, 13456 of 2012 and connected MPs.

Dr. Zubida Begum and Others

APPELLANT

Vs

Indian Bank and Others

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Arbitration Act, 1940 — Section 34
Central Excises and Salt Act, 1944 — Section 35H(1)
Constitution of India, 1950 — Article 14, 214
Criminal Procedure Code, 1973 (CrPC) — Section 193, 195, 228
Limitation Act, 1963 — Section 10, 10, 10, 11, 11
Limited Liability Partnership Act, 2008 — Section 29(2)
Penal Code, 1860 (IPC) — Section 196
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 20, 20(3), 21, 22
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 17, 17(2), 18

Citation : (2013) 1 BC 67 : (2012) 5 CTC 369 : (2012) 4 LW 493 : (2012) 6 MLJ 801

Hon'ble Judges : K.K. Sasidharan, J;D. Murugesan, J

Bench : Division Bench

Advocate : S. Sethuraman, K.M. Vijayan, for E. Vijay Anand, S. Ramesh and P. Raghunathan, for the Appellant; Jayesh Dolia, for Aiyer and Dolia, S. Parthasarathy, for N.S. Manoharan, N.V. Srinivasan, for N.V.S. Associates and OM. Prakash, for Ramalingam Associates, for the Respondent

Judgement

K.K. Sasidharan, J.

Introductory:

1. The core issue raised in these batch of cases, is whether the Debts Recovery Appellate Tribunal constituted under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") has power to condone the delay in filing second appeal u/s 18 of the SARFAESI Act.

Lead case:

Since the principal question is one and the same in all these writ petitions, W.P. No. 13456 of 2012 is taken as the lead case to narrate the relevant facts.

W.P. No. 13456 of 2012

2. The petitioners were the Directors of a Company by name Kohinoor Steel Private Limited. The petitioners were also the partners in a firm called "Varsha Metals". M/s. Kohinoor Steel Private Limited availed financial assistance from Union Bank of India, Bangalore. Since the unit failed to clear the loan outstanding, the Bank initiated proceedings under the SARFAESI Act. Notice u/s 13(2) of the SARFAESI Act was issued on 23.12.2008 followed by a possession notice issued on 28.2.2009. The Bank thereafter issued a sale notice on 18.1.2010 proposing to sell the secured assets on 20.2.2010.

3. The sale notice dated 18.1.2010 was challenged by the petitioners before the Debts Recovery Tribunal (hereinafter referred to as "Tribunal"), Bangalore in S.A. No. 131 of 2010. The appeal was dismissed on 13.5.2010

4. The order dated 13.5.2010 was challenged by the petitioners before the Debts Recovery Appellate Tribunal (hereinafter referred to as "Appellate Tribunal"), Chennai belatedly. There was a delay of six days in preferring the appeal and this made the petitioners to file an application before the Appellate Tribunal to condone the delay.

5. The Appellate Tribunal was of the view that it has no jurisdiction to condone the delay. According to the Appellate Tribunal, the High Court of Madhya Pradesh has already made the position clear that SARFAESI Act does not contain a provision conferring power on the Appellate Tribunal to condone the delay in filing an appeal u/s 18 of the Act. The application was accordingly dismissed. The said order dated 3.5.2010 in I.A. No. 1220 of 2010 is challenged in this writ petition.

6. The applications preferred by the petitioners in other writ petitions were also dismissed solely on the ground that the Appellate Tribunal has no power to condone the delay.

Rival Contentions:

7. Mr. K.M. Vijayan, learned senior counsel for the petitioner in W.P. No. 8099 of 2012 made elaborate submissions with respect to the applicability of the provisions of the Limitation Act to an appeal preferred before the Appellate Tribunal u/s 18 of the SARFAESI Act. The substantial contentions are as follows:

(i) The SARFAESI Act has not expressly excluded the provisions of the Limitation Act.

(ii) Section 29(2) of the Limitation Act would attract in case two requirements are satisfied by the authority invoking the said provision viz.,

(a) there must be a provision for a period of limitation under any special or local law in connection with any suit, appeal or application and

(b) the prescription of period of limitation under such special or local law should be different from the period prescribed by the Schedule to the Limitation Act.

If the above two requirements are satisfied, the consequences contemplated by Section 29(2) would automatically follow.

(iii) In case the two primary requirements are satisfied, Section 3 of the Limitation Act would apply as if the period prescribed by the special or local law was the period prescribed under the Schedule to the Limitation Act.

(iv) For determining any period of limitation prescribed by special or local law for a suit, appeal or application all the provisions under Sections 4 to 24 of the Limitation Act would apply insofar as and to the extent to which they are not expressly excluded by such special or local law.

(v) SARFAESI Act is admittedly a Special statute. Though there is no express provision extending the provisions of the Limitation Act to an appeal preferred u/s 18 of the Act, the fact remains that the Limitation Act is not specifically excluded. Therefore, the Appellate Tribunal has power to extend the time for filing appeal u/s 18 of the SARFAESI Act.

(vi) Section 36 of the SARFAESI Act mandates that the claim in respect of the financial asset should be made within the period of limitation prescribed under the Limitation Act. However, no such provision is found in the SARFAESI Act excluding the period of limitation in respect of an appeal u/s 18 of the Act.

(vii) Section 37 of the SARFAESI Act provides that the application of other laws are not barred. The other law would also include the Limitation Act.

(viii) The right of appeal is a statutory right. Such a right cannot be curtailed by giving a narrow interpretation.

(ix) The issue raised by the petitioner is covered by the decision of the Supreme Court in Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker,

(x) The provisions contained under the Limitation Act would apply automatically to determine the periods under the special law, in case there is no express exclusion of the application of Limitation Act.

8. Mr. P. Raghunathan, learned counsel for the petitioner in W.P. No. 12970 of 2012 would contend:

(i) Though the Legislature had prescribed a particular period of limitation, no outer time limit was fixed restricting the discretion. The legislative intention is very clear that it was not in favour of excluding the provisions of the Limitation Act, in respect of an appeal preferred u/s 18 of the SARFAESI Act.

(ii) The Limitation Act 1963 made a fundamental change in Section 29(2) of the

Act. It is clear that in case the requisite condition for applicability to proceedings under the Special Act are attracted, the provisions of Sections 4 to 24 would get attracted and as a result, Section 5 of the Limitation Act shall apply to such proceedings, unless the Limitation Act is excluded expressly. Since there is no such express exclusion, the Appellate Tribunal was not correct in its observation that it has no power to condone the delay.

9. Mr. S. Ramesh, learned counsel for the petitioner in W.P. No. 8381 of 2012 would contend thus:

SARFAESI Act is not a complete code by itself. Therefore Section 5 of the Limitation Act is applicable to a proceeding before the Appellate Tribunal.

10. Mr. S. Sethuraman, learned counsel for the petitioners in W.P. No. 15386 of 2012 and 13456 of 2012 would contend:

(i) Section 18(2) of SARFAESI Act provides that the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "RDDBFI Act"). The proviso to Section 20(3) of the RDDBFI Act gives discretion to the Appellate Tribunal to entertain an appeal after the expiry of the period of forty-five days prescribed by sub-section 3 of Section 20. The legislative intention is therefore clear that the benefits of the provisions of the Limitation Act should be made applicable to a proceeding u/s 18 of the SARFAESI Act.

(ii) The exclusion of the Limitation Act should be specific. The SARFAESI Act does not contain such a provision indicating express exclusion.

11. Mr. S. Parthasarathy, learned senior counsel for the fourth respondent in W.P. No. 8099 of 2012 would contend:

The time limit for filing an appeal to an appellate Court is thirty days both under the Schedule to the Limitation Act and SARFAESI Act. Therefore, it cannot be said that a different period is prescribed under the local law so as to apply the provisions of Limitation Act and more specifically u/s 29(2) of the Act.

12. Mr. Jayesh Dolia, learned counsel for the first respondent in W.P. No. 15386 of 2012 would submit:

(i) The Legislature consciously avoided the provisions of the Limitation Act to a proceeding before the Appellate Tribunal u/s 18 of the Act. The Court cannot extend the period by importing the provisions of the Limitation Act.

(ii) The Supreme Court upheld the validity of the SARFAESI Act in *Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.*, which includes Section 18 of the Act. Therefore, the issue cannot be re-agitated later on a different point.

(iii) The Act was enacted to achieve a specific purpose. The proceeding initiated

under the SARFAESI Act should attain early finality. In case Section 5 of the Limitation Act is extended to an appeal u/s 18 of the Act, there would be no logical end to the proceeding. The Bank would not be in a position to sell the property on account of the pendency of belated appeals.

Discussion:

13. SARFAESI Act is a "special law" enacted to enable the Banks and Financial Institutions to recover the dues without the intervention of Court. The Act contains various provisions enabling the Banks and Financial Institutions to declare the debt as a "non-performing asset", to call upon the borrower to pay the amount within a prescribed period and in case of failure to discharge the loan amount, to take possession of the secured assets and dispose of the same in any of the methods permitted without taking re-course to the legal proceedings.

14. Section 17 of the Act gives a right to an aggrieved to approach the Tribunal challenging the measures taken by the Bank under sub-section (4) of Section 13 of the Act. Section 17 of the Act prescribes a time limit of forty five days from the date on which measures have been taken, to file an appeal.

15. Section 18 of the SARFAESI Act enables a person aggrieved by the order passed by the Tribunal u/s 17 of the Act to file an appeal within thirty days from the date of receipt of the order before the Appellate Tribunal. The provision reads as under:

18. Appeal to Appellate Tribunal

(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal u/s 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

Provided Further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent, of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided Also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent, of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.

16. The appellate provision mandates that the appeal should be filed within thirty

days from the date of receipt of the order passed by the Tribunal. The SARFAESI Act does not contain an express provision either extending the provisions of the Limitation Act or its exclusion.

17. The Limitation Act, 1963 was enacted in supersession of the Limitation Act, 1908. The provisions of Limitation Act would apply to all Civil Proceedings and certain criminal proceedings unless the application thereof has been excluded either specifically or by necessary implication.

18. We are now mainly concerned with the following two provisions of the Limitation Act viz., Section 5 and Section 29(2).

5. Extension of prescribed period in certain cases-

Any appeal or any application, other than an application under any of the provisions of Order 21 of the Code of Civil Procedure, 1908 (5 of 1908) may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation - The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this Section.

29. Savings:

(1).....

(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 sit, appeal or application by any special or local law, the provisions contained in Section 5 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.

19. The petitioners have taken up a specific contention that in case the provisions of the Limitation Act are not expressly excluded and the period of limitation prescribed under the Special Act is different from the period that prescribed under the Schedule to the Limitation Act, then Section 29(2) would apply. In short, it is the contention of the petitioners that Sections 4 to 24 of the Limitation Act would apply automatically to determine the periods under Special Law in case the provisions of the Limitation Act are not expressly excluded.

20. It is not in dispute that the Supreme Court in *Mangu Ram Vs. Municipal Corporation of Delhi*, and *Mukri Gopalan v. Cheppilat Puthanpuraiyil Aboobacker* (supra) observed that an express mention in the special law is necessary only for an exclusion.

21. The Supreme Court in the subsequent decisions by placing reliance on the Three Judge Bench decision in *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, made the position clear that in case the provisions of the Limitation Act were excluded by necessary implication in spite of the absence of an express provision, the provisions of the Limitation Act cannot be extended to enlarge the time prescribed under the Special Statutes. In fact, in *Hukumdev Narain Yadav v. L.N. Mishra* (supra), the Court held that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. The Court observed that if on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred by the Limitation Act cannot be called in aid to supplement the provisions of the Act. It was also observed that even in case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would still be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject matter and scheme of the special law exclude their operation.

22. The Supreme Court in *Union of India Vs. M/s Popular Construction Co.*, held that the words "exclusion" also includes "exclusion by necessary implication".

23. In *Nasiruddin and Others Vs. Sita Ram Agarwal*, , the Supreme Court held that the Court can condone the delay only when the statute confers such a power on the Court and not otherwise.

24. The Supreme Court in *Hukumdev Narain Yadav v. L.N. Mishra* (supra) and *Union of India v. Popular Construction Co* (supra) indicated the test to determine the applicability of Section 29(2) of the Limitation Act. The Court was of the view that the applicability of the provisions of the Limitation Act has to be considered taking into account the provisions of the Special law and not by placing reliance on the provisions of the Limitation Act.

25. The decisions referred to above clearly shows that in case the provisions of the Special Act taken as a whole excludes the applicability of the Limitation Act either expressly or impliedly, the Courts cannot supplement the provisions of the Limitation Act to extend the period of limitation. In short, the provisions of the special Act as a whole should be examined with reference to the statement of objects and reasons.

26. The Supreme Court in *Union of India v. Popular Construction Co.* (supra) case also considered the history of the scheme of Arbitration and Conciliation Act, 1996 to decide as to whether Section 5 of the Limitation Act is applicable to an application u/s 34 of the Arbitration Act. The Supreme Court found that the object of enacting the new law was to minimise the supervisory role of Courts in Arbitration process. This made the Supreme Court to conclude that the Limitation Act has no application to a proceeding u/s 34 of the Arbitration Act.

27. In order to consider the question as to whether Section 29(2) of the

Limitation Act is applicable to a proceeding u/s 18 of the SARFAESI Act, necessarily we should look in to the scheme of the Special Law.

28. The Banks and Financial Institutions were wandering in the corridors of the Courts to recover the amount advanced to the borrowers. The banks faced immense difficulties in recovering the loans and enforcement of securities. The Civil Courts took considerable time to decide the matters involving Banks and financial institutions. The Civil Suits and the Execution Petitions preferred by the Banks also contributed tremendously to the problem of docket explosion. The Banks and Financial Institutions were not in a position to recover the money in spite of conducting litigations years together. Even after getting a decree, the Banks found it difficult to execute the decree on account of the procedural delay. The banks were compelled to wait for years together to recover the public money. The slow recovery process resulted in denial of new loans. The difficulties faced by the Banks and Financial Institutions in the matter of recovering loans and enforcement of securities charged with them, made the Government of India to appoint a committee headed by Shri. M. Narasimham. The Committee recommended the constitution of Special Tribunals with special powers in adjudication of disputes between the banks and borrowers. Thereafter, a Committee under the Chairmanship of Shri T. Tiwari was constituted to examine the legal and other difficulties faced by the Banks and to suggest remedial measures including changes in law. The Committee has also suggested setting up of Special Tribunals for recovery of amount due to banks and financial institutions by following a summary procedure. The Government on examination of the data provided by the Banks with respect to the pending litigations found that huge amount of public money was locked up in litigation. This made the parliament to enact the RDDBFI Act, 1993.

29. Section 19 of RDDBFI Act permits the Banks to file applications before the Tribunal for the purpose of issuing recovery certificates. The Tribunal was expected to decide the matter within a period of 180 days from the date of receipt of application. Section 20 of the RDDBFI Act provides for an appeal to the Appellate Tribunal within a period of forty-five days from the date on which the copy of the order is received by the appellant. The proviso to Section 20(3) permits the Appellate Tribunal to entertain an appeal in case the Tribunal is of the opinion that the appellant has made out sufficient cause for not filing the appeal within the statutory period. Though RDDBFI Act was enacted with a view to constitute a machinery to achieve speedy recovery, still, it failed to give the desired results.

30. The problem of accruing non-performing assets attracted the attention of the Government once again and a need was felt to evolve a unique mechanism to recover the amount due to Banks and financial institutions. The Government was of the view that the Banks and Financial Institutions should be given power to sell the secured assets without the intervention of Courts. The reports submitted by the Committees headed by Mr. M. Narasimhan and Mr. Andhyarujina

suggested legislative measures to empower the Banks and financial institutions to recover the outstanding by treating the assets as "Non Performing Assets". The issue was thereafter considered by the Government with all its seriousness and ultimately the SARFAESI Act was enacted. The Banks and Financial Institutions were given powers to recover the loan amount from chronic defaulters after declaring the debts as "Non Performing Assets" and without recourse to time consuming Court proceedings.

31. The validity of the SARFAESI Act was challenged before the Supreme Court on various grounds. The Supreme Court upheld the validity of the Act and its provisions except that of sub-section (2) of Section 17 of the Act in *Mardia Chemicals Ltd. v. Union of India* (supra). The condition prescribed u/s 17(2) regarding pre-deposit to file an appeal was found onerous, oppressive, unreasonable, arbitrary and violative of Article 214 of the Constitution of India and accordingly sub-section (2) of Section 17 of the Act was declared ultra vires of Article 14 of the Constitution of India.

32. The observation made by the Supreme Court in *Mardia Chemicals Ltd. v. Union of India* (supra) gives a clear indication that the RDDBFI Act on account of various reasons has not given the expected results and this only prompted the parliament to legislate another special statute, which was described as a draconian law by the petitioners before the Supreme Court in *Mardia Chemicals Ltd. v. Union of India* (supra).

33. The proviso to sub-section (3) of Section 20 of the RDDBFI Act gives a discretion to the appellate authority to extend the time for filing statutory appeal. On the other hand, while enacting the SARFAESI Act, the parliament very consciously excluded the application of the provisions of the Limitation Act to an appeal u/s 18 of the Act. The Legislature was aware of the factual position that in spite of constituting Special Tribunals to recover the public money, the Banks and financial institutions were not in a position to achieve the results on account of the time taken to complete the original and appellate proceedings and the ultimate execution proceedings. The Legislature therefore wanted a fast track method and machinery to recover the dues within a reasonable time. The failure to make a provision to extend the provisions of the Limitation Act cannot therefore be treated as an omission.

34. The intention of the legislature to complete the entire legal proceeding within a specified period is evident from sub-section (5) of Section 17. This provision gives a mandate to the Tribunal to dispose of the application as expeditiously as possible and in any case within sixty days from the date of initiation of such appeal. The proviso to sub-section (5) of Section 17 is an ultimatum to the Tribunal to complete the proceedings within the outer time limit of four months from the date of registration of the appeal under sub-section (1) of Section 17 of the Act.

35. The right of appeal is nothing but a statutory right. The said right can be

regulated by imposing appropriate conditions. When the right of appeal is circumscribed by a condition that it should be filed within thirty days, it cannot be said that the condition is bad or onerous. The Law of Limitation is not to defeat the right. It is only to curtail the right beyond a particular time. The litigation should come to a finality at a particular point of time. In case appeals are entertained after considerable time by invoking the provisions of the Limitation Act, the very purpose of enacting some of the stringent acts in the financial sector, would lose its significance.

36. The Supreme Court in *Popat and Kotecha Property Vs. State Bank of India Staff Association*, , indicated the object and principles underlying the provisions of Limitation Act. The Supreme Court said:

9. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So, a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). The idea is that every legal remedy must be kept alive for legislatively fixed period of time. (See *N. Balakrishnan v. M. Krishnamurthy*)

37. The right of appeal should not be abused by recalcitrant to prosecute frivolous appeals. In case Section 5 of the Limitation Act is extended to an appeal u/s 18 of the SARFAESI Act, appeals could be filed belatedly to revive dead matters, so as to prevent the Banks from invoking the provisions of the Act to realise the dues. That was not the intention of the Parliament while framing SARFAESI Act.

38. The learned counsel for the petitioner in W.P. No. 15386 of 2012 by placing reliance on sub-section (2) of Section 18 of the SARFAESI Act contended that by virtue of this provision, the Appellate Tribunal has to conduct the proceedings in accordance with the provisions of RDDBFI Act. According to the learned counsel, RDDBFI Act contains a specific provision for condoning the delay and as such, the Appellate Tribunal is empowered to condone the delay in filing an appeal u/s 18 of the SARFAESI Act. It is true that Section 18(2) provides that the Appellate Tribunal shall dispose of the appeal in accordance with the provisions of the RDDBFI Act. This is only for the purpose of regulating the proceedings. That does not mean that the provisions of the RDDBFI Act are automatically made applicable to an appeal u/s 18 of the SARFAESI Act.

39. Sub-section (2) of Section 18 is very specific that it is only for the purpose of disposal of the appeals under SARFAESI Act, the provisions of RDDBFI Act are made applicable. The question of disposal of the appeal would arise only after entertaining the appeal. We have not reached that stage now. We are now considering the question as to whether a belated appeal could be entertained by the Appellate Tribunal. In case there is no power to condone the delay, there is no question of entertaining the appeal. The question of disposal of the appeal in accordance with the provisions of the RDDBFI Act would arise only in case the appeal is entertained. The fact that the Appellate Tribunal is obliged to decide the appeal in accordance with the provisions of the RDDBFI Act, does not go to show that even for entertaining the appeal the provisions of RDDBFI Act are made applicable.

40. For determining the issue, the following incidental questions which would go to the root of the matter are to be considered. They are

(a) Whether Appellate Tribunal is a Civil Court.

(b) Whether the provisions of Limitation Act are applicable to a Tribunal, constituted under a Special Law.

Whether Appellate Tribunal is a Civil Court:

41. Section 8(1) of the RDDBFI Act provides for constitution of Debts Recovery Appellate Tribunal. Section 2(a) of SARFAESI Act defines an Appellate Tribunal as a Tribunal established under sub-section (1) of Section 8 of RDDBFI Act. Therefore by virtue of Section 2(a) of SARFAESI Act, Appellate Tribunal constituted under the RDDBFI Act is deemed to be the Appellate Tribunal within the meaning of Section 18 of the SARFAESI Act.

42. It is true that all Courts are Tribunals, but all Tribunals are not Courts. It is also a settled position that all Civil Courts are Courts, but all Courts are not Civil Courts.

43. The Supreme Court in *P. Sarathy Vs. State Bank of India*, , indicated the salient features of a Court.

"...in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial Tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.

44. The question as to whether *Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking Corporation*, . The Court examined the provisions of RDDBFI Act in detail to decide as to whether the Tribunal is a Civil Court, with power to give a decision with authoritativeness. The Supreme Court said:

85. If the Tribunal was to be treated to be a civil Court, the debtor or even a third party must have an independent right to approach it without having to wait

for the bank or financial institution to approach it first. The continuance of its counterclaim is entirely dependent on the continuance of the applications filed by the bank. Before it no declaratory relief can be sought for by the debtor. It is true that claim for damages would be maintainable but the same have been provided by way of extending the right of counterclaim.

86. The Debts Recovery Tribunal cannot pass a decree. It can issue only recovery certificates. (See Sections 19(2) and 19(22) of the Act.) The power of the Tribunal to grant interim order is attenuated with circumspection. (See *Dataware Design Labs (P) Ltd. v. SBI*, Comp Cas. at p. 184.) Concededly in the proceeding before the Debts Recovery Tribunal detailed examination, cross-examinations, provisions of the Evidence Act as also application of other provisions of the CPC like interrogatories, discoveries of documents and admission need not be gone into. Taking recourse to such proceedings would be an exception. Entire focus of the proceedings before the Debts Recovery Tribunal centres round the legally recoverable dues of the bank.

89. The Tribunal could have been treated to be a civil Court provided it could pass a decree and it had all the attributes of a civil Court including undertaking of a full fledged trial in terms of the provisions of the CPC and/or the Evidence Act. It is now trite law that jurisdiction of a Court must be determined having regard to the purpose and object of the Act. If Parliament, keeping in view the purpose and object thereof thought it fit to create separate Tribunal so as to enable the banks and the financial institutions to recover the debts expeditiously where for the provisions contained in the CPC as also the Evidence Act need not necessarily be resorted to, in our opinion, by taking recourse to the doctrine of purposive construction, another jurisdiction cannot be conferred upon it so as to enable this Court to transfer the case from the civil Court to a Tribunal.

45. Section 22(1) of the RDDBFI Act provides that the Tribunal or Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, but shall be guided by the principles of natural justice. Sub-Section (2) of Section 21 provides that the Tribunal and Appellate Tribunal shall have the same power of a Civil Court under the Code of Civil Procedure, while trying a suit, in respect of certain matters, as indicated in Clauses (a) to (h). Similarly, sub-section (3) of Section 22 also contains a legal fiction that the proceedings before Tribunal or Appellate Tribunal shall be deemed to be a judicial proceedings within the meaning of Section 193 and 228 of the Code of Criminal Procedure and Section 196 of the Indian Penal Code. The Tribunals are deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure.

46. The legal fiction created under sub-section (2) and (3) of Section 22 was explained by the Supreme Court in *Nahar Industrial Enterprises Limited v. Hong Kong and Shanghai Banking Corporation* (supra), in the following words:

122. Submission of Mr. Desai that this Court can direct the Tribunal to follow the

provisions of the Code, in our opinion, cannot be accepted. Such a direction would be in the teeth of the provisions of the Act. Reliance placed by the learned counsel on sub-section (2) of Section 22 of the Act to contend that the provisions of the Code are applicable, in our opinion, militates against the said contention. Sub-section (2) of Section 22 deals with applicability of the provisions of the Code in a limited manner.

123. Sub-section (3) of Section 22 raises a legal fiction that the proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for all the purposes of Section 196 of the Penal Code, 1860. The very fact that a legal fiction has been created and the Tribunal or the Appellate Tribunal shall be deemed to be a civil Court for purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973, itself suggests that Parliament did not intend to take away the jurisdiction of the civil Court. In any event, the said legal fiction has a limited application. Its scope and ambit cannot be extended. In *Bharat Bank Ltd.* it has clearly been held that although the Labour Court may have all the trappings of a Court, but it is still not a Court.

47. The Supreme Court in *Nahar Industrial Enterprises Limited v. Hong Kong and Shanghai Banking Corporation* (supra) on the basis of the statement of objects, preamble and the scheme observed that the Tribunal has only a limited jurisdiction and therefore it would not be a civil Court.

48. The Supreme Court in *Mardia Chemicals Ltd. v. Union of India* (supra) while analysing the provisions of the SARFAESI Act observed that Civil Court jurisdiction is not altogether barred and to a very limited extent jurisdiction of Civil Court can also be invoked. This also is an indication that the Tribunal is not a Civil Court empowered to adjudicate complicated questions of fact and law.

49. The Supreme Court in *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, held that although the Labour Court may have all the trappings of a Court, still it is not a Court.

50. The Supreme Court in *Smt. Sushila Devi Vs. Ramanandan Prasad and Others*, found that the Collector notified u/s 2(a) of the Kosi Area (Restoration of Lands to Raiyats) Act 1951 was given exclusive powers to decide questions regarding restoration of holding. Section 15 of the Act vested him with certain specific powers under the Code of Civil Procedure. Still the Supreme Court held that the Collector was not a Court and as such Section 5 of the Limitation Act has no application to a proceeding before him.

Whether Limitation Act is applicable to a proceeding before Appellate Tribunal:

51. The Supreme Court in *Transcore Vs. Union of India (UOI) and Another*, observed that the Debts Recovery Tribunal is a Tribunal, it is the creature of the statute but it has no inherent power which exists in the civil Courts.

52. The Supreme Court in *Sakuru Vs. Tanaji*, by following the earlier decisions held that the provisions of the Limitation Act would apply only to proceedings in "Court" and not to appeals or applications before bodies other than Courts. The Supreme Court said:

3.....It is well settled by the decisions of this Court in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, *V Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, and *Smt. Sushila Devi Vs. Ramanandan Prasad and Others*, 5 that the provisions of the Limitation Act, 1963 apply only to proceedings in "Courts" and not to appeals or applications before bodies other than Courts such as quasi-judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein u/s 90 of the Act not being a Court, the Limitation Act, as such, had no applicability to the proceedings before him. But even in such a situation the relevant special statute may contain an express provision conferring on the Appellate Authority, such as the Collector, the power to extend the prescribed period of limitation on sufficient cause being shown by laying down that the provisions of Section 5 of the Limitation Act shall be applicable to such proceedings.

53. Since the Court has already made the position very clear that the Tribunal under RDDBFI Act is not a Court, the question of automatic extension of the provisions of the Limitation Act to an appeal u/s 18 of the SARFAESI Act would not arise. We have only to see whether there is an express provision under the SARFAESI Act indicating the applicability of the provisions of the Limitation Act.

54. The proviso to sub-section (3) of Section 20 of RDDBFI Act indicates the legislative intent to extend the time limit for filing appeal. Similarly Section 24 of the said Act indicates the exclusion of the provisions of the Limitation Act 1963 to an application before the Tribunal. There are no such express provisions in the SARFAESI Act so as to enable the appellants to invoke Section 5 of the Limitation Act.

55. (a) The learned senior counsel for the petitioner in W.P. No. 8099 of 2012 placed heavy reliance on the judgment of Supreme Court in *Mukri Gopalan v. Cheppilat Puthanpuraiyil Aboobacker* (supra). It is contended that the said decision is an authority for the proposition that in case the special or local law contains a period of limitation and the prescription of a particular period of limitation under such Special Law is different from the period prescribed by the schedule to the Limitation Act, the consequences contemplated by Section 29(2) would automatically follow meaning thereby Sections 4 to 24 would apply insofar as and to the extent to which they are not expressly excluded by such special or local law.

(b) In *Mukri Gopalan v. Cheppilat Puthanpuraiyil Aboobacker* (supra) the High

Court of Kerala held that the Appellate Authority u/s 18 of the Kerala Buildings (Lease and Rent Control) Act is a Persona Designate and as such the said authority has no power to condone the delay. The Supreme Court examined the various provisions of the Kerala Rent Control Act and opined that the Appellate Authority has to decide the disputes in a judicial manner and to declare the rights of parties in a definitive judgment and subject to the revision of its order, the decision would remain final between the parties. The Supreme Court further observed that the Appellate Authority as constituted u/s 18 of the Act being a District Judge, they constitute a class by themselves. Accordingly, the Supreme Court held that the Appellate Authority constituted u/s 18 is not a Persona Designate and it functions only as a Court. It was only thereafter the Supreme Court considered the applicability of the provisions of the Limitation Act to an appeal u/s 18 of the Act. The following observation of the Supreme Court would make the position clear:

22. As a result of the aforesaid discussion it must be held that appellate authority constituted u/s 18 of the Kerala Rent Act, 1965 functions as a Court and the period of limitation prescribed therein u/s 18 governing appeals by aggrieved parties will be computed keeping in view the provisions of Sections 4 to 24. of the Limitation Act, 1963. Such proceedings will attract Section 29(2) of the Limitation Act and consequently Section 5 of the Limitation Act would also be applicable to such proceedings. Appellate authority will have ample jurisdiction to consider the question whether delay in filing such appeals could be condoned on sufficient cause being made out by the applicant concerned for the delay in filing such appeals.

56. Once it is held that Tribunal is not a Court, Section 5 of the Limitation Act would not be available to the appeal u/s 18 of the SARFAESI Act. *Mukri Gopalan v. Cheppilat Puthanpuraiyil Aboobacker* (supra) is not an authority for the proposition that Section 5 would apply even to a proceeding before the specified Tribunal unless it is expressly excluded.

57. While considering the applicability of Section 5 of the Limitation Act to a reference u/s 35-H(1) of the Central Excise Act, 1944 the Supreme Court in *Commissioner of Customs v. Hongo India Private Limited*, (2009) 5 SCC 791, observed:

35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case

where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.

36. The scheme of the Central Excise Act, 1944 supports the conclusion that the time-limit prescribed u/s 35-H(1) to make a reference to the High Court is absolute and unextendable by a Court u/s 5 of the Limitation Act. It is well-settled law that it is the duty of the Court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act.

58. The Supreme Court in *Mukri Gopalan v. Cheppilat Puthanpuraiyil Aboobacker* (supra) with reference to Section 29(2) of the Limitation Act observed that if the power u/s 5 of the Limitation Act has to be exercised by the Appellate Body, it had to be conferred specifically. The Supreme Court said:

13....The provision (Section 5) relating to the power of the Court to condone delay in preferring appeals and making applications came under the latter category. So if the power to condone delay contained in Section 5 had to be exercised by the appellate body it had to be conferred by the special law. That is why we find in a number of special laws a provision to the effect that the provision contained in Section 5 of the Limitation Act shall apply to the proceeding under the special law. The jurisdiction to entertain proceedings under the special laws is sometimes given to the ordinary Courts, and sometimes given to separate Tribunals constituted under the special law. When the special law provides that the provision contained in Section 5 shall apply to the proceedings under it, it is really a conferment of the power of the Court u/s 5 to the Tribunals under the special law - whether these Tribunals are Courts or not.

59. The learned counsel appearing for the petitioners in the respective writ petitions highlighted the point regarding the short time provided for filing an appeal u/s 18 of the Act.

60. The SARFAESI Act gives only thirty days time to file an appeal. The parliament wanted the Banks to recover the debts early without the intervention of Courts. The remedy of appeal u/s 17 and the second appeal u/s 18 are the adjudicatory mechanisms available to the parties to test the legality and correctness of the steps taken by the secured creditor under sub-section (4) of Section 13 of the SARFAESI Act. The parties must be diligent in prosecuting the appeals. Law will not come to the rescue of those who are negligent and careless.

61. Even while providing these forums to redress the grievances of borrowers,

guarantors and Others affected, the parliament wanted early resolution of the dispute as otherwise there would be no meaning in introducing a new law for speedier recovery, notwithstanding the existence of another enactment on the subject. Therefore, it could be safely concluded that the decision to limit the period of filing the appeal without a proviso for extending the provisions of the Limitation Act, was a conscious decision. It is not for the Courts to conduct an enquiry to decide as to whether time is too short to approach the Appellate Tribunal.

62. The Supreme Court in *The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur*, observed that the will of the legislature must be respected and it is not open to the Courts to import the provisions of the Limitation Act in case the legislature willfully omits to incorporate such provisions.

15. Be that as it may, from the scheme and language of Section 10, the intention of the legislature to exclude the unrestricted application of the principles of Sections 5 and 10 of the Limitation Act is manifestly clear. These provisions of the Limitation Act which the legislature did not, after due application of mind, incorporate in the Sales Tax Act, cannot be imported into it by analogy. An enactment being the will of the legislature, the paramount rule of interpretation, which overrides all others, is that a statute is to be expounded "according to the intent of them that made it". "The will of the legislature is the supreme law of the land and demands perfect obedience". "Judicial power is never exercised", said MARSHALL, C.J. of the United States, "for the purpose of giving effect to the will of the Judges; always for the purpose of giving effect to the will of the legislature; or in other words, to the will of the law".

16. If the legislature willfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a *casus omissus* in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so "would be entrenching upon the preserves of legislature" 6, the primary function of a Court of law being *jus dicer* and not *jus dare*.

63. The Supreme Court in *Mardia Chemicals Ltd. v. Union of India* (supra) observed that the effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground the impugned provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of dues.

64. We may now advert to the judgment of the Madhya Pradesh High Court relied upon by the Appellate Tribunal to dismiss the appeal. In *Seth Banshidhar Kedia Rice Mills Pvt. Ltd. v. State Bank of India* AIR 2011 M.P. 205, the Madhya Pradesh High Court compared the provisions of the RDDBFI Act and the SARFAESI Act, more particularly Section 18 of the SARFAESI Act with Section 20

of the RDDBFI Act. The Division Bench found that the period of limitation for filing an appeal u/s 18 of the Act has been reduced from 45 days to 30 days with no discretion to condone the delay. However, power to condone the delay was given to the Appellate Tribunal under the proviso to Section 20(3) of the RDDBFI Act. This made the Division Bench to conclude that the Legislature has consciously decided not to confer the power of condonation of delay with the Appellate Tribunal u/s 18 of the SARFAESI Act. We are in agreement with the views expressed by the Division Bench of the Madhya Pradesh High Court.

65. Section 37 of the SARFAESI Act is in the nature of a clarification that the operation of some of the other laws are not barred. This shows that SARFAESI Act is in aid and not in derogation of other laws. In view of Section 36 of the SARFAESI Act, it is not correct to say that the Limitation Act would corneas an aid to the SARFAESI Act to recover the amount due to the Banks and Financial Institutions.

66. The statement of objects and reasons, the preamble and the scheme of the SARFAESI Act would make the position clear that the Legislature consciously and intentionally excluded the applicability of Section 29(2) of the Limitation Act and consequently Section 5 to an appeal before the Appellate Tribunal u/s 18 of the Act.

67. We are, therefore of the considered view that Section 29(2) of the Limitation Act does not apply to an appeal u/s 18 of the SARFAESI Act and therefore Section 5 of the Limitation Act cannot be pressed into service to condone the delay in filing such appeal.

Conclusion:

68. We, therefore hold that the Debts Recovery Appellate Tribunal has no power to condone the delay in preferring the statutory appeal u/s 18 of the SARFAESI Act.

69. Before we part with the matter, we consider it fit and proper to extract the following observation of the Supreme Court in State of M.P. Vs. Rakesh Kohli and Another,

32. (iii) the Court is not concerned with the wisdom or unwisdom, the justice or injustice of the law as Parliament and State Legislatures are supposed to be alive to the needs of the people whom they represent and they are the best judge of the community by whose suffrage they come into existence.

Result:

70. In the upshot, we dismiss all the writ petitions. Consequently, the connected MPs are closed. No costs.

W.P. Nos. 15386 of 2012 etc.

D. Murugesan, J.

71. After the orders were pronounced, the learned counsel appearing for the petitioner in W.P. No. 12970 of 2012 has submitted that the writ petition was filed without prejudice to the contention that the appeal filed before the Debts Recovery Appellate Tribunal was in time. Nevertheless, the appeal was dismissed on the ground that the Appellate Tribunal has no power to condone the delay. Hence, the learned counsel seeks for a consequential direction to the Appellate Tribunal to consider the question as to whether the appeal was in time or not.

72. We have heard the learned counsel for the first respondent-Bank also. As far as the submission of the learned counsel for the petitioner is concerned, there is no dispute that the petitioner has raised that contention before the Debts Recovery Appellate Tribunal. In view of the above, we dispose of W.P. No. 12970 of 2012 with a direction to the Appellate Tribunal to consider the plea of the petitioner as to the filing of appeal within the period of limitation and decide the same. We further make it clear that in the event the Appellate Tribunal is of the opinion that the appeal filed by the petitioner was within the prescribed period, the appeal should be entertained.