

(2014) 07 CAL CK 0104
In the Calcutta High Court
Case No : C.O. No. 940 of 2014

Indian Overseas Bank

APPELLANT

Vs

Digital Avenue Ltd.

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 34(3)
Foreign Exchange Management Act, 1999 — Section 19
Foreign Exchange Regulation Act, 1973 — Section 52
General Clauses Act, 1897 — Section 10
Limitation Act, 1963 — Section 10, 11, 12, 13, 13
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 16, 19, 20, 20(3), 24
Representation of the People Act, 1951 — Section 116A
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(4), 17, 17A

Citation : (2014) 07 CAL CK 0104

Hon'ble Judges : Debabrata Mookerjee, J

Bench : Single Bench

Advocate : Promit Kumar Ray, Sr. Advocate, Siboprasad Sarkar and A. Banerjee, Advocate for the Appellant; Jishnu Saha, Sr. Advocate, Subhankar Nag and Ajay Gagar, Advocate for the Respondent

Judgement

Debangsu Basak, J.—Whether the provisions of Sections 4 to 24 (inclusive) of the Limitation Act, 1963 was applicable to an appeal u/s 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 fell for consideration in the revisional application.

2. The order impugned herein was a rejection of an appeal filed at the instance of a bank against an order passed by the Presiding Officer, Debts Recovery Tribunal allowing an application u/s 17 of the SARFAESI Act, 2002 at the instance of an alleged debtor, on the ground that Sections 4 to 24 of the Limitation Act, 1963 had no manner of application to such appeal. In arriving at such finding the Appellate Tribunal relied upon the view to such effect expressed by the Madhya

Pradesh High Court in All India Reported 2011 Madhya Pradesh page 205 Hukumdev Narain Yadav Vs. Lalit Narain Mishra, to return a finding that Section 5 of the Limitation Act, 1963 stood excluded in its application to an appeal u/s 18 of the SARFAESI Act, 2002 by implication. The Debts Recovery Appellate Tribunal did not follow the view expressed by the Andhra Pradesh High Court in the judgment reported at All India Reporter 2013 Andhra Pradesh page 24 (Smt. Sajida Begum v. State Bank of India, Hyderabad) on the ground that the Andhra Pradesh High Court did not consider Hukumdev Narain Yadav (supra).

The revisional application was at the instance of the bank. Two other revisional applications were also filed and were pending against proceedings emanating from transactions between the parties herein. The facts which gave giving rise to the revisional applications were as noted hereafter.

3. On or about September 16, 2011 the petitioner instituted proceedings u/s 19 of the Recovery of Debts Due to Banks and Financial Institutions Act (RDB Act), 1993, being O.A. No. 406 of 2011 against the opposite parties herein and others. In such proceedings the petitioner, inter alia, claimed mortgage of an immovable property at Rajarhat made by the Opposite Party No. 3 to secure the claim of the petitioner. The Rajarhat property was stated to be mortgaged on March 24, 2009 and released on February 4, 2011. The petitioner claimed that the opposite parties obtained release of the mortgage fraudulently. The petitioner claimed that the Opposite Party No. 3 remortgaged the Rajarhat property by deposit of title deeds on February 17, 2011. The petitioner claimed that, on the opposite parties failing to repay its dues the petitioner invoked the provisions of the SARFAESI Act, 2002 by a notice u/s 13(2) of the SARFAESI Act, 2002 dated May 13, 2011. Such notice was published in the newspapers on May 17, 2011. In spite of notice, the opposite parties failed to repay the petitioner. The provisions of Section 13(4) of the SARFAESI Act, 2002 were, thereafter, invoked by the petitioner. A possession notice dated July 18, 2011 was issued. Such possession notice was published in the newspapers on July 21, 2011. None of the opposite parties applied u/s 17 of the SARFAESI Act, 2002 within the statutory period of 45 days from the date of possession. The petitioner, thereafter, issued a notice for sale on August 21, 2011. The Opposite Party No. 1 filed an application u/s 17 of the SARFAESI Act, 2002 on September 12, 2011 challenging the measures u/s 13(4) of the SARFAESI Act, 2002 taken on July 18, 2011 and August 21, 2011. Such application was registered as S.A. No. 131 of 2011.

4. The petitioner claimed that, in view the ratio of the decision reported at Akshat Commercial Pvt. Ltd. and Another Vs. Kalpana Chakraborty and Others, a proceedings u/s 17 of the SARFAESI Act, 2002 was an original proceedings and, therefore, the provisions of Section 3 of the Limitation Act, 1963 were attracted and, as such, such proceedings being initiated beyond 45 days from the date of the measures u/s 13(4) of the SARFAESI Act, 2002 being July 18, 2011, such proceedings were barred by limitation and, therefore, not maintainable. Apart from the point of limitation the petitioner contended that, the mortgage made by

the opposite parties was valid and that, the issue of mortgage was also an issue for decision in the pending proceedings u/s 19 of the RDB Act, 1993.

5. By an Order dated June 5, 2013 the Presiding Officer, Debts Recovery Tribunal disposed of S.A. No. 131 of 2011 by holding that, such proceedings u/s 17 were within the period of limitation and that, the mortgage was bad in absence of registration of charge under the provisions of the Companies Act, 1956 and that such mortgage was created by not following the procedure.

6. The Presiding Officer, Debts Recovery Tribunal, thereafter, proceeded to pass a further order on November 21, 2013 in the disposed of S.A. No. 131 of 2013 directing the petitioner to return the documents of title pertaining to the Rajarhat property and directing return of Rs. 50,00,000/- kept with the petitioner with all accrued interest therein.

7. The petitioner assailed the Order dated June 5, 2013 by which the Presiding Officer, Debts Recovery Tribunal, Kolkata allowed the proceedings u/s 17 of the SARFAESI Act, 2002 being S.A. No. 131 of 2011. Such appeal was registered as Appeal No. 408 of 2013 by the Debts Recovery Appellate Tribunal, Kolkata. The appeal was filed beyond the statutory period of 30 days. The appeal was accompanied with an application u/s 5 of the Limitation Act, 1963. Such application was registered as Application No. 685 of 2013. The application u/s 5 of the Limitation Act, 1963 was disallowed by the impugned order dated January 6, 2014 by holding that, the provisions of Sections 4 to 24 of the Limitation Act, 1963 were not applicable to an appeal u/s 18 of the SARFAESI Act, 2002. The application was also considered on merit and it was held that service of copy of the order of the Presiding Officer, Debts Recovery Tribunal, was sufficient compliance of Rule 16 of the Debts Recovery Tribunal (Procedure) Rules, 1993.

8. The petitioner also filed an appeal against the Order dated November 21, 2013 passed u/s 17 of the SARFAESI Act, 2002 by the Presiding Officer, Debts Recovery Tribunal which was registered as Appeal No. 432 of 2013. Such appeal was disposed of on November 18, 2014 by holding that the Presiding Officer, Debts Recovery Tribunal was empowered to pass further orders subsequent to final disposal of a proceedings u/s 17 of the SARFAESI Act, 2002 and that, there was no infirmity in the order passed by the Presiding Officer, Debts Recovery Tribunal in directing return of the title deeds and the refund of the deposit in a disposed of proceeding. The petitioner had filed a separate revisional application being C.O. No. 996 of 2014 impugning the Order dated February 18, 2014 passed by the Debts Recovery Appellate Tribunal, Kolkata in Appeal No. 432 of 2013. The Opposite Party No. 1 also filed a revisional application being C.O. No. 842 of 2014 against the same order.

9. Mr. Promit Kumar Ray, learned Senior Advocate on behalf of the petitioner contended that, the provisions of Sections 4 to 24 of the Limitation Act, 1963 were attracted to a proceeding u/s 18 of the SARFAESI Act, 2002. Consequently the petitioner was entitled to apply u/s 5 of the Limitation Act, 1963 for

condonation of delay in preferring the appeal u/s 18 of the SARFAESI Act, 2002. According to him, Section 18 of the SARFAESI Act, 2002 did not exclude the application of Section 5 of the Limitation Act, 1963 to an appeal u/s 18 of the SARFAESI Act, 2002 expressly. Neither the words used in Section 18 of the SARFAESI Act, 2002, nor the scheme of the Act expressly or by necessary implication excluded the application of Section 5 of the Limitation Act, 1963 to an appeal u/s 18 of the SARFAESI Act, 2002.

10. He submitted that the Debts Recovery Appellate Tribunal acted with material irregularity in arriving at a finding that Section 5 of the Limitation Act, 1963 was not applicable to an appeal u/s 18 of the SARFAESI Act, 2002. The Debts Recovery Appellate Tribunal, according to him, ought to have followed the view expressed by the Division Bench of Andhra Pradesh High Court in *Smt. Sajida Begum (supra)* rather than following the view expressed by the Division Bench of the Madhya Pradesh High Court in *Seth Banshidhar Kedia Rice Mills Pvt. Ltd. & Ors. (supra)*. Reliance on *Hukumdev Narain Yadav (supra)* by the Debts Recovery Appellate Tribunal was misplaced. The Debts Recovery Appellate Tribunal misapplied the ratio of *Hukumdev Narain Yadav (supra)* as the same was not attracted to the facts of the case.

11. He relied upon *Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker*, He submitted that, the application u/s 5 of the Limitation Act, 1963 should be remanded to the Debts Recovery Appellate Tribunal for its disposal on merits. Pending disposal of the Section 5, application by the Debts Recovery Appellate Tribunal directions issued by the Presiding Officer, Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal, if any, with regard to release all title deeds and the sum of Rs. 50,00,000/- with accrued interest should remain stayed.

12. Mr. Jishnu Saha, learned Senior Advocate for the opposite parties contended that, the Debts Recovery Appellate Tribunal rightly held that the provisions of Section 5 of the Limitation Act, 1963 were not applicable to an appeal u/s 18 of the SARFAESI Act, 2002. such view was expressed by the Madhya Pradesh High Court in *Seth Banshidhar Kedia Rice Mills Pvt. Ltd. (supra)*, the Delhi High Court in *Poonam Garg Vs. The Chief Manager, State Bank of Patiala and Another*, and the Madras High Court in the decision reported at *Dr. Zubida Begum and Others Vs. Indian Bank and Others*, He submitted that, the views expressed in the aforesaid three judgments be followed.

13. He referred to Section 29 of the Limitation Act, 1963. He submitted that, Section 29 of the Limitation Act, 1963 did not make any distinction when it sought to apply itself to any proceedings as to whether such proceedings were pending before a Tribunal or a Court or an authority entrusted by law to adjudicate disputes between parties. In the event Section 29 of the Limitation Act, 1963 applied to a proceeding it would apply notwithstanding the status of the adjudicating authority in seisin of the proceedings.

14. He referred to the scheme of the SARFAESI Act, 2002. He submitted that, the application of Section 29(2) of the Limitation Act, 1963 stood excluded by implication to an appeal u/s 18 of the SARFAESI Act, 2002. He relied upon Akshat Commercial Pvt. Ltd. and Another Vs. Kalpana Chakraborty and Others, for the proposition that Section 5 of the Limitation Act, 1963 was found not to be applicable to a proceedings u/s 17 of the SARFAESI Act, 2002.

15. He referred to Section 36 of the SARFAESI Act, 2002. He submitted that, the Limitation Act, 1963 was within the contemplation of the legislature while enacting SARFAESI Act, 2002. The legislature in its wisdom provided for the applicability of the Limitation Act, 1963 to a measure taken u/s 13(4) of the SARFAESI Act, 2002 in section 36 thereof. Limitation Act, 1963 was not made applicable to any other provisions of the SARFAESI Act, 2002 other than a measure sought to be taken u/s 13(4) of the SARFAESI Act, 2002. Therefore, the Legislature by implication excluded the applicability of the Limitation Act, 1963 from other provisions of the SARFAESI Act, 2002.

16. He next referred to Section 20(3) of the RDB Act, 1993 which made an order u/s 19 of the RDB Act, 1993 to be appealable. Section 20(3) of the RDB Act, 1993 allowed by express provision an appeal to be filed beyond the prescribed period of 45 days if the Appellate Tribunal was satisfied that there was sufficient ground for not filing such appeal within that period. He contrasted the provisions of appeal u/s 20 of the RDB Act, 1993 with that of Section 18 of the SARFAESI Act, 2002. The proviso of Section 20(3) of the RDB Act, 1993 was absent in SARFAESI Act, 2002. He contended that, therefore, the legislature by implication excluded the provisions of the Limitation Act, 1963. He, thereafter, referred to Section 24 of the RDB Act, 1993 which provided that the provisions of the Limitation Act, 1963 would apply as far as it may be applicable to an application made to a Tribunal. Therefore, according to him, Section 24 of the RDB Act, 1993 limited the application of the Limitation Act, 1963 till the stage of the Presiding Officer of the Debts Recovery Tribunal and not beyond.

17. Relying on Section 30 of the RDB Act, 1993 he submitted that, an appeal against an order of the Recovery Officer was prescribed to be filed within 30 days from the date of such order. Again according to him, Section 5 of the Limitation Act, 1963 would not apply to an appeal u/s 30 of the RDBI Act, 1963. He submitted that SARFAESI Act, 2002 was a special statute prescribing a specified period for an appeal to be filed u/s 18 thereof. SARFAESI Act, 2002 being a special statute, Limitation Act, 1963 was excluded by implication in respect of an appeal u/s 18 of the SARFAESI Act, 2002. He relied upon 2009 Volume 5 Supreme Court Cases page 791 (Commissioner of Customs & Central Excise v. Hongo India Pvt. Ltd. & Anr.) and submitted that, the applicability of the Limitation Act, 1963 to a special statute was required to be judged from the terms of the special statute and not from the terms of the Limitation Act, 1963. According to him, the legislative intent in the SARFAESI Act, 2002 was a speedy disposal of a recovery proceeding and, therefore, the time specified in the special

statute should be adhered to and Section 5 of the Limitation Act, 1963 should be read to be excluded. According to him, therefore, the Debts Recovery Appellate Tribunal did not err in following the views expressed by the Madhya Pradesh High Court in *M/s. Seth Banshidhar Kedia Rice Mills Pvt. Ltd. & Ors.* (supra) and applying the ratio of *Hukumdev Narain Yadav* (supra).

18. I have considered the rival contentions of the parties and the materials on record.

19. Four Division Benches of four different High Courts had expressed their views on the issue. The first in point of time was Madhya Pradesh High Court in *M/s. Seth Banshidhar Kedia Rice Mills Pvt. Ltd.* (supra). The Madhya Pradesh High Court was of the view that, the Legislature had consciously excluded the applicability of the provisions of Sections 4 to 24 of the Limitation Act, 1963 to a proceeding u/s 18 of the SARFAESI Act, 2002. In arriving at such finding their Lordships reasoned that, there was no express provision in the SARFAESI Act, 2002 empowering the Appellate Tribunal to condone the delay in filing an appeal. Therefore, an Appellate Tribunal could extend the time to file an appeal only if Section 5 of the limitation Act, 1963 applied. Their Lordships relied on *Hukumdev* (supra) to note that "expressly exclude" also included "exclusion by necessary implication" and that even in a case where the special law did not exclude the provisions of Sections 4 to 24 of the Limitation Act, 1963 by an express reference, it would nonetheless be open to the Court to examine whether and to what extent those provisions were excluded or the nature of the subject-matter and the scheme of the special law exclude their operation. Section 18 of the SARFAESI Act, 2002 was compared with Section 20 of the RDB Act, 1993 to arrive at a finding that, the different powers given to the Appellate Tribunal in admitting an appeal on the ground of delay meant that the Legislature consciously intended not to confer the power of condonations of delay to the Appellate Tribunal exercising powers u/s 18 of the SARFAESI Act, 2002. Their Lordships also noted the observation made in 2004 Volume 4 Supreme Court Cases page 331 (*Mardia Chemicals Ltd. & Ors. v. Union of India & Ors.*) to conclude that, a combined reading of Sections 35, 36 and 37 of the SARFAESI Act, 2002 did not lend support to the contention that, the Appellate Tribunal had the power to condone the delay in filing an appeal u/s 18 of the SARFAESI Act, 2002. The provisions contained under Sections 35, 36 and 37 had their own field of operation and had no bearing upon the provisions of Section 18 of the SARFAESI Act, 2002. Their Lordships also relied upon the observation made in paragraph 34 of *Transcore Vs. Union of India (UOI) and Another*, that Section 35 of the SARFAESI Act, 2002 gave an overriding effect to the SARFAESI Act, 2002 with all other laws inconsistent with it.

20. The next in point of time was *Dr. Zubida Begum* (supra). The Madras High Court considered whether the Appellate Tribunal had the power to condone the delay in filing an appeal u/s 18 of the SARFAESI Act, 2002. Their Lordships considered the various pronouncements of the Apex Court including *Hukumdev*

(supra) and found that, the applicability of the provisions of the Limitation "Act, 1963 had to be considered taking into account the provisions of the special law and not by placing reliance on the provisions of the Limitation Act, 1963. In a case where the provisions of the special Act taken as a whole excluded the applicability of the Limitation Act, 1963 either expressly or impliedly, the Court cannot supplement the provisions of the Limitation Act, 1963 to extend the period of limitation. Their Lordships also considered two incidental questions being whether Appellate Tribunal was a Court and whether the provisions of the Limitation Act, 1963 was applicable to a Tribunal constituted under a special law. The Madras High Court was of the view that, the Appellate Tribunal was not a Court and that, the provisions of the Limitation Act, 1963 was not applicable to a Tribunal constituted under a special law unless expressly made applicable. The view of the Madras High Court was that Section 29(2) of the Limitation Act, 1963 did not apply to an appeal u/s 18 of the SARFAESI Act, 2002 and, therefore, Section 5 of the Limitation Act, 1963 could not be pressed into service to condone the delay in filing such appeal.

21. The third judgment in the order of time was that of the Andhra Pradesh High Court rendered in Smt. Sajida Begum (supra). In the case before the Andhra Pradesh High Court the correctness of the order of the Debts Recovery Appellate Tribunal dismissing an appeal u/s 18 of the SARFAESI Act, 2002 on the ground that it had no power to condone the delay following Seth Banshidhar Kedia Rice Mills Pvt. Ltd. (supra) was in question. In Smt. Sajida Begum (supra) the views expressed in Mukri Gopalan (supra) to interpret Section 29 of the Limitation Act, 1963 was noted. It was found that, there was no express exclusion of the application of the Limitation Act, 1963 under the SARFAESI Act, 2002. Debts Recovery Tribunal and Debts Recovery Appellate Tribunal were found to exercise powers of a Civil Court when functioning and entertaining original and appellate proceedings under the SARFAESI Act, 2002. Limitation Act, 1963 was held to be made expressly applicable u/s 24 of the RDB Act, 1993. Their Lordships were of the view that Section 29(2) of the Limitation Act, 1963 were applicable to a proceeding under Sections 17 and 18 of the SARFAESI Act, 2002. Their Lordships were of the view that Seth Banshidhar Kedia Rice Mills Pvt. Ltd. (supra) did not lay down the correct law and was contrary to the ratio of Mukri Gopalan (supra). Dr. Zubida Begum (supra) was not cited before the Court considering Smt. Sajida Begum (supra).

22. The fourth judgment in order of time was Poonam Garg (supra) of the Delhi High Court. Seth Banshidhar Kedia Rice Mills Pvt. Ltd. (supra) was cited and considered by the Delhi High Court. Poonam Garg (supra) considered whether the Debts Recovery Appellate Tribunal had the jurisdiction to condone the delay in filing of an appeal u/s 18 of the SARFAESI Act, 2002 by invoking the provisions of Section 5 of the Limitation Act, 1963. Their Lordships noted that Section 5 of the Limitation Act, 1963 had reference to "Court". However, their Lordships did not enter into the controversy as to whether Debts Recovery Appellate Tribunal satisfied the description of "Court" or not and were of the view that the point

raised could be decided even on the assumption that the Debts Recovery Appellate Tribunal was a "Court". Mukri Gopalan (supra), Hukumdev (supra) and Hongo India (supra) were noted. Section 34 of the Arbitration and Conciliation Act, 1996 and the decision reported at 2008 Volume 1 Supreme Court Cases page 470 (Union of India v. Popular Construction Company (supra) in relation thereto was also considered. The difference between Section 18 of the SARFAESI Act, 2002 and Section 20 of the RDB Act, 1993 were noted. It was held that, the Legislature was aware of the different provisions in the two sections and it specifically provided a different period of limitation of 30 days in Section 18 of the SARFAESI Act, 2002 and consciously excluded a provision similar to the proviso to Section 20(3) of the RDB Act, 1993. The conclusion derived was that, the delay in filing an appeal u/s 18 of the SARFAESI Act, 2002 could not be condoned and that, it would fall within the expression "expressly excluded" as appearing in Section 29(2) of the Limitation Act, 1963.

23. Madhukar Govindrao Thaware and Others Vs. Central Bank of India, Madhukar (supra) considered Section 30 of the RDB Act, 1993 and found Section 5 of the Limitation Act, 1963 not to apply to an appeal from an order passed by the Recovery Officer to the Presiding Officer u/s 30 of the RDB Act, 1993. In Madhukar (supra) provisions of section 20(3) of the RDB Act, 1993 was contrasted with Section 30 thereof.

24. A Division Bench of the Bombay High Court in UCO Bank Vs. Kanji Manji Kothari and Co. and Others, considered whether Section 5 of the Limitation Act, 1963 was attracted to a proceeding u/s 17 of the SAEFAESI Act, 2002. In paragraph 74 of such report it was held that,

.....If we examine the relevant provisions of the NPA Act and the observations of the Supreme Court in Transcore's case (supra), the conclusion is irresistible that Section 5 of the Limitation Act is applicable to the NPA Act. There is no express exclusion of the Limitation Act.....

25. On the interpretation of "express exclusion" of the Limitation Act, 1963 in its applicability to a special law Hukumdev Narain Yadav (supra) and Mukri Gopalan (supra) were considered by the Debts Recovery Appellate Tribunal in the impugned order.

26. Seth Banshidhar Kedia Rice Mills Pvt. Ltd. (supra) considered Hukumdev (supra). Mukri Gopalan (supra) was not considered by it. Dr. Zubida Begum (supra) considered Hukumdev (supra) and Mukri Gopalan (supra). Popular Construction Company (supra) was also considered therein.

27. Smt. Sajida Begum (supra) considered Seth Banshidhar Kedia Rice Mills Pvt. Ltd. (supra) and differed from the views expressed by the Madhya Pradesh High Court therein. In Poonam Garg (supra), Hukumdev (supra), Mukri Gopalan (supra) and Seth Banshidhar Kedia Rice Mills Pvt. Ltd. (supra) were considered apart from Popular Construction Company (supra). The view of the Andhra

Pradesh High Court expressed in Smt. Sajida Begum (supra), however, was considered by the Court as not cited before it.

28. Hukumdev (supra) was considering an election petition. An election petition challenging the declaration of results to the Darbhanga Parliamentary Constituency was presented on a Monday instead of the preceding Saturday. The preceding Saturday was the last date of limitation. The petition was dismissed by the High Court as being time barred. Against such dismissal an appeal was filed u/s 116A of the Representation of the Peoples Act, 1951. In such context three questions were framed for consideration. Such questions were formulated in paragraph 4 of the report which was as follows:-

4. Three questions which require determination are-

(1) Is the Court closed on Saturday, when the Judges do not sit for the purposes either of Section 10 of the General Clauses Act, or Section 4 of the Limitation Act?

(2) By virtue of Section 29(2) of the Limitation Act, are the provisions of Sections 4 to 24 of the said Act applicable to election petitions?

(3) If they are, and Section 5 of the Limitation Act is applicable, do the facts of the case warrant condonation of delay?

29. The Supreme Court found that, the Court was not closed on that particular Saturday and that the election petition could have been presented to the Registrar on a Saturday. On the second question framed their Lordships expressed their view in paragraph 17 of the report which was as follows:-

..... It is 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. As usual the meaning given in the Dictionary has been relied upon but what we have to see is whether the scheme of the special law, that is, in this case the Act, and the nature of the remedy provided therein are 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 view, 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 to 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. The provisions of Section 3 of the Limitation Act that a suit instituted, appeal preferred and application made after the prescribed period shall be dismissed are provided for in Section 86 of the Act which gives a peremptory command that the High Court shall dismiss an election petition which does not comply with the provisions of Sections 81, 82 or 117.....

30. In *Mukri Gopalan* (supra) the Supreme Court was concerned with the question whether Sections 4 to 24 of the Limitation Act, 1963 applied to an appeal u/s 18 to the Kerala Buildings (Lease and Rent Control) Act, 1965. In paragraph 10 of such judgment the view expressed was:-

.....When the first schedule of the Limitation Act prescribes no time limit for a particular appeal, but the special law prescribes a time limit for it, it can be said that under the first schedule of the Limitation Act all appeals can be filed at any time, but the special law by limiting it provides for a different period. While the former permits the filing of an appeal at any time, the latter limits it to be filed within the prescribed period. It is, therefore, different from that prescribed in the former and thus Section 29(2) would apply even to a case where a difference between the special law and Limitation Act arose by the omission to provide for limitation to a particular proceeding under the Limitation Act.

31. Mr. Saha for the Opposite Party No. 1 referred to *Hongo India* (supra) particularly paragraph 35 thereof. In *Hongo India* (supra) the Supreme Court was considering the applicability of Section 5 of the Limitation Act, 1963 in respect of such application filed in the High Court u/s 35H of the unamended Central Excise Act, 2005. In paragraph 35 their Lordships expressed the following view:-

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 the provisions of the Central Excise Act relating to filing of reference application to the High Court.

32. *Hongo India* (supra) considered *Popular Construction Company* (supra). *Popular Construction Company* (supra) was concerned with the applicability of Limitation Act, 1963 to an application u/s 34(3) of the Arbitration and Conciliation Act, 1996. The Supreme Court held in paragraphs 8, 12 and 13 as follows:-

8. Had the proviso to Section 34 merely provided for a period within which the Court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5.

.....

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would satisfy such a result.

13. Apart from the language, "express exclusion" may follow from the scheme and object of the special or local law. Even in a case where the special law does not exclude the provisions of Section 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.

33. Before the Debts Recovery Appellate Tribunal All India Reporter 1985 Supreme Court page 1279 (Sakuru v. Tanaji) was referred to. The question that arose before the Supreme Court in that case was whether provisions of Section 5 of the Limitation Act, 1963 could be invoked for condoning the delay in filing an appeal before the Collector u/s 90 of the Andhra Pradesh (Telengana Area) Tenancy and Agricultural Lands Act, 1950. In paragraph 3 of that judgment it was observed by the Supreme Court as follows:-

.....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. Hence it becomes necessary to examine whether the Act contains any such provision entitling the Collector to invoke the provisions of Section 5 of the Limitation Act for condonation of the delay in the filing of the appeal.....

34. Before the Debts Recovery Appellate Tribunal All India Reporter Smt. Sushila Devi Vs. Ramanandan Prasad and Others, was also referred to. The question that fell for consideration in that case was the applicability of Section 5 of the Limitation Act, 1963 to a proceeding under Kosi Area (Restoration of Lands to Raiyats) Act, 1951. It was held that, the Collector to whom the application was made was not a Court and, therefore, Section 5 of the Limitation Act, 1963 had no manner of application.

35. Reference was also made to K. Venkateswara Rao and Another Vs. Bekkam Narasimha Reddi and Others, before the Debts Recovery Appellate Tribunal. The case before the Supreme Court related to an election petition where it was held that, the Limitation Act, 1963 did not apply.

36. The Debts Recovery Appellate Tribunal referred to Thirumalai Chemicals Limited Vs. Union of India (UOI) and Others, The question that arose in such case before the Supreme Court was whether the Appellate Tribunal constituted, under the Foreign Exchange Management Act, 1999 (FEMA) rightly rejected a belated appeal filed u/s 19 of FEMA applying the first proviso to Sub-Section (2) of Section 52 of the Foreign Exchange Regulation Act, 1973 instead of following the proviso to Sub-Section (2) to Section 19 of FEMA. With regard to the law of limitation their Lordships were of the view that the same was generally and prima facie regarded as procedural but depending on facts it may be substantive also. The Law of limitation was capable of effectively depriving persons of accrued rights and, therefore, they were required to be approached with caution.

37. Consistent view of the four High Courts in Seth Banshidhar Kedia Rice Mills Pvt. Ltd. & Ors. (supra), Dr. Zubida Begum & Ors. (supra), Smt. Sajida Begum (supra) and Poonam Garg (supra) were that the SARFAESI Act, 2002 was a special Act. The Supreme Court in Mardia Chemical Ltd. (supra) and Transcore (supra) held SARFAESI Act, 2002 to be a special Act.

38. In Hongo India (supra) and Popular Construction Company (supra) it was held that, the applicability of provisions of the Limitation Act, 1963 was to be judged not from the terms of the Limitation Act, 1963 but by the provisions of the special Act.

39. Therefore, an examination of the provisions of the SARFAESI Act, 2002 was required. The relevant sections of the SARFAESI Act, 2002 were as follows:-

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 an 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 ruled made thereunder.....

.....

36. Limitation.-No secured creditor shall be entitled to take all or any of the measures under subsection (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).

37. Application of other laws not barred.-The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation or, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force.

40. The provisions of Section 18(2) of the SARFAESI Act, 2002 made the provisions of the RDB Act, 1993 and the rules made thereunder applicable to an appeal to be disposed of u/s 18 of the SARFAESI Act, 2002 save as otherwise provided for the SARFAESI Act, 2002. Therefore, few provisions of the RDB Act, 1993 were required to be looked into. In this regard Sections 19, 20, 24, 30 and 34 of the RDB Act, 1993 were as follows:-

19. Application to the Tribunal.-

(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(c) the cause of action, wholly or in part, arises:

Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier under that Act:

Provided further that any application made under the first proviso for seeking

permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.

.....

.....

20. Appeal to the Appellate Tribunal.-

(1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.....

.....

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".

.....

30. Appeal against the order or Recovery Officer.-

(1) Notwithstanding anything contained in section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.

(2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such inquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under sections 25 to 28 (both inclusive).

.....

34. Act to have over-riding effect.-

(1) Save as provided under sub-section (2), the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984), the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989).

41. The Supreme Court in *Mardia Chemical Ltd.* (supra) and *Transcore* (supra) found that SARFAESI Act, 2002 to be a special law. The question, therefore, was whether the provisions of the SARFAESI Act, 2002 were such that it excluded the applicability of Sections 4 to 24 of the Limitation Act, 1963 to an appeal u/s 18 of the SARFAESI Act, 2002 or not.

42. Section 18 of the SARFAESI Act, 2002 did not exclude the provisions of the Limitation Act, 1963 expressly.

43. Despite Section 18 of the SARFAESI Act, 2002 not excluding the provisions of the Limitation Act, 1963 expressly it was open to the Court to examine whether and to what extent the nature of the provisions of the SARFAESI Act, 2002 or the nature of the subject matter and scheme of the special law excluded their operation. This view was expressed in *Popular Construction Company* (supra).

44. Section 18 of the SARFAESI Act, 2002 did not use the words "and not thereafter" used in Section 34(3) of the Arbitration and Conciliation Act, 1996 which such section was under consideration by the Supreme Court in *Popular Construction Company* (supra). No section of the SARFAESI Act, 2002 excluded the operation of the Limitation Act, 1963 expressly. On the contrary, Section 36 of the SARFAESI Act, 2002 provided that 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 was made within the period of limitation prescribed under the Limitation Act, 1963.

45. Section 17 of the SARFAESI Act, 2002 provided that a person aggrieved by a measure u/s 13(4) of the SARFAESI Act, 2002 may apply to the Debts Recovery Tribunal having jurisdiction in the matter for relief. The right to apply u/s 17 of the SARFAESI Act, 2002 was construed by *Transcore* (supra) to be an original proceeding. The Division Bench on this Court in *Akshat Commercial Private Limited* (supra) considered an application u/s 17 of the SARFAESI Act, 2002 to be an original proceeding. In such context the Division Bench of this Court in *Akshat Commercial Private Limited* (supra) held that Section 5 of the Limitation Act, 1963 was not attracted since an application u/s 17 of the SARFAESI Act, 2002 was an original proceeding. Two other Sections of the SARFAESI Act, 2002,

in my opinion, were also relevant for the purpose of determining the issue as to whether the provisions of Sections 4 to 24 of the Limitation Act, 1963 applied to an appeal u/s 18 of the SARFAESI Act, 2002 in view of Section 29(2) of the Limitation Act, 1963 or not. Those two Sections were Section 17A and Section 18A of the SARFAESI Act, 2002. The two sections were as follows:-

17A. Making of application to Court of District Judge in certain cases.-

In the case of a borrower residing in the State of Jammu and Kashmir, the application u/s 17 shall be made to the Court of District Judge in that State having jurisdiction over the borrower which shall pass an order on such application.

Explanation.-For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons shall not entitle the person (including borrower) to make an application to the Court of District Judge under this section.

.....

18B. Appeal to High Court in certain cases.-

Any borrower residing in the State of Jammu and Kashmir and aggrieved by any order made by the Court of District Judge u/s 17A may prefer an appeal, to the High Court having jurisdiction over such Court, within thirty days from the date of receipt of the order of the Court of District Judge:

Provided that no appeal shall be preferred unless the borrower has deposited, with the Jammu and Kashmir High Court, fifty per cent of the amount of the debt due from him as claimed by the secured creditor or determined by the Court of District Judge, whichever is less:

Provided further that the High Court may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of the debt referred to in the first proviso.

46. Both the sections were introduced to the SARFAESI Act, 2002 by way of an amendment of 2004 and with effect from November 11, 2004.

47. A borrower residing in the State of Jammu and Kashmir was, therefore, entitled to apply u/s 17A of the SARFAESI Act, 2002 to the Court of the District Judge having jurisdiction over the subject. An appeal from the order of the District Judge u/s 18B was to the High Court having jurisdiction over such District Judge for the State of Jammu and Kashmir. The appeal u/s 18B of the SARFAESI Act, 2002 was, therefore, before the Jammu and Kashmir High Court. In my opinion, the Jammu and Kashmir High Court was entitled to consider a belated appeal u/s 18B and apply the provisions of the Limitation Act, 1963 if the finding was that, the provisions of the Limitation Act, 1963 was neither expressly

excluded nor such exclusion was to be inferred from the scheme of the SARFAESI Act, 2002.

48. Another aspect of an appeal u/s 18 of the SARFAESI Act, 2002 required consideration. When an appeal u/s 18 of the SARFAESI Act, 2002 was filed within the period of limitation prescribed thereby, would the provisions of the Limitation Act, 1963 be attracted to such appeal when for example, a natural person to such an appeal died, or where the appeal was dismissed for default, or where such appeal being disposed of ex parte an application was made for recalling the ex parte order of disposal. If the provisions of the Limitation Act, 1963 were excluded to a proceeding u/s 18 of the SARFAESI Act, 2002, in all of the three instances referred to above, a party would be entitled to apply without any period of limitation being prescribed in respect thereof. Surely that cannot be the interpretation of the SARFAESI Act, 2002 and the Limitation Act, 1963.

49. One could contend that the period of limitation to file the appeal was prescribed by Section 18 of the SARFAESI Act, 2002 and that such period could not be extended by the application of Section 5 of the Limitation Act, 1963 and that during the pendency of an appeal u/s 18 of the SARFAESI Act, 2002 there was no embargo on the Limitation Act, 1963 applying to the circumstances arising in the course of the hearing of the appeal u/s 18 of the Limitation Act, 1963.

50. Such contention in my humble opinion meant that, the Limitation Act, 1963 was not excluded in its application in its entirety to a proceeding u/s 18 of the SARFAESI Act, 2002. Such contention acknowledged the application of the Limitation Act, 1963 to an appeal which was already admitted u/s 18 of the SARFAESI Act, 2002.

51. Such contention was, therefore, limited to the question as to whether or not Section 5 of the Limitation Act, 1963 would aid an appellant to have a belated appeal u/s 18 of the SARFAESI Act, 2002 admitted.

52. Section 37 of the SARFAESI Act, 2002 required consideration in that regard and also otherwise. Section 37 of the SARFAESI Act, 2002 stated that, the provisions of the SARFAESI Act, 2002 were in addition to and not in derogation of any other law for the time being in force. That would include the Limitation Act, 1963. A contention could be raised that Section 35 of the SARFAESI Act, 2002 made the provisions of the SARFAESI Act, 2002 to have effect notwithstanding anything inconsistent therewith contained with any other law for the time being in force. Therefore, it could be argued that, Section 18 prescribed a period of limitation and that, such period of limitation was required to be adhered to. Such a contention I am of the view could be met by stating the Limitation Act, 1963 also provided a time limit for preferring an appeal. The Limitation Act, 1963 also allowed a belated appeal to be admitted on sufficient cause being shown u/s 5 of the Limitation Act, 1963. Therefore, merely because Section 18 prescribed a time period for filing an appeal from an order passed u/s 17 of the SARFAESI Act,

2002, it did not exclude the application u/s 5 of the Limitation Act, 1963 ipso facto. In this context I would refer to the observation made in Popular Construction Company (supra). In paragraph 8 of the Popular Construction Company (supra) the Supreme Court held as follows:-

8. Had the proviso to Section 34 merely provided for a period within which the Court could exercise its discretion, that would not have been sufficient to exclude Sections 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5.

53. Section 29(2) of the Limitation Act, 1963 brought into its wake not only Section 5 of the Limitation Act, 1963 but the entirety of Sections 4 to 24 thereof. Sections 4 to 24 of the Limitation Act, 1963 envisaged various scenarios. u/s 14 of the Limitation Act, 1963, for instance, a party would be entitled to plead exclusion of time of a proceeding bona fide in a Court without jurisdiction. To say that Section 29 Sub-Section (2) of the Limitation Act, 1963 was not attracted to proceedings u/s 18 of the SARFAESI Act, 2002 would take away the applicability of Sections 4 to 24 of the Limitation Act, 1963 to such a proceedings and such an interpretation may give rise to a situation not contemplated by the legislature. Rights conferred under the Limitation Act, 1963, therefore, in my view, could not be inferred to be taken away by the SARFAESI Act, 2002 particularly in view of Section 37 thereof.

54. The provisions of the RDB Act, 1993 were also relevant for the purpose of construing whether the provisions of the Limitation Act, 1963 stood excluded impliedly by the scheme of the SARFAESI Act, 2002 or not. Section 18(2) of the SARFAESI Act, 2002 required the Appellate Tribunal to dispose of the appeal in accordance with the provisions of the RDB Act, 1993 and the Rules made thereunder. Section 24 of the RDB Act, 1993 made the provisions of the Limitation Act, 1963 applicable to an application made to a Debts Recovery Tribunal. Section 34 of the RDB Act, 1993 provided that, save as provided in Section 34(2) the provisions of the RDB Act, 1993 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any law other than the RDB Act, 1993. Sub-Section (2) of Section 34 of the RDB Act, 1993 provided that the provisions of the RDB Act, 1993 shall be in addition to and not in derogation of the Acts named therein Limitation Act, 1963 was not named.

55. So far as Limitation Act, 1963 was concerned, the provisions between the RDB Act, 1993 and the SARFAESI Act, 2002 could be contrasted. Under the RDB Act, 1993, Limitation Act, 1963 was made applicable to an application made to the Debts Recovery Tribunal. The right of appeal provided u/s 20 of the RDB Act, 1993 expressly provided that, the Appellate Tribunal could entertain an appeal after the expiry of the specified period of 45 days if it was satisfied that there was sufficient cause for not filing the appeal within that period. Therefore, since an express provision for entertaining an appeal beyond prescribed period of

limitation was made available to the Appellate Tribunal under the RDB Act, 1993 it did not provide for the Limitation Act, 1963 to apply to an appeal u/s 20 of the RDB Act, 1993.

56. Section 18 of the SARFAESI Act, 2002 was a right of first appeal. To curtail such right on the touch stone of limitation only particularly when there was no express exclusion in the statute itself was harsh. Then again, one was cautioned that harshness of an Act would not permit the Court to read the Limitation Act, 1963 into it when it otherwise stood extended expressly or by necessary inference. The present case revolved around the question as to whether exclusion of the Limitation Act, 1963 was to be inferred from the scheme of the SARFAESI Act, 2002 or not. While trying to draw such inference, one should not lose sight of the fact that Section 18 was a right of first appeal. The scheme of the SARFAESI Act, 2002 envisaged expeditious disposal of proceedings for recovery initiated at the instance of the banks and financial institutions. In my view expeditious disposal of a proceeding would not be hindered in the event, the provision of the Limitation Act, 1963 applied. RDB Act, 1993 was also brought about to dispose of proceedings initiated by the banks and financial institutions expeditiously as possible. There u/s 24 of the RDB Act, 1993 provisions of the Limitation Act 1963 were made expressly applicable. The right of first appeal given u/s 20 of the RDB Act, 1993 allowed the Appellate Tribunal to extend the time to file the appeal when sufficient cause for it was shown. In my view, shutting out the right first appeal was not an expeditious disposal contemplated under either the RDB Act, 1993 or the SARFAESI Act, 2002. Rather once an appeal was admitted and taken on record every endeavour should be made to dispose of it as expeditiously as possible. Admitting an appeal per se was not anathema to expeditious disposal of proceedings.

57. In my view, the provisions of Section 18 of the SARFAESI Act, 2002 was required to be read with Section 37 thereof. Section 37 of the SARFAESI Act, 2002 expressly provided that the provisions of the SARFAESI Act, 2002 were in addition to and not in derogation of the existing law. Limitation Act, 1963 was an existing law. Section 18 of the SARFAESI Act, 2002 did not exclude the Limitation Act, 1963 in its application expressly. The scheme of the SARFAESI Act, 2002 did not prompt an exclusion of the Limitation Act, 1963 by inference, in my view. In such circumstances Section 29(2) of the Limitation Act, 1963 was attracted to proceedings u/s 18 of the SARFAESI Act, 2002.

58. In the instant case the petitioner applied for condonation of delay on the ground that, although the order of the Presiding Officer, Debts Recovery Tribunal u/s 17 of the SARFAESI Act, 2002 was made available to the Advocate for the appellant the same was not made available to the appellate by such Advocate on record and, that the Debts Recovery Tribunal did not serve a copy of the order under Rule 16 of the Debts Recovery Tribunal (Procedure) Rules, 1993, therefore, the period of limitation envisaged u/s 18 of the SARFAESI Act, 2002 did not commence. The Debts Recovery Appellate Tribunal in this case by the order

impugned was of the view that, the service of the copy of the order upon the recorded Advocate was sufficient compliance of Rule 16 of the Debts Recovery Tribunal (Procedure) Rules, 1993.

59. The Debts Recovery Tribunal (Procedure) Rules, 1993 in Rule 16 provided as follows:-

16. Communication of orders to parties.-

Every order passed on an application shall be communicated to the applicant and to the defendant either in person or by registered post free of cost.

60. The Rule provided communication of every order passed on an application to the applicant or to the defendant either in person or by registered post free of cost. The provisions and the Rules framed thereunder as well as RDB Act, 1993 and the Rules framed thereunder the SARFAESI Act, 2002 were required to be strictly construed. These two were special Acts taking away various rights from the persons governed thereby. Debts Recovery Tribunal (Procedure) Rules, 1993 was framed in exercise of powers under the RDB Act, 1993. Independent of such logic the provisions of Rule 16 of the Debts Recovery Tribunal (Procedure) Rules, 1993 required strict construction as the same would have drastic effect on the question of limitation vis-a-vis the right of a party aggrieved by an order of the Presiding Officer of the Debts Recovery Tribunal. Rule 16 did not envisage that service of a copy of the order of an Advocate of a party before the Tribunal was sufficient compliance of Rule 16. The provisions of RDB Act, 1993 and the Debts Recovery Tribunal (Procedure) Rules, 1993 permitted a party to be represented by a legal practitioner or an agent. Under Rule 4 of the DRT (Procedure) Rules, 1993, an application u/s 19 or Section 31 or u/s 30(1) of the RDB Act, 1993 was permitted to be presented by the applicant in person or by his agent or by a duly authorized legal practitioner. "Agent" and "legal practitioner" were defined in Rule 2(a) and 2(d) respectively of the Debts Recovery Tribunal (Procedure) Rules, 1993. In such context when Rule 16 of DRT (Procedure) Rules, 1993 required every order passed by a Tribunal to be communicated to the applicant and to the defendant either in person or by registered post free of cost the same meant that the parties themselves were to be communicated. Any communication through the agent or by the authorized legal practitioner will not come within the meaning of Rule 16 of the DRT (Procedure) Rules, 1993.

61. There was no material before the Debts Recovery Appellate Tribunal to show that, a communication envisaged u/s 16 of the DRT (Procedure) Rules, 1993, meaning thereby, that, a free copy of the order impugned before it was made available to the appellant by the Registry of the Debts Recovery Tribunal. In such circumstances, in absence of such proof the appeal u/s 18 of the SARFAESI Act, 2002 before it could not be said to be not within the period prescribed u/s 18 of the SARFAESI Act, 2002. Section 18 of the SARFAESI Act, 2002 required a person aggrieved by an order made by the Debts Recovery Tribunal to prefer such appeal within 30 days from the date of receipt of the order of the Debts

Recovery Tribunal. The DRT (Procedure) Rules, 1993 prescribed the manner of communication of the order passed by the Debts Recovery Tribunal to the party. In the instant case, no communication from the Debts Recovery Tribunal of its order presented for appeal u/s 18 of the SARFAESI Act, 2002 happened so far as the appellant was concerned. The communication to the legal practitioner was not sufficient within the meaning of Section 16 of the DRT (Procedure) Rules, 1993.

62. The petitioner wanted remand of its application for reconsideration by the Appellate Tribunal. In my opinion, since the Appellate Tribunal had pronounced on the merit of the application explaining the delay in filing the appeal, it would be in the interest of justice to dispose of it finally here.

63. In such circumstances the order impugned dismissing the appeal of the appellant is set aside. The Debts Recovery Appellate Tribunal will hear and dispose of Appeal No. 408 of 2013 on merits. During the pendency of the appeal the appellant will continue to hold the title deeds and the sum of Rs. 50,00,000/- kept in deposit with it. Needless to say that both the title deeds and the sum of Rs. 50,00,000/- will abide by the result of Appeal No. 408 of 2013.

64. In such circumstances C.O. No. 940 of 2014 is allowed. There will be no order as to costs.