
(2013) 11 KL CK 0019
In the High Court Of Kerala
Case No : OP (DRT) No. 3777 of 2013 (O)

Shree Vidyadhiraja Vidyasamajam Registered Charitable
Society

APPELLANT

Vs

Indian Overseas Bank and R. Prabhakaran Nair

RESPONDENT

Date of Decision : 01-11-2013

Acts Referred:

Citation : AIR 2014 Ker 4 : (2014) 1 BC 319 : (2013) 4 ILR (Ker) 940 : (2013) 4 KHC 465 : (2013) 4 KLJ 672 : (2013) 4 KLT 528

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : Santhan V. Nair, Sri. V.V. Mithun and Sri. V. Gopikrishna, for the Appellant; Leo George, SC, IOB for R1, for the Respondent

Final Decision : Allowed

Judgement

V. Chitambaresh, J.—The short question is as to whether the Debts Recovery Appellate Tribunal has jurisdiction to condone the delay in filing an appeal u/s 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act" for short)? Section 18(2) of the SARFAESI Act enables the Debts Recovery Appellate Tribunal to dispose of an appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("the Act" for short) and the Rules made thereunder. Section 20(3) of the Act provides a period of forty five days for an appeal to be filed before the Debts Recovery Appellate Tribunal reckoned from the date on which a copy of the order made by the Debts Recovery Tribunal is received by the applicant. The proviso thereof enables the Debts Recovery Appellate Tribunal to 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. Section 24 of the Act further clarifies that the provisions of the Limitation Act, 1963 shall as far as may be apply to an application made to the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal. Also

Section 29(2) of the Limitation Act, 1963 is a cue to hold that Sections 4 to 24 thereof including Section 5 for condonation of delay apply when there is no express exclusion under the SARFAESI Act. Not only is there any express exclusion but also that Section 37 of the SARFAESI Act reinforces that its provisions shall be in addition to and not in derogation of the Act.

2. It is crystal clear therefore that the Debts Recovery Appellate Tribunal has ample powers to condone the delay in filing an appeal against the order of the Debts Recovery Tribunal rendered on an application u/s 17 of the SARFAESI Act. The same view is taken by the Division Benches of the High Courts of Andhra Pradesh and Punjab & Haryana in the following decisions:-

i) Sajida Begum v. State Bank of India, Hyderabad

[2012 KHC 2986 (A.P)].

ii) Surinder Mahajan v. Debts Recovery Appellate Tribunal & Others [C.W.P. No. 22567/2011 (P & H)]

This Court has also held in *Jayan v. Hong Kong and Shanghai Banking Corporation Ltd.* [2009 (2) KLT 1014] that the provisions of the Limitation Act can be extended to the proceedings under the SARFAESI Act before the Debts Recovery Tribunal. The contrary view taken by the High Court of Judicature at Madras in W.P. No. 13456/2012 [*Dr. Subaida Begum v. Indian Bank*] is not followed by me for the reasons stated supra.

The appeal filed by the petitioner under the SARFAESI Act has been rejected by the Debts Recovery Appellate Tribunal on the sole ground that there is no power to condone the delay in filing the same. Such a view is plainly unacceptable in view of the proposition of law stated above and the application for condonation of delay in filing the appeal deserves to be considered on merits. Every endeavour shall be made to dispose of the lis on merits rather than non-suited the petitioner on the ground of delay unless the same is wilful and not sufficiently explained. I set aside the order dated 27.08.2013 in AIR(SA) 761/2011 and direct the Debts Recovery Appellate Tribunal to rehear I.A. No. 714/2013 filed for condonation of delay afresh. The parties shall appear before the Debts Recovery Appellate Tribunal at Chennai on 25.11.2013 and the Registry shall forthwith despatch a copy of this judgment thereto.

The original petition is allowed. No costs.