

(2013) 04 P&H CK 0086

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No's. 22567 and 17894 of 2011 (O and M)

Surinder Mahajan

APPELLANT

Vs

Debts Recovery Appellate Tribunal and Others
 Sat
Narain Sharma Vs Union Bank of India and Others

RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
Constitution of India, 1950 — Article 226, 227
Contract Act, 1872 — Section 25
East Punjab Urban Rent Restriction Act, 1949 — Section 13B, 18
Income Tax Act, 1961 — Section 119(2), 239
Limitation Act, 1963 — Section 10, 11, 12, 13, 13(4)
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19, 20, 22, 24
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(4), 14, 17, 17(1)

Citation : (2013) 4 BC 531

Hon'ble Judges : Ritu Bahri, J; Hemant Gupta, J

Bench : Division Bench

Advocate : Pankaj Gupta, for the Appellant; G.S. Anand, Advocate, for Respondents No. 3 and 4, Ms. Radhika Suri, Addl. AG, Punjab and Mr. S.D. Bansal, Advocate, for Respondents No. 6 and 7, for the Respondent

Judgement

Hemant Gupta, J.—This order shall dispose of aforesaid writ petitions raising identical issues in respect of power to condone delay by the Debt Recovery Tribunal (for short "the Tribunal") or the Debt Recovery Appellate Tribunal (for short "the Appellate Tribunal") in filing applications u/s 17 of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act") or an appeal u/s 18 of the Act. In CWP No. 22567 of 2011, an appeal preferred by the petitioner before the Appellate Tribunal was dismissed relying upon the judgment of Madhya Pradesh High Court in M/s. Seth Banshidhar Kedia Rice Mills Pvt. Ltd. & others Vs. State Bank of India & others AIR 2011 MP 205 that there is no power with the Appellate Tribunal to condone

delay in filing of an appeal. However, in CWP No. 17894 of 2011 an application u/s 17 of the Act was dismissed being barred by 143 days of delay. Appeal against the said order has also been dismissed again relying upon the judgment of Madhya Pradesh High Court in M/s. Seth Banshidhar Kedia Rice Mills Pvt. Ltd. case (supra).

2. Since the question is purely legal, certain provisions of the Statutes i.e. The Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; Recovery of Debts Due to Banks & Financial Institutions Act, 1993 (for short the 1993 Act) and The Limitation Act, 1963 need to be extracted at this stage. The same are as under:

The Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

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

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(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

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

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

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

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 alongwith 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.

35. The provisions of this Act to override other laws - The provisions of this Act 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 such law.

36. Limitation - No secured creditor shall be entitled to take all or any of the measures under sub-section (4) of section 13, unless his claim in respect of 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 of, 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.

Recovery of Debts Due to Banks & Financial Institutions Act, 1993

17. Jurisdiction, powers and authority of Tribunals - (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

22. Procedure and Powers of the Tribunal and the Appellate Tribunal - (1) The Tribunal and the Appellate Tribunal shall not be bound the procedure laid down

by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

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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.

The Limitation Act, 1963

2. Definitions - In this Act, unless the context otherwise requires -

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(b) "application" includes a petition;

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(l) "suit" does not include an appeal or an application;

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29. Savings - (1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1972).

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

3. Learned counsel for the petitioners argued that the Limitation Act has not been excluded from its applicability to the proceedings under the Act either specifically or impliedly, therefore, in the absence of such provision in the statute, the Tribunal would have power to condone delay. It is argued that the Limitation Act is made applicable to the Tribunal under the 1993 Act, whereas, the Act specifically provides that the procedure for filing applications before the Tribunal and the appeals before the Appellate Tribunal shall be as 1993 Act. Therefore, the Limitation Act, being a provision of procedure would be applicable to the proceedings under the Act. The Learned Counsel referred to I (2008) BC 91 (3) Bankers' Journal 438 (Bom.), Punnusamy & another Vs. The Debts Recovery Tribunal 2009 (3) Bankers' Journal 401 (Mad.), Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, , Union of India Vs. M/s Popular Construction Co., , State of M.P. and Another Vs. Anshuman Shukla, and Union Bank of India Vs. Chairperson, The Debts Recovery Appellate Tribunal and Others, (2) Bankers' Journal 976 (Guj.) in support of their arguments.

4. On the other hand, the learned counsel for the respondents Banks argued that the Act is Special Statute and a complete code in itself. The period of limitation to file an application and/or the appeal provided in the Statute excludes the applicability of the Limitation Act as the extension of such provisions would defeat the very purpose of the Act that is speedy recovery of the debts. Reliance is placed upon *Akshat Commercial Pvt. Ltd. & another Vs. Kalpana Chakraborty & others* AIR 2010 Calcutta 138 and *M/s. Seth Banshidhar Kedia Rice Mills Pvt. Ltd.* case (supra).

5. For the purposes of Section 29(2) of the Limitation Act, the Act and the 1993 Act, both are special Statutes. The provisions of the Limitation Act have been extended to an application filed before the Debt Recovery Tribunal in terms of Section 24 of the 1993 Act. Therefore, the provisions of Sections 4 to 24 are applicable to the proceedings before the Tribunal under the 1993 Act with full force.

6. The applicability of the provisions of the Limitation Act to other local or special laws came up for consideration before the Supreme Court from time to time. In *Mukri Gopalan's* case (supra) the issue in respect of applicability of the provisions of the Limitation Act came up for consideration in reference to the proceedings under the Kerala Buildings (Lease and Rent Control) Act, 1965. The Court observed that two requirements i.e. (i) there must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application; and (ii) the said 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, must be satisfied before the provisions of Sections 4 to 24 of the Limitation Act are invoked. The Court held that the Appellate Authority constituted u/s 18 of the said Act functions as a Court and that Sections 4 to 24 of the Limitation Act would be applicable to such proceedings. The Court held as under:

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....

7. In *Popular Construction Co.* case (supra), the Supreme Court considered the applicability of Sections 5 of the Limitation Act to an application challenging an Award u/s 34 of the Arbitration & Conciliation Act, 1996. The Court found that the applicability of Section 5 of the Limitation Act stands excluded as it provides for condonation of delay only within a further period of 30 days, but not

thereafter. Therefore, there is express exclusion of applicability of Section 5 of the Limitation Act. The Court observed as under:

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 subsection (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar 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 justify such a result.

8. In *Commissioner of Customs and Central Excise Vs. Hongo India Private Limited & another* (2009) 5 SCC 791, the Supreme Court interpreted the words "expressly excluded" to return the following finding:

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 here in this case is Central Excise Act. 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 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, 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.

9. In *Om Prakash Vs. Ashwani Kumar Bassi*, the Supreme Court was examining the power of the Rent Controller to condone delay u/s 5 of the Limitation Act in respect of proceedings initiated u/s 13-B of the East Punjab Urban Rent Restriction Act, 1949. The judgment in *Mukri Gopalan* case (supra) was distinguished for the reason that in the case under consideration, the Rent Controller is a member of the Punjab Civil Services and therefore, such a persona designate would not be entitled to apply the provisions of Section 5 of the Limitation Act.

10. At this stage, we may mention that another two Bench in an order reported as *State of M.P. and Another Vs. Anshuman Shukla*, , has referred the matter to larger Bench while dealing an appeal against the Full Bench Judgment of M.P.

High Court. The Full Bench dealt with the power to condone delay by an Arbitral Tribunal constituted under a State Act for resolving disputes pertaining to works contract. The Court observed:

31. There cannot, therefore, be any doubt whatsoever that if the Arbitral Tribunal in question is a court and not a *persona designata*, sub-section (2) of Section 29, Section 5 of the Limitation Act would apply. It is only when the limitation provided under the special law, is different from that prescribed in the Schedule appended to the Limitation Act, sub-section (2) of Section 29 would be attracted.

32. In *Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker*, the distinction between the "*persona designata*" and "court" was noticed. It was held that the appellate authority constituted u/s 18 of the Rent Act was a court having all the trappings of the courts.

33. If the Tribunal is a court, a fortiori sub-section (2) of Section 29 would apply. As it is a court it was not necessary for the legislature to confer power u/s 5 of the 1963 Act specifically. In that view of the matter an application u/s 5 of the Limitation Act would be maintainable.

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35. The Full Bench, however, affirmed the decision of the Division Bench of the Madhya Pradesh High Court on the authority of *Nasiruddin and Others Vs. Sita Ram Agarwal*, and *Union of India Vs. M/s Popular Construction Co.*,

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37. In *Nasiruddin's* case this Court was considering the applicability of Section 5 of the Limitation Act in the matter of deposit of rent. The said question came up for consideration in the light of the power of the Rent Controller in terms of the rent control statute in the matter of depositing the rent. In other words the question was that the provision was directory or mandatory. It was in that view of the matter this Court opined: (SCC p. 590, para 45)

45. On perusal of the said section it is evident that the question of application of Section 5 would arise where any appeal or any application may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not making the appeal or application within such period. Section 13(4) provides that in a suit for eviction on the ground set forth in clause (a) of sub-section (1), the tenant shall on the first date of hearing or on or before such date, the court may on the application fixed in this behalf or within such time the tenant shall deposit in court or pay to the landlord in court as determined under sub-section (3) from the date of such determination or within such further time not exceeding three months as may be extended by the court. Thus, sub-section (4) itself provides for limitation of a specific period within which the deposit has to be made, which cannot be exceeding three months as extended by the court.

It was furthermore observed: (Nasiruddin case, SCC pp. 590-91, para 47)

47. The provisions of Section 5 of the Limitation Act must be construed having regard to Section 3 thereof. For filing an application after the expiry of the period prescribed under the Limitation Act or any other special statute, a cause of action must arise. Compliance with an order passed by a court of law in terms of a statutory provision does not give rise to a cause of action. On failure to comply with an order passed by a court of law, instant consequences are provided for under the statute. The court can condone the default only when the statute confers such a power on the court and not otherwise. In that view of the matter we have no other option but to hold that Section 5 of the Limitation Act, 1963 has no application in the instant case.

It was observed that for entertaining an application within the meaning of the said provision, there should be some request. Mukri Gopalan was distinguished stating: (Nasiruddin case, SCC p. 592, para 53)

53. Mr. Gupta, appearing on behalf of the respondent, however, placed reliance upon a decision of this Court in Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, Therein this Court was concerned with extension of the period of limitation in a case wherein an appeal was to be preferred before an appellate authority under the Kerala Buildings (Lease and Rent Control) Act, 1965. As for preferring an appeal a period of limitation is prescribed, it was held that Section 5 of the Act was applicable and, therefore, the said decision is of no help to the respondent.

It was not dissented from.

38. We, therefore, are prima facie of the opinion that Nagarpalika Parishad, Morena Vs. Agrawal Construction Co. (2004) 2 MPJR 374 was not correctly decided and, thus, the matter requires consideration by a larger Bench. It is ordered accordingly.

39. Let the records of the case be placed before the Hon"ble the Chief Justice of India for constituting an appropriate Bench.

11. The above said Civil Appeal is pending for final disposal.

12. The question is whether, the Act and 1993 Act if read together, leads to the applicability of the Limitation Act to the Proceedings under the Act. Therefore, the issue required to be examined is; whether the period of limitation for filing an application u/s 17 or filing of an appeal u/s 18 of the Act expressly or impliedly excludes the applicability of the provisions contained in Sections 4 to 24 of the Limitation Act to such proceedings.

13. The Appellate Tribunal in the orders impugned in the writ petitions has relied upon the judgment of the Madhya Pradesh High Court in M/s. Seth Banshidhar Kedia Rice Mills Pvt. Ltd. case (supra). In the aforesaid case, the Court observed that the period of limitation for filing an appeal has been reduced to then

provided for filing an appeal under the 1993 Act and thus the power to condone delay stands excluded in Section 18 of the Act. It has been observed that the said aspects leave no iota of doubt that the Legislature has consciously intended not to confer power of condonation of delay with the Appellate Tribunal under the Act. In the latter part of the judgment, the Court has observed that although the Tribunal can give benefit of Section 5 of the Limitation Act, 1963 (for short "the 1963 Act") while dealing with the application u/s 17 of the Act, but such power is not available with the Appellate Tribunal. It was held to the following effect:

17. ...This being the position, it is apparent that although the Tribunal can give the benefit of Section 5 of the Limitation Act, while dealing with an application u/s 17 of the SARFAESI Act, the Appellate Tribunal cannot do so while considering the appeal u/s 18.

14. The Court also referred to the judgments of Bombay High Court and Madras High Court in UCO Bank's case (supra), and Punnusamy's case (supra) respectively to return a finding that Section 5 of the Limitation Act applies only to the proceedings u/s 17 of the Act and not to Section 18 of the Act. In a separate, but concurring judgment, Hon'ble Mr. Justice Sanjay Yadav, observed as under:

28.A combined reading of the provision contained in Sections 35, 36 and 37 of the Act of 2002 does not lend any support to the contention of the petitioners that the powers conferred in the Appellate Tribunal u/s 20 of the Act of 1993 to condone the delay in filing an Appeal against the order of the Debt Recovery Tribunal, could be read with the jurisdiction of Appellate Tribunal u/s 18 of the Act of 2002. As the provisions contained under Sections 35, 36 and 37 have their own field of operation and have no bearing upon the provisions contained u/s 18 of the Act of 2002.

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39. Therefore, when the legislature has chosen not to confer powers on the Appellate Tribunal u/s 18 of the Act of 2002 to condone the delay in filing Appeal against the orders passed by the Debts Recovery Tribunal the same cannot be conferred by Judicial Pronouncement having inroad through inferential interpretation. The upshot of above analysis is that the Appellate Tribunal is justified in dismissing the Appeal not filed within the time, stipulated u/s 18 of the 2002 Act.

15. In UCO Bank's case (supra), a Division Bench of Bombay High Court considered the question as to what extent the Limitation Act is applicable to the proceedings u/s 17 of the Act. The Court held that Legislature has not excluded the application of the Limitation Act to the applications made by the borrower or the aggrieved persons u/s 17 of the Act. It was held as under:

71. Therefore, the Legislature has made two different provisions for the borrower and the secured creditor so far as period of limitation is concerned. On a proper reading of the NPA Act and the DRT Act, we are unable to come to a conclusion

that this indicates that the legislature has consciously excluded the application of the Limitation Act to applications made by the borrower or the aggrieved person u/s 17 of the NPA Act.

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73. Section 17(7) states that the DRT shall, as far as may be, dispose of the applications in accordance with the DRT Act and the Rules made thereunder. u/s 22 of the DRT Act, the DRT is not bound by the procedure laid down by the Civil Procedure Code, but shall be guided by the principles of natural justice and shall have power to regulate its own procedure. Under the said section, Debts Recovery Tribunal, Maharashtra & Goa Regulations of Practice, 2003 have been enacted. Under Regulation 3(7), "interlocutory application" inter alia means application for condonation of delay.

74. Section 24 of the DRT Act states that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to an application made to a Tribunal. In *Transcore Vs. Union of India (UOI) and Another*, the Supreme Court has, after considering the statement of objects and reasons of the NPA Act, the scheme of the NPA Act and the nature of its provisions, held that the enactment of NPA Act is not in derogation of the DRT Act. Their object is recovery of debts by nonadjudicatory process and they provide cumulative remedies to the secured creditor. In fact, section 37 of the NPA Act states that the provisions of the NPA Act shall be in addition to and not in derogation to the DRT Act. 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. So far as borrower's applications u/s 17(1) are concerned, a different period of limitation is prescribed. Hence, on a bare reading of section 29(2), section 5 of the Limitation Act would be applicable to them. So far as the secured creditor is concerned, he can take measures u/s 13(4) within the period prescribed under the Limitation Act. Though section 35 gives overriding effect to the NPA Act, section 37 states that application of other laws is not barred and the NPA Act is in addition to DRT Act and not in derogation thereof. It is important to note that u/s 17(7), the DRT has to dispose of the applications in accordance with the DRT Act and the rules made thereunder and section 24 of the DRT Act makes provisions of the Limitation Act applicable to the application before the DRT. Since after considering the scheme, provisions and object of the NPA Act, the NPA Act and the DRT Act are held complementary to each other by the Supreme Court in *Transcore's* case (supra)....

16. In *Punnusamy's* case (supra), learned Single Judge of the Madras High Court held that proceedings before the Debt Recovery Tribunal u/s 17 of the Act should be treated as applications and not strictly like suits. Therefore, the provisions of Section 5 of the Limitation Act would apply to applications u/s 17 of the Act. The Court observed as under:

36. Therefore, it is clear that Section 5 would apply even to some types of applications, though it may not apply to suits. The proceedings before the D.R.T. u/s 17 of SRFAESI Act, though original in nature, should be treated as applications and not strictly like suits. Therefore, the provisions of Section 5 of the Limitation Act, in my considered view, would apply to applications u/s 17 of SRFAESI Act. But the same logic cannot be extended to applications filed u/s 19 of RDDBFI Act, 1993, since Section 24 of RDDBFI Act, 1993 makes the provisions of the Limitation Act, 1963 applicable to an application under the Act, meaning thereby that an application u/s 19 of RDDBFI Act, 1993 is to be treated as a suit.

17. A Single Bench of Allahabad High Court in a judgment reported as *State Bank of Patiala Vs. The Chair Person Drat and Others*, Allahabad 1 following the judgment of Bombay High Court in *UCO Bank's case* (supra) has held that Sections 5 and 14 of the Limitation Act would apply to the proceedings u/s 17 of the Act.

18. A Division Bench of Andhra Pradesh High Court in Writ Petition No. 22317 of 2012 titled "*Sajida Begum Vs. State Bank of India & others*" decided on 04.09.2012 considered an order passed by the Appellate Tribunal dismissing an application filed to seek condonation of delay. The Bench observed as under:

12. In view of that, we are of the view that Section 29(2) of the Limitation Act is clearly attracted and thereby Sections 4 to 24 (inclusive) of the Limitation Act would be applicable to proceedings under Sections 17 and 18 of the SARFAESI Act before the DRT as well as DRAT. Consequently, therefore, the order impugned passed by the DRAT rejecting the petitioner's application for condonation of delay for want of jurisdiction is liable to be set aside.

19. A Single Bench of Gujarat High Court in a judgment reported as *Chairperson, Debts Recovery Appellate Tribunal case* (supra), returned a finding that Section 5 of the Limitation Act is applicable to the proceedings u/s 17 of the Act. It was observed as under:

14. As observed earlier, even if the contention of the learned counsel is considered and accepted that it is a Tribunal and not the Court as per the view taken by the Apex Court in the case of *Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking Corporation*, then also in view of the observations made hereinabove, it cannot be accepted that Section 5 of the Limitation Act would not apply to the proceedings u/s 17 of the Securitisation Act before the Debt Recovery Tribunal. The reliance upon the decision of the Apex Court in the case of *Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others*, is ill - founded inasmuch the observations off the Apex Court are to be considered and applied to the facts of that case. If such observation are considered, what is being held by the Apex Court that if there is express period prescribed in the special law, such would apply and not the prescription as provided under the Limitation Act, but the same cannot be read in absolute so as to excluded the applicability of other provisions of the Limitation Act which may

apply, more particularly in view of the no express bar provided under the special law. Therefore, such a decision is of no help to the learned counsel for the petitioner.

20. In a judgment reported as Akshat Commercial Pvt. Ltd. case (supra), a Division Bench of Calcutta High Court differed with the judgment of Bombay High Court in UCO Bank's case (supra) and held that Section 5 of the Limitation Act does not apply to proceedings although the other relevant provisions of the Limitation Act may apply. It was observed as under:

22. On the same analogy, the proceedings u/s 17(1) should also be treated as a suit and thus, Section 5 of the Limitation Act at least does not apply to such proceedings although other relevant provisions of the said Act may apply.

23. So far as the Division Bench decision of the Bombay High Court in the case of I (2008) BC 91 is concerned, which was strongly relied upon by Mr. Chatterjee, the learned senior advocate appearing on behalf of the writ petitioner, we find that the Division Bench in the said case did not take note of the aforesaid decision of the Supreme Court in the case of Gopal Sardar Vs. Karuna Sardar, as also the point as to whether a proceeding u/s 17(1) of the SARFAESI Act should be treated to be suit for the purpose of application of Section 5 of the Limitation Act. Therefore, the said decision cannot be relied as a precedent in the facts of the present case.

21. The Calcutta High Court has relied upon the Judgment of the Supreme Court in Gopal Sardar Vs. Karuna Sardar, wherein the issue was the exercise of right of pre-emption granted under the West Bengal Land Reforms Act, 1955. The Court observed as:

13. ...Considering the scheme of the Act being a self - contained code in dealing with the matters arising u/s 8 of the Act and in the light of the aforementioned decisions of this Court in the case of Hukumdev Narain Yadav Vs. Lalit Narain Mishra, , AIR 1994 512 (SC) and The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, it should be construed that there has been exclusion of application of Section 5 of the Limitation Act to an application u/s 8 of the Act. In view of what is stated above, the non-applicability of Section 5 of the Limitation Act to the proceedings u/s 8 of the Act is certain and sufficiently clear. Section 29(2) of the Limitation Act as to the express exclusion of Section 5 of the Limitation Act and the specific period of limitation prescribed u/s 8 of the Act without providing for either extension of time or application of Section 5 of the Limitation Act or its principles can be read together harmoniously. Such reading does not lead to any absurdity or unworkability or frustrating the object of the Act. At any rate, in the light of the three - Judge Bench decision of this Court in Hukumdev Narain Yadav case and subsequently followed in Anwari Basavaraj Patil case even though special or local law does not state in so many words expressly that Section 5 of the Limitation Act is not applicable to the proceedings under those Acts, from the scheme of the Act and having regard to

various provisions such express exclusion could be gathered. Thus, a conscious and intentional omission by the legislature to apply Section 5 of the Limitation Act to the proceedings u/s 8 of the Act, looking to the scheme of the Act, nature of right of pre - emption and express application of Section 5 of the Limitation Act to the other provisions under the Act, itself means and amounts to "express exclusion" of it satisfying the requirement of Section 29(2) of the Limitation Act.

22. The provisions of the Act have come up for consideration in *Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.,* . The Supreme Court observed that the proceedings u/s 17 of the Act are not appellate proceedings. It is, in fact, initial action which is brought before a forum as prescribed under the Act, raising grievance against the action and measures taken by one of the parties to the contract. It is the stage of initial proceeding like filing a suit in civil court. It was held to the following effect:

59. We may like to observe that proceedings u/s 17 of the Act, in fact, are not appellate proceedings. It seems to be a misnomer. In fact it is the initial action which is brought before a forum as prescribed under the Act, raising grievance against the action or measures taken by one of the parties to the contract. It is the stage of initial proceeding like filing a suit in civil court. As a matter of fact proceedings u/s 17 of the Act are in lieu of a civil suit which remedy is ordinarily available but for the bar u/s 34 of the Act in the present case.

23. In *United Bank of India Vs. Satyawati Tondon and Others*, the Supreme Court held that the Section 17 is the remedy available to any person including the borrower, who may have grievance against the action taken by secured creditor under sub-section (4) of Section 13. In *Kanaivalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others*, the Court held that even against an action taken u/s 14, the remedy lies to move an application to the Tribunal. The court observed:

22. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action u/s 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action u/s 13(4) of the Act, by providing for an appeal before the DRT.

23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants u/s 17 of the Act. It is well settled that ordinarily relief under Articles 226 /227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person.

24. A perusal of the judgments referred above would show divergent views of the High Courts in respect of applicability of the Limitation Act to the proceedings under the Act both in respect of proceedings before the Tribunal and the Appellate Tribunal. The Division Bench of Andhra Pradesh High Court in *Sajida*

Begum's case (supra) has taken a view that the provisions of the Limitation Act are applicable to proceedings under Sections 17 & 18 of the Act. Similar is the view taken by Bombay High Court in UCO Bank's case (supra). Whereas, the Division Bench of Madhya Pradesh High Court in M/s. Seth Banshidhar Kedia Rice Mills Pvt. Ltd. case (supra); a Single Bench of Madras High Court in Punnusamy's case (supra) and Single Bench of Allahabad High Court in State Bank of Patiala's case (supra) have held that the provisions of the Limitation Act are applicable to the proceedings u/s 17 of the Act but not to the proceedings u/s 18 of the Act. The Calcutta High Court is the sole High Court taking different view in Akshat Commercial Pvt. Ltd. case (supra) that the Limitation Act is not applicable in respect of proceedings either u/s 17 or Section 18 of the Act.

25. It is also settled that the Limitation Act is procedural law as in Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others, The Supreme Court has held that law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature. The relevant extract reads as under:

26. xxx xxx

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

xxx xxx

26. In T. Kaliamurthi and Another Vs. Five Gori Thaikal Wakf and Others, the Court observed that law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter.

27. In Thirumalai Chemicals Limited Vs. Union of India (UOI) and Others, , the Supreme Court held that the limitation can be procedure in one set of facts, but substantive in the context of different set of facts and that the procedure for filing of appeal including the period of limitation cannot be called substantive rights. It was held to the following effect:

24. Right of appeal may be a substantive right but the procedure for filing the appeal including the period of limitation cannot be called a substantive right, and an aggrieved person cannot claim any vested right claiming that he should be governed by the old provision pertaining to period of limitation. Procedural law is retrospective meaning thereby that it will apply even to acts or transactions under the repealed Act.

28. A Full Bench of this Court in a judgment reported as Jaswant Singh Bambha Vs. Central Board of Direct Taxes and Others, examined the provisions of Section 239 of the Income Tax Act, 1961 and held that Section 5 of the Limitation Act shall apply to the claims of refund u/s 239 read with Section 119(2) of the said Act. The Bench observed as under:

(13.1) The above provision clearly shows that Section 5 of the Limitation Act shall apply in cases of special or local laws to the extent to which they are not expressly excluded by such special or local laws. In other words, Section 5 of the Limitation Act cannot be resorted to only when it is expressly excluded by a special or local law.

(13.2) Section 239 of the Act has not expressly excluded the application of Section 5 of the Limitation Act. In fact, a conjoint reading of Sections 239 and 119(2) of the Act clearly shows that the application of Section 5 of the Limitation Act to the claims of refund has been specifically included in the Act.

(13.3) Thus, in our view the power given to the Board u/s 119(2) of the Act to entertain a belated claim is nothing but incorporation of the provisions of Section 5 of the Limitation Act, 1963.

(14) In view of the above, we are satisfied that by virtue of power conferred on the Board u/s 119(2) of the Act, it is fully competent to admit an application for refund even after the expiry of period prescribed u/s 239 of the Act for avoiding genuine hardship in any case or class of cases.

29. Section 2(l) of the Limitation Act defines a "suit" for the purposes of Limitation Act. Such suit does not include an appeal and application for the purposes of the said Act. The "application" in Section 2(b) of the said Act includes a petition for the purposes of the aforesaid Act. The Tribunal is not a Court to which the Limitation Act is applicable. Therefore, the action of the borrower in approaching the Debt Recovery Tribunal u/s 17 of the Act is not a suit as defined in Section 2(l) of the Limitation Act nor such application is before the Court. It is like original proceedings against an action taken by the secured creditor as observed by Supreme Court in *Mardia Chemicals Case* (Supra). The right to approach the Debt Recovery Tribunal u/s 17 of the Act arises to the borrower only if the secured creditor takes an action or any of the measures under the Act. The entire process of recovery is vested with a secured creditor under the Act. The only right available with an aggrieved person is to seek recourse to his remedies contemplated u/s 17 of the Act. Thus it is not an original proceeding to be initiated by an aggrieved person to establish one's right. It is more akin to the objections filed to the action taken by the secured creditor, who is not only the beneficiary and also adjudicator to the large extent except to the rights of an aggrieved person u/s 17 of the Act. The right to approach the Tribunal arises on the initiation of proceedings by the secured creditor against the borrower or any aggrieved person. Therefore, though an application is to be filed by an aggrieved person including a borrower, but such application is an objection petition to the action taken by the secured creditor.

30. Though sub-sections (5) & (6) of Section 17 of the Act, prescribes the period for a decision on an application filed in terms of Section 17 of the Act, but sub-section (7) contemplates that the Debt Recovery Tribunal shall dispose of the application filed in accordance with the provisions of the 1993 Act and the Rules

made there under, save as otherwise provided under the Act. Similar provision is in respect of appellate proceedings contained in sub-section (2) of Section 18 of the Act. The right has been given to any person including borrower to invoke the jurisdiction of the Debt Recovery Tribunal in the matter within 45 days from the date on which such measures had been taken under sub-section (1) of Section 17. Section 37 of the Act contemplates that provisions of the Act or the Rules made there under are in addition to, and not in derogation of 1993 Act including some other Statutes.

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

32. In the present set of cases, the right given to the secured creditor under the Act is not a complete code. The right given to the secured creditor under the Act is in addition to the rights conferred on the secured creditor in terms of Section 37 of the Act. Such right is in addition to many statutes including the 1993 Act. In fact, Section 17(7) and 18(2) of the Act, prescribes the procedure before the Tribunal as that under the 1993 Act. The Limitation Act is extended to the proceedings under the said Act, while treating an application to be filed u/s 19 of the said Act as a suit. Therefore, the inference that the limitation Act stands excluded in respect of the proceedings under the Act is not permissible to be drawn.

33. Therefore, in the absence of any provision under the Act excluding the applicability of the Limitation Act to the proceedings before the Debt Recovery Tribunal u/s 17 or before the Debt Recovery Appellate Tribunal u/s 18 of the Act, an application for condonation of delay would be maintainable before the Tribunal and the Appellate Tribunal. Therefore, we respectfully agree with the view of the Andhra Pradesh and Bombay High Court and unable to agree with the view expressed by Calcutta High Court.

34. In view of the above, we hold that:

(i) The remedy provided to any person including a borrower u/s 17 of the Act is in response to the actions and measures taken by the secured creditor through an application which is in the nature of objections to the action taken by the secured creditor.

(ii) The provisions of Sections 4 to 24 of the Limitation Act are applicable to the proceedings to be initiated by any person aggrieved including a borrower before the Debt Recovery Tribunal u/s 17 of the Act.

(iii) The provisions of Sections 4 to 24 of the Limitation Act are applicable to an appeal to be preferred against an order passed by the Debt Recovery Tribunal before the Debt Recovery Appellate Tribunal u/s 18 of the Act.

(iv) Whether sufficient cause is disclosed to seek condonation of delay, is a question of fact to be determined by the Debt Recovery Tribunal and/or the Debt Recovery Appellate Tribunal in the facts of each case.

In the light of the findings above, the order dated 23.09.2011 passed by the Debts Recovery Appellate Tribunal in CWP No. 22567 of 2011 is set aside and the matter is remitted back to the Appellate Tribunal to decide the appeal on merits. The orders dated 31.05.2011 and 19.09.2011 in CWP No. 17894 of 2011 are also set aside and the matter is remitted to the Debt Recovery Tribunal to decide the application for condonation of delay afresh on merits in accordance with the observations made hereinbefore.