Reportable/Non-Reportable

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON

Misc. Appeal Dy. No. 439 of 2026
(Arising out of I.A. 3166 of 2025, I.A. 3167/2025, I.A. 2591/2025, I.A. No. 3584 of 2025 in DRT-1, Kolkata)

1. Au Small Finance Bank Limited, 19A Dhuleshwar Garden, Ajmer Road, Jaipur-302001, Rajasthan, India and carrying on its business from its local branch office at 45, Syed Amir Ali Avenue, Jhowtala Road, Near P.S. – Karaya, Fazul Haq Sarani, Ballygunge, Kolkata-700019.

2. Authorised Officer, Au Small Finance Bank Limited, 19A Dhuleshwar Garden, Ajmer Road, Jaipur-302001, Rajasthan, India and carrying on its business from its local branch office at 45, Syed Amir Ali Avenue, Jhowtala Road, Near P.S. – Karaya, Fazul Haq Sarani, Ballygunge, Kolkata-700019.

....Appellants

-Versus-

1. Deepak Mehta (Prop of Mehta Enterprise) 8, Dr. Rajendra Road, L.R. Sarani, Kolkata -700020 and having its principal place of business at Flat No. 40, Ground Floor, Lenin Sarani, Dharmatala, Kolkata -700013, West Bengal.

2. Das Gold Private Limited, 188, Bipin Behari Ganguly Street, Bowbazar, Kolkata 700012, West Bengal.

....Respondents

Counsel for Appellants	Mr. P.K. Mukherjee, Mr. Sayak Ranjan Ganguly, Ms. Chaitali Dasgupta
Counsel for Respondents	Mr. D. Basu Roy

JUDGMENT : 14th May, 2026

THE APPELLATE TRIBUNAL :

Heard the Learned Counsel for the parties and perused the record on I.A. No. 297 of 2026 Application under Section 5 of Limitation Act, 1963 for condonation of delay of 91 days in preferring an Appeal against the order dated 24th December, 2025 passed by Learned DRT -1 Kolkata in I.A. No. 3166 of 2025, I.A. No. 3167 of 2025, I.A. No. 2591 of 2025 and I.A. No. 3584 of 2025 arising out of S.A. No. 387 of 2025.

2. Learned Counsel for the Appellant submits that the issue of maintainability of the S.A. is being raised by the Appellants from the very beginning and different I.As are being filed by the SARFAESI Applicants one by one. Since all the I.A.s were pending and the matter was extensively heard by the Learned DRT, hence, Appeal could not be filed. But when an order dated 28th April 2026 is passed by the Learned DRT, then it was found that the impugned order dated 24th December, 2025 should also be challenged. It is submitted that the delay of 91 days is not due to any negligence on the part of the Appellant, rather, it was on the basis of advice received by the Appellants. Learned Counsel for the Appellant also in detail argued the matter regarding the pending I.A.s and the orders passed therein by the Learned DRT which are not relevant at this point of disposal of Application under Section 5 of Limitation Act.

3. Learned Counsel for the Respondent opposed the prayer and submits that the Appellants have not challenged the impugned order passed by Learned DRT. Rather, when they sought the advice of their Counsel to challenge the

order dated 24th December, 2025, only then it was decided to file the instant Appeal. Accordingly, no sufficient cause could be shown by the Appellant for condonation of delay of 91 days in preferring the Appeal.

4. Order under challenge is dated 24th December, 2025 while the Appeal was filed on 24th April, 2026. Application for certified copy of the impugned order was filed on 22nd April, 2026. Accordingly, Appellant cannot take any advantage of the time in preparation of the copy of the impugned order.

5. As far as the issue of condonation of delay is concerned, law is very well settled that Appellant has to show the sufficient cause for condonation of delay as has been held by the Hon'ble Apex Court in ***Sheo Raj Singh (Deceased) through Legal Representatives & Others -vs- Union of India & Another [(2023) 10 SCC 531]*** wherein it was held in paragraphs 30 and 32 as under:

> *"30. X x x condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial."*
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> *"32. x x x At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher courts for adjudication."*

6. The Hon'ble Apex Court in ***State (NCT of Delhi) -vs- Ahmed Jaan [(2008) 14 SCC 582],*** held that proof of sufficient cause is a condition precedent. In para 10 it is held that

> *"There is no general principle saving the party from all mistakes of its Counsel could be laid. The expression 'sufficient cause' must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be*

condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay."

7. The Hon'ble Apex Court in ***S. Ganesharaju (Dead) through LRs -vs- Narasamma (Dead) through LRs [(2013) 11 SCC 341]*** in para 12 it was held that

"Unless the Respondents are able to show mala fides in not approaching the Court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the Courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by."

It was further held in para 14 that :

"Since sufficient cause has not been defined, thus, the Courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in prosecution of the matter."

8. It has been held by the Hon'ble Apex Court that in an application under Section 5 of the Limitation Act sufficient cause has be to shown for condonation of delay. There is difference between excuse and sufficient cause, as has been held by the Hon'ble Apex Court.

9. The Hon'ble Apex Court in ***Pathapati Subba Reddy (Died) -vs- The Special Deputy Collector (LA)[(2024)12 SCC 336]*** has referred to ***Collector, Land Acquisition, Anantnag and Others -vs- Katiji & Others [(1987) 2 SCC 107]*** wherein it was held that :

"x x x x ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above,

howsoever, liberal approach is adopted in condoning the delay, existence of 'sufficient cause' for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases liberal approach', justice-oriented approach' and cause for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act."

10. It is further held that it must be borne in mind, while construing 'sufficient cause' in deciding application under Section 5 of the Limitation Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of the decree-holder accrues and this right ought not to be lightly disturbed.

11. Hon'ble Apex Court has also referred to ***Basawaraj and Another -vs- Special Land Acquisition Officer (2013) 14 SCC 81*** wherein it was held in paragraph 23 that:

"The discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression 'sufficient cause' as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds."

12. Hon'ble Apex Court also placed reliance on paragraphs 12 and 15 of the ***Basawaraj*** (supra) which reads as under :

"12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period per of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held

that, "inconvenience is not" a decisive factor to be considered while interpreting a statute."

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay byimposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."(emphasis supplied)."

13. In paragraph 26 of the ***Pathapati Subba Reddy*** (supra) Hon'ble Apex Court held that

"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

14. It was further held that if sufficient cause is not shown, delay cannot be condoned. Further condonation of delay merely for the reason that the claimants have been deprived of the interest for the delay while holding that they had made out a case for condoning the delay is not a correct approach.

15. In ***K.B. Lal (Krishna Bahadur Lal) -vs- Gyanendra Pratap & Others [2024 SCC OnLine SC 508]*** Hon'ble Apex Court in judgment dated 8.4.2024 held that

"*10. There is no gain saying the fact that the discretionary power of a court to condone delay must be exercised judiciously and it is not to be exercised in cases where there is gross negligence and/or want of due diligence on part of the litigant (See Majjfi Sannomine @ Sanyasiree Reddy Sridevi & Ors. (2021) 18 SCC 384). The discretion is also not supposed to be exercised in the absence of any reasonable, satisfactory or appropriate explanation for the delay (See PK. Ramachandranu. State of Kerala and Anr., (1997) 7 SCC 556). Thus, it is apparent that the words sufficient cause' in Section 5 of the Limitation Act can only be given a liberal construction, when no negligence, nor inaction, nor want of bona fide is imputable to the litigant (See* ***Basawaraj and Another -vs- Special Land Acquisition Officer, (2013) 14 SCC 81).*** *The principles which are to be kept in mind for condonation of delay were succinctly summarised by this Court in* ***Esha Bhattacharjee -vs- Managing Committee of Raghunathpur Nafar Academy & Others (2013) 12 SCC 649****, and are reproduced as under:*

"21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are

to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted, or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation."

16. As far as issue of sufficient cause is concerned, in the present case no sufficient cause could be shown by the Appellant. Only ground shown by the Appellant in Para No. 21 of the Application under Section 5 of Limitation Act is that when they approached the Learned Tribunal for challenging the order dated 17th April, 2026, then on the advice of the

Counsel they applied for the certified copy of the impugned order and preferred the Appeal.

17. Impugned order was passed in the presence of the Appellants. No doubt, Learned DRT asked the SARFAESI Applicant to file the rejoinder against the opposition filed by the Respondent Bank and also passed the interim order directing to maintain the status quo. If the Appellants were aggrieved by the impugned order, they should have immediately filed the Appeal but they did not take any action for filing the Appeal. Rather, they kept mum for a period of about four months. When an order dated 28th April, 2026 is passed then the Appellant awoke and sought the advice of their Counsel and preferred this Appeal. This could not be sufficient ground for condonation of 91 days in preferring the Appeal.

18. Accordingly, I do not find any merit in the I.A. No. 297 of 2026 which is dismissed. Appeal is also dismissed being time barred. However, the Learned DRT is expected to take up the S.A. expeditiously for hearing as per its own roster. It is made clear that all the issues raised by the parties are open including the issue of maintainability raised by the Appellants. Learned DRT would be at liberty, if it finds fit, to decide the issue of maintainability at the preliminary stage.

Order

Appeal is dismissed with the observations made in the body of the judgment.

No Order as to costs.

File be consigned to Record Room.

Copy of the Judgment/ Final Order be uploaded in the Tribunal's Website.

Order signed and pronounced by me in the open Court on this the 14th day of May 2026.

(Anil Kumar Srivastava,J)
Chairperson

Dated 14th day of May, 2026
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