Appeal Dy. No. 1019/2024

Atindra Container Pvt. Ltd. Vs. Punjab National Bank & ors.

Present: Shri V. K. Shukla, counsel for the appellant,
Shri Himanshu Tewari, counsel for the respondent-Bank,
Shri Shailendra Kumar Patel, counsel for the respondent-Subsequent Purchaser,

ORDER

Date of Pronouncement: 14.07.2026

The present matter was heard and reserved for orders on the issue of limitation involved in the present appeal as well as on merits of the case vide order dated 28.04.2026 of this Tribunal.

Learned counsel for the appellant submitted that the order impugned was challenged before the Hon'ble High Court of Madhya Pradesh, Principal Bench at Jabalpur by filing a W.P. No. 23638/2023, which was disposed of vide order dated 22.03.2024, whereby the Hon'ble High Court has directed the appellant to file appeal before this Tribunal within a period of 30 days. It was further contended that against the said order, the appellant has preferred the Special Leave to Appeal (C) No. 12794/2024 before the Hon'ble Apex Court, which was dismissed vide order dated 14.06.2024 with liberty to the appellant to prefer an appeal before this Tribunal within 30 days from the date of said order and accordingly, the present appeal was filed on 11.07.2024 through online. It was thus contended that the present appeal was filed within the period of limitation as prescribed under the Act and Rules made thereunder from the date of order passed by the Hon'ble Supreme Court.

Learned counsel for the appellant also submitted that the contention of the respondents that the limitation shall be considered from the date of filing of hard copy of appeal is unsustainable in view of notification issued by the Ministry of Finance. It was, therefore, prayed that the appeal may be treated to have been filed within the period of limitation and the matter may be decided on merits.

Learned counsel for the respondent-Bank submitted that SLP filed by the appellant before the Hon'ble Supreme Court was dismissed with the liberty to file appeal before this Tribunal within 30 days. It was further submitted that the order dated 14.06.2024 passed by the Hon'ble Supreme Court has not been followed in letter and spirit, as it is matter of record that though appeal was filed online on 11.07.2024, but it is observed in Registrar's order dated 27.03.2025 that the hard copy of appeal was filed after eight months, thus in such circumstances, appellant is not entitled to get the benefit of Hon'ble Supreme Court's order dated 14.06.2024, hence the appeal deserves to be dismissed on ground of delay. It was, therefore, prayed that the appeal filed by the appellant may be dismissed with heavy costs.

Learned counsel for the respondent-Subsequent Purchaser submitted that as per Rule 4(2) of the Debts Recovery Tribunals and Debts Recovery Appellate Tribunals Electronic Filing Rules, 2020, after e-filing, it is mandatory for the appellant to file hard copy of memo of appeal within 7 days, but in the present case, e-filing was done earlier, but the physical filing was made on 11.03.2025, i.e. after a delay of about 8 months from the date of online filing. It was, therefore, prayed that the appeal filed by the appellant may be dismissed with heavy costs.

Considered the arguments and perused the record.

It is to be seen that the present appeal was filed on 11.07.2024 through online under section 18 of the SARFAESI Act against the order dated 03.07.2023 passed by the Tribunal below in S.A. No. 526/2023, but the hard copy of the same was filed before this Tribunal on 11.02.2025. If the period of limitation is counted from the date of the order impugned, the present appeal was filed beyond the period of limitation of more than 01 year and if the same is counted from the date of filing of hard copy of memo of appeal, then it is found that the same was filed beyond the period of limitation of more than 1.7 years, but it appears that during the said period, the appellant was continuously pursuing his cause with due diligence although before the wrong forum. The admitted fact is that the order impugned was firstly challenged by the appellant before the Hon'ble High Court by filing a Writ Petition No. 23638 of 2023, which was disposed off vide order dated 22.03.2024 with liberty to the appellant for filing appeal before this Tribunal within thirty days and the said order was challenged by the appellant before the Hon'ble Supreme Court by filing SLP No. 12794 of 2024, which was also disposed off vide order dated 14.06.2024 with the relief as was granted by the Hon'ble High Court and accordingly, the present appeal was filed on 11.07.2024, which is 27th day.

From the above, it is clear that the appellant was pursuing his cause with due diligence, therefore, benefit of section 14 of the Limitation Act can be extended, as section 14 of the said Act says "*Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. (2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. (3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on* *the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature."*

However, if the time spent by the appellant before the Hon'ble High Court as well as the Hon'ble Supreme Court is excluded, the present appeal is found to have been filed well within the period of limitation as prescribed under the SARFAESI Act. Besides it, the Hon'ble High Court in para 4.1 of the its order dated 22.03.2024, by which the writ petition no. 23638 of 2023 filed by the appellant was disposed off, has clearly held as under:-

> *"This Court has no manner of doubt that DRAT shall entertain appeal if filed by petitioner-borrower within a period of 30 days from today alongwith copy of this order. If the said appeal is filed within 30 days then, the same shall be entertained on merits without being dismissed on limitation alone provided petitioner complies with all the per-requisites prescribed u/S 17 of SARFAESI Act."*

It is admitted fact that the aforesaid order was challenged by the appellant before the Hon'ble Apex Court by filing S.L.P. No. 12794 of 2024, which was disposed off vide order dated 14.06.2024, but the Hon'ble Apex Court has given the same liberty as was granted by the Hon'ble High Court, which is quoted above. In view of this, the point of limitation will not come in the way of deciding the present appeal on merits.

The contention of the learned counsels for the respondents that the period of limitation shall be counted from the date of filing of hard copy of the memo of appeal is not tenable in view of the section 3(2) of the Debts Recovery Tribunals and Debts Recovery Appellate Tribunals Electronic Filing Rules, 2020, as the same says "the e-filing of pleadings by the applicant is mandatory and any other form of filing shall not be taken on record." Thus, the date of filing of the present appeal through Online i.e. 11.07.2024 is relevant and is taken into consideration for computing the period of limitation in the present case.

In view of the aforesaid, the delay, if any, in filing the the present appeal is condoned and the same is held to have been filed within the period of limitation as prescribed under the Act and Rules made thereunder.

With regard to merit of the case, learned counsel for the appellant submitted that the Tribunal below has erred in holding that the DRT has no power to condone the delay occurred in filing the securitization application under section 17 of the SARFAESI Act, as the judgment passed by the Hon'ble Apex Court in Civil Appeal No. 5924/2015-Baleshwar Dayal Jaiswal Vs. Bank of India and others, reported in (2016) 1 SCC 444 clearly says that the DRT has power to condone the delay under section 18 of the SARFAESI Act, which must also apply to section 17 of the said Act.

Learned counsel further submitted that the respondent-bank issued notice only to two directors of the company and did not issue any notice to the appellant, who has availed the loan facility from the Bank. It was further contended that in the possession notice dated 20.03.2019 under section 13(4) of the SARFAESI Act, only the name of the appellant was mentioned as borrower, but name of the Directors were not mentioned.

Learned counsel further submitted that the appellant had submitted one time settlement proposal for an amount of Rs. 47.00 lacs to the respondent-Bank vide letter dated 21.10.2019, which was sanctioned vide letter dated 27.12.2019 and 10% upfront amount of Rs. 4.70 lacs was immediately deposited by the appellant with the Bank, but due to lockdown on account of Covid-19, the conditions of the OTS could not be complied with and the securitization application under section 17 of the SARFAESI Act could also not be filed within the period of limitation as prescribed in the Act.

Learned counsel also submitted that meanwhile, the Oriental Bank of Commerce got merged with the Punjab National Bank, the respondent no.1 and in the month of Feb-2023, the appellant endeavored to make good the loan amount through OTS, therefore, approached to the Punjab National Bank, but nothing was done, as the Bank officials of the respondent no.1 were not willing to settle the matter. It was further contended that thereafter, the respondent-Bank has published e-auction Notice dated 01.02.2023 in Dainik Bhaskar, Bhopal with very low reserve price of Rs. 30.43 lacs.

Learned counsel further contended that the appellant sought an information under the RTI Act from the respondent no.1-Bank vide letter dated 07.03.2023 and the respondent no.1 provided the documents as sought under the RTI by the appellant vide dated 02.06.2023 and on the same very day, the appellant wrote a letter and made its submissions against the unlawful conduct of the respondent no.1-Bank.

It was further contended on behalf of the appellant that the appellant had later-on challenged the E-auction notice and also the demand notice dated 09.03.2018 under section 13(2) of SARFAESI Act, 2002 by filing the present S.A. along with application for condonation of delay under section 17 of SARFAESI Act and as such the Tribunal below without considering the fact and documents available on record has rejected the application of condonation of delay and also the S.A. filed by the appellant vide order impugned, which is not sustainable in the eye of law. It was, therefore, prayed that the order impugned may be set aside and the matter may be remanded back to the Tribunal below for deciding the S.A. on merits.

Learned counsel for the respondent-Bank submitted that the property in question was sold on 24.02.2023, therefore, the Bank is under legal obligation to execute the sale deed in favour of the auction purchaser, but despite being fully aware of the same, the appellant failed to challenge it within the limitation period.

Learned counsel further submitted that since the S.A No. 526/2023 filed by the appellant challenging the demand notice dated 09.03.2018 and auction sale notice publication dated 01.02.2023, which was time barred, therefore, the Tribunal below has rightly dismissed the same vide order impugned on the ground of delay and the same needs no interference by this Hon'ble Tribunal, as the appellant failed to explain sufficient reason for condoning the delay. It was, therefore, prayed that the appeal filed by the appellant may be dismissed with heavy costs.

Learned counsel for the respondent-subsequent purchaser submitted that in view of the judgments passed by the Hon'ble Apex Court in case of Consolidated Engg. Enterprises Vs. Irrigation Deptt., (2008) 7 SCC 169 as well as Hon'ble High Court, Kolkatta in the case of Akshat Commercial Pvt. Ltd. & Anr. Vs. Kalpana Chakraborty & Ors., AIR 2010 Calcutta 138, the delay in filing the application under section 17 of the SARFAESI Act cannot be condoned by the Tribunal below, as it has no power to condone the same. It was, therefore prayed that the appeal filed by the appellant may be dismissed with heavy costs.

I have considered the rival contentions of the learned counsels for the parties and perused the record.

The first question is, as to whether the Tribunal below has power to condone the delay occurred in filing the application under section 17 of the SARFAESI Act or not?

It is to be seen that section 17 of the SARFAESSI Act is a remedy available to any person aggrieved by any measures taken by the secured creditor under section 13(4) of the said Act. The said remedy is available before the DRT by filing the Securitization Application within 45 days from the date, on which any of the measures are taken under section 13(4). The SARFAESI Act is a special law and the same does not expressly exclude the provisions of the Limitation Act including section 5, therefore, the benefit of the said section is available to the cause of action raised in the application under section 17 of the SARFAESI Act. In this regard, section 29(2) of the Limitation Act stipulates that if the special law does not expressly exclude the application of sections 4 to 24 of the Limitation Act, then these provisions of the Limitation Act qua all causes raised under the special law shall apply. The said issue has already been dealt with and decided by the Hon'ble Supreme Court in case of Baleshwar Dayal Jaiswal Vs. Bank of India and Ors. (2016)1 SCC 444 and held that power of condonation of delay was expressly applicable by virtue of section 18(2) of the SARFAESI Act read with proviso to section 20(3) of the RDDB Act and to that extent, the provisions of the limitation Act having being expressly incorporated under the special statutes in question. The said issue has recently been considered and decided by the Hon'ble High Court of Madhya Pradesh at Indore in case of Ramesh Pal and Ors. Vs. IDFC First Bank Ltd. and Ors., 2025 MPHC-IND.. 31730, wherein it is held as under:-

> "The borrower's sole remedy lies before the Debts Recovery Tribunal (DRT) under sub-section (1) of the section 17 of the SARFAESI Act to challenge any or all the measures of the secured creditor and to seek recovery of the property from the purchaser. Consequently, if the borrower intends to protect or reclaim the property, no other court, forum, or authority-other than the DRT- has jurisdiction in this matter. The borrower is barred from approaching the Civil Court under Section 34 of the SARFAESI Act and is also precluded from invoking the writ jurisdiction of the High Court under Article 226 of the Constitution of India, owing to the availability of an alternative statutory remedy. Therefore, the DRT remains the only competent forum available to the borrower for redressal of grievances and for restoration of the property. The provision before the DRT, at the instance of borrower or any person shall be an original proceeding, hence, provisions of section 4 to 24 (both inclusive) of the Limitation Act, 1963 shall apply.
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> In light of the above discussion, it is held that the delay in filing an application/appeal/petition under section 17(1) of the SARFAEIS Act can be condoned by the DRT by invoking the provisions of the Limitation Act, 1963".

From the above law as laid down by Hon'ble Apex Court as well as by the Hon'ble High Court, it is clear that the DRT has power to condone the delay in the application filed under section 17 of the SARFAESI Act.

With regard to delay in filing the S.A. by the appellant, it is to be seen that the Securitization Application was filed by the appellant on 09.06.2023 challenging the auction sale notice dated 01.02.2023 and the auction sale dated 24.02.2023 along with demand notice dated 09.03.2018, thus the same was admittedly filed beyond the period of limitation as prescribed under the Act and Rules made thereunder.

In order to decide the issue of limitation, it has to be seen, on which date the applicant came to know about the cause of action taken place and the same could be ascertained from the date of service of notice upon applicant. In the present case, the appellant filed the present S.A. before the Tribunal below on the ground that no demand notice and sale notice were served upon the appellant. While going through the order impugned, it is found that the Tribunal below has taken the said issue while considering and deciding the application for condonation of delay, but no finding on the same has been given, as to whether those notices were served upon the appellant or not, even left the same stating that the DRT has no power to condone the delay occurred in filing the S.A. under section 17 of the SARFAESI Act and rejected the application for condonation of delay. If the said issue ought to have been considered by the Tribunal below, the fate of the case may have been otherwise, because in the SARFAESI proceedings, limitation starts from the date when any of the measures takes place under section 13(4) of the SARFAESI Act. Since it has been held in the preceeding paragraphs of this order that the DRT has power to condone the delay under section 17 of the said Act, therefore, the order impugned is liable to be set aside and the matter is also liable to be remanded back to the Tribunal below.

In view of the discussions as recorded above, the order impugned is set aside and the matter is remanded back to the Tribunal below for deciding it afresh in accordance with law after affording proper opportunity of hearing to the parties concerned without being influenced by the observations made hereinabove. Consequently, the appeal filed by the appellant is allowed with no order as to costs.

A copy of this order be forwarded to the parties as well as to the DRT concerned and be also uploaded on the e-drt portal.

Justice R. D. Khare
Chairperson

VN Giri,PS