

IN THE DEBTS RECOVERY TRIBUNAL-III, CHENNAI

Dated this the 22nd day of July, 2026

Present: SMT. S.V. GOWRAMMA
Presiding Officer

I.A. No.167 of 2025 in O.A. No.237 of 2024

1. M/s. Saravana Computer,
Proprietor: Mr. N. Muthu Kumar,
No. 73 and 74, Basement 10, Panna Plaza,
Arcot Road, Kodambakkam
Chennai – 600 024.
 2. Mr. N.Muthu Kumar,
S/o Mr. Narasingam,
No. 2/117, 1st Floor, 10th Cross Street,
Trustpuram, Vannier Street Main Road,
Kodambakkam,
Chennai –600 024
-Petitioners / Defendants

-Vs-

M/s Axis Bank Ltd.,
New Door No. 87, Old Door No. 17,
3rd Avenue, Plot No. 3635,
J Block, Anna Nagar East,
Chennai, Tamil Nadu - 600102
Represented by its Branch Manager

...Respondent/Applicant

Counsels on record / appeared:

Counsel for Petitioners : M/s R. Sivaraman

Counsel for Respondent: Sh. Kvp. Deepak Raj

: - ORDER ON IA NO.167 of 2025 - :

The defendants No.1 and 2 have filed IA.No.167/2025, a petition under Section 5 of Limitation Act praying to condone delay of 66 days in filing set aside petition.

2. The Defendant No.2 filed affidavit by swearing for himself and also as Proprietor of M/s Saravana Computer, 1st defendant herein. and on behalf of Defendant No.1 and Defendant No.3, contending that the applicant bank has filed the OA against the defendants claiming a sum of Rs.27,31,163.27p from petitioners 1 and 2 / Defendants 1 and 2 together with interest.

3. The petitioners submits that this Tribunal vide order dated 14.10.2024 in respect to the above OA has set the defendants ex-parte for non representation till 14.10.2024. The present application is filed with a delay of 66 days.

4. It is contended by the petitioners that no notice has been served upon the petitioners, which has been recorded by this Tribunal vide order dated 04.09.2024. The mentioned address is situated in the basement of the Building. The address mentioned in the cause title of the present OA had been the address of business operation until December 2023. It is submitted that, owing to Cyclone Michaung and the torrential rainfall during December 2023, the entire office premises located in the basement at the aforesaid address were severely inundated, resulting in extensive damage to the office infrastructure and rendering the premises unsuitable for carrying on business operations. Consequently, the Petitioners were constrained to shift their office to a new location. Therefore, it is the case of the petitioners that they could not receive the notices sent by the Respondent/Applicant, having no knowledge of the present proceedings.

5. It is further contended by the Petitioner that he was not residing at the second address mentioned in the OA, having shifted his residence to West Mambalam much prior to the issuance of summons. Consequently, the summons issued to the said address were never served upon him. The Applicant Bank had also initiated separate proceedings under the SARFAESI Act by issuing a Possession Notice under Section 13(4). Aggrieved thereby, the Petitioners had filed S.A. No. 6 of 2024 before this Tribunal challenging the said Possession Notice. It is stated that this Tribunal, by order dated 06.03.2024, granted an interim stay in the said SA.

6. It is the further case of the Petitioners that, to their shock and surprise, their counsel, while perusing the regular cause list on 18.12.2024, noticed that O.A. No. 237 of 2024 had been listed before this Tribunal. It is contended that only thereafter did the Petitioners become aware of the pendency of the said Original Application. Upon verification of the records, they came to know that they had been set ex parte by order dated 14.10.2024.

7. It is contended that, since neither the summons nor any notice of the proceedings had been served upon the Petitioners at their correct residential or business address, they had no knowledge of the proceedings or of the ex parte order dated 14.10.2024. It is only on 18.12.2024, when their counsel noticed the matter in the cause list, that they became aware of the pendency of the Original Application and the ex parte order passed therein.

It is, therefore, contended that the Petitioners were unable to file the application to set aside the ex parte order within the prescribed period of thirty days, resulting in a delay of 66 days. According to the Petitioners, the delay was neither wilful nor deliberate, but was occasioned solely on account of the aforesaid bona fide and unavoidable circumstances and hence prayed for condonation of delay and for setting aside the ex-parte order dated 14.10.2024.

8. The respondent bank filed counter in IA denying the averments in the petition and submitted that after filing of OA, this Tribunal issued summons dated 25.07.2024 to both the defendants returnable by 04.09.2024. The summons sent to both the defendants returned with an endorsement 'left'. The Affidavit of Service of summons has been filed in the Registrar Court on 04.09.2024.

9. It is further submitted that as the summons returned unserved, the Tribunal ordered notice to the defendants through substituted service by way of paper publication and the same was effected on 09.09.2024 and proof of paper publication was also filed on 03.10.2024. The defendants were called absent and set ex-parte on 14.10.2024 before the Presiding Officer's Court.

10. The respondent bank denied the averment stated in para 4 of the IA that no notice was served upon the defendants and puts the petitioner to strict proof of the same. In spite of paper publication effected, the

petitioners failed to appear before this Tribunal. There are no proper grounds in the present petition and the same is filed without any basis. Hence prayed for dismissal of IA.

Heard the submissions of both counsels on IA and perused the records.

11. The bank has filed OA have recovery a sum of Rs.27,31,163.37p from the Defendants 1 and 2, along with interest and cost till the date of realization. After filling OA on 25.07.2024, the Tribunal ordered summons to Defendants 1 and 2, returnable by 04.09.2024.

12. The bank has taken summons as directed by the Tribunal. Summons sent to Defendant No.1 and 2, returned unserved with postal endorsement as 'left' and 'no such person' respectively. The applicant bank had filed Affidavit of Service before the Registrar on 04.09.2024, who had recorded the Affidavit of service and ordered notice to defendants through substituted service i.e., paper publication returnable by 03.10.2024.

13. Accordingly, the applicant bank had effected paper publication in two newspapers, one in vernacular language on 09.09.2024, for hearing on 03.10.2024. As there was no representation for defendants on 03.10.2024, the defendants were called absent before Registrar's Court and case was posted before Presiding Officer's Court on 14.10.2024 for further proceedings. Despite paper publication, as defendants did not appear before this Tribunal, there were called absent and set ex-prate on 14.10.2024.

14. Thereafter, at the stage of filing Proof Affidavit by applicant bank, the petitioners have filed two IAs viz., IA No.167/2025 – praying to condone delay of 66 days in filing petition to set aside the ex-parte order and IA vide SR No.653/2025 praying to set aside the ex-parte order dated 14.10.2024 respectively on 21.01.2025.

15. It is the case of the Petitioners that no summons or notice in the OA was served upon them. According to them, the business address mentioned in the cause title had become non-functional after the office premises were inundated during the floods caused by Cyclone Michaung in December 2023, compelling them to shift their office to a different location. It is further contended that the second Petitioner had also shifted his residence from the address mentioned in the OA prior to the issuance of summons and, therefore, no summons was served at his correct residential address. It is further contended that the Applicant Bank had initiated proceedings under the SARFAESI Act, which were challenged by the Petitioners in S.A. No.6 of 2024, wherein this Tribunal granted an interim stay on 06.03.2024. According to the Petitioners, they came to know about the pendency of the present OA and the ex parte order dated 14.10.2024 only when their counsel noticed the matter in the regular cause list on 18.12.2024.

16. It is the specific case of the Petitioners that they had shifted their business premises to a different location after the office situated in the basement was inundated during the floods in December 2023. Further, the

second petitioner also claims to have shifted his residence. If that be so, it is incumbent upon the Petitioners to intimate the change of address to the Applicant Bank. However, no material evidence has been placed on record to show that any such intimation was ever given to applicant bank nor to the postal authorities intimating the change of address.

17. Further, the Petitioners themselves contend that they had challenged the Possession Notice issued under Section 13(4) of the SARFAESI Act by filing SA No. 06 of 2024 (Sic. TSA No.06 of 2024), in which this Tribunal granted an interim order on 06.03.2024. A perusal of the records in T.S.A. No.06 of 2024 reveals that the Petitioners have described their address as *M/s. Saravana Computer, represented by its Proprietor, Mr. Muthu Kumar, Basement No. 10, Door Nos. 73 & 74, Panna Plaza, Arcot Road, Kodambakkam, Chennai – 600 024*, which is the very same address of the defendants shown in the present Original Application and also in the present IA. This clearly belies the contention of the Petitioners that they had shifted their business premises to a different location after the floods in December 2023. The plea that the notices could not be served on account of the change of business address is, therefore, devoid of merit and cannot be accepted. It is contrary to their own submissions to play fraud on the Tribunal as well as on the bank.

18. It is the matter of fact that the affidavit filed along with IA No.167/25 does not support case as the Petitioners / defendants have not justified the

reason stated by them for non appearance. On the other hand, the applicant bank has taken summons as directed by this Tribunal following due procedures in taking out summons/ service of summons as prescribed under the law.

19. It is pertinent to note that the Petitioners/Defendants have chosen to enter appearance and seek to contest the proceedings only at a belated stage by filing the present application with a delay of 66 days. In the absence of any reasonable or satisfactory explanation for the delay, this Tribunal is of the view that the present application appears to have been filed only to protract and delay the proceedings.

20. 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 Tribunal has no power to extend the period of limitation on equitable grounds and has no power to ignore that provision to relieve what it considers a distress resulting from its operation as per the Judgement of Hon'ble Supreme Court in the matter of **P.K. Ramachandran vs. State of Kerala**, reported in (1997) 7 SCC 556, **the Hon'ble Supreme Court** has held thus:-

"Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds".

Hence, the legal maxim “dura lex sed lex” which means “the law is hard but it is the law”, stands attracted in such a situation.

21. It is axiomatic that condonation of delay is a matter of discretion of the Court. However, while there is no sufficient cause has been satisfactorily assigned by the petitioner for the delay of 66 days in preferring the application, the Tribunal is not inclined to condone the delay.

22. In the instant matter the Defendants has not justified the reasons for each day's delay and the Tribunal is not inclined to condone the delay even on equitable grounds. The Tribunals opinion is justified by the judgement of Hon'ble Supreme Court in the case titled ***Lingeswaran vs Thirunagalingam in SLP 2054-2055/2022*** where it is held that the Limitation Period Cannot Be Extended On Equitable Grounds.

23. The Hon'ble Supreme Court in the is the said judgement observed that an application for condonation of delay has to be dismissed if it is found that the delay is not properly explained and that the period of limitation cannot be extended on equitable ground. Otherwise, it would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches.

24. The Tribunal reminds itself that the RDDB Act is a special enactment, enacted with the purpose of providing expeditious adjudication and recovery of debts due to Banks and Financial Institutions. Time is the essence in quick disposal of Original Applications to avoid locking up of huge

amount of public money in litigation which prevents proper utilization and recycling of the funds for the economic development of the country.

25. For better understanding S.19[5] is reproduced reads as under:

"The defendant shall within a period of thirty days from the date of service of summons, present a written statement of his defence including claim for set-off under sub-section (6) or a counter-claim under sub- section (8), if any, and such written statement shall be accompanied with original documents or true copies thereof with the leave of the Tribunal, relied on by the defendant in his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, extend the said period by such further period not exceeding fifteen days to file the written statement of his defence"

26. Thus, a reading of S.19(5) clearly shows that the written statement/ counter-claim is required to be filed mandatorily within 30 days from the date of service of summons. Another period of 15 days maximum can be granted, only in exceptional cases and in special circumstances, which are to be found and recorded in writing by the Presiding Officer while granting extension by up to 15 days. These strict timelines of 30 days, and 15 days as mandated in section 19(5) are in consonance with the objective sought to be achieved by the Recovery of Debts and Bankruptcy Act, 1993.

27. The strict timelines for filing written statement and counter claim is that DRT is adjudicating on disputes involving huge amounts of public money, and if any delay is permitted in the adjudication of those disputes, the same will result in locking up of huge amounts of public money which

further would prevent utilization and recycling of those funds for the development of the country.

28. In the instant matter the defendants have deliberately evaded the summons from this Tribunal and had filed the present IA with untenable, frivolous and vexatious reasons.

29. For the foregoing reasons, the IA filed for condonation of delay of 66 days in filing set aside petition order cannot be considered and the same stands rejected.

30. Accordingly, IA No.167/25 stands dismissed. Consequently, IA vide SR No.653/2025 filed by the petitioners to set aside the ex-parte order dated 14.10.2024 also stands dismissed. No order as to costs.

Sd/-

(S.V. GOWRAMMA)
PRESIDING OFFICER
DRT-III, CHENNAI

(Dictated to PS, transcribed by her, corrected, signed and pronounced by me on this the 22nd day of July, 2026)