



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 20TH DAY OF FEBRUARY, 2025

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PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

WRIT PETITION NO. 11273 OF 2024 (GM-DRT)

BETWEEN:

KAILASAM P
AGED ABOUT 59 YEARS,
SON OF P M PANCHAPAKESAN IYER,
RESIDING AT NO.46, 3RD MAIN ROAD,
VYALIKAVAL, BANGALORE – 560 003.

CURRENTLY RESIDING AT
NO. 36/6, UP HOMES,
3RD FLOOR, 11TH MAIN, MALLESHWARAM,
BENGALURU – 560 055.

...PETITIONER

(BY SRI. MANU PRABHAKAR KULKARNI.,ADVOCATE)

AND:

1. THE KARNATAKA BANK LTD
REPRESENTED BY ITS AUTHORISED OFFICER
ASSET RECOVERY
BRANCH NO.105, 3RD FLOOR,
MOHAN MANSION, KASTURBA ROAD,
BANGALORE – 560 001.
2. MR. CHANDRAKUMAR CHAULA
AGED MAJOR,
SON OF LATE A L CHAULA
NO.92, 3RD MAIN, 13TH CROSS,
VYALIKAVAL, BANGALORE - 560 003.





3. SMT. SNEHA NAGPAL
W/O SRI.RAJESHI NAGPAL,
D/O MR.CHANDRAKUMAR CHAWLA,
R/AT NO.03,1ST CROSS, MADHAV NAGAR,
BENGALURU NORTH, BENGALURU – 560 001.
4. MR. RAJESH R
S/O SRI RAJIVELU T K,
R/AT NO.35, BRN ENCLAVE,
RADHAKRISHNA LAYOUT, 1ST STAGE,
PADMANABHANAGAR, BENGALURU – 70.
5. MRS. GEETHANJALI M N
W/O SRI RAJESH R,
R/AT NO.35, BRN ENCLAVE,
RADHAKRISHNA LAYOUT, 1ST STAGE,
PADMANABHANAGAR, BENGALURU – 70.
6. MR.G JAGADESWARA NAIDU,
S/O SRI G NARASIMHULU NAIDU,
R/AT NO.12-61, BANGAREDDY PALLI,
DIGUVAMASAPALLE, CHITTUR – 517 419
ALSO AT NO.502, 11-A MAIN,
RAGHAVENDRA LAYOUT, BENGALURU.
AMENDED V.C.O DATED 20.02.2024.

...RESPONDENTS

(BY SRI.K N MAHABALESHWARA.,ADV FOR C/R2 & ALSO FOR R3;
SRI. K V SHYAMA PRASAD.,ADV., FOR C/R1(CP 7118/24;
SRI. RAJAGOPALA NAIDU., ADVOCATE FOR R4 TO R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO I) SET-ASIDE THE IMPUGNED ORDER DATED 01.04.2024 PASSED BY THE HONBLE DEBT RECOVERY APPELLATE TRIBUNAL, CHENNAI IN IA No. 308 OF 2023 IN AIR 676 OF 2023 (ANNEXURE A) AND ALLOW THE IA NO. 308 OF 2023 IN A.IR 676 OF 2023 AND CONSEQUENTLY DIRECT THE HONBLE DEBT RECOVERY APPELLANT TRIBUNAL TO CONSIDER THE APPEAL ON MERITS AND ETC.,

THIS WRIT PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:



CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
AND
HON'BLE MR JUSTICE G BASAVARAJA

ORAL ORDER

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

Petitioner being the guarantor for a gigantic loan of Rs.12,84,46,406.76 as quantified on 04.04.2017 is knocking at the doors of writ court for assailing the Debt Recovery Appellate Tribunal's order dated 01.04.2024 whereby his application in I.A.308/2023 u/s.17.... having been negatived, his appeal in AIR No.676/2023 also has met the same fate. In the said appeal challenge was laid to the DRT order dated 27.03.2023 whereby his application in I.A.3078/2019 seeking condonation of delay in filing I.R.No.4121/2019, was dismissed.

2. FOUNDATIONAL FACTS OF THE CASE:

2.1 Petitioner availed a housing loan facility of Rs.2.90 crore from the respondent -bank. One White Horse Network Services Pvt. Ltd., had availed loan facility in all Rs.8 crore and that petitioner had furnished the subject property by way of mortgage for securing repayment. The loans having not being repaid, the bank



resorted to coercive proceedings for recovery as provided under the provisions of SARFAESI Act, 2002. Sec.13(2) notice was issued on 04.04.2017 followed by Possession Notice u/s.13(4) dated 08.08.2017.

2.2 Petitioner along with White Horse filed application in I.R.No.2655/2017 u/s.17(1) & (3) of the Act before the DRT, Bangalore challenging the possession notice. An application in I.A.No.2095 of 2017 supported by affidavit was filed seeking condonation of delay of 14 days on the ground that the subject notice was not delivered to him, he having learnt of it from the neighbours. During the pendency of the said proceeding the bank issued sale notice on 09.11.2017 fixing 27.12.2017 as the day for public auction.

2.3 The DRT granted interim stay on 12.12.2017 against the possession notice subject to petitioner depositing Rs.2 crore with the bank. White Horse had filed S.A.No.429 of 2017 challenging the public auction notice. The DRT vide order dated 22.12.2017 had stayed confirmation of auction and that came to be vacated for non-compliance of the condition. Petitioner however had partially complied with the condition by depositing only Rs.10 lakh and he could not pay the remaining Rs.1.90 crore.



2.4 The bank issued Second Sale Notice dated 23.03.2018 fixing 31.03.2018 as the date of public auction of mortgaged property. Petitioner filed W.P.Nos.13207-13208/2018 challenging the said notice. A learned Single Judge vide ad interim order dated 28.03.2018 had stayed finalizing of any sale subject to petitioner depositing Rs.5 crore within six weeks. This condition was not complied with and petitions came to be dismissed on 06.06.2018 reserving liberty to the petitioner to pursue pending I.R.No.2655/2017 before the DRT.

2.5 There were other writ petitions which do not merit mentioning. Auction was conducted on 22.03.2019 and the 2nd respondent being the highest bidder got the sale of subject property. Petitioner on 06.05.2019 filed an application seeking amendment to I.R.No.2655/2017 for impleadment of 2nd respondent. On 16.05.2019 the Sale Certificate was issued to the 2nd respondent confirming the auction sale. On 11.10.2019 Petitioner filed I.R.No.4121/2019 u/s.17(1) & (3) of 2002 Act, challenging entire measures as being illegal & invalid.

2.6 Since there was delay in laying the challenge before the DRT, an application was filed in I.A.No.3078 of 2019 seeking condonation of delay of 31 days when actually delay was admittedly 158 days. The bank filed objections to the said application. The DRT vide order



dated 27.03.2023 dismissed the said application on the ground that it had no power to condone the delay. Petitioner filed W.P.No.8379/2023 challenging the said order which came to be disposed off reserving liberty to the petitioner to approach DRAT. In the meanwhile, parties were directed to maintain *status quo*. Petitioner filed appeal (Dy.No.676 of 2023) on 24.05.2023. An application was also moved seeking condonation of delay. The DRAT vide order dated 01.04.2024 dismissed the delay application and as a consequence appeal also came to be negated. The same is put in challenge at our hands.

3. SUBMISSION OF COUNSEL:

Learned counsel appearing for the petitioner-guarantor/mortgagor vehemently argues that the period of limitation of 45 days prescribed u/s.17(1) of SARFAESI 2002 is only directory in nature and therefore the DRT could not have rejected the application seeking condonation of delay beyond 45 days. Learned advocates appearing for the Bank, purchasers & developer of the subject property resist the petition making submission in justification of the order of the DRAT which has affirmed



DRT's order contending that the prescribed period of limitation is 45 days u/s.17 of the Act, which is mandatory, DRT not being a conventional court has no inherent power to condone any delay, more particularly when Sec.5 of the Limitation Act, 1963 is not applicable. Both the sides rely upon certain decisions in support of their respective stand.

4. Having heard the learned counsel for the parties and having perused the petition papers, we decline indulgence in the matter for the following reasons:

4.1 Since both the sides heavily banked upon Sec.17(1) of the 2002 Act, the same is reproduced for ease of reference:

"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 along with such fee, as may be prescribed,] [Substituted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004, Section 10, for "may prefer an appeal" to the Debts Recovery Tribunal having jurisdiction in the matter within



forty-five days from the date on which such measures had been taken:[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.][Inserted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004, Section 10.”

[Rest of the provisions of this section not being relevant to the case at hand, is not reproduced]

A perusal of the above provision leaves no manner of doubt that no provision is made by the Parliament for condonation of delay in approaching the DRT against orders of the kind, whatever be the cause therefor and howsoever justifiable it may sound. Unless power to condone delay is legislatively granted expressly or by inference, a Tribunal of the kind cannot condone delay. It hardly needs to be stated that the Tribunals unlike conventional courts do not have inherent power. Added, a Tribunal is not a court and therefore 1963 Act is not applicable, subject to all just exceptions. It is the policy of Parliament that one who wants to have redressal has to knock at the doors of DRT within 45 days and thereafter those doors should permanently stand closed. In other words, law does not come to the aid of those who are sleepy & tardy. Further, no challenge is laid to the provisions of Sec.17 on the ground that it does not provide for condonation of delay.



4.2 The above view gains support from the Apex Court decision in **BANK OF BARODA vs. M/S.PARASAADILAL TURSIRAM SHEETGRAH PVT. LTD.,¹**. In more or less similar facts the borrowers had approached the DRT by invoking Sec.17 of 2002 Act. *"...DRT dismissed the Sec.17 application on the ground that it was filed beyond the statutory period of limitation of 45 days... The above referred order was challenged in review. The DRT by its order dated 08.08.2016 allowed the review... It is rather strange that the DRT not only entertained the Review Petition, but has allowed the same... The order in review was challenged before the DRAT, which found no difficulty in allowing the appeal on the ground that there was never been an error apparent on the face of record for exercising the review jurisdiction..."*. At para 12 the Apex Court has further observed as under:

"The reason for providing a time limit of 45 days for filing an application u/s.17 can easily be inferred from the purpose and object of the enactment. In TRANSCORE vs. UNION OF INDIA & ANOTHER this court held that the SARFAESI Act is enacted for quick enforcement of the security. It is unfortunate that proceedings where a property that has been brought to sale and third party rights created under the provisions of the Act, have remained inconclusive even after a decade."

¹ 2022 LiveLaw (SC) 671



4.3 The vehement submission of learned counsel for the petitioner that a perusal of decision in BANK OF BARODA *supra* does not show that any ratio in so many words is laid down to the effect that in no circumstance DRT can condone delay once the prescribed period of 45 days expires, is difficult to countenance. A ratio decidendi has to be churned out by applying conventional tests, Prof. Eugene Wambaugh's Test of Inversion being one of them. Salmond's Jurisprudence² writes as under:

"Various methods of determining the ratio have been advanced. The "reversal" test of Professor Wambaugh suggested that we should take the proposition of law put forward by the Judge, reverse or negate it, and then see if its reversal would have altered the actual decision. If so, then the proposition is the ratio or part of it; if the reversal would have made no difference, it is not. In other words the ratio is a general rule without which the case would have been decided otherwise..."

If DRT had power to condone delay, the decision of the Apex Court would have been different. That sufficiently indicates the ratio. The scope for invocation of this test cannot be doubted since interpretation of Sec.17 was the jugular vein of the case, there being no other point. Added, the Apex Court in **C.N.RUDRAMURTHY vs. K.BARKATHULLA KHAN**³ has observed as under:

² Twelfth Edition by Fitzgerald at page 180

³ AIR 1998 SC 260 at para 6



"Indeed it is a matter of judicial discipline that required that when this Court states as to what the law on the matter is, the same shall be binding on all the Courts within the territory of India. This mandate of Article 141 of the Constitution is not based on any doctrine of precedents, but is an imprimatur to all courts that the law declared by this Court is binding on them. If that is so, it was not open to the High Court to consider the effect of the decisions in Rattan Arya's case, its scope, what was decided therein and whether there could be any distinction between that decision and the decision rendered in D.C. Bhatia's case..."

4.4 Learned counsel appearing for the petitioner heavily banked upon a Delhi High Court decision in **GLOBAL Heritage Venture Ltd., vs. PUNJAB NATIONAL BANK**⁴ and decision of Telangana High Court in **PORUS LABORATORY PRIVATE LIMITED vs. INDIAN BANK**⁵ in support of his contention that Sec.17 of the Act empowers the DRT to condone delay if sufficient cause is shown. We respectfully differ from this view since it does not fit even into the penumbra of Sec.17, let alone its precincts. The Calcutta High Court in **AKSHAT COMMERCIAL PVT. LTD., vs. KALPANA CHAKRABORTY**⁶ has taken the view that Sec.17 is mandatory and therefore the question of condoning delay would not arise. We are in respectful agreement with this.

⁴ 2019 SCC OnLine Del 10551

⁵ 2018 SCC OnLine Hyd 161

⁶ AIR 2010 CALCUTTA 138



4.5 If the Parliament intended that DRT should have power to condone delay, it would have enacted a provision like Sec.5 of the 1963 Act in Sec.17 of 2002 Act. However, consciously it has chosen not to do it. It is not an omission by inadvertence, to say the least. It is a policy decision taken in the accumulated experience and the lessons drawn from it. The Apex Court in **CELIR LLP vs. BAFNA MOTORS (MUMBAI) (P) LTD.**,⁷ at para 65 has observed as under:

"The SARFAESI Act is a special law containing an overriding clause in comparison to any other law in force... The SARFAESI Act is a special law of recovery with a paradigm shift that permits expeditious recovery for the banks and the financial institutions without intervention of courts... If the general law is allowed to govern in the manner as sought to be argued by the borrowers, it will defeat the very object and purpose..."

4.6 Learned Counsel for the Petitioner Mr. Manu Kulkarni in support of his contention banks upon the Apex Court decision in **BALESHWAR DAYAL JAISWAL vs. BANK OF INDIA**⁸, to contend that DRT has power to condone delay because Section 17(7) is *pari materia* to Section 18(2) of the SARFAESI Act. The subject matter of

⁷ (2024) 2 SCC 1.

⁸ (2016) 1 SCC 444



this case involved Section 18 and not Section 17. Since the Privy Council days, if not before, difference is maintained between institution of original proceedings and that of appellate proceedings; proceedings u/s 17 of the Act belong to the class of former whereas those u/s 18 pertain to the class of latter. This position is fairly admitted at the Bar. It hardly needs to be reiterated that a decision is an authority for the proposition it lays down in a given fact matrix and not for all that, that would logically follow from what has been so laid down vide Lord Halsbury in ***QUINN vs. LEATHEM***⁹. Added, when a special legislation grants a right of action subject to certain conditions and creates a Forum for its effectuation, that right becomes exercisable on satisfying such conditions, and not otherwise. Limitation period is one such condition. After all, judiciary being a branch of the State, has to show due deference to the decisions of co-ordinate branches i.e., legislations. This is founded on the doctrine of separation of powers which is held to be a Basic Feature of

⁹ (1901) UKHL 2



the Constitution vide **KESAVANANDA BHARTI vs. STATE OF KERALA**¹⁰.

4.7 Law of Limitation may harshly affect a particular party; but it has to be applied with all its rigour when the statute so prescribes; Courts have no powers to extend prescribed period of limitation on grounds of equity and justice. This view gains support from **P.K. RAMACHANDRAN vs. STATE OF KERALA**¹¹. Thomas M. Cooley (1824-1898)¹², an acclaimed American Jurist, writes as under:

"The rule of law upon this subject appears to be, that, except where the constitution has imposed limits upon the legislative power, it must be considered as practically absolute, whether it operate according to natural justice or not in any particular case. The courts are not the guardians of the rights of the people of the state, unless those rights are secured by some constitutional provision which comes within the judicial cognizance. The remedy for unwise or oppressive legislation, within constitutional bounds, is by an appeal to the justice and patriotism of the representatives of the people. If this fail, the people in their sovereign

¹⁰ AIR 1973 SC 1461

¹¹ (1997) 7 SCC 556

¹² "A Treatise on Constitutional Limitations", at page 168



capacity can correct the evil; but courts cannot assume their rights. The judiciary can only arrest the execution of a statute when it conflicts with the constitution. It cannot run a race of pinions upon points of right, reason, and expediency with the lawmaking power."

Law of Limitation fixes upon a particular period within which a party is entitled to institute legal proceedings and if he fails to do so, ordinarily the cause of action dies subject to just all exceptions. Law of Limitation is statute of repose. True it is that any welfare State like ours is bound in good faith to furnish its citizens all needful legal remedy however it is not bound to keep its Courts and Tribunals open ad infinitum. If an aggrieved person neglects or refuses to apply for redress within the prescribed period of limitation, his claim is lost in the lapse of time. All Limitation Laws are structured on the idea that the party, by lapse of time and omission on his part, has forfeited his right to legal remedy, said **Walker, J.**¹³, more than a century & a half.

¹³ Stearns Vs. Gittings, 23 Illinois 389



In the above circumstances, this petition is liable to be rejected, costs having been made easy.

Before parting with the papers, we place on record our deep appreciation for the assistance rendered by the Research Assistant Mr.Raghunandan K.S.

**Sd/-
(KRISHNA S DIXIT)
JUDGE**

**Sd/-
(G BASAVARAJA)
JUDGE**

Snb/cbc
List No.: 1 Sl No.: 17