



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 20193 OF 2025 (GM-DRT)

BETWEEN:

1. SRI V.THULASIRAM
S/O VISHWANATH,
AGED ABOUT 53 YEARS,
R/A NO.53 LAKSHMIPURAM,
1ST MAIN ROAD, HALASURU,
BENGALURU
KARNATAKA - 560 008

2. SMT.BHUVANESHWARI,
W/O V.THULASIRA,
AGED ABOUT 46 YEARS,
R/A NO.53 LAKSHMIPURAM,
1ST MAIN ROAD, HALASURU,
BENGALURU,
KARNATAKA-560 008

...PETITIONERS

(BY SRI.D.R.RAVISHANKR, SENIOR COUNSEL FOR
SMT.SIRI RAJASHEKAR, ADVOCATE)





AND:

1. THE AUTHORISED OFFICER
CANARA BANK,
MAGADI ROAD II BRANCH,
NO.46, MAGADI MAIN ROAD,
BESIDE ANJAN CUMEMAS,
BENGALURU,
KARNATAKA -560 023

2. SRIRAM APPADURAI,
S/O V SRIRAM,
AGED MAJOR,
NO.1/8, VAIDYANATHA,
VIJAYAM, ARTILLERY ROAD,
ULSOOR, BENGALURU,
KARNATAKA-560 008

...RESPONDENTS

(BY SRI.VIGNESH SHETTY, ADVOCATE FOR C/R1
SMT.APARNA N., ADVOCATE FOR
SMT.BHAVANA G.K., ADVOCATE FOR R2)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER IN IA NO. 2576/2024 FILED IN SA NO. 597/2024 DATED 28.03.2025 PASSED BY THE DEBTS RECOVERY TRIBUNAL-1 VIDE ANNEXURE -A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 10.11.2025, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:



CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CAV ORDER

The present writ petition is filed seeking the following prayer:

"PRAYER

WHEREFORE, the petitioner most humbly prays that this Hon'ble court be pleased to:

- a) ISSUE A writ of appropriate nature to set aside the order in IA.No.2576/2024, filed in SA.No.597/2024, dated 28.03.2025 passed by the Debts Recovery Tribunal-1 vide Annexure-A; and***
- b) PASS such other orders as may be deemed appropriate in the ends of justice and equity."***

2. It is the case of the petitioners that the petitioners had filed SA.No.597/2024 on 19.11.2024 seeking to quash/set aside the sale notice dated 17.08.2024 by declaring it as illegal and void ab initio on the ground that measures initiated by respondent No.1 is in violation of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'Act'). The petitioner also filed I.A.No.2576/2024 on 19.11.2024 under Section 5 of the Limitation Act, 1963 read with Section 24 of the Recovery Debts and Bankruptcy Act, 1993 praying to condone the delay of 49 days in filing SA.No.597/2024 under



Section 17(1) of the SARFAESI Act. SA.No.597/2024 came to be dismissed on 28.03.2025 on the ground that SA is barred by limitation and is not maintainable before the Tribunal. Aggrieved thereby, the petitioners are before this Court.

3. Learned Senior counsel appearing for the petitioners submits that "*whether the Debts Recovery Tribunal has the power to condone the delay beyond 45 days in filing an application under Section 17 of the SARFAESI Act*" is a question which is directly pending consideration before the Hon'ble Supreme Court in SLP(C).No.4754/2021 arising from the judgment of the Kerala High Court dated 02.11.2020. The Hon'ble Supreme Court upon being satisfied of the importance of the issue had issued notice, thereby seizing itself of the matter. It is submitted that the Division Bench of Madhya Pradesh High Court in ***Aniruddh Singh Vs. ICICI Bank Ltd.***¹, while interpreting provisions of Section 29(2) and Section 5 of the Limitation Act had held that the action taken under Section 17 of the SARFAESI Act, by virtue of Section 29(2) of the Limitation Act, the SARFAESI Act does not expressly exclude

¹ 2024 SCC Online MP 205



the application of the provisions from Section 4 to 24 of the Limitation Act including Section 5.

4. Learned Senior counsel had relied on the judgment of the Division Bench of Punjab & Haryana High Court in case of ***Surinder Mahajan Vs. Debts Recovery Appellate Tribunal***² and submits that it is held that in the absence of any provision under the Act excluding the applicability of the Limitation Act to the proceedings before the DRT under Section 17 would not be proper. Learned Senior counsel had also relied on the judgment of the Division Bench of High Court of Telangana in case of ***Porus Laboratory Private Limited Vs. Indian Bank***³, wherein relying upon the judgment of the Hon'ble Apex Court in ***Baleshwar Dayal Jaiswal Vs. Bank of India and others***⁴, it is held that the DRT may exercise similar powers as exercised by the DRAT and may entertain application filed beyond the prescribed period. Learned counsel had relied on the judgment of the Madras High Court in case of ***Ponnusamy Vs. Debts***

² 2013 SCC Online P&H 7088

³ 2018 SCC Online Hyd 161

⁴ (2016) 1 SCC 444



Recovery Tribunal⁵, wherein it is held that the SARFAESI Act does not exclude the application of the provisions of the Limitation Act and remedy under Section 17(1) is in respect of right of redemption and to say Section 5 of the Limitation Act will not apply to an SA would virtually defeat the valuable right of redemption. He had relied on the judgment of the Coordinate Bench of this Court in case of **H.V. Gopal & Ors Vs. The Bangalore Souhardha Central Co-operative Bank Ltd** arising out of **WP.No.21349/2022 dated 08.07.2024**, the Court had held that provisions contained in Section 5 of the Limitation Act would be applicable to an application/appeal filed before the DRT under Section 17 of the SARFAESI Act.

5. It is submitted that "*whether this Court must defer the consideration of the petition in WP.No.20193/2025 since the question of law is pending before the Apex Court notwithstanding a decision of Division Bench in WP.No.11273/2024*". It is submitted that Coordinate Bench Ruling in **Kailasam P Vs. Karnataka Bank Limited⁶** itself is liable to be revisited in the light of the Hon'ble Apex Court's

⁵ 2009-1-L.W.954

⁶ 2025 SCC OnLine Kar 16631



judgment and Review Petition which is pending consideration. It was not brought to the notice of the Division Bench regarding the pending SLP(C).No.4754/2021. When the Hon'ble Supreme Court has ceased of the matter, the Division Bench ought not to have delved upon the matter. It is submitted that the Hon'ble Apex Court alone has the authority to settle questions of law when the matter is ceased before it. Until such settlement is made to decide the matter, may render an order that could soon stand in conflict with the Hon'ble Supreme Court judgment, creating needless multiplicity and prejudice to the parties. It is submitted that in such circumstances, judicial discipline and constitutional propriety demand that this Court defer consideration of the issue until the Hon'ble Supreme Court renders its authoritative pronouncement. To proceed and decide a matter on which the Hon'ble Supreme Court has already issued notice, it would undermine the constitutional scheme and might lead to possibility of conflicting rulings and may be contrary to what the Hon'ble Supreme Court may ultimately hold.



6. It is also submitted that the Hon'ble Apex Court in case of ***Indian Overseas Bank Vs. Ashok Saw Mills***⁷ had held that the action taken by the bank under Section 13(4) of the SARFAESI Act is a continuous cause of action in context of Section 13(8) and therefore, the DRT would have jurisdiction to consider and adjudicate with regard to Section 13(4) events. It further held that DRT has been vested with jurisdiction to declare any such action as invalid and necessarily implies that borrower are entitled to question the action taken by the secured creditor and the transactions entered into by virtue of Section 13(4) of the Act. Therefore, if the action of respondent No.1 in issuance of Sale Certificate is to be taken then the period starts from 08.11.2024 or 09.10.2024, then the SA is filed within time.

7. It is submitted that this Court vide order dated 27.09.2024 had directed the parties to maintain status quo as on that day in relation to possession and title of schedule property. When the matter was listed on 08.11.2024, respondent No.1 made submission that the sale certificate is issued and the Court records the same and interim order stands

⁷ (2009) 8 SCC 366



vacated. Notwithstanding the fact that there was interim order operating against respondent No.1 to maintain status quo with respect to possession and title of the property, the bank had committed an act of contempt violating the interim order passed on 27.09.2024. It is submitted that the Hon'ble Apex Court in case of ***Vidur Impex & Traders Pvt. Ltd. & Ors Vs. Tosh Apartments Pvt. Ltd. & Ors***⁸, had held that person cannot acquire right in violation of the injunctive order and lacked legal sanctity or bonafide status. Such transactions are tainted and cannot be recognised in law.

8. It is submitted that the appeal filed before the DRAT was withdrawn by the petitioner. The petitioner had filed withdrawal application on 23.07.2023 before the DRAT and on 01.08.2025, the Tribunal had passed an order and dismissed as withdrawn. As such, the respondent cannot contend that the petitioner is still pursuing the matter before the DRAT. It is submitted that the petitioner had challenged the sale notice dated 17.08.2024 in WP.No.25944/2024 on the ground that there was non compliance of Section 13(4) of the SARFAESI Act and Rule 8(5) of the Security Interest (Enforcement) Rules,

⁸ 2012 8 SCC 384



2002. A Co-ordinate Bench of this Court by order dated 27.09.2024 directed the parties to maintain status quo as on that day in relation to possession and title of the schedule property. On 08.11.2024, respondent No.1 made submission that the sale certificate is issued and the Court recorded the same and interim order stands vacated. It is submitted that the bank had committed an act of contempt violating the interim order passed on 27.09.2024. The petitioner immediately filed I.A.No.1/2024 seeking to recall the order dated 08.11.2024 in WP.No.25944/2024. Parallely, the petitioner approached the DRT and instituted SA.No.597/2024 on 19.11.2024 seeking to quash the sale notice dated 17.08.2024. It is submitted that in the light of the clear violation of the earlier orders and the fact that the Court ought to have condoned the delay, the writ petition is liable to be allowed.

9. Learned counsel appearing for respondent No.1/bank has filed the written argument stating that on 19.11.2024, the petitioner had filed SA.No.597/2024 under Section 17 of the SARFAESI Act, 2002 calling in question the sale notice dated 17.08.2024. Along with the said SA, I.A.No.2576/2024 was



filed under Section 5 of the Limitation Act and the same was dismissed by the DRT and consequently, dismissed SA.No.597/2024 as the same is barred by limitation. It is submitted that the only question that arises for consideration before this Court is whether the DRT has power to condone the delay under Section 5 of the Limitation Act in filing application under Section 17 of the SARFAESI Act. It is submitted that as per Section 17 of the SARFAESI Act, any person aggrieved by any of the measures referred to in sub-section (4) of Section 13, can approach the Debts Recovery Tribunal within 45 days from the date on which such measure had been taken. It is submitted that a period of 45 days is envisaged as per the provisions of the Act.

10. It is submitted that the issue whether the DRT has the power to condone the delay or not is no more *res integra* in the light of the judgment of the Division bench of this Court in ***Kailasam***'s case referred supra, wherein the Division Bench had categorically held that the DRT does not have the power to condone the delay and the period of 45 days under Section 17 is mandatory. It is submitted that the reliance placed by the



petitioner on **Baleshwar Dayal's** case is misconceived. In **Baleshwar Dayal's** case, the Hon'ble Apex Court was considering the question of condonation of delay by DRAT under Section 18, which is an appeal provision. In fact, the Division Bench of this Court in **Kailasam's** case referred supra after considering **Baleshwar Dayal's** case has come to the conclusion that delay in filing Section 17 application cannot be condoned since a proceeding under Section 17 is original proceedings and difference has to be maintained between the original and appellate proceedings. It is submitted that the question whether delay under Section 17 can be condoned, whether the ratio of **Baleshwar Dayal's** case should apply to Section 17 proceedings is pending before the Hon'ble Supreme court in SLP(C).No.4754/2021. It is submitted that in case of **Mardia Chemicals Ltd. vs. Union of India**⁹, the Hon'ble Supreme Court had held that the proceedings under Section 17 are not appellate proceedings but are in the nature of initial proceeding like filing an original suit in Civil Court and he relied on paragraph No.59 of the judgment which reads thus:

⁹ (2004) 4 SCC 311



"59. We may like to observe that proceedings under Section 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 under Section 17 of the Act are in lieu of a civil suit which remedy is ordinarily available but for the bar under Section 34 of the Act in the present case. We may refer to a decision of this Court in Ganga Bai v. Vijay Kumar [(1974) 2 SCC 393] where in respect of original and appellate proceedings a distinction has been drawn as follows: (SCC p. 397, para 15)

"There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."

11. Learned counsel has also relied on the judgment of the Division Bench of Calcutta High Court in ***Akshat Commercial Pvt. Ltd. Vs. Kalpana Chakraborty***¹⁰, wherein it is held that the provisions of the Limitation Act applies in general 'as far as may be', yet Section 5 of the Limitation Act has no application to Section 17 as the proceeding is original in

¹⁰ 2010 SCC OnLine Cal 1361



nature like suit and Section 5 and Section 29(2) has no application to proceedings before the Tribunal. It is submitted that Section 17(5) of the SARFAESI Act provides that an application made under sub-section (1) shall be dealt with by the DRT as expeditiously as possible and disposed of within 60 days from the date of such application. The proviso to Section 17(5) further provides that any extension of time for disposal of such application must be for reasons recorded in writing and the total period of pendency of the application with the DRT shall not in any case exceed 4 months. It is further submitted that prescription of an outer limit for disposal is indicative of the legislative intent to exclude the provisions of the limitation act for condoning the delay.

12. Learned counsel has also relied on the judgment of the Hon'ble Apex Court in ***Bank of Baroda Vs. Parasaadilal Tursiram Sheetgrah (P) Ltd.***¹¹, wherein the Hon'ble Apex Court had observed that the reason for providing a time-limit of 45 days for filing an application under Section 17 can easily be inferred from the purpose and object of the enactment. In case

¹¹ (2023) 19 SCC 751



of ***Transcore Vs. Union of India***¹², it is 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. Learned counsel had relied on the judgment of the Hon'ble Apex Court in case of ***CCE & Customs Vs. Hongo India (P) Ltd.***¹³, wherein the Court was deciding the question as to whether the High Court can condone delay beyond period prescribed under Section 35-H of the Central Excise Act. The Court held that in the absence of any clause condoning delay by showing sufficient cause after prescribed period, there is complete exclusion of Section 5 of the Limitation Act. Even in a case where the special law does not exclude provisions of Limitation Act by an express reference, it is open for the Court to examine as to what extent the nature of special law and its scheme exclude their operation.

13. Further, it is submitted that mere pendency of a matter before the Hon'ble Supreme Court is not a ground for

¹² 2008 (1) SCC 125

¹³ (2009) 5 SCC 791



the petitioner to submit that the binding judgment of the Division Bench should not be followed. It is submitted that in case of ***Ashok Sadarangani Vs. UOI***¹⁴, the Hon'ble Supreme Court had held that till such time as the decisions are not modified or altered in any way, they continue to hold the field and mere pendency of reference to a larger bench does not mean that all other proceedings involving same issue would have to be stayed. Similarly, in ***Rajnish Kumar Rai Vs. Union of India***¹⁵, the Hon'ble Supreme Court had held that a decision which is referred to larger bench continues to hold the field and has binding status until decision of larger bench. It is submitted that the writ petition is liable to be dismissed.

14. Learned counsel appearing for respondent No.2/auction purchaser has also placed the written submissions before this Court stating that respondent No.2 had purchased the property vide sale notice dated 17.08.2024 and auction conducted on 06.09.2024 by respondent No.1/Bank. It is stated that the petitioners had approached the DRT by filing SA.No.597/2024 and in that, they had filed I.A.No.2576/2024.

¹⁴ (2012) 11 SCC 321

¹⁵ (2023) 14 SCC 782



When the DRT rejected I.A.No.2576/2024 and consequently dismissed SA.No.597/2024 on 28.03.2025, the petitioners on 16.05.2025 had approached the DRAT challenging the order passed by DRT. Suppressing these facts, the present petition has been filed seeking to set aside the order of the DRT dated 28.03.2025. It is submitted that the Hon'ble Apex Court had only issued notice in the matter and no interim order/stay has been granted. The Hon'ble Supreme Court has only taken notice of the counsel's submission and has not provided any reasoning or finding on the question raised. It is submitted that there is no statutory provision prohibiting the learned Single Judge of a High Court from hearing and passing orders in matters, solely because a similar question is pending before the Hon'ble Supreme Court, notwithstanding the decision of the Division Bench of the same High Court on the same question. It is submitted that the judicial discipline prescribes that the learned Single judge follow the decision of the larger bench of the same court, irrespective of pendency of similar question before the Hon'ble Supreme Court where there is no interim order or prohibitory order to decide the said question.



15. In this regard, learned counsel has relied on the judgment of Hon'ble Apex court in case of ***Union Territory of Ladakh and Others Vs. Jammu and Kashmir National Conference and Others***¹⁶. He has also relied on the judgment of the Division Bench of this Court in case of ***Union of India Vs. M/s. Johnson & Smith Co. and Others*** arising out of ***W.A.No.7333/2000 dated 30.10.2012***. For the same proposition, he had relied on the judgment in case of ***T.V.Sundaram Iyengar & Sons Ltd. and Another Vs. State of Karnataka and Another***¹⁷. It is submitted that the Division Bench of this Court has laid down in ***Kailasam***'s case, that the DRT does not have power to condone the delay in respect of applications under Section 17 of the SARFAESI Act. This decision has not been challenged before the Hon'ble Supreme Court. It is submitted that only SLP has been preferred against the decision of the learned single Judge of the High Court of Kerala, where it is held that beyond 45 days the delay cannot be condoned. In that, notice was issued and no stay has been

¹⁶ 2023 SCC OnLine SC 1140

¹⁷ ILR 1999 Kar 1828



granted. It is submitted that in the light of the law laid down by the Division Bench, the writ petition needs to be dismissed.

16. Having heard the learned Senior counsel for the petitioner, the respective counsels for the respondents, perused the entire material on record. In the light of the submissions made on behalf of the parties, the issues that falls for consideration before this Court is **"whether the DRT has the power to condone the delay by entertaining the application filed under Section 5 of the Limitation Act", "whether this Court can entertain and decide this writ petition as the similar issue is pending consideration before the Hon'ble Apex Court."**

17. Before considering the issue with regard to condonation of delay, it is appropriate to look at the Legislative Intent behind enacting the SARFAESI Act. The whole purport of the Act is to enable the banks and financial institution to recover secured debts quickly without intervention of Civil Courts, expeditious recovery of non-performing assets, empowering secured creditors to enforce security interest, reducing delay in recovery litigation and ultimately



strengthening the banking system. The Hon'ble Apex Court in case of ***Mardia Chemicals Ltd.*** referred supra had considered the object of the SARFAESI Act and observed that it is to provide a speedy remedy to secured creditors, while still preserving the borrower's right to challenge the action before the Tribunal. Hence, the whole purport of the act is for speedy recovery of the amounts to the banking and financial institutions.

18. At this juncture, it is appropriate to have a look at Sections 17, 35, 36, 37 of the SARFAESI Act and Sections 5 and 29 of the Limitation Act which reads thus:

"Section 17 of the SARFAESI Act

17. [Application against measures to recover secured debts].—(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,1[may make an application along with 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:

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]

[Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of



communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]

[(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

[(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.

[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-



section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

[(4A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

(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:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).



(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 (51 of 1993) and the rules made thereunder.]"

Section 35 of the SARFAESI Act

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.

Section 36 of the SARFAESI Act

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 the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963 (36 of 1963).

Section 37 of the SARFAESI Act

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.



Section 5 of the Limitation Act

Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Section 29 of the Limitation Act

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

(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, the 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) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend."

19. The party who is aggrieved by the measure taken by the Bank can approach the Debts Recovery Tribunal under Section 17 of the Act. The words employed in Section 17(1) of the Act are that the aggrieved party can make an application



within 45 days from the date on which such measures had been taken. The words used "within forty five days" shows that the statute is silent on extension of time. In those circumstances, it has to be presumed as mandatory. The Act is a complete code in itself, the application of the Limitation Act is not automatic. Section 18 of the Act which deals with the appeal to the DRAT contains express provision for condonation of delay, whereas Section 17 of the SARFAESI Act is silent. The legal maxim "*expressio unius est exclusio alterius*" i.e., express mention of one implies exclusion of another applies in this case. It clearly demonstrates what is the intention of the legislature, legislature consciously granted the power to condone the delay under Section 18 of the Act, but not under Section 17 of the Act. The omission is deliberate, meaningful and in the pursuit of speedy recovery of debts to financial institutions. Section 29 (2) of the Limitation Act envisages that Section 5 of the Limitation Act applies unless it is expressly excluded by special or local law. When it comes to Section 17 of the SARFAESI Act, though it is not express exclusion but it is by way of implied exclusion by clearly mentioning the rigid time limit of 45 days and not giving any room for extension of time. The expression



within forty five days is not an incidental expression, it is a deliberate legislative command.

20. Section 29(2) of the Limitation Act says that if a special law prescribes its own limitation, the Limitation Act applies only if not expressly or impliedly excluded. In the light of the language employed in Section 18 of the SARFAESI Act which is conspicuously absent in Section 17 of the Act, it is clear case of implied exclusion of Section 5 of the Limitation Act and satisfies the test of necessary implication. The Courts have to adopt the purposive construction while interpreting the provisions of the Act which advances the object of the Act, another contrary interpretation will not serve the legislative intent. The Debt Recovery Tribunal is a creature of statute, the Tribunal cannot assume powers which are not expressly conferred upon it by the legislation. By fixing the time limit of 45 days, there is an implied exclusion of the provisions of the Limitation Act. When the intention of the legislature is evident, it is impermissible for the Courts to supplement its view by introducing words which are not used by the legislature. The role of the Courts is to interpret law, but not to legislate under



the guise of interpretation. The intention of the legislature prevails over literal or equitable considerations.

21. It is the general argument that procedural laws/provisions should be liberally construed, delay should be condoned in the interest of justice. This would not apply in cases where the provision speaks in clear terms and it is designed for a strict frame work and with an avowed object to be achieved. The legislative intent underlined under Section 17 of the SARFAESI Act is to provide a non extendable limitation period of 45 days and any interpretation and applying Section 5 of the Limitation Act is nothing but acting contrary to the purport of the SARFAESI Act and same is impermissible. When it comes to the appeal, the position is slightly different. The Hon'ble Apex court in **Baleshwar Dayal's** case referred supra held that DRT may condone the delay in appropriate cases. But the power is limited discretion.

22. Learned Senior counsel appearing for the petitioner submits that in the light of the law laid down in **Baleshwar Dayal's** case, it applies to Section 17 of the SARFAESI Act also. That contention of the learned Senior Counsel is liable to be



rejected for the reason that **Baleshwar Dayal's** case is with regard to the appeal provision, but the proceedings under Section 17 of the SARFAESI Act are in the nature of original suit. Hence, same analogy cannot be applied to the original proceedings.

23. The Division Bench of this Court in **Kailasam's** case referred supra had considered the judgment of the Hon'ble Apex Court in **Baleshwar Dayal's** case referred supra and held that Section 5 of the Limitation Act will not apply. The relevant paragraphs of the judgment are paragraph Nos.4.2 and 4.6 which reads thus:

"4.2. The above view gains support from the Apex Court decision in BANK OF BARODA vs. M/S.PARASAADILAL TURSIRAM SHEETGRAH PVT. LTD.. 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."

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, 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 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. 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 the Constitution vide KESAVANANDA BHARTI vs. STATE OF KERALA."

24. In the light of the Division Bench judgment which is a binding precedent on this Court, the contention of the petitioner is liable to be rejected.

25. The other submission made by the Senior counsel is that the Hon'ble Apex Court had seized of the matter with regard to condonation of delay, as such, the judicial discipline



demands that the Courts have to wait till the authoritative pronouncement is made by the Hon'ble Apex Court. This Court is not able to appreciate this submission also. The Hon'ble Apex Court has issued notice and no interim order is granted. In these circumstances, there is no bar for this Court to entertain this writ petition and particularly in the light of the order passed by the Division Bench of this Court.

26. In the light of the above discussion, this Court comes to the irresistible conclusion that Section 5 of the Limitation Act has no application and the Tribunal has no power to condone the delay in an application filed under Section 17 of the SARFAESI Act. Both the issues are held against the petitioner. Hence, this Court is passing the following order:

ORDER

- i. Accordingly, the writ petition is ***dismissed***.
- ii. All I.As. in this petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE