CO.136 of 2026

17.11.26
D/L
Sl-11
Ct.04
(Samar)

M/s Jatadhari Rice Mill & Anr.
Vs.
Punjab National Bank, ARMB, Murshidabad & Anr.

Mr. Rishav Das,
Ms. Rinka Chakraborty,
Mr. Samrat Acharya,
....for the Petitioners.

Mr. Tapas Paul,
Mr. Pritam Ray,
....for the respondents.

1. Affidavit of service filed in Court today is taken on record.
2. The petitioners assail an order dated June 29, 2026 passed by the learned Debts Recovery Tribunal Siliguri whereby their interim application being I.A. No. 824 of 2025 filed in connection with SA 171 of 2024 was rejected. By the order dated June 29, 2026 the Tribunal disposed of two interim applications being I.A No. 823 of 2025 and I.A. No. 824 of 2025 filed in connection with SA 171 of 2024.
3. The petitioner no. 1 (hereafter "the petitioner"), a partnership firm, has availed of certain credit facilities from the erstwhile Oriental Bank of Commerce (which was subsequently merged and integrated with the opposite party no. 1).
4. Certain properties were mortgaged by the

petitioner and its partners for securing the credit facilities availed of by the petitioner.

5. The petitioner has allegedly defaulted in repayment of the credit facilities whereupon; the opposite party no. 1 (hereafter “the bank”) has initiated measures under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for recovery of the amount due and owing from the petitioner. In the process the bank proceeded to sell the secured assets in auction.

6. Challenging the steps taken by the bank under Section 13(4) of the 2002 Act *inter alia* for selling the secured asset in acution, the petitioners have approached the Tribunal by filing an application under Section 17 of the 2002 Act which has been registered as a SA 171 of 2024.

7. In connection with the said application, the petitioners took out two interim applications being IA 823 of 2025 and IA 824 of 2025.

8. IA 823 of 2025 had been filed seeking production of all original documents pertaining to the loan account and the SARFAESI proceedings and also the original postal receipt, track reports, demand notices, possession notices and all other documents

relied upon by the bank in its written objection and additional written objection for verification and inspection.

9. IA 824 of 2025 had been filed seeking a direction upon the bank's authorized officer to appear before the tribunal and *"to adduce evidence"*.

10. The petitioners' application in IA 823 of 2025 has been allowed by the Tribunal. However, IA 824 of 2025 has been rejected.

11. Feeling aggrieved thereby the petitioners have approached Court by filing the present revisional application.

12. Mr. Das learned advocate appearing for the petitioners submit that the order impugned should be set aside inasmuch as, the learned Tribunal has failed to appreciate that the issues raised by the petitioners cannot be effectively adjudicated without affording the petitioners an opportunity to cross-examine the bank's authorized officer.

13. It has been next submitted by Mr. Das that the bank has failed to produce the documents indicating affixation of sale notice on the secured asset prior to sale thereof and that the bank has issued the notice of sale to a dead person.

14. It is further submitted that the veracity of the

averments made by the bank in the affidavit can be tested only if the deponent thereof is permitted to be cross-examined by the petitioners.

15. Mr. Das next submits that the postal receipts and the postal track report which pertain to the sale notice issued for a failed sale which had been undertaken earlier in point of time and not the sale which has been impugned before the Tribunal in SA 171 of 2024 have been produced by the bank as evidence of issuance of sale notice in respect of the second sale.

16. Mr. Das further contends that the bank has taken an incorrect stand in its affidavit. He submits that while the bank has averred that it has followed procedure prescribed by the 2002 Act, the bank has actually not done so and as such cross-examination would be required.

17. Mr. Das relies on an unreported decision of a Co-ordinate Bench of this Court in the case of ***Roma Roy Vs. Indian Overseas Bank, Siliguri Branch*** (CO 74 of 2024 decided on May 16, 2024) to buttress his contention the cross-examination should be allowed.

18. Mr. Roy, learned advocate appearing for the bank submits that the present revisional

application should not be entertained inasmuch as the petitioners have an effective alternative remedy before the Debts Recovery Appellate Tribunal. It is next submitted that, in any case, the petitioners have not made out any extra-ordinary case justifying their prayer for cross-examination of the bank's authorized officer and that being so such prayer has rightly not been entertained by the Tribunal.

19. Heard learned advocates appearing for the respective parties and considered the material on record.

20. The present revisional application does not merit entertainment for more reasons one.

21. Firstly, it is noticed that the while order impugned was passed on June 29, 2026, the revisional application has been filed on August 17, 2026. In terms of 2002 Act an appeal against an order passed by the Debts Recovery Tribunal under section 17 of the 2002 Act can be lodged before the Appellate Tribunal under Section 18 thereof within 30 days from the date of receipt of the order of the Tribunal. Nothing has been mentioned in this revisional application as to why has the petitioner approached this Court beyond the time prescribed for preferring appeal before

the Appellate Tribunal.

22. While it is true that there is no period of limitation prescribed for filing an application under Article 227 of the Constitution of India, yet, it is well settled that such application should be filed within a reasonable time and if there is delay, the same should be appropriately explained. When an order of a Tribunal which is amenable to a statutory appeal before an Appellate Tribunal is challenged, the time within which appeal could have been preferred should be taken to be the reasonable time within which the discretionary constitutional remedy under Article 227 can be resorted to.

23. In the case of ***A.V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani,*** reported at ***A 1961 SC 1506*** the Hon'ble Supreme Court had, albeit in the context of a writ petition under Article 226 held that *"If a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Article 226 to exercise its discretion in his favour."*

24. Although, present revisional application has been filed under Article 227 of the Constitution of India, there is no reason why the same principle cannot be applied here as well when the plenary constitutional power of the High Court is being invoked despite availability of alternative remedy.

25. Secondly, the order impugned is neither one without jurisdiction, nor has it been passed in derogation of the principles of natural justice nor has the same been demonstrated to be suffering from perversity. That being so, there is no reason for this Court to entertain the revisional application on merits.

26. Thirdly, even otherwise, as righty contended by the Bank the petitioners have not been able to demonstrate any extraordinary case wherefor cross examination would be necessary in the present factual matrix.

27. The petitioners' assertion that the bank has issued notice in the name of a dead person and that the bank has used the postal receipt and postal track records pertaining to an earlier failed sale in order to support its claim of issuance of notice in respect of the present sale cannot be a ground to seek cross examination. The truth can always be ascertained from the documents that have

been produced by the bank by way of affidavit. If the dates of the notices and/or postal receipts/track reports indicate that the same have not been issued in accordance with the 2002 Act and the Rules framed thereunder, the Tribunal would pass appropriate orders. Further, the Tribunal has already allowed the petitioners' application seeking production of the original documents for the petitioners' inspection. The same can definitely be examined by the Tribunal as well. Thus there is sufficient scope for the Tribunal to reach the truth and to decipher as to whether the procedure prescribed under the 2002 Act and the 2002 Rules has been followed by the bank or not. Cross-examination, in such case would not be required.

28. As regards Mr. Das's contention that the bank has taken a stand that it followed the procedure prescribed the 2002 Act and the Rules while actually it has not, is concerned, the same can also be thrashed out by the Tribunal on the basis of the documents produced before the Tribunal by the parties. For such purpose too, cross-examination would not be necessary.

29. Insofar as the unreported decision in the case

of ***Roma Roy*** (supra) is concerned, the same was rendered in the facts of the said case where an original application in which the Tribunal was required to determine the debt due was under consideration and evidence on affidavit had been tendered by the Bank. Such is not the case here, where the application is being decided on the basis of the documents annexed to the petition and the written objection thereto.

30.It must be noted that, the scheme of the 2002 Act, being summary in nature, does not ordinarily contemplate the examination and cross-examination of witnesses. In such context the following observations of the Hon'ble Supreme Court in the case of ***Union of India v. Delhi High Court Bar Assn.*** reported at ***(2002) 4 SCC 275 23*** deserve notice:

*23**.** In other words, the Tribunal has the power to require any particular fact to be proved by affidavit, or it may order that the affidavit of any witness may be read at the hearing. While passing such an order, it must record sufficient reasons for the same. The proviso to Rule 12(6) would certainly apply only where the Tribunal chooses to issue a direction on its own, for any particular fact to be proved by affidavit or the affidavit of a witness being read at the hearing. The said proviso refers to the desire of an applicant or a defendant for the production of a witness for cross-examination. In the setting in which the said proviso occurs, it would appear to us that once the parties have filed*

affidavits in support of their respective cases, it is only thereafter that the desire for a witness to be cross-examined can legitimately arise. It is at that time, if it appears to the Tribunal, that such a witness can be produced and it is necessary to do so and there is no desire to prolong the case that it shall require the witness to be present for cross-examination and in the event of his not appearing, then the affidavit shall not be taken into evidence. When the High Courts and the Supreme Court in exercise of their jurisdiction under Article 226 and Article 32 can decide questions of fact as well as law merely on the basis of documents and affidavits filed before them ordinarily, there should be no reason as to why a Tribunal, likewise, should not be able to decide the case merely on the basis of documents and affidavits before it. It is common knowledge that hardly any transaction with the bank would be oral and without proper documentation, whether in the form of letters or formal agreements. In such an event the bona fide need for the oral examination of a witness should rarely arise. There has to be a very good reason to hold that affidavits, in such a case, would not be sufficient.

31. Then again in the case of ***Nahar Industrial Enterprises Ltd. v. Hong Kong and Shanghai Banking Corpn.***. reported at ***(2009) 8 SCC 646*** the Hon'ble Supreme Court held thus:

86. *The Debts Recovery Tribunal cannot pass a decree. It can issue only recovery certificates. [See Sections 19(2) and 19(22) of the Act.] The power of the Tribunal to grant interim order is attenuated with circumspection. [See Dataware Design Labs (P) Ltd. v. SBI [(2005) 127 Comp Cas 176 (Ker)] , Comp Cas at p. 184.] Concededly in the proceeding before the Debts Recovery Tribunal detailed*

examination, cross-examinations, provisions of the Evidence Act as also application of other provisions of the Code of Civil Procedure like interrogatories, discoveries of documents and admission need not be gone into. Taking recourse to such proceedings would be an exception. Entire focus of the proceedings before the Debts Recovery Tribunal centres round the legally recoverable dues of the bank.

32. In such view of the matter, the aforesaid decision of the Co-ordinate Bench of this Court cannot be come to the aid of the petitioner.

33. For all the reasons aforesaid, the order impugned does not call for any intereference.

34. It is noticed that the SARFAESI application filed by the petitioners has been pending for more than two years. The Tribunal is requested to dispose of the same as expeditiously as possible and preferably within a period of six months from the next date fixed without granting unnecessary adjournment to either of the parties.

35. With the above observations, CO. 136 of 2026 stands disposed of. There shall be no order as to costs.

36. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Om Narayan Rai, J.)