

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M.BADAR

MONDAY, THE 02ND DAY OF NOVEMBER 2020 / 11TH KARTHIKA, 1942

OP (DRT) .No.73 OF 2018

AGAINST THE ORDER IN SA 165/2012 OF DEBT RECOVERY TRIBUNAL,  
ERNAKULAM DTD. 19.04.2018

PETITIONER:

THE AUTHORISED OFFICER, INDIAN BANK  
CIRCLE OFFICE, P.B.No.2575,38/1672-B& C, CHITTOOR  
ROAD, ERNAKULAM-35, NOW REPRESENTED BY ITS MANAGER,  
INDIAN BANK, POLAYATHODU.

BY ADV. SRI.S.EASWARAN, SC, INDIAN BANK

RESPONDENTS:

- 1 K.J.GEORGE  
S/O. VARGHESE, KARITHALAKKAL HOUSE, VAKATHANAM P.O,  
KOTTAYAM DISTRICT, PIN-686 001.
- 2 MARIAMMA  
W/O. K.J. GEORGE, KARITHALAKKAL HOUSE,  
VAKATHANAM P.O, KOTTAYAM DISTRICT, PIN- 686 001
- 3 M/S.BRUBEX GLOBAL  
NEW BLOCK, BISHOP JEROME NAGAR, KOLLAM-691 001.
- 4 V.N. JAYAKUMAR  
MUTTAKUNNIL HOUSE, VADAVATHUR P.O,  
KOTTAYAM DISTRICT, PIN -686 001.
- 5 THE REGISTRAR  
DEBT RECOVERY TRIBUNAL-2, ERNAKULAM,  
PANAMPALLY NAGAR, KOCHI-682 036.

R1& R2 BY ADV. SRI.V.K.PEERMOHAMED KHAN  
R1& R2 BY ADV. SRI.V.RENJITH  
R3 BY ADV. SRI.K.M.ANEESH  
R4 BY ADV. SRI.M.RAJENDRAN NAIR  
R4 BY ADV. SMT.M.SANTHY

THIS OP (DEBT RECOVERY TRIBUNAL) HAVING BEEN FINALLY HEARD ON  
02.11.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**A.M.BADAR, J.**

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**OP(DRT). No.73 OF 2018**  
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**Dated this the 2<sup>nd</sup> day of November, 2020.**

**J U D G M E N T**

This Original Petition under Article 226 and 227 of the Constitution of India has been filed by the Authorized Officer, Indian Bank with the following prayers:-

- (a) Set aside Exhibit P6 order of the Debts Recovery Tribunal-II, Ernakulam and dismiss the SA and restore the sale conducted by the petitioner in favour of the 4<sup>th</sup> respondent.
- (b) Declare that the SA was not maintainable before the Debts Recovery Tribunal since the same was beyond the period of limitation under Section 17 of the Securitization Act.

Respondent Nos.1 and 2 are the guarantors whereas the 3<sup>rd</sup> respondent is the principal borrower. The 4<sup>th</sup> respondent is the auction purchaser.

2. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

3. At the outset, let us put on record the facts which would enable us to grasp the background of issues involved in the instant petition:-

a) The 3<sup>rd</sup> respondent, M/s.Brubex Global, had availed a term loan of Rs. 7 lakhs on 03.05.2006 and open cash credit facility for Rs.80 lakhs on 24.05.2008. Respondent Nos.1 and 2 stood as guarantors for the loan facility availed by the 3<sup>rd</sup> respondent. Security interest came to be created in respect of immovable property comprised in Sy. Nos.299/2/1, 299/3/1, 299/2/2, 299/3 in Block No.20 of Panachikkadu Village of Kottayam Taluk owned by respondent Nos.1 and 2.

b) It is not in dispute that, on 06.11.2009, first demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for the sake of brevity hereinafter referred to as 'the SARFAESI Act') came to be issued by the secured creditor to the borrower as well as the guarantors for discharging of their liability in full to the secured creditor. Subsequently, Ext.P3 second demand notice under Section 13(2) of the SARFAESI Act (Record Page No.33) came to be issued on 27.07.2010, thereby asking the borrower and the guarantors to discharge their full liability to the secured creditor within sixty days from the date of notice. By this notice, respondent Nos.1

to 3 and others were directed to pay an amount due on the date amounting to Rs.92,80,417.92 with interest till the date of payment, by giving a caution to them that on failure, the secured creditor shall exercise right of enforcement of security interest. This notice was not complied by the borrower or the guarantors. Accordingly, on 02.11.2010, constructive possession of the secured assets was taken by the creditor complying provisions under Section 13(4) of the SARFAESI Act. Thereafter, Ext.P4 notice of intended sale under Rules 6(2) and 8(6) of the Security Interest (Enforcement) Rules 2002 (hereinafter referred to as 'the Rules') came to be issued on 20.11.2020. Respondent Nos.1 to 3 were informed by this notice that schedule properties shall be sold within thirty days from serving of the sale notice. It is reported that the date of sale was fixed on 28.12.2020.

c) Feeling aggrieved by the notices under Section 13(2) of the SARFAESI Act dated 06.11.2009 (Record Page No.29) and 27.07.2010 (Record Page No.33) as well as notice of intended tender-cum-auction sale dated 20.11.2010 (Record page No.35A), respondent Nos.1 and 2 who are

guarantors had chosen to file Ext.P1 writ petition as W.P.(C). No.38409 of 2010 (Record Page No.14) before this Court. It is apposite to reproduce the prayer clause in the said writ petition, which reads thus:-

- "a. To issue writ of mandamus directing the 01<sup>st</sup> respondent to constituted Central Registry as per Section 20 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 or in alternate declare that Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 applicable only in cases were secured assets are registered with Central Registry.
- b. To issue writ of Mandamus directing the 01<sup>st</sup> respondent to constituted Central Registry as per section 20 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 or in alternate declare that Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 applicable only in cases were secured assets are registered with central registry.
- c. To issue a writ of Certiorari quashing proceedings pursuant to Exhibit P2 to P4 to the extent of petitioners Agricultural Properties having a total extent of 45.53 Ares in Old Survey No.183/1A and Re-Survey No.299/2/1, 299/2/2, 299/3, 299/3/1 in Block No.20 of Panachikkadu village, Kottayam Taluk initiated by the 06<sup>th</sup> respondent.

d. Declare that Exhibit P4 intended tender-cum-auction sale of petitioner's Agricultural properties having a total extent of 45.53 Ares in Old Sy.No.183/1A and Re-Survey No.299/2/1, 299/2/2, 299/3, 299/3/1 in Block No.20 of Panachikkadu village, Kottayam Taluk by the 06<sup>th</sup> respondent in violation of section 31(i) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002."

d) It is thus seen that notices dated 06.11.2009 and 27.07.2010 issued under Section 13(2) of the SARFAESI Act as well as notice of intended tender-cum-auction sale dated 20.11.2010 issued under Rules 6(2) and 8(6) of the Rules came to be challenged in the said W.P.(C) No.38409 of 2010.

e) It is not in dispute that during pendency of W.P.(C)No.38409 of 2010, which was filed at the instance of respondent Nos.1 and 2, the secured creditor again issued a fresh sale notice dated 11.02.2011 (Record page No.71) under Rules 6(2) and 8(6) of the Rules. It needs to be reiterated that in pursuant to earlier Ext.P4 sale notice dated 20.11.2010 (Record page No.26), of the secured assets, sale did not take place. As per this sale notice dated 11.02.2011, sale of the secured asset took place on 14.03.2011 and the 4<sup>th</sup> respondent

being the highest bidder had purchased the secured asset. Ultimately, on 07.04.2011, the sale came to be confirmed. On 20.04.2011, the 4<sup>th</sup> respondent paid the balance sale consideration and accordingly on 25.04.2011, a certificate of sale of the immovable property came to be issued in favour of the 4<sup>th</sup> respondent in the prescribed format, as per the provisions under Rule 10(6) of the Rules of 2002.

f) After sale of the secured assets took place in April 2011, W.P.(C) No.38409 of 2010 filed by respondent Nos.1 and 2 came to be heard by this Court and the same came to be dismissed on 20.12.2011 by Ext.P2 judgment. The said writ petition came to be dismissed without prejudice to the rights of the petitioners to take up all their contentions before the Debts Recovery Tribunal, if not yet done so far. Paragraph No.8 of the judgment in W.P(C) No.38409 of 2010 reads thus:-

'8. As far as W.P(C). Nos.38278 & 38409/2010 are concerned, in view of the judgment of this Court in W.A. No.277/2011 and also the very many judgments of the Hon'ble Supreme Court holding that the High Courts shall not interfere with proceedings under the Act under Article 226 of the Constitution of India, necessarily the petitioners in those two writ petitions are liable to be

relegated to the remedy prescribed under Section 17 of the Act. In fact the petitioner in W.P.(C) No.38278/2010 has done just that by filing Securitisation Application No.155/2011 before the DRT."

Concluding portion of the judgment in W.P(C) No.38409 of 2010 reads thus:

"W.P(C). Nos.38278 & 38409/2010 are dismissed without prejudice to the right of the petitioners therein to take up all their contentions before the Debts Recovery Tribunal appropriately, if they have not yet done so."

It is needless to mention here that while deciding W.P.(C). No.38409 of 2010, this Court was obviously not aware of issuance of fresh sale notice dated 11.02.2011 (Record Page No.71), sale of the secured asset in pursuant to the said sale notice as well as confirmation of that sale and issuance of the sale certificate.

g) Be that as it may, against the dismissal of W.P.(C) No.38409 of 2010 vide judgment dated 20.12.2011, respondent Nos.1 and 2 preferred Securitisation Application No.165 of 2012 under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, Ernakulam on



03.02.2012. Respondent Nos.1 and 2, by the said Securitization Application have prayed that, sale of scheduled properties be set aside and the bank be restrained from proceeding with the alleged sale as well as from evicting the applicants therein. The Debts Recovery Tribunal vide order dated 16.12.2012 was pleased to order maintenance of *status quo* by the parties.

h) Perusal of the Securitisation Application No.165 of 2012 filed by respondent Nos.1 and 2 makes it clear that sale notice dated 11.02.2011 (Record page No.71) came to be challenged by respondent Nos.1 and 2 herein by making a categorical averment in paragraph No.4 of the said application to the effect that they received sale notices dated 11.02.2011 on 19.02.2011. So far as the question of limitation is concerned, following are the averments made in the said Securitisation Application, in paragraph No.4:-

4. LIMITATION:

The impugned sale was notified to be held on 14-03-2011 as per the sale notice dated 11.02.2011, which was published during the pendency of Writ Petition No.38409/2010 on the files of the Honourable High Court of Kerala. In the order dated 08.06.2011 passed by this Honourable Tribunal the submission of the counsel for the defendant was recorded that the properties in the above case have been sold under

the Provisions of the SARFAESI Act 2002. The Honourable High Court of Kerala vide judgment dated 20.12.2011 dismissed the writ petition filed by the applicants without prejudice to the right of the petitioners therein to take up all their contentions before the Debts Recovery Tribunal appropriately, if not yet done so. The applicants received the judgment on 06-01-2012 and on excluding the period where the writ petition was pending, the above application is filed within the time and therefore the applicants declare that the above application is within the time prescribed under the SARFAESI Act.

i) It is thus respondent Nos.1 and 2 contended that the Securitization Application filed under Section 17 of the SARFAESI Act is within limitation and W.P.(C) No.38409 of 2010 was dismissed by this Court on 20.12.2011 without prejudice to their right and they had received copy of the judgment on 06.01.2012 and as such, they are entitled to exclude the period during which their petition was pending for adjudication before this Court.

j) After hearing the parties, by Ext.P6 order dated 19.04.2018 (Record Page No.155), the learned Presiding Officer, Debts Recovery Tribunal-2, Ernakulam was pleased to allow the said Securitisation Application filed by respondent Nos.1 and 2 by declaring that measures taken by the petitioner herein, towards disposal of the subject secured assets belonging to the

applicants are not in accordance with the provisions of the SARFAESI Act and the Rules made thereunder. The sale of secured assets held on 14.03.2011 came to be declared as null and void, with a direction that the Authorised Officer of the Bank shall refund the consideration paid by the auction purchaser. Issue of limitation is concerned by the Debts Recovery Tribunal in page Nos.26, 27 and 28 of its judgment dated 19.04.2018.

These paragraphs read as under:-

" 26. Insofar as the contention raised by the 1<sup>st</sup> respondent as well as the 3<sup>rd</sup> respondent with regard to the limitation aspect is concerned, the respondent bank and the guarantors had filed writ petitions before the Hon'ble High Court. The respondent bank had filed W.P.(C). No.32120/2011 complaining the delay in the matter of disposal of an application filed by the bank before the Chief Judicial Magistrate Court, Kollam, W.P.(C). 38278/10 is filed by a guarantor and W.P(C). No.26409/2010 was filed by the applicants herein challenging the measures initiated by the bank. Further, the other guarantor/petitioner in W.P.(C). No.38278/10 had filed SA No.155/2011 in which an I.A. No.823/2011 was filed for enlargement of time against the earlier order in IA. N.597/2011 dated 09.03.2011 which is subsequently to the publication of the sale notice in Mathrubhumi daily dated 13.02.2011 for sale of the properties of the applicants in the present SA No.165/2012. The respondent bank though had issued the second sale notice during the pendency of the proceedings, it chose to

be silent to bring it to the notice of the Hon'ble High Court. The Hon'ble High Court after considering all the issues raised in the writ petitions filed by the guarantors and the bank dismissed the writ petitions vide common judgment dated 20.12.2011. Accordingly, the applicants presented the SA before the Tribunal on 03.02.2012. The relevant portion of the judgment is produced hereunder.

"W.P.(C). No.38278 & 38409/2010 are dismissed without prejudice to the right of the petitioners therein to take up all their contentions before the Debts Recovery Tribunal appropriately, if they have not yet done so."

27. The 1<sup>st</sup> respondent has confirmed the sale in favour of the auction purchaser who has offered highest amount in his tender, sale certificate was issued on 25.04.2011 and possession of the property was handed over to the auction purchaser. Therefore, bank conducted the sale during the pendency of the writ proceedings where other measures were pending adjudication. Further it is not the case of the bank that the applicant had challenged the proceedings before a wrong court. If that is the case of the bank, nothing prevented the bank to raise the issue of maintainability of challenge to the measure under S.13[4] of the Act under Article 226 under the writ jurisdiction at the appropriate time, more so when it did not intimate about the issuance of second sale notice when the first sale notice was under challenge.

28. In view of the aforesaid facts and circumstances, the instant SA filed by the applicants is maintainable before the Tribunal and it cannot be said that the same is barred by limitation. "

k) Feeling aggrieved by the order of the Debts Recovery Tribunal in the Securitization Application, authorized officer of the secured creditor had chosen to file the instant petition by invoking the provisions under Article 226 and 227 of the Constitution of India, contending that the Debts Recovery Tribunal was not justified in entertaining the time barred Securitisation Application as the same was filed beyond the period of 45 days.

4. Learned counsel for the petitioner drew my attention to the relevant provision, Section 17 of the SARFAESI Act and argued that the guarantor or borrower who is aggrieved by any measures taken by the secured creditor or his authorized officer under Section 13(4) of the SARFAESI Act can approach the Debts Recovery Tribunal within 45 days from the date on which such measures had been taken. By drawing my attention to the Securitisation Application No.165 of 2012, the learned counsel further argued that respondent Nos.1 and 2 contended that they are aggrieved by the sale notice dated 11.02.2011 (Record page No.71), which according to their pleadings, in the Securitisation Application was received by them on 19.02.2011. Therefore, it

is argued that limitation to file the Securitisation Application was expired on 05.04.2011 and therefore, the Debts Recovery Tribunal ought not to have entertained the said time barred application which was in fact filed on 03.02.2012.

5. It is argued by the learned counsel for the petitioner that even though, this Court, while deciding W.P.(C) No.38409 of 2010 on 20.12.2011, had observed that the said petition is dismissed without prejudice to the right of the petitioners therein to take up all their contentions before the Debts Recovery Tribunal appropriately, if they have not yet so, this Court cannot extend the statutory period of limitation. In fact, the said writ petition was rendered infructuous as the sale of the secured asset did not take place in pursuant to the sale notice dated 20.11.2010 (Record page No.35A) which was challenged by the said writ petition. The learned counsel further argued that the Debts Recovery Tribunal has no power to condone the delay in filing an application under Section 17 of the SARFAESI Act. With this contention, the learned counsel relied on the following judgments:-

- (1) **Standard Chartered Bank v. MSTC Limited**  
reported in Manu/SC/0073/2020.

- (2) **Baleshwar Dayal Jaiswal v. Bank of India and Others**, reported in (2016) 1 SCC 444.
- (3) **International Asset Reconstruction Company of India Limited v. Official Liquidator of Aldrich Pharmaceuticals Limited and Others**, reported in (2017) 16 SCC 137.
- (4) **K.P. Jayan V. Hong Kong& Shanghai Banking Corporation** rendered in writ Appeal No.1797/2009 decided on 31.08.2015.
- (5) **Reji Thomas and Others V. State of Kerala and Others**, reported in (2018) 16 SCC 778.

6. It is further urged by the learned counsel for the petitioner that the the term '*without prejudice*' means that fresh proceedings according to law are not barred and there is no need to seek permission from the court to initiate fresh proceedings, if those are according to the provisions of law. Reliance is placed on the judgment in **Superintendent (Tech.I) Central Excise IDD. Jabalpur and Others v. Pratap Rai** reported in (1978) 3 SCC 113.

7. Learned counsel for the petitioner submitted that as the Debts Recovery Tribunal has not acted in accordance with the provisions of the enactment in question and had condoned the delay by entertaining the Securitisation Application, contrary

to the fundamental principles of judicial procedure, the petition as framed and filed is maintainable. For this purpose, he placed reliance on the judgment in **Commissioner of Income Tax and Others v. Chhabildass Agarwal** reported in (2014) 1 SCC 603.

8. As against this, learned counsel appearing for respondent Nos.1 and 2 vehemently argued that there is equally efficacious, alternate remedy of approaching the Debts Recovery Appellate Tribunal under Section 18 of the SARFAESI Act and as such, the Original Petition is not maintainable. He further argued that the prayer in W.P.(C) No.38409 of 2010 was to set aside the demand notice till disposal of the said writ petition, respondent Nos.1 and 2 were not in a position to file the Securitisation Application as the issue regarding the secured assets being an agricultural land was pending before this Court. Expenses incurred in issuing defective sale notice cannot be added as debt in borrower's account and earlier defective sale notice was pending adjudication in the writ petition. Expenses of first sale notice cannot be added while issuing the second sale notice and therefore, respondent Nos.1 and 2 were required to



wait for disposal of the writ petition filed by them in order to decide further cause of action.

9. Learned counsel appearing for respondent Nos.1 and 2 further argued that the valuation report (Record Page No.24) shows that the property in question is an agricultural property. There was no clear 30 days notice of intended sale and therefore the sale was vitiated. With this, learned counsel for respondent Nos.1 and 2 supported the impugned order of the Debts Recovery Tribunal.

10. I have also heard the 4<sup>th</sup> respondent who supported the petitioner.

11. The question which arises for consideration in the instant Original Petition is whether the Debts Recovery Tribunal has power to condone delay in filing an application under Section 17 of the SARFAESI Act. Section 13 of the SARFAESI Act deals with enforcement of security interest by issuing demand notice to the borrower in the event of default in repayment of the secured debt. It also provides that if the borrower fails to discharge his liabilities in full within sixty days from the date of such notice of demand, the secured creditor can take recourse to

the measures prescribed in sub section (4) thereof for recovery of his secured debt. Any person aggrieved by any of the measures taken by the secured creditor by resorting to the provisions of sub section (4) of Section 13 can approach the Debts Recovery Tribunal for redressal of his grievance. The sub section (1) of Section 17 of the SARFAESI Act reads thus:

“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, [may make an application alongwith 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 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.]

[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]”.

12. It is thus clear that the aggrieved person can approach the Debts Recovery Tribunal within 45 days from the date on which the impugned measures had been taken by the secured creditor or his authorised officer. As narrated in the foregoing paragraphs, respondent Nos.1 and 2 herein had approached the Debts Recovery Tribunal feeling aggrieved by the sale notice dated 11.02.2011 (Record page No.71). This sale notice was undisputedly received by these respondents on 19.02.2011. Undisputedly, the Securitisation Application No.165 of 2012 came to be filed by them much beyond the prescribed period of 45 days and precisely on 03.02.2012. As stated in the foregoing paragraphs, the Debts Recovery Tribunal assumed jurisdiction in the matter by entertaining the Securitisation Application by holding that the same is not barred by limitation because that sale notice was not brought to the notice of this Court during the pendency of W.P.(C) No.38409 of 2010 and the sale was conducted during the pendency of the said writ petition. Learned Debts Recovery Tribunal further concluded that the bar of limitation is not

applicable in the said Securitisation Application because it was not the case of the Bank that respondent Nos.1 and 2 herein (original applicants) challenged the proceedings before the wrong forum and nothing prevented the petitioner-Bank to raise the issue of maintainability of challenge at appropriate time before this Court in W.P.(C) No.38409 of 2010. It is thus seen that the learned Debts Recovery Tribunal proceeded on assumption that the application under Section 17 of the SARFAESI Act filed by respondent Nos.1 and 2 is within limitation.

13. The question whether the Debts Recovery Tribunal can entertain an application under Section 17 of the SARFAESI Act after 45 days of the impugned measures referred to in sub section (4) of Section 13 of the said Act is no more res integra. The Hon'ble Division Bench of this Court has already answered this question in Writ Appeal No.1797 of 2009 in W.P.(C) No.22192 of 2007 between ***K.P Jayan vs. Hong Kong & Shanghai Banking Corporation Ltd and others*** decided on 31.08.2015. The Hon'ble Division Bench of this Court, while deciding the said Writ Appeal, had categorically held that the

power to condone delay in entertaining an application under Section 17 of the SARFAESI Act is not conferred on the Debts Recovery Tribunal. It was further held that the Debts Recovery Tribunal cannot consider an application for condonation of delay under Section 5 of the Limitation Act in an application under Section 17 of the SARFAESI Act. In that matter, the application for condonation of 554 days delay in filing the Securitisation Application under Section 17 of the SARFAESI Act was rejected by the Debts Recovery Tribunal by holding that Section 5 of the Limitation Act is not applicable to the application filed under Section 17 of the Act. In paragraph 7 of the said judgment, the Hon'ble Division Bench of this Court has held thus:

"7. Referring to these provisions the contention urged before us is that since section 24 of the RDB Act makes Limitation Act applicable and as the DRT constituted under the RDB Act is conferred with jurisdiction under section 17, Limitation Act governs applications made in a proceedings under section 17 also. We are unable to accept this contention. Both the RDB Act and the SARFAESI Act are independent enactments, although certain provisions of the RDB Act are made applicable in respect of the proceedings under

the SARFAESI Act also. However that does not mean that every provision of the RDB Act would apply to every proceedings initiated under the SARFAESI Act. In so far as this case is concerned, proceedings were initiated under SARFAESI Act and in view of the provisions contained in section 17 conferring jurisdiction on the DRT constituted under RDB Act application is made by the appellant before the DRT. That does not mean that provisions of section 24 of the RDB Act governing the proceedings taken thereunder would get automatically attracted to such proceedings before the DRT. Therefore the contention raised relying on section 24 in so far as this case is concerned is only to be rejected and we do so. This is further clear from section 36 of the SARFAESI Act, which confines the applicability of the Limitation Act to measures under section 13 (4) of the said Act”.

14. In ***Baleshwar Dayal Jaiswal's*** case (supra) relied by the learned counsel for the petitioner, the question which was considered by the Hon'ble Supreme Court was whether the Debts Recovery Appellate Tribunal has power to condone delay in filing an application under Section 18(1) of the SARFAESI Act. It was held in that matter that there is legislation by incorporation and Section 20(3) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB Act, for the sake of brevity), is incorporated in

Section 18(2) of the SARFAESI Act. With this, the Hon'ble Supreme Court concluded that the delay in filing an appeal under Section 18(1) of the SARFEASI Act can be condoned under the provisions of Section 20(3) of the RDDB Act. Paragraph 4.3 of the said judgment needs to be quoted for our purpose.

“4.3 Provisions of the Limitation Act can stand excluded not only by an express provision of a local or special law but also by necessary implication from the scheme of such local or special law. The scheme of the SARFAESI Act by making the Limitation Act expressly applicable to measures under Section 13(4) of the Act impliedly excludes the said Act from the appeals or other proceedings”.

15. In the case in hand also, the provisions of Section 5 of the Limitation Act are excluded from the scheme of Section 17 of the SARFAESI Act by not making any provisions enabling the Tribunal to condone the delay in filing an application under the said provisions of the Special Act.

16. In ***Standard Chartered Bank's*** case (supra), the appellant had filed an application under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 ('the RDB Act', for

the sake of brevity). After the disposal of the said application, an application for review with an application for condonation of delay in filing the review petition came to be filed. The said application for condonation of delay came to be rejected by holding that Section 5 of the Limitation Act is not applicable and the benefit of Section 14 of the Limitation Act cannot be granted. The Hon'ble Supreme Court in the said matter, has held that Rule 2(c) of the Debt Recovery Tribunal (Procedure) Rules, 1993 defines an application as an application filed under Section 19 or under Section 31A and includes an appeal filed under Section 30(1) of the RDB Act. The review application is an application under Rule 5A of the Debt Recovery Tribunal (Procedure) Rules, 1993 and such application can be filed within 30 days from the date of the order. Therefore, it was held by the Hon'ble Supreme Court that beyond 30 days, there is no power to condone delay in filing a review application. Paragraph 14 of the said judgment reads thus:

“14. The peremptory language of Rule 5A would also make it clear that beyond 30 days there is no power to condone delay. We may also note that Rule 5A was added in 1997 with a longer period within which to file a review



petition, namely, 60 days. This period was cut down, by amendment, with effect from 04.11.2016, to 30 days. From this two things are clear: one, whether in the original or unamended provision, there is no separate power to condone delay, as is contained in Section 20(3) of the Act; and second, that the period of 60 days was considered too long and cut down to 30 days thereby evincing an intention that review petitions, if they are to be filed, should be within a shorter period of limitation – otherwise they would not be maintainable”.

17. In the case in hand also, there is no provision in the SARFAESI Act authorising the Debts Recovery Tribunal to condone the delay caused beyond 45 days from the date on which the impugned measures had been taken.

18. In the matter of ***International Asset Reconstruction Company of India Limited*** (supra) relied by the learned counsel for the petitioner, the question was whether Section 5 of the Limitation Act can be invoked to condone the delay occurring beyond the prescribed period of 30 days, under Section 30(1) of the RDB Act. Paragraph 13 of the said judgment reads thus:

“13. The RDB Act is a special law. The proceedings are before a statutory Tribunal. The scheme of the Act manifestly provides that the Legislature has provided for application of

the Limitation Act to original proceedings before the Tribunal under Section 19 only. The appellate tribunal has been conferred the power to condone delay beyond 45 days under Section 20(3) of the Act. The proceedings before the Recovery officer are not before a Tribunal. Section 24 is limited in its application to proceedings before the Tribunal originating under Section 19 only. The exclusion of any provision for extension of time by the Tribunal in preferring an appeal under Section 30 of the Act makes it manifest that the legislative intent for exclusion was express. The application of Section 5 of the Limitation Act by resort to Section 29(2) of the Limitation Act, 1963 therefore does not arise. The prescribed period of 30 days under Section 30(1) of the RDB Act for preferring an appeal against the order of the Recovery officer therefore cannot be condoned by application of Section 5 of the Limitation Act”.

19. It is thus clear that the Hon'ble Supreme Court has held that in a special law when the statute does not prescribe for condonation of delay, the application of Section 5 of the Limitation Act does not arise.

20. In the matter of ***Reji Thomas and others*** (supra), following are the observations of the Hon'ble Apex Court in paragraphs 10 and 11.

“10. Section 69 of the Act is the mechanism provided by the State Legislature as contemplated under Article 243 ZK

(2) of the Constitution of India. Once the mechanism provided under the Statute provides for a time schedule for preferring an election petition, in the absence of a provision in the Statute for enlarging the time under any given circumstances, no court, whether the High Court under Article 226 or this Court under Article 32, 136 or 142 of the Constitution can extend the period in election matters. In the matter of limitation in election cases, the Court has to adopt strict interpretation of the provisions. This Court in *Smita Subhash Sawant Vs. Jagdeeshwari Jagdish Amin & Ors.* reported in (2015) 12 SCC 169, though in a different context, has held at para 33 that :

*"33. .... In the absence of any provision made in the Act for condoning the delay in filing the election petition, the Chief Judge had no power to condone the delay in filing the election petition beyond the period of limitation prescribed in law"*

11. In *Union of India vs. Kirloskar Pneumatic Co. Ltd.* reported in (1996) 4 SCC 453, at paragraph 10, this Court has held as under :-

*"10. ....The power conferred by Articles 226/227 is designed to effectuate the law, to enforce the rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. Maybe the High Court or a civil court is not bound by the said provisions but the authorities under the Act are. Nor can there be any question of the High Court*

clothing the authorities with its power under Article 226 or the power of a civil court. No such delegation or conferment can ever be conceived.”

21. This makes it clear that in the absence of provision in the statute for enlarging the time, no court even the High Court can extend the period of limitation. In the SARFAESI Act, there is no provision for extension of the period of limitation of 45 days prescribed by Section 17 of the Act by condoning the delay.

22. In the light of the positions of law crystalised in the above quoted judgments, it can be manifestly concluded that neither the Debts Recovery Tribunal has power to condone the delay while exercising the powers under Section 17 of the SARFAESI Act nor this Court can extend the time of limitation for entertaining an application under Section 17 of the SARFAESI Act. The learned Debts Recovery Tribunal, while passing the impugned order, committed an error of law by overlooking the settled law on the aspect of limitation in entertaining an application under Section 17 of the SARFAESI Act. W.P.(C) No.38409 of 2010 filed by respondent Nos.1 and 2 was in respect of demand notices dated 06.11.2009 and 27.07.2010 as well as sale notice dated 20.11.2010. Nothing prohibited the

petitioners in that writ petition (respondents 1 and 2 herein) to bring to the notice of this Court subsequent development in the matter. Learned Debts Recovery Tribunal committed an error by putting blame regarding non disclosure of this fact on the petitioner herein. It was a specific case of the petitioner herein while defending W.P.(C) No.38409 of 2010 that the remedy lies elsewhere and therefore, this Court had dismissed the said writ petition by relegating the petitioner to the Debts Recovery Tribunal. The dismissal was without prejudice to the right of the petitioners in the said writ petition to take up all their contentions before the Debts Recovery Tribunal.

23. Learned counsel for the petitioner rightly relied on the judgment of the Hon'ble Supreme Court in the matter of ***Superintendent (Tech.I) Central Excise IDD. Jabalpur and Others*** (supra) wherein the term 'without prejudice' came to be interpreted to mean that fresh proceedings can be entertained provided they are according to the provisions of law and for initiation of such fresh proceedings, even there is no requirement of seeking permission from the court.

24. In the case in hand, the remedy of respondent Nos.1

and 2 of challenging sale notice dated 11.02.2011 was barred by passage of 45 days and therefore, even if this Court had noted that respondent Nos.1 and 2 can take up all their contentions before the Debts Recovery Tribunal appropriately while dismissing W.P.(C) No.38409 of 2010, the challenge to the fresh sale notice dated 11.02.2011 had become time barred by that time.

25. Now let us examine whether the provisions of Section 14(2) of the Limitation Act, 1963 comes into the aid of respondent Nos.1 and 2. Section 14(2) reads thus:

“14. Exclusion of time of proceeding *bona fide* in court without jurisdiction

(1) xxx

(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”.

A bare reading of the above provision makes it clear that the time spent on prosecuting another civil proceedings for the same relief can be excluded when such proceeding is prosecuted in good faith. In the case in hand, the reliefs claimed in

W.P.(C) No.38409 of 2010 and in the Securitisation Application No.165 of 2012 were totally different as both these proceedings were based on different cause of action. In W.P.(C) No.38409 of 2010, what was challenged was demand notices dated 06.11.2009 and 27.07.2010 as well as sale notice dated 20.11.2010 whereas in the Securitisation Application, the challenge was to the sale notice dated 11.02.2011. Therefore, sub section (2) of Section 14 of the Limitation Act has no application to the case in hand.

26. The question which now falls for consideration is whether the instant Original Petition can be entertained in view of the availability of remedy of challenging the impugned order passed by the Debts Recovery Tribunal by filing an appeal under Section 18 of the SARFAESI Act. The availability of alternate and efficacious statutory remedy generally warrants non-entertainment of the petition. This is a rule of self imposed limitation. The question whether availability of efficacious alternate remedy bars entertainment of petition, came to be examined in depth by the Hon'ble Apex Court in the matter of ***Chhabildass Agarwal*** (supra). Paragraph 15 of the said

judgment reads thus:

“15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation”.

27. It is thus clear that where the statutory authority has not acted in accordance with the provisions of the enactment in question or if it is demonstrated that there is defiance of the fundamental principles of judicial procedure then despite availability of alternate remedy, this Court can exercise its writ jurisdiction. In the case in hand, the judgment of this Court in Writ Appeal No.1797 of 2009 decided on 31.08.2015 operates as



a writ prohibiting the Debts Recovery Tribunal from entertaining time barred application under Section 17 of the SARFAESI Act, apart from the fact that there is no statutory provision in the SARFAESI Act which is undoubtedly a Special Act to condone delay in taking recourse to the remedy prescribed by Section 17 of the said Act. Still the learned Debts Recovery Tribunal assumed jurisdiction in exercising the power under Section 17 of the said Act with a reasoning narrated in the foregoing paragraphs of this judgment which cannot stand scrutiny of law.

28. In this view of the matter, despite availability of alternate remedy of preferring an appeal, as the impugned order of the Debts Recovery Tribunal is totally in defiance of the fundamental principles of judicial procedure and causing violation of the provisions of the SARFAESI Act, it needs to be held that the instant Original Petition as framed and filed is maintainable.

29. In the light of the foregoing discussions, as the learned Debts Recovery Tribunal has committed an error of law in entertaining time barred application under Section 17 of the SARFAESI Act by assuming jurisdiction and has further gone into the merits of the case despite lack of jurisdiction to entertain

time barred claim, the impugned order of the Debts Recovery Tribunal needs to be quashed and set aside.

In the result, this Original Petition is allowed by quashing and setting aside Ext.P6 order of the learned Debts Recovery Tribunal. The Securitisation Application No.165 of 2012 filed by respondent Nos.1 and 2 stands rejected being barred by limitation.

Sd/-  
**A.M.BADAR**  
**JUDGE**

ajt/smp

**APPENDIX**

**PETITIONER'S EXHIBITS:**

- EXHIBIT P1** COPY OF THE WRIT PETITION (C) NO. 38409 OF 2010 FILED BY RESPONDENTS 1 AND 2.
- EXHIBIT P2** COPY OF THE JUDGMENT DATED 20.12.2011 IN W.P. (C) NO. 38409 OF 2010.
- EXHIBIT P3** COPY OF THE APPLICATION S.A.NO. 165 OF 2012 FILED BY RESPONDENTS 1 & 2 UNDER SECTION 17 OF THE SECURITIZATION ACT.
- EXHIBIT P4** COPY OF THE WRITTEN STATEMENT FILED ON BEHALF OF THE PETITIONER IN S.A.NO.165 OF 2012.
- EXHIBIT P5** COPY OF THE ADDITIONAL WRITTEN STATEMENT FILED ON BEHALF OF THE PETITIONER IN S.A.NO.165 OF 2012.
- EXHIBIT P6** COPY OF THE ORDER DATED 19.4.2018 IN S.A.NO. 165 OF 2012.

RESPONDENTS' EXHIBITS: NIL.

True Copy

P.S to Judge

smp