APHC010146352025

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

Bench Sr.No.__ [3446]

WRIT PETITION NO: 8750 of 2025

M/s. Prabhakar Raw & Boiled Rice Mill and others ...Petitioners

Vs.

Maximus A.R.C. Limited and others ...Respondents

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Advocate for Petitioners	:	Mr. Y. N. Vivekananda
Advocates for Respondents	:	Mr. K. S. Murthy, Senior Counsel, Mr. T. V. P. Sai Vihari – R4

CORAM : THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE R. RAGHUNANDAN RAO

DATE : 23rd April, 2026.

<u>Per DHIRAJ SINGH THAKUR, CJ</u>:

The present Writ Petition has been filed challenging the order of the Debts Recovery Tribunal (DRT), Visakhapatnam, dated 30.04.2024, passed in M.A.No.14 of 2023 in R.A.No.4 of 2024 in S.A.No.463 of 2021.

2. Briefly stated, the material facts are as under:

The petitioner secured loans from respondent Nos.2 & 3 Banks. On the ground of defaults committed by the petitioners in repayment to the Banks, proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act"), were initiated against the petitioners. The Banks subsequently assigned the loan in favour of respondent No.1, which is an Asset Reconstruction Company. The petitioners preferred S.A.No.463 of 2021 challenging the proceedings initiated under the SARFAESI Act.

3. The DRT, Visakhapatnam, by virtue of its order, dated 29.06.2022, disposed of the Securitisation Application along with connected I.As. During the pendency of S.A.No.463 of 2021, an affidavit came to be filed by respondent No.1 through its Sr. Vice President, wherein the following was stated:

> *"3. I submit that as the situation stands the Respondent No.1 has already submitted a detailed counter to I.A. 1979/2021 and an equally detailed reply to the above numbered Appeal with the latter being filed on 13/05/2022 itself. I submit that if the Hon'ble Tribunal's attention can be directed to Documents No. 31 and 32 filed along with the aforementioned reply filed by Respondent No.1, it can be seen that the Respondent No.1 has withdrawn the auction procedure on 10.03.2022 date making this S.A. infructuous effective immediately. I further submit that if the auction procedure itself has been terminated, then proceeding with the current S.A. will greatly damage the Respondent's time and resources. Therefore, it is highly imperative that the matter be advanced to a nearer date and then dismissed."*

4. This affidavit having been filed, the DRT, Visakhapatnam, on 29.06.2022, passed the following order:

> *"The Ld. Counsel for the respondent F.I Bank is submitted that the respondent F.I Bank is withdrawing SARFAESI proceedings*

against the applicant. Hence this SA along with all IAs are dismissed and disposed as the Respondent F.I. Bank is withdrawing SARFAESI proceedings."

5. It is in that backdrop that a review petition came to be filed by respondent No.1 along with an application for condonation of a delay of 41 days. The application seeking condonation of delay was allowed by the Presiding Officer of the DRT by passing a non-speaking order and only on the ground of the 'interest of justice'.

6. In the review petition, the petitioner sought to project that there was no intention to withdraw the SARFAESI proceedings against the applicants/petitioners herein. It was argued that what was sought to be projected was the dismissal of the S.A. on the ground that the auction proceedings which were under challenge had been withdrawn by the review petitioner, and that the order dated 29.06.2022 had incorrectly recorded and was in fact a typographical error to suggest that the SARFAESI proceedings were being withdrawn.

7. The review petition accordingly came to be allowed and the order was modified to suggest that the S.A. was being dismissed on account of the withdrawal of the auction notice.

8. It is not out of place here to mention that after the dismissal of the S.A.No.463 of 2021, respondent No.1-Maximus ARC Limited, started fresh

auction proceedings in regard to the secured asset, which yet again came to be challenged by the petitioners in S.A.No.321 of 2022.

9. In the aforementioned backdrop, the petitioners have filed the present Writ Petition challenging the order dated 30.04.2024, passed in M.A.No.14 of 2023, whereby the delay was condoned and the order dated 30.10.2024, passed in R.A.No.4 of 2024, whereby the review petition was allowed.

10. The principal ground taken is that the delay in filing the review application could not have been condoned at all, inasmuch as the period prescribed for filing a review was only 30 days in terms of Rule 5A(2) of the Debts Recovery Tribunal (Procedure) Rules, 1993, which envisages that no application for review shall be made after the expiry of a period of 30 days from the date of the order. For facility of reference, Rule 5A is reproduced hereunder:

> *“**5A. Review.-***
>
> *(1) Any party considering itself aggrieved by an order made by the Tribunal on account of some mistake or error apparent on the face of the record desires to obtain a review of the order made against him, may apply for a review of the order to the Tribunal which had made the order.*
>
> *(2) No application for review shall be made after the expiry of a period of thirty days from the date of the order and no such application shall be entertained unless it is accompanied by an affidavit verifying the application.*
>
> *(3) …”*

11. Mr. Y. N. Vivekananda, learned counsel for the petitioners, would submit that no review application, which is otherwise envisaged under Rule 5A, could be entertained after the expiry of a period of 30 days from the date of the order that since there was no provision envisaging condonation of delay beyond the prescribed period of 30 days, the Debts Recovery Tribunal could not have condoned the delay, and therefore, the review application ought to have been dismissed.

12. Learned counsel for the petitioners placed reliance upon the judgment of the Hon'ble Supreme Court rendered in the case of **Standard Chartered Bank v. MSTC Limited**[1] to buttress and support the point that, insofar as review applications are concerned, the provisions of the Limitation Act, including Section 5 thereof are not attracted and that the DRT committed an error in condoning the delay by presuming as if the power to condone the delay beyond the period prescribed existed.

13. On the other hand, Mr. K. S. Murthy, learned Senior Counsel for the respondents, would submit that the DRT had ample jurisdiction to entertain the review by invoking Section 5 of the Limitation Act, 1963, read with Section 24 of the Recovery of Debts and Bankruptcy Act, 1993 and Rule 5A of the Debts Recovery Tribunal (Procedure) Rules, 1993. It was also stated that the judgment relied upon by the counsel for the petitioners in **Standard Chartered Bank (supra)** was not applicable to the facts of the present case, inasmuch as the governing provision, namely Section 30 of the

[1] (2020) 13 SCC 618

RDB Act, did not expressly provide for the condonation of delay, nor did the corresponding rules permit it and that the issue before the Apex Court in **Standard Chartered Bank (supra)** was entirely within the framework of the RDB Act, specifically concerning appeal orders of the Recovery Officer and subsequent review proceedings under that Act.

14. We have heard learned counsel for the parties.

15. In our opinion, we need not go into the question of whether there was any power with the DRT to condone the delay in entertaining the review application, inasmuch as what was sought to be reviewed would fall within the category of 'procedural review' which belongs to a different category altogether than a 'review on merits'.

16. The distinction between a review on merits and a procedural review was succinctly culled out by the Apex Court in **Grindlays Bank Limited v. Central Government Industrial Tribunal[2],** where the Apex Court held:

> *"Furthermore, different considerations arise on review. The expression 'review' is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in Patel Narshi Thakershi case held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debita justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal"*

[2] 1980 Supp SCC 420

17. This principle of law was subsequently followed in **Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills limited[3],** wherein it was held:

> *"19. … The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. …"*

18. The instant case, in our opinion, was also a case where the review was more in the nature of a mistake having been committed by the DRT. This we say on the basis of the affidavit which was filed before the DRT, reference to which has been made in the preceding paragraphs, where it was specifically stated that the S.A. be dismissed on account of the withdrawal of the auction. Since the affidavit was on record, as has been stated by learned counsel for the respondents and a copy whereof has been produced before us for our perusal, we are left with no doubt that the DRT ought to have considered the said affidavit and passed an order accordingly. What is recorded by the DRT in its order dated 29.06.2022, while dismissing S.A.No.463 of 2021, appears to be quite contrary to the affidavit that was filed and therefore, the mistake having crept in the order passed by the D.R.T. was required to be corrected.

19. It is a settled principle of law that no litigant should suffer on account of a fault committed by the Court or a Tribunal. Reference in this

[3] (2005) 13 SCC 777

regard can be made to the legal maxim, *Actus curiae neminem gravabit*. What was done by the DRT, therefore, in these circumstances, was not only legally warranted but also justified.

20. Be that as it may, we find no merit in the present Writ Petition, which is accordingly dismissed.

No costs. Pending miscellaneous applications, if any, in this case, shall stand closed.

DHIRAJ SINGH THAKUR, CJ.

R. RAGHUNANDAN RAO, J.

Kbs/SSN