

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 4767 of 2024**

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VINAYAK INFOSYS & ORS.

Versus

BANK OF BARODA & ANR.

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Appearance:

ADITYA A GUPTA(7875) for the Petitioner(s) No. 1,2,3

MS NALINI S LODHA(2128) for the Respondent(s) No. 1

REFUSED SERVED (N)(10) for the Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 20/06/2025

ORAL ORDER

1. By way of this petition under Article 226 of the Constitution of India, the petitioners have approached this Court challenging, inter alia, the order dated 2.2.2024 passed in Case bearing Diary No.1000 of 2022 by the learned Debt Recovery Tribunal-I, Ahmedabad (for short 'the Tribunal'), by which the application preferred by the petitioners for condonation of delay of 15 days came to be rejected mainly on the ground that in view of the provisions of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'), the power to condone the delay is not available with the Tribunal.

2. Short facts of the case can be stated as under :

2.1 The respondent No.1 bank has undertaken the

proceedings under the SARFAESI Act by way of notice under Section 13(2) dated 12.1.2017. In the said notice, a sum of Rs.39,02,805/- was asked to be paid by the petitioners.

2.2 On 17.4.2017, initially, the respondent No.1 bank has taken over the symbolic possession of the property by affixing the notice, which, thereafter, culminated into the actual physical possession with the aid of the order by the District Magistrate under Section 14 of the SARFAESI Act.

2.3 The petitioners had filed SA No.133 of 2018 before the Tribunal, which came to be disposed of on 7.8.2019, recording, inter alia, the settlement between the parties. Pertinently, the petitioners admitted the claim of Rs.44,53,138/-.

2.4 It appears that some amount to the extent of Rs.5 lakhs and Rs.10 lakhs deposited by the petitioners with the respondent No.1 bank on 8.8.2018 and 4.12.2018 respectively.

2.5 It further appears that thereafter, the petitioners did not pay any agreed amount and thereby, the respondent No.1 bank was constrained to move further with the auction of the property and the auction was held on 28.1.2020. The said auction was disputed by the petitioners by way of SA No.50 of 2020 before the Tribunal. The Tribunal, vide its order dated 23.3.2021, set aside the auction held by the authorized officers of the respondent No.1 bank and further directed the respondent No.1 bank to have a fresh valuation and then, to

auction the property, again.

2.6 On various dates, as it appears, the auctions were conducted; however, could not yield into any result. Once again on 24.8.2022, the auction was advertised and the date so fixed was on 14.9.2022. On the said date, the auction could go through and the property of the petitioners was sold of at Rs.56,52,000/-.

2.6 According to the petitioners, the said auction was not conducted properly and the purchaser of the property appears to be the close one of the employee of the respondent No.1 bank. Thus, the petitioners intend to challenge the said proceedings. However, since there was a delay of 15 days, the petitioners submitted an application before the Tribunal for condonation of delay which was registered as Diary No.1000 of 2022, filed on 25.10.2022. The Tribunal, having considered the documents available on record, vide its order dated 2.2.2024, rejected the application of the petitioners mainly relying upon the provisions of Section 17 of the SARFAESI Act, holding, inter alia, further that there is no power available with the Tribunal to condone the same, as the provisions of the Limitation Act are not applicable.

3. Being aggrieved and dissatisfied by the aforesaid, the petitioners have approached this Court by way of this petition for the reliefs prayed therein.

4. I have heard Mr.Aditya Gupta learned advocate for the petitioners and Ms.Nalini Lodha learned advocate for the

respondents.

5. Mr.Aditya Gupta learned advocate for the petitioners, while assailing the impugned order, has made mainly the following submissions :

(1) Mr.Aditya Gupta learned advocate submitted that the impugned order passed by the Tribunal is not legally tenable in the eye of law. He further submitted that the order impugned is mainly passed relying upon the decision of the Madras High Court in the case of **M/s.Velar Engineering Works Pvt. Ltd. v. The Authorized Officer / Chief Manager, Indian Bank & Ors.**, rendered in **Writ Petition No.31251 of 2018**, decided on 5.9.2019. Mr.Aditya Gupta learned advocate submitted that as such, the Division Bench of this Court in the case of **Aditya Birla Finance Ltd. v. Manglesh Champaklal Gandhi & Ors.**, rendered in **Letters Patent Appeal No.224 of 2020**, decided on 28.6.2024, has categorically held that Section 5 of the Limitation Act applies to the proceedings under Section 17 of the SARFAESI Act.

(2) Mr.Aditya Gupta learned advocate further submitted that in view of settled proposition of law laid down by the Division Bench of this Court, the Tribunal ought not to have rejected the application of the petitioners in such a casual manner. Learned advocate submitted that assuming that there is a delay, in that event also, there is a meager delay of 15 days and thus, the Tribunal ought to have adopted the pragmatic view instead of such hyper-technical approach.

5.1 By making above submissions, Mr.Aditya Gupta learned advocate, urged this Court to allow the present petition.

6. *Per contra*, Ms.Nalini Lodha learned advocate for the respondents, while supporting the impugned order, has made mainly the following submissions :

(1) Ms.Nalini Lodha learned advocate fervently submitted that the impugned order passed by the Tribunal is perfectly justified and is within the four corners of law and thereby, this Court exercising jurisdiction under Article 226 of the Constitution of India, may not show any interference. Learned advocate further submitted that the petitioners are continuously trying to halt and/or hamper the auction proceedings by way of filing repeated application before the Tribunal. She further submitted that initially, the petitioners have approached the Tribunal by way of SA No.133 of 2018; however, said SA was disposed of pursuant to the settlement arrived at between the parties. Ms.Nalini Lodha learned advocate submitted that though the said settlement though agreed upon by the petitioners, was never fulfilled in its letter and spirit.

(2) Ms.Nalini Lodha learned advocate submitted that because of non-fulfillment of the terms and conditions of the settlement, the respondent No.1 bank was left with no option but, to continue with the auction of the property and that action was also challenged by the petitioners by way of SA No.50 of 2020 before the Tribunal. The Tribunal, thereafter, quashed the auction proceedings and direct the respondent

No.1 bank to auction the property after having fresh valuation of the property. Learned advocate further pointed out that pursuant to the said direction of the Tribunal, after obtaining fresh valuation, the property was put to auction and accordingly, after numbers of unsuccessful attempts, finally, the respondent No.1 could auction the property and fetch the sum of Rs.56,52,000/-. However, that also, now sought to be challenged by way of present petition and the same is not permissible. Ms.Nalini Lodha learned advocate pointing out the aforesaid facts and events, submitted that the approach of the petitioners is not bona fide and repeatedly approaching the Tribunal for the purpose of derailing the auction proceedings and/or disturbing the auction. Thus, the Tribunal was otherwise justified in not condoning the delay as there is no merits in the matter.

(3) Ms.Nalini Lodha learned advocate, without prejudice to the aforesaid, submitted that in view of Section 17 of the SARFAESI Act, the Tribunal has got no authority and/or power to condone the delay beyond 45 days and thereby, the impugned order passed by the Tribunal rejecting the application for condonation of delay beyond the period of 45 days, is perfectly justified and thus, this Court may not interfere the petition.

6.1 By making above submissions, Ms.Nalini Lodha learned advocate, urged this Court to dismiss the petition.

7. Heard learned advocates appearing for the respective parties and have gone through the material produced on

record. No other and further submissions have been canvassed by learned advocates appearing for the respective parties.

8. Having considered the submissions made by learned advocates appearing for the respective parties and the material produced on record, a short question that falls for consideration of this Court is whether the Tribunal has got power to condone the delay beyond 45 days as envisaged under Section 17 of the SARFAESI Act?

9. The aforesaid question is no more res-integra. The Division Bench in the case of **Aditya Birla Finance Ltd.** (supra) has already decided and held that Section 5 of the Limitation Act applies to the proceedings under Section 17 of the SARFAESI Act. In other words, the Division Bench has, in no uncertain terms, held that Section 5 of the Limitation Act is applicable and that the Tribunal under that has got ample power to condone the delay. The relevant observations of the aforesaid decisions, read thus :

“38. Having exhaustively gone through the provisions of the SARFAESI Act, 2002 and the RDB Act, 1993 and the Limitation Act, 1963 and the decisions of the Apex Court in International Asset Reconstruction Co. Of India Ltd. (supra) and Baleshwar Dayal Jaishwal (supra), heavily relied by learned senior counsel for the appellant, as also the decision of the Kerala High Court based on the aforesaid judgments of the Apex Court and the Division Bench judgment of this Court in Corporation Bank (supra), we may note, at the outset that, we are convinced with the reasoning given by the learned Single Judge in holding that Section 5 of the Limitation Act, 1963 applies to the proceedings under Section 17 (1) of the SARFAESI Act, 2002, relying upon exhaustive reasoning given by the Division Bench of this

Court in Corporation Bank (supra). We find ourselves in full agreement with the decision of the Division Bench of this court on the first question of applicability of Section 5 of the Limitation Act, 1963 for the reasons given hereinafter.

39. We may note, at the outset, that we are conscious of the fact that the SARFAESI Act, 2002 has been enacted in order to provide legal provision for facilitating securitisation of financial assets of banks and financial institutions, that too, without the intervention of the Court or Tribunal. Section 13 contained in Chapter III of SARFAESI Act, 2002 prescribes an extensive procedure as to how the banks or financial institutions would enforce security interest created in their favour as secured creditor, in the case of default of borrower. As noted hereinbefore, Section 13(2) provides that the demand notice would be served upon the borrower requiring him to discharge in full his liabilities to the secured creditor within 60 days from the date of notice. Sub-section (3A) of Section 13 gives right to the borrower to raise objection to such notice. Section 13(4), however, provides that, in case, the borrower fails to discharge his liability in full within the period specified in the notice under Section 13(2), the secured creditor will be free to take recourse to any of the measures to recover his secured debt. Remedy of challenging the action taken by the secured creditor or any of the measures referred to in Sub-section (4) of Section 13 taken by the secured creditor or his authorised officer has been provided to the borrower under Section 17(1). Section 17(1) provides a timeline within which the borrower can file an application before the DRT to challenge any of the measures taken by the secured creditor as referred to in Sub-section (4) of Section 13. We may further note that there is no outer time limit provided in Sub-section (1) of Section 17 or the provision attached to it, restricting the DRT not to entertain any application made under Section 17(1) beyond the period of 45 days. Section 18 of the SARFAESI Act, 2002 further provides a remedy of appeal against the order passed by the DRT under Section 17, within a period of 30 days from the date of the receipt of the order, as per Sub-section (1) thereof. It is further relevant to note that there is no outer time limit prescribed in Section 18(1) or the proviso attached thereto, to restrain the Appellate Tribunal from entertaining an appeal beyond the period of 30 days provided in Sub-section (1) of Section 18.

40. As noted by the Division Bench in *Corporation Bank (supra)*, Section 35 though gives overriding effect to the

provisions of the Securitisation Act, 2002 against any other law, which is inconsistent with its provision, Section 36 which prescribes limitation restrains the secured creditor not 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 in the Limitation Act. Section 37 further states that the provisions of the SARFAESI Act, 2002 are in addition to other regulations such as Companies Act, etc. which include RDB Act, 1993.

41. It is noted by the Apex Court in Baleshwar Dayal Jaishwal (supra) that in M/s Transcore vs Union Of India [2008 (1) SCC 125], the Apex Court has observed that the RDB Act and the SARFAESI Act are complementary to each other. The question before the Apex Court in Baleshwar Dayal Jaishwal (supra) was with regard to the power of the Appellate Tribunal to condone the delay after the expiry of the period of 30 days prescribed in filing appeal under Section 20 of the RDB Act. The Apex Court has held that the Appellate Tribunal under Section 18(1) of the SARFAESI Act has power to condone the delay in view of Section 20(3) of the RDB Act read with Section 18(2) of the SARFAESI Act, 2002.

42. We may note that the language of Sub-section (2) of Section 18 and Sub-section (7) of Section 17 are the same, as they read as under :

"17. Application against measures to recover secured debts.-

(1) xxx

(2) xxx

(3) xxx

(4) xxx

(5) xxx

(6) xxx

(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."

"18. Appeal to Appellate Tribunal.-

(1) xxx

(2) *Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder."*

43. *It is further pertinent to note that the RDB Act, 1993 and SARFAESI Act, 2002 though provide different procedures of recovery of the debts due to banks and financial institutions, however, the fundamental object and aim of both the statutory provisions is to ensure speedy and expeditious recovery of debts due to banks and financial institutions. The RDB Act enacted in the year 1993 provides for establishment of Tribunal named as "Debts Recovery Tribunal" and Appellate Tribunal named as "Debts Recovery Appellate Tribunal" to provide a forum to bank and financial institutions to recover any debt from any person by making an application to the DRT under Section 19, which in essence is a suit or original proceeding for recovery of debts filed by the bank or financial institution. Section 24 of the RDB Act makes the provisions of the Limitation Act apply to the proceedings before the Tribunal under Section 19, as it says that the provisions of the Limitation Act shall apply to an application made to the Tribunal, which means an "application made under Section 19".*

44. *As noted hereinbefore, Section 20(3) of the RDB Act confers power on the Appellate Tribunal to condone the delay in the limitation provided for filing an appeal under Subsection (1) of Section 20, if there was a sufficient cause for doing so.*

45. *From a careful reading of the aforesaid provisions, it can be discerned that there is no bar or restraint with the Tribunal not to entertain any application under Section 17(1) beyond the period of 45 days. Insofar as the power of DRAT to condone the delay in filing appeal under Section 18(1) of the SARFAESI Act, 2002, the controversy has been set at rest by the Apex Court in Baleshwar Dayal Jaishwal (supra), as noted hereinbefore. The only issue remains is that of applicability of the Limitation Act to the proceedings under Section 17(1) of the SARFAESI Act, 2002.*

46. *The Division Bench of this Court in Corporation Bank (supra), after taking note of the above referred provisions of*

SARFAESI Act, 2002 and RDB Act, 1993, has observed that it cannot be disputed that filing of application and the procedure so provided for disposal of the application is by the Act (SARFAESI Act, 2002), which is a Special law. It was noted that it is also true that there is no express provision made by the Parliament in the Act for applicability of Section 5 of the Limitation Act to the proceedings under Section 17 of the Act.

47. Therefore, the Division Bench further proceeded to consider the provisions of the Limitation Act, to answer the question of applicability of Section 5 of the Limitation Act to the Special law, i.e. SARFAESI Act, 2002, whether the Limitation Act may also include the proceedings under Section 17 of the Act. By reading the provisions of Section 29(2) of the Limitation Act, which is a saving clause, pertaining to the applicability of the Limitation Act to any Special law, it was observed in paragraph '12' as under :-

"12. The aforesaid provisions show that applicability of the Limitation Act if provided under the special law for the different period than that provided under the schedule of the Limitation Act, the provisions of the Limitation Act would apply as if section 3 of the Limitation Act provides for the prescribed period of limitation for such purpose, but it further provides for the purpose of determining any period of limitation prescribed for any suit, appeal or application under any special or local law, the provisions contained in sections 4 to 24 of the Limitation Act shall apply unless they are expressly not excluded by any such special or local law. The pertinent aspect is that section 29(2) of the Limitation Act for applicability of sections 4 to 24 of the Limitation Act to the period prescribed under any special law, no distinction is made to the proceedings of any suit or appeal or application. It considers all the proceedings of any suit or appeal or application alike if provided by any special or local law for the purpose of applicability of sections 4 to 24 of the Limitation Act. To say in other words, sections 4 to 24 of the Limitation Act are made applicable to all the matters specified in special or local law for any suit or appeal or application unless they are expressly excluded by such special or local law."

48. Noticing a previous decision in *Union Bank of India (supra)*, passed by the learned Single Judge of this Court, the

Division Bench has observed that on a plain reading of Section 29 of the Limitation Act, it appears that if there is an express provision in Special law or in local law, prescribing the limitation for any suit or appeal or application, such shall apply for prescription of such period. However, the provisions contained in Sections 4 to 24 would apply to the extent unless they are expressly excluded by such Special law. That means that if the Limitation Act provided for a particular period during which the application has to be made to any Tribunal or any authority, such period would not apply in view of express provision under Section 17(1) of the SARFAESI Act providing for preferring an application within a period of 45 days. However, so far as further application of the Limitation Act is concerned and more particularly from Sections 4 to 24, which includes Section 5 for condonation of delay, such would apply, inasmuch, as there is no express exclusion of the said provisions by the Special law, i.e. SARFAESI Act, 2002. It was further noted that Section 17(1) is silent on the aspect of providing outer period of limitation for filing of the application or for exercise of the discretion for entertainment of the application after expiry of period of 45 days. The result is that the Legislature has not expressed its intention to curtail further exercise of power by the Tribunal for entertaining of the application after expiry of the period of 45 days. Under such circumstances, the provisions of Section 5 would apply to the discretion to be exercised by the Tribunal for entertainment of the application after the period of 45 days, but such discretion has to be exercised taking into consideration the facts and circumstances on the aspect of sufficient cause to condone the delay or not.

49. On the applicability of Section 29(2) to the period of limitation provided by any special or local laws in any proceedings such as suit, appeal or application, different from the period prescribed by the Schedule under the Limitation Act, it has further been noticed therein that Section 29(2) does not make any distinction between the proceedings before a Court or Tribunal for the applicability of Section 29(2) of the Limitation Act. What is required to be found out is whether any special or local law prescribes different period of limitation for any suit, appeal or application. Once the Special law provides a different period of limitation, the consequences laid down by Section 29(2) must follow.

50. The Division Bench has further relied upon the decision

of this Court in Mahesh Harilal Khamar vs. B.N. Narasimhan [1982 GLH 700], wherein the question of applicability of Section 29(2) of the Limitation Act was discussed with reference to the limitation provided in a Special law, viz. Gujarat Agricultural Produce Market Act, 1963. It was held therein that where Special law provides for period of limitation different from that provided by the Limitation Act and once Section 3 of the Limitation Act gets attracted by virtue of Section 29(2) to the proceedings before the concerned authority acting under the Special law which has to enforce the period of limitation, said authority will have to apply the provisions of Section 3 of the Limitation Act to the proceedings presented before it under the provisions of the concerned Special law or the local law, as the case may be. The result is that if the proceeding is initiated beyond the period of limitation provided in the Special law, the concerned authority has to apply Section 3 of the Limitation Act to dismiss the concerned application or appeal, if it is found to be barred by time prescribed in the statute. It was thus held in Mahesh Harilal Khamar (supra), that if the injunction prescribed by Section 3(1) has to operate by virtue of Section 29(2), the said injunction must necessarily bring in its wake all the rest of the provisions of the said Sub-section (1) of Section 3. A further reading of Section 3(1) of the Limitation Act shows that the operation of Section 3 is subject to the provisions contained in Sections 4 to 24 (inclusive).

51. *Consequently, if the provisions of Sections 4 to 24 are made applicable, they would necessarily override and superimpose themselves upon the operation of Section 3(1) of the Limitation Act. It was, thus, held in Mahesh Harilal Khamar (supra) that :-*

"It is trite to say that if section 3 applies to the first respondent acting under Section 27 (5) of the Act then it must follow as a necessary corollary that Section 5 of the Limitation Act would equally apply by virtue of Section 29(2) read with Section 3(1) of the Limitation Act. It cannot be urged for a moment that Section 3(1) of the Limitation Act would apply but Section 5 thereof would not apply to the first respondent's proceedings because he is not a court. While Section 29(2) is attracted the entire machinery of Sections 3 to 24 of the Limitation Act gets imported and would automatically apply to the proceedings before the concerned authority under the given special or local

law has to enforce the period of limitation for any appeal or application before such authority, implicit in the power would be the power to condone the delay which would get imported as part and parcel of the entire machinery of Sections 3 to 24 of the Limitation Act that would apply by virtue of Section 29(2) of the Limitation Act to such proceedings before the concerned authorities acting under the special or local law. This is the logical effect of the applicability of Section 29(2) of the Limitation Act and hence the question whether the concerned authority is a court within the strict meaning of the term as envisaged by the Limitation itself, would necessarily pale into insignificance."

52. *With the above discussion, the contention made by the petitioner (therein) in the Corporation Bank (supra), that Section 5 of the Limitation Act would apply only to the Court and not to the Tribunal or any proceedings before the authority other than the Tribunal, has been turned down by the Division Bench. It was held that Section 5 of the Limitation Act would also apply to the statutory authority under the Special law when it is not expressly barred or prohibited.*

53. *We do not find any justification to form contradictory opinion to the said reasoning of the Division Bench with regard to the applicability of Section 5 of the Limitation Act by reading of Section 29(2), which applies to the proceedings before any Tribunal or any authority under Special law or in local law.*

54. *Further discussion of the Division Bench in Corporation Bank (supra), are on the aspects of the provisions of Securitisation Act read with the provisions of Non Performing Assets Act and the Limitation Act. While holding that Section 5 of the Limitation Act would apply to the proceedings before the DRT under Section 17 of the SARFAESI Act, though original in nature, the Division Bench has referred to the decision of the Bombay High Court in UCO Bank Vs. M/s. Kanji Manji Kothari [2008 SCC Online (Bom) 170]. The observations therein in paragraph '37' are relevant to be extracted hereinunder :-*

"37. Section 17 (1) of the SARFAESI Act, prescribes a period of limitation of just 45 days for filing an application, challenging any of the measures taken by

the secured creditor under Section 13 (4) of the Act. The remedy under Section 17 (1) is virtually a remedy in respect of a right of redemption. Therefore, to hold that Section 5 of the Limitation Act, will not apply to an application under Section 17 (1) would virtually defeat the valuable right of redemption available to a mortgagor. This right of redemption normally gets extinguished after the sale of the property. Therefore the apprehension expressed by the learned counsel for the Bank that the parties may come up with applications after a huge delay and defeat the object of the Act for speedy recovery of dues, may not be well founded for the simple reason that after losing possession of the property under Section 13 (4), a debtor cannot afford to wait for long. If he waits for long, the property may get sold and his rights may get extinguished. Hence the application of Section 5 of the Limitation Act, to proceedings under Section 17 (1) of the SARFAESI Act, would neither defeat the rights of the secured creditor nor cause irreparable hardship to the secured creditor."

55. It has further noted the observations of the Apex Court in *Karnataka State Financial Corporation vs. N. Narasimahaiah* [(2008) 5 SCC 176] in paragraph '39', as under: -

"39. Viewed in the context of the ratio laid down by the Supreme Court extracted above, it could be seen that the right conferred upon the secured creditor under Section 13 (4) of the SARFAESI Act, is a right of recovery. The right conferred upon the debtor or the surety under Section 17 is a right to save one's own property. To hold that the fate of a debtor or surety will be sealed in a period of 45 days from the date of initiation of the measures under Section 13 (4) and that he would be left remediless after the said period on account of non-availability of Section 5 of the Limitation Act, would defeat the right to property. Therefore the Court has to choose an interpretation which would lean in favour of the right to property. If so done, the conclusion is irresistible that Section 5 of the Limitation Act, would apply to applications filed under Section 17 of the SARFAESI Act."

56. The observations in paragraph '14' are further relevant to be extracted herein under :-

"14. As observed earlier, even if the contention of the learned counsel is considered and accepted that it is a Tribunal and not the Court as per the view taken by the Apex Court in the case of Nahar Industrial Enterprises Ltd. (supra), then also in view of the observations made hereinabove, it cannot be accepted that Section 5 of the Limitation Act would not apply to the proceedings under Section 17 of the Securitisation Act before the Debt Recovery Tribunal. The reliance upon the decision of the Apex Court in the case of Consolidated Engineering Enterprises (supra) is ill-founded inasmuch the observations of the Apex Court are to be considered and applied to the facts of that case. If such observation are considered, what is being held by the Apex Court that if there is express period prescribed in the special law, such would apply and not the prescription as provided under the Limitation Act, but the same cannot be read in absolute so as to excluded the applicability of other provisions of the Limitation Act which may apply, more particularly in view of the no express bar provided under the special law. Therefore, such a decision is of no help to the learned counsel for the petitioner."

"14. As observed earlier, section 29 of the Limitation Act makes no distinction for any suit or appeal or application provided by the special or local law. It is true that as observed by the Apex Court in the case of Mardia Chemicals Limited and another Vs. Union of India and others, reported at (2004) 4 SCC 311 = AIR 2004 SC 2371 read with the judgment of the Apex Court in the case of M/s Transcore Vs. Union of India and another reported at AIR 2007 SC 712, the proceedings under section 17 of the Act are not the appellate proceedings and may be termed as the original proceedings, but then also when the special law uses the language of the word "appeal", it cannot be said that the proceedings under section 17 of the Act can be termed as "suit" for the purpose of applicability of the Limitation Act if one goes by the plain and literal meaning of the language used by the Parliament in the Act. Even, if it is considered that literal meaning cannot be accepted and in view of the above referred decisions of the Apex Court in the case of Mardia Chemicals Limited (supra) and M/s Transcore (supra), the proceedings under section 17 of the Act may be termed

as analogous to the proceedings of any suit, then also in our view, as per the language of section 29(2) read with the language used under the special law i.e. the Act in the present case, the distinction as considered by the Calcutta High Court in the case of Akshat Commercial Private Limited (supra) cannot be emphasized. At this stage, we may refer to the decision of the Apex Court in the case of The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma reported at AIR 1977 SC 282 wherein the Apex Court had an occasion to consider applicability of the provisions of the Limitation Act in light of the provisions of section 16(3) of the Indian Telegraph Act enabling the owner or occupier of the property to demand compensation by preferring the petition to the District Judge. The Apex Court, in the said decision did observe, inter alia, at paragraph 18 as under.

“....But it has to be an application to a court for the reason that Sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when Court is closed and extension of prescribed period if applicant or the appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application during such period.”

15. Therefore, even in case where the proceedings were provided by the special law for a petition which may be termed as original in nature rather at par with the suit, the Apex Court did observe for application of sections 4 and 5 of the Limitation Act in respect of the special law i.e. Indian Telegraph Act read with the Indian Electricity Act. Hence, in our view, applicability of the Limitation Act by virtue of section 29(2) of the Limitation Act would not be different merely because if under any special law, the proceedings by way of an appeal or application has been provided which are in the nature of original proceedings."

57. It is further noted that under the RDB Act, whenever any application is made to the Tribunal by the bank or financial institution for recovery of the amount under Section 19, it is to be termed as original proceedings and Section 24 of the RDB Act expressly provides for application of the provisions of the Limitation Act. It was held that by virtue of the provisions of Section 17(7) of the

SARFAESI Act, 2002, Section 24 of the RDB Act is imported under the SARFAESI Act. The Parliament while applying the provisions of the Limitation Act to the RDB Act, or to the SARFAESI Act, 2002 for the purposes of original proceedings, may be at par with the suit proceedings, made no distinction for applicability of any of the provisions of the Limitation Act. Rather, it has consciously applied the provisions of the Limitation Act by express provisions of Section 24 of the RDB Act, which as per the Division Bench are to apply to the proceedings under Section 17 of the SARFAESI Act, by virtue of the provisions of Section 17(7) of the said Act. It was, thus, finally concluded on consideration of the above aspects of the matter that Section 5 of the Limitation Act, as are applicable, confers power on the DRT to condone the delay in the proceedings under Section 17(1) of the SARFAESI Act. In other words, Section 5 of the Limitation Act would be applicable to the proceedings under Section 17(1) of the Act for the purpose of condonation of delay in making the application by a borrower.

58. We do not find any good ground in the submissions made by the learned senior counsel for the appellant to assail the reasoning given by the learned Single Judge based on the above discussed decision of the Division Bench with regard to the application of Section 5 of the Limitation Act to the proceedings under Section 17(1) of the SARFAESI Act, 2002. However, it goes without saying that while dealing with the application for condonation of delay, the DRT has to be conscious of the scheme of the SARFAESI Act, 2002. It must bear in mind the object and purpose of the SARFAESI Act, 2002, enacted to expedite the recovery of secured debt by the banks and financial institutions and should not allow any person to procrastinate the proceedings by making frivolous application for condonation of delay.

59. Coming to the contention of the learned senior counsel for the appellant on the decision of the Apex Court in International Asset Reconstruction Co. Of India Ltd. (supra), and the observations in the case of Baleshwar Dayal Jaishwal (supra), we may note that in Baleshwar Dayal Jaishwal (supra), the specific question was about the power of the Appellate Tribunal to condone the delay in filing appeal under Section 18(1) of the Act. The Apex Court while answering the said question in affirmative has compared the provisions of the RDB Act and SARFAESI Act,

2002 and by reading Section 18(2) of the SARFAESI Act, 2002, it was held that by virtue of Section 18(2), the provisions of RDB Act stand incorporated into the SARFAESI Act. It was observed that the RDB Act and SARFAESI are complementary to each other and the proviso to Section 20 (3) of the RDB Act is applicable to the proceedings before the appellate tribunal under Section 18 by virtue of Section 18(2) of the SARFAESI Act, 2002. While saying so, though there is an observation that even if the power of condonation of delay by virtue of Section 29(2) of the Limitation Act were held to be inapplicable, unless the scheme of the statute expressly excludes the power of condonation, there is no reason to deny such power to an appellate tribunal when the statutory scheme so warrants.

This observation of the Apex Court in *Baleshwar Dayal Jaishwal (supra)* cannot be read to hold that the Apex Court has decided the question of applicability of Section 29(2) of the Limitation Act in the proceedings under the SARFAESI Act, 2002. The further observations made by the Apex Court on the applicability of Section 29(2) of the Limitation Act are not to be taken as a binding precedent for the observations made in paragraph '13', as under:-

"13..... We are of the view that for purposes of decision of these appeals, it is not necessary to decide the question whether the Tribunal under the Banking statutes in question was court for purposes of Section 29(2) of the Limitation Act."

61. The observations in paragraph '14' therein [*Baleshwar Dayal Jaishwal (supra)*] that "the provisions of the Limitation Act having been expressly incorporated under the special statutes in question, Section 29(2) stands impliedly excluded" is with reference to the power of condonation of delay with the Appellate Tribunal under Section 18(2) of the SARFAESI Act, which was decided in a different context by reading of the proviso to Section 20(3) of the RDB Act.

62. In view of the above detailed discussion with regard to the applicability of the provisions of Section 29(2) of the Limitation Act, in the proceedings before the statutory authority under a Special law or local law, we are of the considered opinion that the observations made by the Apex Court in *Baleshwar Dayal Jaishwal (supra)* with regard to the applicability of Section 29(2) of the Limitation Act do

not hold any contrary view on the specific question about the applicability of Section 5 of the Limitation Act by virtue of Section 29(2) thereof, in the proceedings under Section 17 of the SARFAESI Act, 2002.

63. We, therefore, do not find any substance in the submission of Mr. Shalin Mehta, learned senior counsel appearing for the appellant with regard to the applicability of Section 5 of the Limitation Act based on the aforesaid observations.”

10. In view of the aforesaid, this Court is of the firm opinion that the order impugned passed by the Tribunal is not tenable in eye of law being contrary to the decision of the Division Bench of this Court in the case of **Aditya Birla Finance Ltd.** (supra).

11. Accordingly, the petition deserves to be allowed and is hereby allowed. The impugned order dated 2.2.2024 is hereby quashed and set aside. The Tribunal is hereby directed to decide the condonation of delay application afresh, keeping in mind the provisions of law and the decision of the Division Bench of this Court in the case of in view of decision of the Division Bench in the case of **Aditya Birla Finance Ltd.** (supra).

(NIRAL R. MEHTA,J)

V.J. SATWARA

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: VIPUL JASWANTBHAI SATWARA(HC00170), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 30/06/2025 13:58:02