102

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-20243-2025 (O&M)
RESERVED ON: 02.08.2025
DATE OF PRONOUNCEMENT: 12.09.2025

M/S FAIR STYLE EMBROIDERY WORKS AND ANOTHER

…….Petitioners

Vs

DEBTS RECOVERY TRIBUNAL III, CHANDIGARH & OTHERS
……..Respondents

(2)
CWP-16232-2025 (O&M)
RESERVED ON: 02.08.2025
DATE OF PRONOUNCEMENT:12.09.2025

HARSIMRAN SINGH AND ANOTHER

…….Petitioners

Vs.

DEBTS RECOVERY TRIBUNAL-III, CHANDIGARH AND OTHERS.

…….Respondents.

CORAM : HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV BERRY, JUDGE

Present:- Mr. Rohit Suri, Advocate (Arguing Counsel)
Mr. Sandeep Suri, Advocate,
Ms. Tanu Sidhu, Advocate,
Mr. Karan Gaba, Advocate, and
Mr. Kartiv Goyal, Advocate for the petitioners.

Mr. Rajiv Joshi, Advocate (Arguing Counsel),
Ms. Deepika Mittal, Advocate, for the respondents-Bank.

* * * *

<u>SHEEL NAGU, CHIEF JUSTICE</u>

1. Both these petitions, bearing CWP No. 20243 of 2025 and CWP 16232 of 2025, involve a common question of law, and, therefore, are decided by the instant common order.

2. In both these petitions, the question of law involved is as follows:-

I. Whether the provisions of the Limitation Act are applicable to an application filed u/s 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act for brevity) ?

3. Both these petitions have been filed by petitioners-borrowers, who have defaulted in the repayment of loan, leading to initiation of SARFAESI proceedings, which were challenged by the petitioners-borrowers in the jurisdictional Debts Recovery Tribunal by way of S.A. No. 458 of 2024 titled as "Samriti Dang Vs. Indian Bank and others" and S.A. No. 456 of 2025 titled as "Harsimran Singh and another Vs. Indian Bank and others", which came to be dismissed by orders dated 12.06.2025 and 19.05.2025, respectively, on the ground of having been filed beyond the period of limitation of 45 days prescribed u/s 17 of SARFAESI Act.

4. For the sake of convenience and ready reference, it would be appropriate to reproduce the relevant statutory provisions, involved in the process of adjudication of the dispute involved, as follows:-

***** ***Section 17 The Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002***

"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. (1) of Section 17.]

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

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

(b) where the secured asset is located; or

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

[*(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.*

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

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

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

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

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

[*(4A) Where-*

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

(a) has expired or stood determined; or

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

(c) is contrary to terms of mortgage; or

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

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

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

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

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

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

**** Section 37 of the SARFAESI Act***

Application of other laws not barred.

"The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."

*** Section 24 of the Recovery of Debts and Bankruptcy Act, 1993**

"Limitation-The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to an application made to a Tribunal."

5. From a bare perusal of the aforesaid statutory provisions, in particular Section 17(1), it is obvious that while prescribing a period of 45 days for making an application u/s 17 by the borrowers/aggrieved persons, the SARFAESI Act does not prohibit in express terms filing of an application beyond 45 days.

5.1 Further, reference be had to sub-section (7) of Section 17, which vests power with the DRT to dispose of application under Section 17(1) in accordance with the provisions of Recovery of Debts and Bankruptcy Act, 1993 (The Act of 1993 for brevity).

5.2. More so, the SARFAESI Act does not eclipse the provisions of the Act of 1993, which is evident from a plain reading of Section 37, which stipulates that the provisions of SARFAESI Act would be in addition to, and not in derogation of various Acts including the Act of 1993.

5.3 Taking cue from Section 17(7) of SARFAESI Act, Section 24 of Act of 1993 provides that Limitation Act of 1963 shall apply to an application made to Tribunal. Meaning thereby, any application made before the DRT under the Act of 1993 would be amenable to the provisions of Limitation Act, 1963. Thus, a conjoint reading of Section 17(7) of SARFAESI Act and Section 24 of Act of 1993 vividly reveal the statutory intent that an application u/s 17(1) of SARFAESI Act can take advantage of Limitation Act, 1963.

6. More so, it is well settled principle of interpretation of statutes that in the absence of any express provision curtailing the application of Limitation Act, 1963, in any statute (as is the case in SARFAESI Act), the principle of law enshrined in Section 29 of the Limitation Act squarely applies. [***Please See***: ***Superintending Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper and Another Versus Excise and Taxation Officer, Sunder Nagar/ Assessing Authority, (2020) 17 Supreme Court Cases 692*** **(Para No. 14)].**

7. This Court need not enter into the perplexity of adjudication, since the aforesaid issue is no more *res-integra*, in view of the Division Bench decision of this Court in the case of ***M/s Oswal Spinning and Weaving Mills limited and***

others Versus UCO Bank and another, [2019 (1) 193 PLR 6], in which the Coordinate Bench of this Court, considering the issue in detail, held thus;

> *"14. The issue has also been examined by this Court in detail in* ***Surinder Mahajan's*** *case (supra) where the question was whether the period of limitation for filing an application under Section 17 or filing of an appeal under Section 18 of the 2002 Act expressly or impliedly excludes the applicability of the provisions contained in Section 4 to 24 of the Limitation Act to such proceedings. After perusing the decisions rendered by various High Courts and the Supreme Court, it had been concluded that applicability of Limitation Act, 1963 to the proceedings before the DRT under Section 17 of the 2002 Act or under Section 18 of 2002 Act before the Debts Recovery Appellate Tribunal seeking condonation of delay would be maintainable in the following terms:-*
>
> *"Section 2 (l) of the Limitation Act defines a 'suit' for the purposes of Limitation Act. Such suit does not include an appeal and application for the purposes of the said Act. The 'application' in Section 2(b) of the said Act includes a petition for the purposes of the aforesaid Act. The Tribunal is not a Court to which the Limitation Act is applicable. Therefore, the action of the borrower in approaching the Debt Recovery Tribunal under Section 17 of the Act is not a suit as defined in Section 2 (l) of the Limitation Act nor such application is before the Court. It is like original proceedings against an action taken by the secured creditor as observed by Supreme Court in* ***Mardia Chemicals*** *Case (Supra). The right to approach the Debt Recovery Tribunal under Section 17 of the Act arises to the borrower only if the secured creditor takes an action or any of the measures under the Act. The entire process of recovery is vested with a secured creditor under the Act. The only right available with an aggrieved person is to seek recourse to his remedies contemplated under Section 17 of the Act. Thus it is not an original proceeding to be initiated by an aggrieved person to establish one's right. It is more akin to the objections filed to the action taken by the secured creditor, who is not only the beneficiary and also adjudicator to the large extent except to the rights of an aggrieved person under Section 17 of the Act. The right to approach the Tribunal arises on the initiation of proceedings by the secured creditor against the borrower or any aggrieved person.*

Therefore, though an application is to be filed by an aggrieved person including a borrower, but such application is an objection petition to the action taken by the secured creditor.

Though sub-sections (5) & (6) of Section 17 of the Act, prescribes the period for a decision on an application filed in terms of Section 17 of the Act, but sub-section (7) contemplates that the Debt Recovery Tribunal shall dispose of the application filed in accordance with the provisions of the 1993 Act and the Rules made there under, save as otherwise provided under the Act. Similar provision is in respect of appellate proceedings contained in sub-section (2) of Section 18 of the Act. The right has been given to any person including borrower to invoke the jurisdiction of the Debt Recovery Tribunal in the matter within 45 days from the date on which such measures had been taken under sub-section (1) of Section 17. Section 37 of the Act contemplates that provisions of the Act or the Rules made there under are in addition to, and not in derogation of 1993 Act including some other Statutes.

There is no express exclusion of Sections 4 to 24 of the Limitation Act to the proceedings before the Debt Recovery Tribunal analogous to the provisions of the Arbitration and Conciliation Act, 1996, subject matter of consideration in ***Popular Construction Co.*** *Case (Supra). Even though the proceedings before the Debt Recovery Tribunal are time bound, a directory provision, but such provisions will come into play only if the petition is filed before the Debt Recovery Tribunal.*

Sub-section (7) of Section 17and/or sub-section (2) of Section 18 of the Act contemplate that the application shall be disposed of in terms of 1993 Act.

In the present set of cases, the right given to the secured creditor under the Act is not a complete code. The right given to the secured creditor under the Act is in addition to the rights conferred on the secured creditor in terms of Section 37 of the Act. Such right is in addition to many statutes including the 1993 Act. In fact, Sections 17(7) and 18(2) of the Act, prescribes the procedure before the Tribunal as that under the 1993 Act. The Limitation Act is extended to the proceedings under the said Act, while treating an application to be filed under Section 19 of the said Act as a suit. Therefore, the inference that the limitation Act stands excluded *in respect of the proceedings under the Act is not permissible to be drawn.*

Therefore, in the absence of any provision under the Act excluding the applicability of the Limitation Act to the proceedings before the Debt Recovery Tribunal under Section 17 or before the Debt Recovery Appellate Tribunal under Section 18 of the Act, an application for condonation of delay would be maintainable before the Tribunal and the Appellate Tribunal. Therefore, we respectfully agree with the view of the Andhra Pradesh and Bombay High Court and unable to agree with the view expressed by Calcutta High Court.

In view of the above, we hold that:

(i) The remedy provided to any person including a borrower under Section 17 of the Act is in response to the actions and measures taken by the secured creditor through an application which is in the nature of objections to the action taken by the secured creditor.

(ii) The provisions of Sections 4 to 24 of the Limitation Act are applicable to the proceedings to be initiated by any person aggrieved including a borrower before the Debt Recovery Tribunal under Section 17 of the Act.

(iii) The provisions of Sections 4 to 24 of the Limitation Act are applicable to an appeal to be preferred against an order passed by the Debt Recovery Tribunal before the Debt Recovery Appellate Tribunal under Section 18 of the Act.

(iv) Whether sufficient cause is disclosed to seek condonation of delay, is a question of fact to be determined by the Debt Recovery Tribunal and/or the Debt Recovery Appellate Tribunal in the facts of each case."

15. In all fairness to learned counsels for the Bank, we refer to the judgments relied upon by them. Support was drawn by them from the decisions in ***Om Parkash vs. Ashwani Kumar Bassi,*** *AIR 2010 SC 3791;* ***Ashwani Kumar Gupta vs. Siripal Jain,*** *1998(2) RCR 222;* ***Prakash H.Jain vs. Marie Fernandes,*** *(2003) 8 SCC 431; AIR 2003 SC 459 and* ***Officer on Special Duty vs. Shah Mari Lal****, 1996 AIR SCW 941. Suffice it to notice that the principle of law enunciated therein is unquestionable but none of them relates to the provisions of 2002 Act or 1993 Act. Thus, no benefit can be derived by them from these pronouncements.*

16. Further, it may be noticed that the Calcutta High Court in ***Akshat Commercial Pvt. Ltd. and another vs. Kalpana Chakraborty and others,*** *AIR 2010 Calcutta 138, differed with the judgment of Bombay High Court in **UCO Bank's** case (supra) and held that Section 5 of the Limitation Act, 1963 does not apply to proceedings although the other relevant rovisions of the Limitation Act, 1963 may apply. It was observed as under:*

> *"22. On the same analogy, the proceedings under Section 17(1) should also be treated as a suit and thus, Section 5 of the Limitation Act at least does not apply to such proceedings although other relevant provisions of the said Act may apply.*

*The Calcutta High Court is the sole High Court taking different view in **Akshat Commercial Pvt. Ltd.** case (supra) that the Limitation Act is not applicable in respect of proceedings under Section 17 of the 2002 Act. With due respect, we are unable to subscribe to the aforesaid opinion of the Calcutta High Court.*

*17. The DRT relying upon the decision of the Apex Court in **International Assets and Reconstruction of India Limited's case** (supra), dismissed the SA on the ground that it does not have the jurisdiction to condone the delay. The judgment in **Industrial Assets and Reconstruction of India Limited's** case (supra) is not applicable to the facts of the present case. Therein, the Apex Court was dealing with the issue of the competence of Tribunal in condoning the delay while adjudicating the appeal filed against an order passed by the recovery officer before the presiding officer under Section 30 of the 1993 Act. The Apex Court held that since there was no provision for condonation of delay under Section 30 of the 1993 Act, the presiding officer/Tribunal would not be competent to condone the delay in an appeal preferred against the order of the recovery officer. The said decision has been wrongly applied by the DRT to an application filed under Section 17 of the 2002 Act. The provisions of Section 30 of the 1993 Act do not contain any power to condone delay in filing the appeal against the order of the Recovery Officer whereas by virtue of Section 17(7) of the 2002 Act read with Section 24 of the 1993 Act, the DRT would have jurisdiction to condone the delay in filing an application under Section 17 of the 2002 Act.*

18. From the discussion and reading of the judicial pronouncements as quoted above, the inevitable conclusion is that Section 17(1) of the 2002 Act is virtually a remedy in respect of a right of redemption. Hence the *application of Section 5 of the Limitation Act, 1963 to proceedings under Section 17(1) of the 2002 Act would neither defeat the rights nor cause irreparable hardship to the secured creditor. The provisions of the Limitation Act, 1963 are applicable to the proceedings under Section 17 of 2002 Act before the DRT in view of Section 24 of the 1993 Act and therefore, the provisions of section 5 of the Limitation Act, 1963 are applicable to the provisions of the said Act. Further, 2002 Act does not expressly exclude the application of the provisions of the Limitation Act, 1963.*

19. Accordingly, all the petitions are allowed. The impugned orders passed by the DRT dismissing the application under section 17 of the 2002 Act on the ground that the Debt Recovery Tribunal does not have the power to condone the delay, are quashed. The matter is remitted back to the DRT to decide the application for condonation of delay afresh on merits in accordance with the observations made hereinbefore".

8. Before parting, this Court deems it appropriate to deal with various judicial pronouncements, relied upon by the jurisdictional DRT for rendering the impugned orders. The said judicial verdicts relied upon by DRT were as follows:-

(i) ***Mardia Chemicals Limited and others Vs. Union of India and others, (2004) 4 SCC 311;***

(ii) ***Gopal Sardar Vs. Karuna Sardar, (2004) 4 SCC 252;***

(iii) ***M/s Transcore Vs. Union of India and another, 2008 (11) SCC 125;***

(iv) ***Bank of Baroda and another Vs. M/s Parasaadilal Tursiram Sheeetgarh Pvt. Ltd and others, AIR 2022 Supreme Court 3803;***

(v) ***Baleshwar Dayal Jaiswal Vs. Bank of India and others, 2016 (1) SCC 444;***

(vi) ***Akshat Commercial Pvt. Ltd. and another Vs. Kalpana Chakraborty and others, AIR 2010 Cal 138 (Calcutta High Court);***

(vii) ***M/s Velar Engineering Works Pvt. Ltd. Kancheepuram Vs. Authorized Officer/Chief Manager, Indian Bank, Circle Office Kanchipuram, AIR Online 2019 Mad 596 (Madras High Court);***

(viii) ***Authorised Officer Indian Bank and others Vs. K.J. Gorge and another, 2020 SCC OnLine Ker 4886 (Kerala High Court)***

9. This Court deems it appropriate to deal with each of the aforesaid judicial pronouncements, one by one :-

(i) ***Mardia Chemicals Limited and others Vs. Union of India and others, (2004) 4 SCC 311;***

10. In the said case, Apex Court was essentially dealing with questions of law, as mentioned in paragraph 33 of the judgment, which is re-produced below :-

> *(i) Whether it is open to challenge the statute on the ground that it was not necessary to enact it in the prevailing background particularly when another statute was already in operation ?*
>
> *(ii) Whether provisions as contained under Sections 13 and 17 of the Act provide adequate and efficacious mechanism to consider and decide the objections/disputes raised by a borrower against the recovery, particularly in view of bar to approach the Civil Court under Section 34 of the Act ?*
>
> *(iii) Whether the remedy available under Section 17 of the Act is illusory for the reason it is available only after the action is taken under Section 13 (4) of the Act and the appeal would be entertainable only on deposit of 75% of the claim raised in the notice of demand?*
>
> *(iv) Whether the terms or existing rights under the contract entered into by two private parties could be amended*

by the provisions of law providing certain powers in one sided manner in favour of one of the parties to the contract?

(v) Whether provisions for sale of the properties without intervention of the Court under section 13 of the Act is akin to the English mortgage and its effect on the scope of the bar of the jurisdiction of the Civil Court?

(vi) Whether the provisions under sections 13 and 17 (2) of the Act are unconstitutional on the basis of the parameters laid down in different decisions of this Court?

(vii) Whether the principle of lender's liability has been absolutely ignored while enacting the Act and its effect?

10.1 Finally, after adjudicating all the aforesaid questions of law, Apex Court answered the issues in following manner :-

"80. Under the Act in consideration, we find that before taking action a notice of 60 days in required to be given and after the measures under section 13 (4) of the Act have been taken, a mechanism has been provided under section 17 of the Act to approach the Debt Recovery Tribunal. The above noted provisions are for the purposes of giving some reasonable protection to the borrower. Viewing the matter in the above perspective, we find what emerges from different provisions of the Act, is as follows :

1. Under Sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceeding to take any of the measures as provided under Sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, *however, brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information/knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal under Section 17 of the Act, at that stage.*

2. As already discussed earlier, on measures having been taken under Sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open to the borrower to file an appeal (petition) under Section 17 of the Act before the Debt Recovery Tribunal.

3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition as it may deem fit and proper to impose.

4. In view of the discussion already held on this behalf, we find that the requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in Civil Court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the Court."

From the above, it is obvious that interference by Apex Court qua the question of legality and validity of SARFAESI Act was to the limited extent of striking down

Section 17 (2), which obliged the aggrieved person availing remedy under Section 17 to deposit 75% of amount claimed. Besides, Apex Court also held the non-grant of opportunity u/s 13 of SARFAESI Act before taking coercive measures u/s 13 (4), to be ultra vires. Accordingly, SARFAESI Act was amended by incorporating Section 13 (3A) with effect from 11.11.2024, and by deleting the provision of pre-deposit of 75% of amount claimed for entertaining an application under Section 17.

10.2 Thus, from the aforesaid, it is evident that the question as to whether the provisions of Limitation Act are applicable to an application under Section 17 of SARFAESI Act after 45 days, was neither involved and thus not decided in the said ***Mardia Chemicals Ltd.'s case*** (supra).

(ii) ***Gopal Sardar Vs. Karuna Sardar, (2004) 4 SCC 252;***

11. Apex Court, in the said case, was dealing with applicability of Section 5 of Limitation Act to an application under Section 8 of West Bengal Land Reforms Act, 1955. Section 8 essentially relates to the right of pre-emption by co-sharer and contiguous tenant. After considering the object of West Bengal Land Reforms Act, 1955 and the concept of pre-emption, Apex Court held that Section 5 of the Limitation Act cannot be pressed into service in aid of a belated applicable made under Section 8 of the said Act, for the reason that right of pre-emption conferred under Section 8 is a statutory right, besides being weak, it has to be exercised strictly in terms of the said section and consideration of equity has no place.

11.1 The said finding was recorded by Apex Court in ***Gopal Sardar's case*** (supra) by relying upon ***Hukumdev Narain Yadav Vs. Lalit Narain Mishra, (1974) 2 SCC 133; CST Vs. Parson Tools and Plants, (1975) 4 SCC 22;*** and

Anwari Basavaraj Patil Vs. Siddaramaiah, (1993) 1 SCC 636. By relying upon these earlier judgments, Apex Court held that the expression "expressly excluded" used in Section 29 (2) of Limitation Act is not restricted to a textual exclusion in the special statute, but an inferential exclusion also, after assessing the object behind special statute and the malady, which the statute was promulgated to eliminate.

11.2 Since the object behind SARFAESI Act and the purpose, for which it was promulgated, are at variance to the purpose and object of West Bengal Land Reforms Act, 1955, the said decision in ***Gopal Sardar's case*** (supra) though ostensibly appearing relevant to the present controversy, in actuality is not.

(iii) ***M/s Transcore Vs. Union of India and another, 2008 (11) SCC 125;***

12. Apex Court, in the said case, was dealing with inter-play between the Recovery of Debts and Bankruptcy Act, 1993 and SARFAESI Act, and the question posed and decided by Apex Court is evident from paragraph 1 of the said judgment, which is re-produced below :-

> *"A short question of public importance arises for determination, namely, whether withdrawal of O.A. in terms of the first proviso to Section 19 (1) of the DRT Act, 1993 (inserted by the amending Act No. 30 of 2004) is a condition precedent to taking recourse to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("NPA Act" for short)."*

Further, in paragraph 8 of the judgment in ***M/s Transcore's case*** (supra), Apex Court delineated the points for determination in the following manner :

> *(i) Whether the banks or financial institutions having elected to seek their remedy in terms of DRT Act, 1993 can still invoke the NPA*

Act, 2002 for realizing the secured assets without withdrawing or abandoning the O.A filed before the DRT under the DRT Act.

(ii) Whether recourse to take possession of the secured assets of the borrower in terms of Section 13 (4) of the NPA Act comprehends the power to take actual possession of the immovable property.

(iii) Whether ad valorem court fee prescribed under Rule 7 of the DRT (Procedure) Rules, 1993 is payable on an application under Section 17 (1) of the NPA Act in the absence of any rule framed under the said Act.

12.1 After adjudication on aforesaid issues, answer to each of aforesaid three questions was given in affirmative, which is evident from paragraph 13 of the judgment, which is re-produced below for ready reference and convenience:-

"13. Accordingly, we answer the above three questions in the affirmative that is in favour of the banks/FIs (secured creditors) and, accordingly, the borrower's appeal/I.A. in this Court stands dismissed whereas the appeal/I.A. filed by the banks/FIs stands allowed with no order as to costs."

12.2 Accordingly, it is obvious that said decision in ***M/s Transcore's case*** (supra) did not deal with issue involved in the present petitions. Therefore, the said decision is distinguishable on facts.

(iv) ***Bank of Baroda and another Vs. M/s Parasaadilal Tursiram Sheeetgarh Pvt. Ltd and others, AIR 2022 Supreme Court 3803;***

13. Apex Court, in the said case, was faced with legality and validity of an interlocutory order of stay passed by the High Court of Judicature at Allahabad, Lucknow Bench, in a pending writ petition which was filed against an order passed in appeal by DRAT. Before the DRAT the subject was dismissal by the DRT, filed u/s 17 of SARFAESI Act which in turn assailed the sale certificate issued in favour of auction purchaser.

13.1 Though in ***Bank of Baroda's*** case (supra), while contemplating on the reason for providing time limit of 45 days for filing an application u/s 17 of SARFAESI Act, a reference has been made to earlier decision of ***M/s Transcore's case*** (supra). But the question involved in Bank of Baroda (Supra) before Apex Court is elicited from the contents of paragraph 11 of the judgment, which is re-produced below for ready reference and convenience :-

> *"11. We are only concerned with the limited question as to whether the High Court was justified in passing the interim order as extracted herein above. This is a case where the Company, with its own independent identity, is contesting the proceedings. It is apparent that the Directors were also contesting the matter by filing the Section 17 application. Even the legal representatives of one of the deceased Directors were party to the application under Section 17. Further, DRAT came to the conclusion that the original order passed by the DRT has been arrived at after a detailed consideration and that there is no justifiable ground for invoking the review jurisdiction. For granting or refusing to grant an interim order, the above referred facts were more than sufficient."*

13.2 As such, Apex Court was essentially dealing with legality and validity of an interim order passed by the High Court of Judicature at Allahabad, Lucknow Bench, and while doing so, a passing reference was made to the object behind prescribing 45 days' time limit for filing an application under Section 17 of SARFAESI Act and for the said purpose, decision of ***M/s Transcore's case*** (supra) was relied upon.

13.3 This Court has already found that ***M/s Transcore*** (supra) related to factual scenario, which are distinct and diverse to the facts prevailing in the instant case.

13.4 Thus, with utmost humility at our command, decision in ***Bank of Baroda's*** case (supra) may not be helpful to resolve the controversy involved herein.

13.5 The entire issue deserves to be looked at from different angles. The Act of 1993 was promulgated to resolve the stalemate created by locking up of huge amount of public money, to the tune of Rs.5622 Crores payable to the Public Sector Banks and Rs.391 Crores payable to the Financial Institutions, as on 30.09.1990. A mechanism was, thus, sought to be devised in shape of the aforesaid Act of 1993, which came into force on 24.06.1993.

13.6 The Act of 1993 defined 'application' u/s 2(b) to mean an application made to Debts Recovery Tribunal (DRT). Section 19 of Act of 1993 bestowed right upon Banks and Financial Institutions to prefer an application (known as Original Application i.e. O.A.) to recover any debt from any person subject to pecuniary and territorial jurisdictions prescribed in Act of 1993.

13.7 Due to various reasons, the Act of 1993 failed to fully achieve the objective for which it was promulgated, thereby compelling the legislature to promulgate SARFAESI Act.

13.8 Proviso to Section 19 (1) in Act of 1993 was incorporated on 11.11.2004 after coming into effect of SARFAESI Act to give option to a Bank/Financial Institution to withdraw an O.A. filed u/s 19(1) of the Act of 1993 and to proceed and adopt the shorter method of enforcement of security interest under the SARFAESI Act, provided no such action had been taken earlier under SARFAESI Act.

13.9 Section 24 of the Act of 1993 extends the application of Limitation Act, 1963, to an application made to the DRT u/s 19 (1) of the Act of 1993.

13.10 From Section 24 of the Act of 1993, it is obvious that the provisions of Limitation Act, 1963 are available for the Banks/Financial Institutions, to be availed, while pursuing an O.A. u/s 19(1) of the Act of 1993. Moreso, the Bank/Financial Institutions have been extended liberty to withdraw an O.A. filed under Section 19(1) of the Act of 1993 to pursue the shorter and quicker remedy under SARFAESI Act, provided the same has not been availed earlier.

13.11 Coming to the SARFAESI Act, we find that Section 17 extends liberty to a person including borrower, who is aggrieved by any of the measures referred to in Section 13(4) of SARFAESI Act, taken by the secured creditors, to make an application to the DRT, within 45 days from the date on which such measures were taken.

13.12 Section 35 of SARFAESI Act is the overriding provision, which provides that the provisions of SARFAESI Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

13.13 A similar provision is contained u/s 34 of Act of 1993, which provides overriding effect to the Act of 1993 over any other law for the time being in force. Meaning thereby that even if there is anything inconsistent between the provisions of SARFAESI Act and the Act of 1993, both would prevail and operate in their respective spheres. So far as the provision of Limitation Act, 1963 is concerned, the same is made available, by virtue of Section 24 of Act of 1993 to any O.A. filed by the Bank/Financial Institution u/s 19(1) of the Act of 1993.

13.14 Pertinently, bare reading of Section 17 (7) of SARFAESI Act mandates that, as far as may be, an application u/s 17 (1) of SARFAESI Act shall be considered and decided in terms of procedure stipulated in Act of 1993. Since Act of 1993 u/s 24 apply the provisions of Limitation Act to an application under Act of 1993, the application of Limitation Act can very well be borrowed while considering the maintainability of application u/s 17 (1) of SARFAESI Act filed after 45 days. Thus, a conjoint reading of Section 17 (7) of SARFAESI Act, Section 24 of Act of 1993, first proviso to Section 19 (1) of Act of 1993, the absence of any inconsistency between Act of 1993 and SARFAESI Act, and the ratio laid down in ***Superintending Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper and Another Versus Excise and Taxation Officer, Sunder Nagar/ Assessing Authority, (2020) 17 Supreme Court Cases 692,*** (**Para No. 14**)] and ***M/s Oswal Spinning and Weaving Mills limited and others Versus UCO Bank and another, [2019 (1) 193 PLR 6],*** makes it amply clear that Limitation Act, 1963 is applicable while deciding the maintainability of an application u/s 17 (1) of SARFAESI Act.

13.15 As explained above, there is no express bar in the SARFAESI Act against the application of the provisions of Limitation Act, 1963. Thus, the SARFAESI Act does not expressly exclude the application of Limitation Act. As such, by applying the statutory principles of Section 29(2) of the Limitation Act, 1963, the beneficial provisions of Limitation Act, 1963, can be availed by the aggrieved person including borrower in an application filed u/s 17 of the SARFAESI Act.

13.16 However, another obstacle which come in way of the petitioner/borrower/aggrieved person to avail the benefit under the Limitation Act for an application u/s 17 of SARFAESI Act, is the passing references made by various judgments of different High Courts to the effect that an application u/s 17 of SARFAESI Act, is akin to a civil suit, and, therefore, the benefit of Section 5 of the Limitation Act, 1963 is not available.

13.17 This Court draws inspiration from the decision of Coordinate Bench of this Court in the case of **M/s Oswal (supra)** and also that the SARFAESI Act being the new 'Avtar' of the Act of 1993, which was promulgated to remedy the maladies of Act of 1993, and holds that the benefit available under the Act of 1993 of application of Limitation Act, 1963 to O.As. filed u/s 19 of Act of 1993, would certainly be available to an application u/s 17 of the SARFAESI Act. This Court is bolstered in its view by the doctrine contained in Section 29 (2) of Limitation Act, 1963, read with the law laid down by the Apex Court in ***Superintending Engineer's case (Supra) [Para No. 14].***

14. Another way to look at the issue herein is that, in an O.A. preferred u/s 19 of the Act of 1993, the provisions of Limitation Act, 1963 are applicable. An O.A. filed u/s 19 is the first attempt of the Banks/Financial Institutions to recover the outstanding dues of loan amount in any court of law. Similar is the situation of an application u/s 17 of the SARFAESI Act, where the aggrieved person including the borrower assails the recourses taken by the Banks/Financial Institutions u/s 13(4) of SARFAESI Act. Thus, for all practical purposes, the statutory remedy made available u/s 19 of the Act of 1993 to the Banks/Financial Institutions and on the other hand, the remedy u/s 17 of SARFAESI Act to the aggrieved person including the borrower, approaches the Court/Tribunal as a court of first instance. Thus, the remedy of limitation Act 1963 if available to the Banks/Financial Institutions u/s 19 of the Act of 1993 should also be available to an applicant/aggrieved person, including the borrower u/s 17 of the SARFAESI Act.

15. In the conspectus of above discussion, we hold that the provisions of Limitation Act, 1963 are available to the DRT, while dealing with an application under Section 17(1) filed after the prescribed period of 45 days, provided the same is accompanied by an application u/s 5 of Limitation Act, 1963.

16. Consequently, the impugned order dated 12.06.2025 passed by DRT in S.A. No. 458 of 2024, as well as the order dated 19.05.2025 passed in S.A. No. 456 of 2024, are hereby set-aside, with further directions to the DRT to afford an opportunity to the petitioners herein to file an application (if not filed already), seeking condonation of delay u/s 5 of Limitation Act, 1963 and thereafter consider the same in its right perspective and in accordance with law and if the cause of delay shown is found to be bona fide and justified, then S.A.(s) in question be dealt with on merits.

17. Both the petitions stand allowed.

18. All pending Civil Miscellaneous application(s), if any, also stand disposed of.

(SHEEL NAGU)
CHIEF JUSTICE

(SANJIV BERRY)
JUDGE

12.09.2025
Kamal Gandhi

Whether speaking/reasoned Yes/No
Whether reportable Yes/No