

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

FRIDAY, THE 28TH DAY OF JUNE 2013/7TH ASHADHA, 1935

WP(C).No. 16071 of 2013 (H)

AGAINST THE ORDER IN AIR (SA) 384/2013 of DEBT RECOVERY
APPELLATE TRIBUNAL, CHENNAI DATED 12.6.2013

PETITIONER(S):

1. M.SHABEER,
PROPRIETOR, MANGULAM PARK, MANGULAM HOUSE
PRIYADARSINI LANE, MUTTADA, THIRUVANANTHAPURAM
2. SHANAZ SHABEER,
S/O M. SHABEER, MANGULAM PARK, MANGULAM HOUSE
PRIYADARSINI LANE, MUTTADA, THIRUVANANTHAPURAM
3. SHADIL SHABEER,
S/O M. SHABEER, MANGULAM PARK, MANGULAM HOUSE
PRIYADARSINI LANE, MUTTADA, THIRUVANANTHAPURAM

BY ADVS.SRI.ANIL SIVARAMAN
SMT.RAJI VINCENT

RESPONDENT(S):

1. UNION BANK OF INDIA,
UNION BANK BHAVAN, M.G ROAD, STATUE
THIRUVANANTHAPURAM 695001
(REPRESENTED BY ITS AUTHORISED OFFICER)
2. THE DEBT RECOVERY TRIBUNAL,
ERNAKULAM, 5TH FLOOR, KHSB BUILDING
MANORAMA JUNCTION, ERNAKULAM 682016
3. THE DEBT RECOVERY APPELLATE TRIBUNAL,
4TH FLOOR, INDIAN BANK BUILDING, ETHIRAJ SALAI
EGMORE, CHENNAI 600001
4. THE UNION OF INDIA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
LAW DEPARTMENT, GOVERNMENT SECRETARIAT
NEW DELHI 110001

R1 BY ADV. SRI.A.V.THOMAS (SR.)
R1 BY ADV. SMT.M.M.JASMIN
R1 BY ADV. SRI.NIDHI SAM JOHNS
R BY SRI.P.PARAMESWARAN NAIR, ASG OF INDIA
R BY SRI.A.S.P.KURUP, SC, UBI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
28-06-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 16071 of 2013 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1	TRUE COPY OF THE NOTICE DATED 01-07-2009
EXHIBIT P2	TRUE COPY OF THE POSSESSION NOTICE DATED 14-05-2010
EXHIBIT P3	TRUE COPY OF THE CERTIFICATE
EXHIBIT P4	TRUE COPY OF THE ORDER IN IA 334/2012 IN SA 98/2012 DATED 31-01-2012
EXHIBIT P5	TRUE COPY OF THE ORDER DATED 25-03-2013 IN IA 1001/2013 IN SA 98/2012
EXHIBIT P6	TRUE COPY OF IA 491/13 IN AIR (SA) 384/13
EXHIBIT P7	TRUE COPY OF THE JUDGMENT DATED 28-08-2012 IN WPC NO 15386/12 & CONNECTED CASES
EXHIBIT P8	TRUE COPY OF THE ORDER DATED 12-06-2013 IN IA 491/2013 IN AIR (SA) 384/2013

//TRUE COPY//

P.S. TO JUDGE.

V.CHITAMBARESH, J.

W.P (C) No.16071 of 2013

Dated this the 28th day of June, 2013

J U D G M E N T

Section 18(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('the SARFAESI Act' for short) enables the appellate tribunal to dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Rules made thereunder. Section 20(3) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 provides a period of 45 days for an appeal to be preferred to the Tribunal reckoned from the date on which a copy of the order made or deemed to have been made by the Tribunal is received by the applicant. Section 24 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 further clarifies that the provisions of the Limitation Act, 1963 shall as far as may be applied to an application made to a Debts Recovery Tribunal.

2. The Debts Recovery Appellate Tribunal has therefore ample powers to condone the delay in filing an appeal

against the order of the Debts Recovery Tribunal passed on an application under Section 17 of the SARFAESI Act. This Court has in **Jayan v. Hong Kong and Shanghai Banking Corporation Ltd.** [2009 (2) KLT 1014] held that the provisions of the Limitation Act can be extended to proceedings under the SARFAESI Act. A Division Bench of Andhra Pradesh High Court has in **Sajida Begum v. State Bank of India, SARC Nampally, Hyderabad** [2012 KHC 2986] held that the Debts Recovery Appellate Tribunal has got powers to condone the delay in filing an appeal against the order of the Debts Recovery Tribunal. I prefer to follow the decisions afore-quoted than Ext.P7 judgment of the High Court of Judicature at Madras in W.P.No.15386/2012 and connected cases.

3. The delay in the instant case is not so inordinate as to refuse condonation and rejection of the appeal in-limine. The Registry of the Debts Recovery Appellate Tribunal has noted that the delay in the instant case is only 12 days and the petitioner justifies the belated approach on account of lack of proper communication of the order. I quash Ext.P8 order passed by the

Debts Recovery Appellate Tribunal, Chennai and direct the appeal itself to be heard on merits within a time frame.

4. This is of course subject to the condition that the petitioner deposits a sum of ₹ 10 lakhs towards the dues within a period of one month from the date of receipt of a copy of this judgment. The amount after payment to the first respondent Bank shall be intimated to the Debts Recovery Appellate Tribunal by the production of the chalan/receipt. The Debts Recovery Appellate Tribunal shall thereupon dispose of AIR (SA) No.384/2013 on its file on merits within a period of four months. Nothing said in this judgment will disable the petitioners from finding out a suitable purchaser in order to liquidate the liability due to the Bank.

The Writ Petition is disposed of.

**V.CHITAMBARESH,
Judge.**

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