

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
AND
THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA
+ Civil Revision Petition No.2320 of 2023

% 26.09.2023

Between:

Chaparala Rajasekhar, S/o Dr.C.babu Rao,
Hindu, aged about 51 years, residing at
D.No.7-17-1, Kirlampudi Layout,
Visakhapatnam-530 017.

... Petitioner

And

ICICI Bank Limited, Visakhapatnam Branch,
Represented by its Authorized Signatory and
Area Solution Manager.

... Respondent

DATE OF JUDGMENT PRONOUNCED: **26.09.2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes/No
3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

DUPPALA VENKATA RAMANA, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**
AND
THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA
+ Civil Revision Petition No.2320 of 2023

% 26.09.2023

Between:

Chaparala Rajasekhar, S/o Dr.C.babu Rao,
Hindu, aged about 51 years, residing at
D.No.7-17-1, Kirlampudi Layout,
Visakhapatnam-530 017.

... Petitioner

And

ICICI Bank Limited, Visakhapatnam Branch,
Represented by its Authorized Signatory and
Area Solution Manager.

... Respondent

! Counsel for Petitioners : Sri P RAJASEKHAR

^ Counsel for Respondents : -----

< Gist:

> Head Note:

? Cases referred:

1. 2008-2-L.W.1103
2. (2017) 16 SCC 137

This Court made the following:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA
Civil Revision Petition No.2320 of 2023

JUDGMENT: *(Per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri P.Raja Sekhar, learned counsel for the petitioner.

2. This civil revision petition under Article 227 of the Constitution of India has been filed for the following relief:-

"...pleased to set aside the order dated 01.08.2023 passed in Diary No 1301 of 2023 (unnumbered MA) in O.A.No.157 of 2009 on me file of Debts Recovery Tribunal, Visaknapatnam and allow the Civil Revision Petition in the interest of justice and pass..."

3. Briefly stated the facts of the case are that, the respondent ICICI Bank Ltd., Visakhapatnam, filed O.A.No.157 of 2009, before the Debts Recovery Tribunal Visakhapatnam (in short the Tribunal) which was allowed against the defendants therein (the present petitioner was defendant No.4) for realization of the amount claimed in O.A., fixing liability of the defendants jointly, severally and personally, and the recovery certificate was issued vide Order of the Tribunal dated 22.03.2018.

4. The petitioner herein, filed Petition Diary No.1301/2023/ unnumbered M.A. in the said O.A. to set aside the Order dated, 22.03.2018 on the ground that it was an *ex-parte* order.

5. The Registry of the Tribunal raised objections to the petition IR (MA) 101 of 2023 that “(1) condone delay petition not filed. (2) This petition is non maintainable without delay petition”.

6. The petitioner represented the same with an endorsement which reads as follows:

“It is submitted that this petition is filed under Sec.22(2)(g) of Recovery of Debts and Bankruptcy Act for which no period of limitation is prescribed. Further, provisions of Limitation Act, do not apply to this petition as held by the Madras High Court in the Judgment reported in 2008(2) Law Weekly (Page 103). The Hon’ble Supreme Court held that the provisions of Limitation Act will apply only to Application filed under Section 19 of the Act to Review Petitions filed under Sec.22(2)(e) of the Act read with Rule 5.A of Debts Recovery (Procedure) Rules, 1993. Hence, this petition is maintainable without a separate petition for condonation of delay. In such cases, the only aspect to be considered is, whether reasonable grounds are set out in the petition to set aside ex-parte order”.

7. The petitioner's endorsement was that the application was filed under Section 22(2)(g) of the Recovery of Debts and Bankruptcy Act (for short "the RDB Act") for which no period of limitation is prescribed. The Limitation Act also did not apply in view of the judgments as mentioned in the endorsement (supra). It was submitted that the petition was maintainable without a separate petition for condonation of delay.

8. The matter was placed before the Tribunal which by Order dated 01.08.2023 dismissed the Petition Diary No.1301 of 2023/unnumbered M.A., finding no merit.

9. Learned counsel for the petitioner while challenging the Order dated 01.08.2023 submits that the application to set aside the *ex-parte* order is maintainable under Section 22(2)(g) of the Act. For filing the said application there is no period of limitation prescribed under the Act. The Limitation Act is also not applicable. Consequently there is no requirement to file any application under Section 5 of the Limitation Act or any application under the RDB Act to condone the delay. He has referred to the provisions of Sections 2, 19, 22(2)(g), and 24 of RDB Act and placed reliance in the Judgment of the Madras High Court in ***M/s.Tamil Nadu Merchantile Bank Limited represented by its Manager, TTK Road Branch Vs M/s***

G.Vijaya Lakshmi¹ and the Judgment of the Hon'ble Supreme Court in ***International Asset Reconstruction Company of India Limited Vs. Official Liquidator²***.

10. He further submits that the Tribunal ought to have first decided the objection with respect to the limitation and the necessity of the application for condonation of delay. It was only thereafter it should have proceeded to decide the application on merits. He submits that the opportunity to argue the matter on the merits of the application was thus denied to the petitioner.

11. We have considered the submissions advanced by the learned counsel for the petitioner and perused the material on record.

12. Now the points for consideration are:

(1) "Whether there is any period of limitation to file application to set aside the ex-parte award of the Tribunal? And Whether Section 24 of the RDB Act applies to an application under Section 22(2)(g) of the Act?"

(2) Whether the petitioner's Petition Diary No.1301/2023/unnumbered M.A. has been dismissed on merits, without affording an opportunity of hearing to the petitioner?"

¹ 2008-2-L.W.1103

² (2017) 16 SCC 137

13. **Point No.1:**

So far as, the first point is concerned, Section 24 of the RDB Act, provides as under:-

“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”.

Section 2(b) of the RDB Act defines ‘application’ as under:-

‘application’ means an application made to a Tribunal under section 19’.

Section 19 of the RDB Act, provides *for an application to the Tribunal with respect to the matters mentioned therein. Here an application under Section 22(2)(g) of the Act has been rejected. This was an application to set aside the ex-parte award passed on an application under Section 19 of the RDB Act.*

14. In ***International Asset Reconstruction Company of India Limited Vs. Official Liquidator***³, the Hon’ble Apex Court held that Section 24 of the RDB Act, manifestly makes the provisions of the Limitation Act applicable only to an original “application” made under Section 19 only. The definition of “application” under Rule 2(b) cannot be extended beyond what

³ (2017) 16 SCC 137

the Act provides for and then make Section 24 of the RDB Act applicable to an appeal under Section 30(1) of the Act. The Hon'ble Apex Court held that any such interpretation shall be completely contrary to the legislative intent.

15. It is apt to refer paras 1, 11 and 13 of ***International Asset Reconstruction Company of India Limited Vs. Official Liquidator***⁴ (supra) as under :

“1. Leave granted. A Common question of Law arising for consideration in both appeals is whether Section 5 of the Limitation Act, 1963(hereinafter referred to as “the Limitation Act”), can be invoked to condone the prescribed period of 30 days, under Section 30(1) of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred as “the RDB Act), for preferring an appeal before the Tribunal, against an order of the Recovery Officer.”

11. An “application” is defined under Section 2(b) of the RDB Act as one made under Section 19 of the Act. The latter provision in Chapter IV deals with institution of original recovery proceedings before a Tribunal. An appeal lies against the order of the Tribunal under Section 20 before the Appellate Tribunal within 45 days, which may be condoned for sufficient cause under the proviso to Section 20(3) of the Act. The Tribunal issues a recovery certificate under Section 19(22) to the Recovery Officer who then proceeds under Chapter V for recovery of the certificate amount in the manner prescribed. A person aggrieved by an order of the Recovery Officer can prefer an appeal before the Tribunal under Rule 4, by an application in the prescribed Form III. Rule 2(c) defines an “application” to include a memo of appeal under Section 30(1). The appeal is to be preferred before the Tribunal, as distinct from the Appellate Tribunal, within 30 days. Section 24 of the RDB Act, therefore, manifestly makes the provisions of the Limitation Act applicable only to such an

⁴ (2017) 16 SCC 137

original “application” made under Section 19 only. The definition of an “application” under Rule 2(c) cannot be extended to read it in conjunction with Section 2(b) of the Act extending the meaning thereof beyond what the Act provides for and then make Section 24 of the RDB Act applicable to an appeal under Section 30(1) of the Act. Any such interpretation shall be completely contrary to the legislative intent, extending the Rules beyond what the Act provides for and limits. Had the intention been otherwise, nothing prevented the legislature from providing so specifically.

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

16. In view of the Law laid down in ***International Asset Reconstruction Company of India Limited Vs. Official Liquidator***⁵ (supra), the application under Section 24 of the RDB Act means ‘original application under Section 19’. An application under Section 22(2)(g) of the RDB Act is not an application under Section 19 of RDB Act.

⁵ (2017) 16 SCC 137

17. In ***M/s.Tamil Nadu Merchantile Bank Limited*** the Madras High Court held that the provisions of the Limitation Act do not apply to application under Section 22(2)(g) of the RDB Act.

18. From the aforesaid legal provisions as also Judgments mentioned above, there is no dispute that the provisions of the Limitation Act are not applicable to any application, except the original application under Section 19 of RBD Act.

19. Learned counsel for the petitioner submitted that once the Limitation Act does not apply there would be no question of filing any application seeking condonation of delay in filing the application under Section 22(2)(g) of the RDB Act. He may be right in his submission but then an application for setting aside the *ex-parte* award/order would not be maintainable at all, after the period for filing such an application under Section 22(2)(g). Then after the expiry of limitation period, no such application would lie even along with application for condonation of delay as Section 5 of the Limitation Act does not apply.

20. The question therefore arises if the RDB Act lays down any prescribed period within which an application to set aside an *ex-parte* order is to be filed or such application can be preferred, at

any time. In our view, it cannot be, that because, period if not prescribed by the statute, the applicant is at liberty to file the application under Section 22(2)(g) at any point of time.

21. We may refer to Section 22 of the RDB Act, which reads as under:

“22. (1) The Tribunal and the Appellate Tribunal shall not be bound the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of documents;*
- (c) receiving evidence on affidavits;*
- (d) issuing commissions for the examination of witnesses or documents;*
- (e) reviewing its decisions;*
- (f) dismissing an application for default or deciding it ex parte;*
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;*
- (h) any other matter which may be prescribed”.*

(3) Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Tribunal or the Appellate Tribunal shall be deemed to be a civil court for all the purposes of

section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)”.

/(4) For the purpose of proof of any entry in the ‘bankers books’, the provisions of the Bankers’ Books Evidence Act, 1891 (18 of 1891) shall apply to all the proceedings before the Tribunal or Appellate Tribunal.]

22. Section 22(2) thus, provides that the Tribunal shall have for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of, inter alia, setting aside an order of dismissal of any application for default or any order passed by it *ex-parte*. The period of limitation within which the civil court can entertain an application for setting aside an order passed *ex-parte* is 30 days. The civil Court can entertain such an application even after the period of 30 days, if it is accompanied by an application under Section 5 of the Limitation Act for condonation of delay. But in our view when it comes to the Tribunal which enjoys the same power as of the civil court in the matter of setting aside an *ex-parte* order, the period of limitation within which such power can be exercised, shall be 30 days as is applicable to the civil Court. So far as the power of the civil court beyond the period of limitation, by virtue of the applicability of the Limitation Act is concerned, the same cannot be exercised by the Tribunal, in view of the specific provision of Section 24 of RDB Act, which

makes applicable the provisions of the Limitation Act only in relation to an application under Section 19, which has been interpreted by the Hon'ble Apex Court as an original application.

23. The intention of the Legislature is to give finality to the orders passed by the Tribunal in the main O.A. subject to filing of appeal within the specified period. If the order is passed *ex-parte*, the remedy is to file appeal or to apply for setting aside the *ex-parte* order, but that is to be done within the period of limitation.

24. Consequently, we hold that the period of limitation for filing an application to set aside an *ex-parte* order shall be 30 days from the time limitation period starts to run. But after expiry of such period of 30 days, the application under Section 22(2)(g) cannot be maintained being barred by Limitation and there being no provision for condonation of delay.

Point No.2:

25. The next submission of the learned counsel for the petitioner is that the petitioner was not heard on the merits of the application, though the same has been rejected on merits.

26. We find that the opportunity of hearing was there to the petitioner, to argue on the merits of the application. On perusal

of the order, we find that the Tribunal recorded that the defendants there in, including the present petitioner, appeared in O.A. Requested time to file written statement. For filing of the written statement, the matter was adjourned on so many dates. But, in spite, thereof, they did not file the written statement. The opportunity to file written statement was closed. The case was fixed for evidence on 26.05.2012. On 26.05.2012, the learned counsel appearing for the petitioners i.e., defendant Nos. 1, 2 and 4 requested time to file petition to reopen the matter, for filing written statement. On 24.08.2022 that order was recalled. Thereafter, defendant No.1 filed written statement and defendant Nos. 2 and 4 adopted the written statement of the defendant No.1. The written statements so filed were taken on record subject to the condition of imposing costs. But the order of payment of cost was not complied, in spite of time having been granted on various dates 17.10.2012, 26.12.2012 and 08.03.2013. Consequently, after giving number of opportunities, the Tribunal passed order that the written statements so filed by the defendants shall be ignored as the conditional order to take the written statement on record was not complied. The order was also passed to proceed *ex-parte* against defendant Nos. 1, 2 and 4. On 22.03.2018 the final order was passed in O.A. Against the said order dated 22.03.2018, unnumbered petition 'Petition

Diary No.1301/2023/unnumbered M.A.' was filed after almost five (5) years for setting aside.

27. The Tribunal has also recorded that the defendant No.4 had knowledge of the case, was served with summons and had been given sufficient time, which has not been disputed. By following the principles of Law laid down by the Hon'ble Apex court in the case ***M/s Jhon Impex (Pvt) Ltd. And another Vs.Athul Kapur and others***, in which the Hon'ble Apex Court also referred to the case of ***Sunil Poddar & Others Vs.Union Bank of India (2008) 2 SCC 326***, the Tribunal rejected the application under Section 22(2)(g) of the petitioner.

28. In ***Sunil Poddar & Others Vs.Union Bank of India (2008) 2 SCC 326***, the Hon'ble Apex Court considering the amended provisions of Order 9 Rule 13 CPC held as under :

“23. It is, therefore, clear that the legal position under the amended Code is not whether the defendant was actually served with the summons in accordance with the procedure laid down and in the manner prescribed in Order 5 of the Code, but whether (i) he had notice of the date of hearing of the suit; and (ii) whether he had sufficient time to appear and answer the claim of the plaintiff. Once these two conditions are satisfied, an ex parte decree cannot be set aside even if it is established that there was irregularity in service of summons. If the court is convinced that the defendant had otherwise knowledge of the proceedings and he could have appeared and answered the plaintiff's claim, he cannot put forward a ground of non-service of summons for setting aside ex parte decree passed against him by

invoking Rule 13 of Order 9 of the Code. Since the said provision applies to the Debts Recovery Tribunals and the Appellate Tribunals under the Act in view of Section 22(2)(g) of the Act, both the Tribunals were right in observing that the ground raised by the appellants could not be upheld. It is not even contended by the appellants that though they had knowledge of the proceedings before DRT, they had no sufficient time to appear and answer the claim of the plaintiff Bank and on that ground, ex parte order deserves to be set aside.”

29. In the present case, the petitioner was served with summons and appeared before the Tribunal. So, the law as in ***Sunil Poddar & Others Vs. Union Bank of India (2008) 2 SCC 326*** (Supra) applies with greater force.

30. On specific query made to the learned counsel for the petitioner, as to on what ground, the petition under Section 22(2)(g) was filed, to set aside the *ex-parte* order, he submits that the copy of the final order dated 22.03.2018 was not served in terms of Section 19(21) of RDB Act. He submits that it was the duty of the Tribunal to serve final order under Section 19(21).

31. Section 19(21) of the RDB Act reads as under:

“The Tribunal shall send a copy of every order passed by it to the applicant and the defendant”.

32. Section 19(21) thus provides that the Tribunal shall send copy of every order passed by it to the defendants as well.

33. However, we are of the considered view that even if the copy of the final order and recovery certificate was not sent to the petitioner/defendant No.4, that cannot be a reason or cause for not preferring the application under Section 22(2)(g) before the Tribunal. The petitioner had the summons and had appeared in the case. If the copy of the final order was not sent to the petitioner that would not prevent the applicant from filing application to set aside *ex-parte* order. The reason is obvious for filing application to set aside the *ex-parte* order copy of the final order would not be required. It is not that only after service of the copy of the order the application would be maintained or copy of the order was required to be annexed to an application to set aside *ex-parte* order. We are of the view that an application to set aside *ex-parte* order is to show the sufficient cause for non appearance on the date fixed, which has nothing to do with the merits of the *ex-parte* order. It is not a case of filing of appeal against the final order where the grounds on the merit are to be raised in memo of appeal.

34. We are not convinced with the submission advanced that the petitioner was not afforded opportunity of hearing. The order was passed with due opportunity of hearing to the petitioner.

35. On point No.1 we hold as under :

i) that the period of Limitation for filing an application under Section 22(2)(g) of RDB Act to set aside an *ex-parte* order before the Tribunal shall be 30 days, as within such period the application is maintainable by the Civil Court. It follows from Section 22(2) of RDB Act itself, which confers the same powers on the Tribunal as on the civil Court in respect of inter alia, an application under section 22(2)(g).

ii) that there would however be no power with the Tribunal to entertain such an application beyond 30 days period from the start of the Limitation period, as in view of Section 24 of the RDB Act, the provisions of Section 5 of the Limitation Act does not apply.

36. On point No.2 we hold that the impugned order has been passed with due opportunity of hearing to the petitioner.

37. We do not find any illegality in the order impugned. The civil revision petition has no merit.

38. In the result, the Civil Revision Petition is dismissed.

39. Learned counsel for the petitioner at this stage submits that against the final order of the Tribunal, dated 22.03.2018, the petitioner has the remedy to file the appeal under Section 20

of the RDB Act. Be that as it may, it is for the petitioner to choose the remedy, if the Law so permits, subject to the provisions of the RDB Act and the Law of Limitation.

40. No order as to costs.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE RAVI NATH TILHARI

JUSTICE DUPPALA VENKATA RAMANA

Date: 26.09.2023
*vnb/mjl/**

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

AND

THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

CIVIL REVISION PETITION No. 2320 of 2023

(Per Hon'ble Sri Justice Ravi Nath Tilhari)

Date: 26.09.2023

*unb/ mjl/ **