

GAHC010068322023

**IN THE GAUHATI HIGH COURT**

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WP(C) No.1864 of 2023

Bornali Sarmah,
Daughter of Dr. Abhay Prasad Sarma,
Resident of L.B. Road, New
Guwahati, PS: Noonmati, Guwahati –
781021, District: Kamrup (Metro),
Assam.

.....Petitioner

-Versus-

1. Punjab National Bank, erstwhile
United Bank of India, represented by
the C.M.D., H.O. at 11 Hemanta Basu
Sarani, Kolkatta – 700001.

2. The Branch Manager, United Bank
of India, Noonmati, Guwahati –
781020.

3. Smt. Arhie Kaushik,
Daughter of Samar Sarma,
Proprietor of M/s Swarnilipi Offset,
Resident of Classic Enclave, Ground
Floor, MRD Road, Guwahati –
781021, District: Kamrup (Metro),
Assam.

4. Sri Samar Sarmah,
Son of Dr. Abhay Prasad Sarma,
Resident of Classic Enclave, Ground
Floor, MRD Road, Guwahati –
781021, District: Kamrup (Metro),
Assam.

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA

For the Petitioner : Ms. G. Goswami, Advocate.
Mr. B.P. Borah, Advocate.

For the Respondents : Mr. A. Ganguly, Standing Counsel,
Punjab National Bank for respondent
Nos.1 & 2.

Date of Judgment & Order : **3rd April, 2023.**

JUDGMENT & ORDER (ORAL)

[Sandeep Mehta, C.J.]

This writ petition has been filed by the petitioner for assailing the order dated 21.12.2022 passed by the Debts Recovery Tribunal (DRT), Guwahati in I.A. No.75/2020 in S.A. No.34/2020 whereby, the application filed by the applicant/writ petitioner to condone the delay of 224 days in preferring the SARFAESI application under Section 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) was dismissed by the Tribunal on the ground that the applicant/writ petitioner failed to show sufficient cause for condoning the delay occasioned in moving the application under the SARFAESI Act.

2. Heard Ms. G. Goswami, learned counsel for the petitioner. Also heard Mr. A. Ganguly, learned standing counsel, Punjab National Bank, representing the respondent Nos.1 & 2.

3. With the consent of the learned counsel appearing for the parties, we have heard the matter and are deciding the same finally today itself.

4. Pursuant to initiation of the proceedings against the petitioner under the SARFAESI Act, a writ petition being WP(C) No.7310/2019 was filed before this Court, which was disposed of in the following terms:-

“9. Taking note of the facts and circumstances of the case and without expressing any opinion on the merit of the case, we dispose of this writ petition with a direction to the writ petitioner to approach the learned Debt Recovery Tribunal (DRT), Guwahati by preferring an appeal under Section 17 of the SARFAESI Act, 2002. If the appeal is preferred within 02 weeks from today along with appropriate prayer for condonation of delay, the learned Tribunal may consider the prayer objectively by taking note of the facts and circumstances.

10. Until such time, the appeal filed by the petitioner is disposed of on merit, the operation of the impugned notice dated 13-02-2019 shall remain stayed, insofar as the writ petitioner is concerned.”

5. The Tribunal was thus, directed to consider the prayer for condonation of limitation [if the appeal was preferred within 2(two) weeks] objectively by taking note of the facts and circumstances. Further direction was given that until such time the appeal filed by the petitioner was disposed of on merits, the operation of the impugned notice dated 13.02.2019 would remain stayed.

6. Learned counsel for the petitioner submits that certified copy of the order dated 26.02.2020 was received on 28.02.2020, which was a Friday. The appeal/application before the DRT was presented on 13.03.2020 and thus, as per the petitioner, the appeal/application was presented within the stipulated period of 2(two) weeks in terms of the order passed by this Court and hence, the Tribunal was not

justified in dismissing the application on the ground of being time barred. She thus, urges that the impugned order deserves to be set aside and the matter be remanded to the Tribunal to consider and dispose of the appeal/application filed by the petitioner on merits.

7. Mr. A. Ganguly, learned counsel representing the respondent Bank has opposed the submissions advanced by the learned counsel for the petitioner. However, he too is not in a position to dispute the fact that the appeal/application was presented within the stipulated time of 2(two) weeks from the date, the petitioner received the certified copy of the order dated 26.02.2020. However, his submission was that the Debts Recovery Tribunal does not have the jurisdiction to condone the delay as the SARFAESI Act does not stipulate any such mechanism whereby, the Tribunal can extend the limitations prescribed under the Act for entertaining the applications.

8. We have heard and considered the submissions advanced at Bar and have gone through the impugned order and the materials placed on record.

9. The consequence of the directions given by this Court in WP(C) No.7310/2019 decided vide order dated 26.02.2020 was very clear that the application of the petitioner was to be considered on merits. Though, the DRT does not have the jurisdiction to exercise powers under the Limitation Act so as to condone the delay in filing of the applications but this Court while exercising the high prerogative writ jurisdiction, is definitely empowered to

pass a direction to condone the delay in order to secure the ends of justice in a suitable case. Thus, the Tribunal ought to have acted in compliance of this Court's judgment/order and should have heard and decided the application on merits after condoning the delay on the strength of the directions given by this Court.

10. Consequently, the impugned order dated 21.12.2022 passed by the Debts Recovery Tribunal (DRT), Guwahati is hereby reversed and set aside. The DRT is directed to condone the delay occasioned in filing of the application preferred by the petitioner under Section 17(1) of the SARFAESI Act. The matter shall thereafter be, heard and decided on merits preferably within 3(three) months from the date of receipt of certified copy of this order.

11. With the above observations and directions, the writ petition is disposed of. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant