

Bombay High Court Uco Bank, Churchgate Branch . . . vs Kanji Manji Kothari And Co., A . . . on 12 February, 2008 Equivalent citations: 2008 (3) BomCR 290, 2008 (110) Bom L R 744 Author: R Desai Bench: R Desai, R Dalvi JUDGMENT Ranjana Desai, J. Page 0749 1. The petitioner is a body corporate incorporated under the provisions of the Banking Companies Act, 1949, having its head office at 10, BTM, Sarani, Kolkata, and branch offices all over India, including one at Churchgate. 2. Respondent 1 is a partnership firm constituted under the provisions of the Indian Partnership Act and, the rest of the respondents are its partners. 3. The respondents have availed various loan facilities from the petitioner's various branches as per the details given in paragraph 3 of the petition. For securing the said loans, the respondents had mortgaged their two flats situate at Malbar Hill, Mumbai (for convenience, "the secured assets"). 4. It is the case of the petitioner that the loan account of the petitioner became irregular despite the efforts of the petitioner to regularise it and, hence, the petitioner declared the account of the respondents as Non Performing Asset (for convenience, "NPA") on 31/3/2005. Page 0750 5. According to the petitioner, on the date of declaring the account of the respondents as NPA, the outstanding amount payable by the respondents to the petitioner was Rs. 1,59,79,460/with further interest at contractual rate w.e.f. 1/4/2005 with Churchgate Branch and Rs. 38,44,738.91 with further interest at contractual rate w.e.f. 1/1/2005 with Queens Road Branch of the petitioner. 6. After declaring the account of the respondents as NPA as on 31/3/2005 for the sake of recovering the outstanding amount, the Bank initiated proceedings under the Securitization and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (for convenience, "the NPA Act"). Churchgate Branch of the petitioner issued notice dated 7/4/2005 and the Queens Road Branch issued notice dated 11/6/2005 to the respondents under Section 13(2) of the NPA Act and demanded the payment of the outstanding amount and warned the respondents that if they failed to repay the loan, they would proceed further under the provisions of Section 13(4) of the NPA Act. 7. The respondents replied to the said notices and the petitioner duly rejoined to the same under the provisions of Section 13(3)(A) of the NPA Act. 8. According to the petitioner, despite notice, the respondents failed to repay the amount within a period of 60 days as provided under Section 13(2) of the NPA Act. The petitioner, therefore, initiated proceedings under Section 13(4) of the NPA Act. The petitioner took symbolic possession of the secured assets by pasting notice on the door of the secured asset, by giving notice to the borrower in person on 15/7/2005. The learned Chief Metropolitan Magistrate offered assistance to the petitioner to take physical possession of the secured assets. The petitioner took physical possession of the secured assets on 13/3/2006. The petitioner invited offers from public at large for holding auction for selling the secured assets. 9. The respondent then filed an application under Section 17 of the NPA Act, inter alia, praying that notice dated 7/4/2005 and notice dated 11/6/2005 be quashed and set aside; that the petitioner be restrained from selling, disposing of, alienating, transferring and creating any third party rights in the secured assets and that the respondents be permitted to bring the prospective purchasers

in respect of the secured assets and be allowed to sell the said flats at market rate to the prospective purchasers and the sale proceeds be deposited with the respondents and for that, the petitioner be ordered and directed to cooperate with the respondents. 10. The petitioner opposed the application on various grounds. The petitioner raised a preliminary contention that the application filed by the respondents was time barred taking into consideration the fact that it had been filed almost nine months after the petitioner initiated action under Section 13(4) of the NPA Act by taking symbolic possession of the secured asset on 15/7/2005. By order dated 8/5/2006, the Debt Recovery Tribunal (for short, “the DRT”) rejected the application. The DRT held that validity of notice under Section 13(2) has not been challenged. The only submission of the respondents is that there are good purchasers for the secured assets. The DRT held that the symbolic possession was taken on 15/7/2005. Page 0751 The respondents should have filed the application within 45 days from 15/7/2005. The respondents have not done so. The application was, therefore, barred by limitation. The DRT dismissed the application. 11. The respondents carried an appeal to the Debts Recovery Appellate Tribunal (for short, “the DRAT”). The DRAT held that the possession contemplated under Section 13(4)(a) of the NPA Act cannot be other than actual possession. Under Section 17, a borrower may be aggrieved by any of the measures taken under Section 13(4) of the NPA Act. The borrower may not be aggrieved by the issuance of a notice under Section 13(2) of the NPA Act, but he may be aggrieved by the taking of physical possession as in that case, he is dispossessed from his property. The DRAT further observed that an effective action can be taken by a secured creditor only after actual possession is taken. Hence, a borrower has a right to file appeal under Section 17 of the NPA Act within 45 days from the date of taking physical possession. The appeal was thus allowed. The DRAT remanded the matter to DRT for disposal in accordance with law. Being aggrieved by this judgment and order, the petitioner-bank has filed this writ petition. 12. Mr. Khanavkar, learned Counsel appearing for the petitioner- bank assailed the impugned order on various grounds. He submitted that the DRAT has grossly erred in holding that the borrower has a right to file an appeal within 45 days after actual possession is taken. 13. Mr. Khanavkar submitted that as per the scheme of the NPA Act, Section 13(2) notice amounts to attachment. Section 13(13) provides that after receipt of the notice under Section 13(2), the borrower should not transfer the property to any third person without the permission of the bank. The submission of the respondents that the notice under Section 13(2) and the notice under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 (for short, “the said Rules”) by which symbolic possession of the secured assets is taken, is one and the same and hence, nothing new happens between Section 13(2) and Section 8(1), is not what is contemplated under the NPA Act. 14. Mr. Khanavkar further submitted that chapter III of the NPA Act deals with ‘Enforcement of Security Interest’. As per Section 2(1)(zf), ‘security interest’ is defined as right, title and interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in Section 31. From the

title of Chapter III (Enforcement of Security Interest) and the wordings in Section 13, it is clear that the bank can enforce its security interest i.e. the bank can enforce its right, title and interest over the secured assets by following any of the measures provided in Section 13(4). In the present case, the bank has taken recourse to Section 13(4)(a) by taking de jure possession of the secured assets. Once the security interest is enforced by taking de jure possession under Section 13(4)(a) read with Rule 8(1) all the rights and interests of the borrower including the borrower's title in the secured assets ceases to exist and the same vests in the bank. Legislature has consciously used the word 'possession' instead of the word 'attachment' in Rule 8(1) which fortifies the petitioner's submission that if notice under Section 13(2) amounts to 'attachment', the action under Section 13(4)(a) read with Rule 8(1) amounts to taking possession. Page 0752 15. Mr. Khanavkar further submitted that since the title, interest and all the rights including the right to be in possession of the borrower cease to exist, the possession of the borrower over the secured assets becomes unwarranted by law and the same is not even protected by law. This is the reason why, on making a request to the learned Chief Metropolitan Magistrate/District Magistrate, the bank gets physical (de facto) possession of the secured assets as a matter of right. This is further justified by the fact that under the proceedings under Section 14 of the NPA Act, there is no adjudication provided and it is mandated that the learned Chief Metropolitan Magistrate/District Magistrate should assist the bank in taking forcible possession of the property as a matter of right by passing an administrative order. Therefore, at the most, the only right existing with the borrower after the bank takes de jure possession is the right not to be dispossessed forcibly from the secured assets without following due process of law. And the said due process of law is followed by the bank by taking the assistance of the learned Chief Metropolitan Magistrate/District Magistrate under Section 14. 16. Mr. Khanavkar reiterated that since after taking de jure possession of the property, the borrower has no right in the secured asset, there can be no infringement of the borrower's right on bank taking physical (de facto) possession of the secured asset. He submitted that it is a well settled principle of law that unless there is infringement of right, there can be no cause of action and since there is no cause of action, there can be no remedy in law. Thus, if there is no remedy in law, there can be no renewal of period of limitation. Therefore, the period of limitation as contemplated in Section 17 of the NPA Act commences from the date bank takes de jure (symbolic) possession of the secured assets. 17. Mr. Khanavkar further submitted that Sub-section (2) of Section 17 states that the DRT has to consider whether the measures referred to in Section 13(4) taken by the secured creditor are in accordance with the provisions of the NPA Act and the said Rules. The same indicates that all that the DRT can consider is whether the action under Section 13(4) is proper or not. Further, in Sub-section (3), it is provided that in case the DRT comes to the conclusion that the measures taken by the bank under Section 13(4) are not proper, the DRT can order restoration of possession of the secured assets to the borrower. In short, the DRT cannot go beyond anything but monitoring the actions of the bank under Section 13(4). There is no provision in the entire NPA

Act which authorizes the DRT to see if any actions of the bank subsequent to its actions under Section 13(4) are proper or not. The justification for the legislature not providing for a check on the actions of sale, auction, etc. is that after taking de jure possession of the secured assets, even the title in the property vests in the bank. If the right and title of the borrower in the property ends, the borrower loses locus to challenge the action of the bank after these right and title are taken away. Even under Section 19 of the NPA Act, the DRT can order the bank to pay costs, charges, etc. to the borrower in case possession of the secured assets is not taken properly by the bank. Even here the legislature has not provided for costs, charges, etc. for actions other than for taking possession of the Page 0753 property, fortifying the petitioner's case that after the bank takes over the right, title and interest in the secured assets, the borrower loses locus to challenge any further action of the bank. 18. Mr. Khanavkar further submitted that the provisions of the Limitation Act, 1963 are not applicable to any local or special statutes if the special statute expressly bars the application thereof. Section 35 of the NPA Act expressly bars the application of any Act that is in force for the time being and the same beyond doubt includes the Limitation Act. He submitted that while following , the Supreme Court has in *Fairgrowth Investments Ltd. v. Custodian* held that 'exclusion' includes 'exclusion by necessary implication'. The Supreme Court has held in the said case that since Section 13 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 provides that the provisions of that Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force... 'and, hence, the provisions of the Limitation Act would have no application though the said special statute provides for a period of limitation other than what has been provided for in the schedule to the Limitation Act. Mr. Khanavkar submitted that since Section 35 is similar to Section 13 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on the same reasoning, the provisions of the Limitation Act are not applicable to the NPA Act. He submitted that in *Prakash Jain v. Marie Fernandes* , the Supreme Court has after discussing the provisions of Section 29(2) of the Limitation Act held that there is no inherent power in the court/tribunal to condone delay in filing proceedings if the same is not expressly provided for in the special statute itself. In this connection, learned Counsel also relied on *Sakuru v. Tanaji* . Mr. Khanavkar contended that the entire scheme of the NPA Act and the intention of the legislature show that the legislature has expressly barred application of the provisions of the Limitation Act. Mr. Khanavkar urged that in the circumstances, the view taken by the DRAT deserves to be set aside. 19. Mr. Bulchandani, learned Counsel for the respondent submitted that the view taken by the DRAT is unassailable but the point from which limitation starts running needs to be further extended. He submitted that possession under Section 13(4)(a) read with Sections 13 (6), (8), 17(1) and Rules 8(1), (3), (6) and Rule 9(9) comprehends both 'symbolic' and 'actual' possession of the secured asset and therefore, a debtor has a right to file an application before DRT under Section 17(1) within 45 days of the secured creditor taking steps for symbolic possession or within 45 days of a

secured creditor taking steps for actual possession of secured asset but before confirmation of sale. Page 0754 20. He submitted that the manner in which measures can be “taken for possession” under Section 13(4)(a), are elucidated in Rules 8 and 9 of the said Rules which are framed under Section 13 of the NPA Act. Section 17 of the NPA Act provides for an appeal/application from “any measures” under Section 13(4). One of the measures that can be taken is “for taking possession”. Mr. Bulchandani contended that in Section 13(4)(a) the legislature has used the words “including the right” with a purpose. The words “including the right” appearing in Clause (a) of Section 13(4) comprehend both symbolic and/or physical possession in stages as is elucidated in Rules 8 and 9. The measure contemplated under Section 13(4)(a) has sub-measures inbuilt in the same in view of Rule 8(1), Rule 8(3) and Rule 8(5). In fact, Rule 8(3) specifically talks about taking of “actual” possession while Rule 8(1) only talks about possession. While interpreting provision of any law, every word has a connotation and significance. The words “including the right” in Sub-clause (a) would not have been necessary if the legislature would have contemplated only one stage in Section 13(4)(a). Mr. Bulchandani submitted that the manner in which secured asset is to be dealt with is provided under Rules 8 and 9 of the said Rules. These rules envisage different stages/steps to be followed; first symbolic possession [rules 8(1) and (2)], then physical/actual possession [rules 8(3) and (4)] and then proceeding to sell the secured asset [rules 8(5) and (6) read with Rule 9(9)]. These steps/stages are in aid of taking the measures for possession and selling the property. Rule 9(9) therefore provides that the authorized officer shall deliver the property to the purchaser free from encumbrances. Compliance of these Rules is open to scrutiny by DRT under Section 17(2) and in the event the measures taken by secured creditors are not in accordance with the provisions of the NPA Act and the said Rules, the borrower is entitled to restoration of possession of the secured asset under Section 17(3). Therefore, Rules 8(1) and (2), then Rules 8(3) and (4) and then Rules 8(5) and (6) contemplate accrual of cause of action at each stage. 21. Mr. Bulchandani submitted that if the case of the petitioners is to be accepted that the rights of borrowers extinguish on expiry of 45 days of date of possession notice issued under Rule 8(1), then breaches of subsequent Rules 8(3) to (6) will not be open to any challenge/scrutiny. Mr. Bulchandani submitted that if the submission of the petitioner is to be accepted, then there will be no case before DRT for consideration whether the procedure under Rules 8(3) to (6) has been complied with by the secured creditor, since according to the petitioners rights of borrower is completely extinguished and, therefore, none can question any illegality committed by the secured creditor. This would dilute provisions of Sections 17(2) and (3), besides causing grave and irreparable harm, injury and injustice to the borrower. 22. Mr. Bulchandani laid stress on Sections 13(6), 13(8), Rule 8(1), (3) to (6) and contended that there is sufficient indication in these provisions that the borrower can pay the debt and redeem the secured asset. He submitted that the liability to pay crystallizes but the extent of liability is always subject to the scrutiny of DRT. When the extent of liability is disputed or when non-compliances of the provisions of the NPA Act or the said Rules is alleged by the

borrower, it is DRT which is the forum for the borrower to approach Page 0755 and this in the cause of justice, equity and fair deal to the borrower has to be at any stage before the sale of the asset. Thus, it stands to logic and rationality that the borrower has a right to approach DRT either after the symbolic possession is taken after service of possession notice under Section 13(4)(a) read with Rules 8(1) and (2), or after actual possession is taken under Section 13(4)(a) read with Section 14 and Rules 8(3), (4) or after sale notice is received by the borrower under Rule 8(6), all read with Section 17(1), but before completion of sale. 23. Drawing our attention to relevant portion of the Supreme Court's judgments in *Mardia Chemicals* (supra) and *Transcore's case* (supra), Mr. Bulchandani submitted that the borrower has no remedy available, not even a right to be heard on receipt of notice under Section 13(2), not even a right to challenge the declaration of his account as NPA, neither on the claim nor on quantum of claim raised by the secured creditor at that stage. Only after "taking of possession" by the secured creditor, rights accrue to the borrower to file application challenging at that stage, declaration of his account as NPA and the claim of secured creditor including the quantum of claim. Section 17 therefore cannot render the borrower remediless, in the event, borrower chooses not to file an application after receipt of possession notice under Section 13(4)(a) read with Rule 8(1). Remedy will also be available to the borrower, if the borrower is aggrieved by the takeover of actual possession after symbolic possession or by notice of sale. All these stages therefore give rise to a separate cause of action which would be subject to the limitation period of 45 days commencing from each stage. 24. So far as application of Limitation Act is concerned, Mr. Bulchandani contended that Section 37 of the NPA Act provides that application of other laws shall not be barred and that the provisions of the NPA Act or the said Rules shall be in addition and not in derogation of any other law for the time being in force. Section 36 of the NPA Act makes the provisions of the Limitation Act, 1963 applicable to secured creditors. 25. Section 17(7) of the NPA Act provides that DRT shall dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, "the DRT Act") and the Rules made thereunder. The DRT Act under Section 24 makes the provisions of Limitation Act, 1963 applicable to DRT. Therefore, provisions of Limitation Act, 1963 are applicable both to secured creditors and borrowers to avoid discrimination. 26. He submitted that the Supreme Court has in *Transcore's case* (supra) held that provisions of NPA Act and DRT Act and remedies thereunder are complementary to each other. The provisions of DRT Act therefore in the light of the said judgment in *Transcore's case* (supra) read with provisions of Section 17(7) of the NPA Act shall mutatis mutandis apply to the NPA Act. The Limitation Act, 1963 will, therefore, apply to the NPA Act also. 27. Mr. Bulchandani submitted that as Sections 4 to 24 become applicable by virtue of Section 29, under Section 5 of the Limitation Act, application before DRT can be admitted after the prescribed period if the applicant satisfies the court that he had sufficient cause for not preferring the Page 0756 application within such period. The delay if any, in preferring an application after 45 days can be therefore always condoned by DRT under the provisions

of Limitation Act, 1963. 28. Mr. Bulchandani relied on *Mangu Ram v. Delhi Municipality and Union of India v. Popular Construction Co.* and contended that the provisions of Limitation Act, 1963 stand excluded only when there is an express bar to application of the Limitation Act, 1963 in special statute under consideration. 29. Mr. Bulchandani submitted that the judgments on which reliance is placed by the petitioner have no applicability, as in the special laws dealt with in the said cases, there was no concurrent provision as is provided in Section 37 and Section 17(7) of the NPA Act. As the provisions of DRT Act have been made applicable expressly to the NPA Act and in view of Section 24 of the DRT Act, the Limitation Act, 1963 does apply to the NPA Act. Delay in preferring an application, therefore, can be always condoned by DRT provided cause is shown for delay to the satisfaction of DRT. 30. Mr. Bulchandani urged that in the circumstances, there is no substance in the contentions raised by the petitioner and, hence, the petition be dismissed. 31. Two important questions fall for considerations of this Court. They are: (a) From which point does the period of limitation of 45 days prescribed in Section 17 of the NPA Act start running; from the date on which symbolic possession is taken or from the date on which actual possession is taken. (b) Whether and to what extent the Limitation Act, 1963 is applicable to the proceedings under Section 17(1) of the NPA Act? 32. Both sides have heavily relied on the judgments of the Supreme Court in *Mardia Chemical's case* (supra) and *Transcore's case* (supra). To find answers to the above questions, it is necessary to see what led to the enactment of the NPA Act and how various provisions thereof are interpreted by the Supreme Court in the above judgments. 33. The DRT Act was enacted to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions considering the huge pendency of cases filed by the banks and financial institutions for recovery of debts. In *Transcore's case* (supra), the Supreme Court has discussed the reasons which prompted the legislature to enact the NPA Act. It would be appropriate to reproduce the gist of the Supreme Court's observations. The Supreme Court has observed that the DRT Act did not provide for assignment of debts to securitization companies. The secured assets could not be liquidated in time. In order to empower banks and financial institutions to liquidate the assets and the secured Page 0757 interest, the NPA Act is enacted. The Supreme Court emphasised that it is enacted to regulate securitization and to provide for reconstruction of financial assets. 34. The constitutional validity of the NPA Act was challenged in *Mardia Chemical's case* (supra). The main contention raised before the Supreme Court was that the banks and financial institutions have been vested with arbitrary power without any guidelines for their exercise and also without providing any appropriate and adequate mechanism to decide the disputes relating to the correctness of the demands, its validity and the actual amount of loan sought to be recovered from the borrower. It was contended that certain offending provisions of the NPA Act make it all a one-sided affair while enforcing sale of the property or taking over the management and possession of the secured assets without offering any opportunity to the borrower. 35. In the present context, two important questions which fell before the Supreme Court

for consideration in that case need to be quoted. (i) 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? (ii) 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? 36. It is pertinent to note that while examining whether certain provisions of the NPA Act are one-sided and heavily loaded against the borrower, the Supreme Court held that Section 17(2) which provides for deposit of 75% of the amount claimed before entertaining an appeal by the DRT under Section 17 was ultra vires Article 14 of the Constitution. By the enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (for short, the Amendment Act“) the said condition was deleted. 37. While upholding the constitutional validity of the rest of the NPA Act, the Supreme Court observed that in cases where the secured creditor has taken action under Section 13(4) of the NPA Act, it would be open to the borrower to file an appeal under Section 17 of the NPA Act within the limitation as prescribed therein. The Supreme Court also observed that if the borrower, after service of notice under Section 13(2), 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 reasons for not accepting the objections, however brief they may be, must be communicated to the borrower because he cannot be denied the right to know the reasons for non-acceptance of his objections before the drastic measures under Section 13(4) are taken against him. The Supreme Court clarified that as per the provisions of the NPA Act, the borrower may not be entitled to challenge the reasons communicated to him or the likely action of the secured creditor at that point of time, unless his right to approach the DRT as provided under Page 0758 Section 17 of the NPA matures on any measures having been taken under Section 13(4) of the NPA Act. The Supreme Court observed that the right to file appeal under Section 17 accrues only after measures under Section 13(4) of the NPA Act are taken and described the appeal under Section 17 as the next safeguard available to a borrower within the framework of the NPA Act after measures under Section 13(4) are taken. The Supreme Court concluded that 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 under Section 17 before the DRT. 38. While considering whether the remedy under Section 17 is illusory because it is available only after action under Section 13(4) is taken, the Supreme Court observed that proceedings under Section 17, in fact, are not appellate proceedings. It seems to be a misnomer. In fact, it is the initial action which is brought before a forum prescribed under the NPA Act raising grievance against the action or measures taken by one of the parties to the contract. The Supreme Court further observed that it is the stage of initial proceedings like filing a suit in civil court and as a matter of fact proceedings under Section 17 are in lieu of a civil suit which remedy is ordinarily available but for the bar un-



der Section 34 of the NPA Act. It may be stated here that the Amendment Act introduced suitable changes in the NPA Act in deference to the view expressed by the Supreme Court. 39. What is important to note is that while dealing with the grievance that the NPA Act is a draconian legislation and that it affords no protection to the borrower, the Supreme Court made the above observations. The Supreme Court fixed the point at which the borrower can make a grievance and clarified the scope of appeal under Section 17. The Supreme Court held that the borrower's right to approach the DRT as provided under Section 17 matures on any measures having been taken under Sub-section 4 of Section 13 of the NPA Act and on measures having been taken under subsection 4 of Section 13 and before the date of sale/auction of the property, it would be open for the borrower to file an appeal under Section 17 before the DRT. Thus appeal can be filed from the date on which any measures are taken under Section 13(4) till the date of sale/auction of the property. Obviously, therefore, after sale, there can be no appeal. 40. The Supreme Court negated the contention that because remedy under Section 17 is available, only after measures under Section 13(4) are taken, it is illusory. The Supreme Court described this remedy as the initial action where grievance can be raised against the action or measures taken by one of the parties to the contract. The Supreme Court clarified that proceedings under Section 17 are in lieu of a civil suit. 41. In Transcore's case (supra), the Supreme Court was considering whether the NPA Act is an additional remedy to the DRT Act or whether the doctrine of election applies to the remedies provided under both the Acts. While holding that doctrine of election has no application because there is no repugnancy between the two Acts, the Supreme Court considered 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 immoveable secured assets. Page 0759 42. It was, inter alia, argued before the Supreme Court on the basis of the judgment of the Punjab & Haryana High Court in Kalyani Sales Company and Ors. v. Union of India and Ors. , that if physical possession is taken on expiry of sixty days, the remedy of application under Section 17 by the borrower would become illusory and meaningless as the borrower, as a person in possession, would be dispossessed even before the adjudication of objections by the DRT. After considering the relevant sections and rules, the Supreme Court negated this contention. The Supreme Court held that there is no dichotomy between symbolic possession and physical possession. 43. The following is the gist of what the Supreme Court has said in Mardia Chemical's case (supra) and Transcore's case (supra). (i) The NPA Act deals with crystallized liability. It deals with rights of the secured creditors. (ii) The NPA Act proceeds on the basis that the asset is created in favour of the secured creditors, which could be assigned to the Asset Management Company, which steps into the shoes of the secured creditors. The NPA Act provides for recovery of possession by non-adjudicatory process. (iii) Section 13(2) deals with liquidation of liability. It contemplates a notice of demand and constitutes action under the NPA Act. It proceeds on the basis that the borrower is already under a liability i.e. the debt has become due and the borrower's account in the bank is classified as substandard. It acts

as an attachment because Section 13(13) forbids the borrower, after receipt of notice under Section 13(2), from transferring the secured assets, in any manner, without written consent of the secured creditor. (iv) Notice under Section 13(2) is a condition precedent to the invocation of Section 13(4) by the secured creditor and once notice under Section 13(2) is issued, the secured creditor is entitled to take any of the measures provided in Section 13(4). (v) Once any of the measures under Section 13(4) are taken, the security interest is already created in favour of the secured creditor. Under Rule 8 of the said Rules, the authorized officer is empowered to take possession by delivering the possession notice as per the prescribed format informing the borrower that the secured creditor has taken possession of the secured assets. (vi) Where possession is taken by the authorized officer, he shall take steps to protect the secured assets till they are sold (rule 8(4)). (vii) Provision for time of sale, issue of sale certificate and delivery of possession, etc. is made in Rule 9. (viii) Though Rule 8 refers to sale of immoveable secured assets, it deals with the stage anterior to the issuance of sale certificate and delivery of possession under Rule 9. Page 0760 (ix) Recourse to take possession of the secured assets of the borrower under Section 13(4) of the NPA Act comprehends the power to take actual possession of the secured assets. (x) There is no dichotomy between symbolic possession and actual possession. (xi) Any transfer of secured assets after taking possession or after taking over management of business under Section 13(4) by the secured creditor vests in the transferee all rights in relation to the secured assets. This is because thereafter assets vest in the secured creditor free of all encumbrances (Section 13(6)). (xii) If the dues of the secured creditor together with the costs, etc. are tendered to the secured creditor before the date fixed for sale/transfer, the secured assets shall not be sold or transferred by the secured creditor (Section 13(8)). (xiii) The provisions as contained under Sections 13 and 17 of the NPA Act provide adequate and efficacious mechanism to consider and decide the objections and disputes raised by a borrower against the recovery. (xiv) The right of the borrower to approach the DRT as provided under Section 17 of the NPA Act matures on any measures having been taken under Section 13(4) of the NPA Act. (xv) On measures having been taken under Section 13(4) of the NPA Act and before the date of sale/auction of the property, it would be open to the borrower to file an appeal under Section 17 before the DRT. (xvi) Any person including the borrower aggrieved by any of the measures referred to in Sub-section (4) of Section 13 can approach the DRT by way of an application within 45 days from the date on which the measures are taken. (xvii) Remedy under Section 17 is in the nature of original proceedings. It is wrongly described as an appeal. It is a remedy in lieu of a suit. (xviii) Under Section 17(2), the DRT is required to consider whether any of the measures referred to in Sub-section (4) of Section 13 taken by the secured creditor are in accordance with the provisions of the NPA Act and the said Rules. (xix) If the DRT comes to the conclusion that the said measures are taken not in accordance with the provisions of the NPA Act and the said Rules, it may declare the recourse taken to the said measures as invalid and restore the possession of the secured assets to the borrower and may pass appropriate orders in relation thereto. (xx)

The scheme of Section 13(4) read with Section 17(3) is that, if the borrower is dispossessed not in accordance with the provisions of the NPA Act, then the DRT is entitled to put the clock back by restoring the status quo ante. (xxi) Therefore, it cannot be said that if possession is taken before confirmation of sale, the rights of the borrower to get the dispute adjudicated upon is defeated by the authorized officer. Page 0761 44. We shall deal with the points raised by the parties in the light of the observations of the Supreme Court in Mardia Chemical's case (supra) and Transcore's case (supra), the gist of which we have quoted hereinabove. 45. The NPA Act and the said Rules aim at enforcement of security interest. On the date on which any measures under Section 13(4) are taken, security interest is created in favour of the secured creditor in the secured assets. The borrower is restrained from transferring the secured assets in any manner, the moment notice under Section 13(2) is issued. Since after any of the measures contemplated under Section 13(4) are taken, the property vests in the secured creditor, he can pass on a clear title to the transferee. Therefore, the moment the measures under Section 13(4) are taken, the right, title and interest which the borrower had in the secured assets gets extinguished. 46. Section 17 gives right to the borrower to file an application before the DRT within 45 days from the date on which such measures are taken under Section 13(4). It is necessary to quote Section 13(4) of the NPA Act. It reads thus: 13. Enforcement of security interest. (1) xxx xxx xxx (2) xxx xxx xxx (3) xxx xxx xxx (4) In case the borrower fails to discharge his liability in full within the period specified in Sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely: (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset; [(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset; Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt: Provided further that where the management of whole, of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security or the debt;] (c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor; (d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt. Page 0762 47. We are concerned here with Sub-clause (a) of Section 13(4) where there can be two stages i.e. symbolic possession and actual possession. The question is whether 45 days' limitation period will start running from the date on which symbolic possession is taken or the date on which actual possession is taken. 48. The scope of appeal/application under Section 17 assumes importance. In Mardia Chemical's case (supra), the Supreme Court has clarified that where the action of the secured creditor is fraudulent and his

claim is so absurd that it does not require any probe whatsoever, a very limited jurisdiction of the civil court can be exercised in English mortgages as otherwise Section 34 bars a civil suit. Therefore, a civil suit can be filed on the ground of fraud or if the claim of the borrower is absurd on the face of record. 49. So far as appeals under Section 17 are concerned, the Supreme Court has held that they are not appellate proceedings. They are in the nature of an initial action where grievance can be made against the action taken under Section 13(4) by the secured creditor. They are in lieu of a civil suit, which remedy is ordinarily available but for the bar under Section 13(4). 50. The Supreme Court has in Transcore's case (supra) held that Section 13(4) read with Section 17(3) indicates that if the borrower is dispossessed not in accordance with the provisions of the NPA Act and the said Rules, then the DRT is entitled to put the clock back by restoring the status quo ante. Thus, possession can be restored to the borrower if he is dispossessed not in accordance with the provisions of the NPA Act and the said Rules. 51. In our opinion, in the light of the observations of the Supreme Court in Mardia Chemical's case (supra) and in Transcore's case (supra), the conclusion is irresistible that though the proceedings before the DRT are in the nature of civil suit, the DRT cannot entertain a debate on the question whether the debt has become due or not because the NPA Act proceeds on the basis that the liability is crystallized and the debt has become due. The moment action under Section 13(4) is taken, security interest is also created in the secured assets. The DRT Act can obviously consider whether possession of the secured assets is taken in accordance with the NPA Act and the said Rules. This is more so because if the secured creditor is required to approach the Chief Metropolitan Magistrate/District Magistrate, as the case may be, under Section 14 of the NPA Act for help to take actual possession, notice is not required to be given to the borrower. He is not required to be heard (See Trade Well and Anr. v. Indian Bank and Anr. 2007 (1) Bom.C.R. (Cri.) 783). Therefore, if the borrower is dispossessed not in accordance with the provisions of the NPA Act and the said Rules, he can make grievance only before the DRT by filing an appeal under Section 17 and the DRT can restore the possession if a case is made out. The liability is crystallized. It cannot be adjudicated upon. In this connection, we may also refer to Section 19 of the NPA Act which enables the DRT to award compensation and costs to the borrower in case it finds, while dealing with an application under Section 17, that possession of the secured assets was not taken in accordance with the Page 0763 NPA Act and the said Rules. Section 17 covers borrower as well as aggrieved third parties. All grievances relating to measures under Section 13(4) not having been taken in accordance with the NPA Act and the rules made thereunder can be raised under Section 17(1). That is the width or the amplitude of those proceedings. Proceedings under Section 17 are an original action to the above extent. 52. As stated by the Supreme Court, the right of the borrower to resort to Section 17 matures on measures having been taken under Section 13(4) and he can file an appeal till the sale of the secured assets. There can be no appeal after the sale. 53. In our opinion, in the light of the exposition of law made by the Supreme Court in Mardia Chemical's case (supra) and Transcore's case (supra), it must

be held that under the scheme of the NPA Act and the said Rules, taking over possession of the secured assets and sale of the secured assets are two distinct and different concepts. The borrower's right, title and interest in the secured assets is extinguished the moment measures under Section 13(4) are taken such as taking over symbolic or actual possession of the secured assets. He can make a grievance that those measures were not taken in accordance with the provisions of the NPA Act. Thereafter, he has no right to appeal against any steps taken towards sale. 54. It is argued by Mr. Bulchandani that the measures contemplated under Section 13(4)(a) have sub-measures which are reflected in Rules 8(1), (3) and (5). He submitted that these rules envisage different stages and steps to be followed. According to him, Rules 8(1) and (2) pertain to symbolic possession. Rules 8(3) and (4) pertain to physical possession and Rules 8(5) and (6) read with Rule 9(9) refer to sale of secured assets. These steps according to him are in aid of taking the measures for possession and selling the secured assets and, therefore, Rules 8(1) and (2), Rules 8(3) and (4) and Rules 8(5) and 9(6) contemplate accrual of cause of action at those stages. 55. We are unable to agree with his submission that Rules 8(3) and 8(4) and Rules 8(5) and 9(6) contemplate accrual of cause of action at those stages or that they are sub-measures for taking possession. Such a view will frustrate the object of the NPA Act viz. enforcement of security interest. We have already observed that taking over possession of the secured assets and sale of the secured assets are two different and distinct concepts. Since the security interest is created in the secured assets, the borrower after possession is taken over, having lost his right, title and interest has no locus to challenge the sale. Undoubtedly, Rule 8 contemplates a notice of sale to the borrower. Rule 9(1) also contemplates a notice to the borrower. Rule 9 says that if the authorized officer fails to obtain a price higher than the reserved price, he may with the consent of the borrower and the secured creditor effect the sale at a price less than the reserved price. In our opinion, these rules reflect the anxiety of the legislature to ensure that as far as possible the secured asset is sold at the highest available price. The intention is not to be unfair to the borrower. In fact, as per Section 13(8), if the dues of the secured creditor together with costs, etc. are tendered at any time before the sale, the secured asset is not to be sold or transferred by the authorized officer. It is clear from this that the intention of the legislature is not to encourage the secured creditor to somehow take possession of the secured assets. A long rope is given to the borrower to pay the debts or else the secured asset in which the security interest of the secured creditor is Page 0764 already created is liable to be sold and the borrower cannot frustrate the sale. Notice of sale contemplated under the said Rules is obviously to give an opportunity to the borrower to bring a buyer who can buy the secured assets at a higher price. But, in no way, he can make the sale an impossibility by raising objections. We, therefore, reject the submission of Mr. Bulchandani that under Rules 8(3) and (4) and Rules 8(5) and (6), there is accrual of cause of action and the borrower can appeal at that stage. 56. Mr. Bulchandani laid stress on the observations of the Supreme Court that on measures having been taken under Sub-section (4) of Section 13 and before the sale/auction, it would be open to the borrower

to file an appeal under Section 17. There can obviously be no dispute about this proposition. But, it cannot be inferred from this that, at every stage, in the process of sale, the borrower can appeal to the DRT. The borrower cannot wait till the date of auction is fixed and treat any time in between as the starting point for limitation and frustrate the sale. Besides, that will encourage indolence which the law does not approve. The law does not encourage the indolent. What the Supreme Court has emphasized is that after sale, there can be no appeal. But, that does not mean that procedure for sale can be challenged by filing an appeal because as already stated by us, the right, title and interest of the borrower is already extinguished after measures under Section 13(4) are taken. 57. We, however, feel that if as observed by the Supreme Court in Transcore's case (supra) there is no dichotomy between symbolic possession and actual possession, the borrower can file an appeal within 45 days from the date on which the actual possession is taken. It is true that even if actual possession is taken, in an appeal filed within limitation after symbolic possession is taken, the DRT can put the clock back and restore possession to the borrower if it is not taken in accordance with the NPA Act and the said Rules. But, take a case where the secured creditor takes only symbolic possession but for a period of 45 days thereafter, he does not take actual possession on account of lethargy or any other reason and also because in any case after symbolic possession is taken, the borrower cannot sell the property. There may be settlement talks which may fail after expiry of 45 days. In such a case if after expiry of 45 days' from the date when symbolic possession is taken actual possession is taken, can the borrower be remedy-less? If it is held that 45 days' period of limitation has expired after symbolic possession is taken, then the borrower will have no remedy to make a grievance that the possession is not taken in accordance with the provisions of the NPA Act and the said Rules. As already stated by us, the law does not contemplate any notice or hearing to the borrower when the Chief Metropolitan Magistrate / District Magistrate is approached by the secured creditor for help to take possession. Any illegality committed at that stage would, therefore, escape judicial scrutiny if it is held that 45 days period of limitation has lapsed as it starts from the day on which the symbolic possession is taken. It must also be remembered that under Section 17(1), any person (including a borrower) aggrieved by the measures can appeal. This includes third parties. We, therefore, hold that an appeal under Section 17(1) of the NPA Act can be filed within 45 days from the date on which actual possession is taken as there is Page 0765 no dichotomy between symbolic possession and actual possession. However, we make it clear that there is no further accrual of cause of action. The borrower's right in the secured assets having been extinguished, he has no right to object to the procedure of sale. 58. We shall now turn to the second question pertaining to application of Limitation Act, 1963. 59. Under Section 5 of the Limitation Act, 1963, any appeal or any application other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfied the court that he had sufficient cause for not preferring the appeal or making the application within such period. Thus, Section 5 provides for extension of

period of limitation in certain cases. 60. Section 29(2) of the Limitation Act, 1963 states that where any special or local law prescribes for any suit, appeal or application, a period different from the period prescribed by the schedule, the provisions of Section 3 of the Law of Limitation shall apply as if such period was the period prescribed by the schedule and for the purpose of determining any period of limitation for any suit, appeal or application by any special or local law. The provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local laws. 61. We shall now have a look at the judgments on which reliance is placed by learned Counsel. In *Mukum Narain Yadav v. Lalit Narain Mishra*, the Supreme Court has observed as under: If on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. The Supreme Court further observed as under: Even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent the nature of these provisions or the nature of the subject matter and scheme of the special law exclude their operation. 62. In *Mangu Ram's case* (supra), the Delhi High Court was considering Section 417(3) of the Code of Criminal Procedure 1989. The Delhi Municipal Corporation had made an application to the Delhi High Court under Section 417(3) for special leave to appeal from order of acquittal. Section 417(4) required that the application should be made before the expiry of sixty days from the date of order of acquittal. There was delay in filing application. The Corporation, therefore, made an application for condonation of delay invoking Section 5 of the Limitation Act, 1963. The Delhi High Court Page 0766 condoned the delay. The appeal was then heard and Mangu Ram was convicted and sentenced. Being aggrieved by the conviction, the matter was carried to the Supreme Court. The only point which was stressed was that the time limit of sixty days prescribed in Section 417(4) was mandatory. It excluded the applicability of Section 5 of the Limitation Act, 1963. Therefore, the limit could not have been relaxed. The Supreme Court rejected this submission and observed that unless the applicability of the Limitation Act is expressly excluded by the provisions of the special law, Section 5 of the Limitation Act would continue to be applicable to it. Mere provision of a period of limitation, in howsoever peremptory and imperative language, is not sufficient to displace the applicability of Section 5. 63. In *M/s. Popular Construction Company's case* (supra), the Supreme Court was considering whether the time limit prescribed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act") for filing application to challenge the award was absolute or not. The Supreme Court referred to its judgments in *Hulum Chand's case* (supra) and *Mangu Ram's case* (supra). The Supreme Court considered the history and scheme of the Arbitration Act and observed that its main objective was to minimize the supervisory role of courts in the arbitral process. It referred to Section 5 of the Arbitration Act which states that in matters of domestic arbitrations, no judicial authority shall intervene except

so provided. The Supreme Court then considered Section 34 of the Arbitration Act which pertains to application for setting aside arbitral award. The Supreme Court laid stress on the proviso to Section 34 which states that if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the period of three months, it may entertain the application within a further period of thirty days, but not thereafter. The Supreme court observed that the words 'but not thereafter' would amount to an express exclusion within the meaning of Section 29(3) of the Limitation Act and would, therefore, bar the application of Section 5 thereof. 64. We must, at this stage, also refer to the judgment of the Supreme Court in *State of Goa v. Western Builders* because there the Supreme Court was concerned with the Arbitration Act as in *Popular Construction Company's case* (supra). The question which fell for consideration was whether Section 14 of the Limitation Act is applicable to the Arbitration Act. In that case, the Sole Arbitrator declared Award in favour of the Claimant and against the State of Goa. A petition was filed before the Civil Court, Civil Judge, Margao under Sections 30 and 53 of the Arbitration Act, 1940. An objection was raised that since the Arbitration Act had come into force, the Civil Court had no jurisdiction to entertain the proceedings under the Arbitration Act, 1990. The Civil Judge, Senior Division, held Page 0767 that the Arbitration Act, 1990 was not applicable. He disposed of the proceedings. State of Goa filed proceedings before the District Judge, South Goa with an application under Section 14 read with Section 5 of the Limitation Act, 1963 for condoning delay. It was contended that time which was spent in prosecuting proceedings before the Civil Judge, Senior Division, may be excluded while calculating the period of limitation. That application was rejected. Appeal carried from this order was dismissed by the High Court. The High Court's order was carried in appeal to the Supreme Court. Attention of the Supreme Court was drawn to the judgment of the Supreme Court in *M/s. Popular Construction Company's case* (supra). The Supreme Court held that by virtue of Sub-section (3) of Section 34 of the Arbitration Act, for filing an application for setting aside Award, a period of 3 months is prescribed and delay can be condoned only to the extent of 30 days only. To that extent, the applicability of Section 5 of the Limitation Act will stand excluded. But there is no provision in the Arbitration Act which excludes application of Section 14 of the Limitation Act. 65. The Supreme Court observed that the prohibitory provision has to be construed strictly. The Supreme Court further observed that it is true that the Arbitration Act is intended to expedite the commercial issue, that its statement of objects and reasons state that commercial disputes should be disposed of quickly so that country's economic progress is expedited, but it nowhere states that Section 14 of the Limitation Act shall be excluded. The Supreme Court observed that wherever two enactments are overlapping each other, on same area then courts should be cautious in interpreting those provisions. The extent of exclusion, however, is really a question of construction of each statute. The Supreme Court observed that since there is no prohibition provided under Section 34 of the Arbitration Act, there is no reason why Section 14 of the Limitation Act which will advance the cause of justice should be held inapplicable



to Arbitration Act, 1960. 66. Much stress was laid by Mr. Khanavkar on the Supreme Court's judgment in Prakash Jain's case (*supra*), where the Supreme Court was considering a special status i.e. Maharashtra Rent Control Act, 1999. The question which arose before the Supreme Court was whether competent authority under the said special statute had the power of condonation of delay. It was argued that the competent authority was not a court and, hence, provisions of the Limitation Act could not be invoked by it. The Supreme Court observed that the question raised before it had to be considered not only on the nature and character of the authority, whether it is court or not, but also on the nature of powers conferred on such authority or court, the scheme underlying the provisions of the Act concerned, and the nature of powers, the extent thereof or the limitation, if any, contained therein, with particular reference to the intention of the Page 0768 legislature as well found expressed therein. There is no such thing as any inherent power of court to condone the delay in filing proceedings unless the law warrants and permits it. Mr. Khanavkar pointed out that in the Maharashtra Rent Control Act, there is no express provision making Limitation Act inapplicable to it yet the Supreme Court considered the case on the principles enunciated by it and held that the competent authority had no power to condone delay in filing of an affidavit with grounds of defence and application for leave to contest under Section 43(4)(a) thereof. 67. In Fairgrowth's case (*supra*), the Supreme Court was dealing with Section 4(2) of the Supreme Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, (for short, "the said Act"), which prescribed a time limit for filing objections. It was argued that Section 29(2) of the Limitation Act would be automatically applicable to all special Acts such as the said Act as the said Act provided for a period of limitation different from the period prescribed under the Limitation Act, 1963 and, since the provisions of the Limitation Act had not been excluded either expressly or by necessary implication. Section 13 of the said Act contained a provision like Section 35 of the NPA Act giving the said Act an overriding effect on other laws. The Supreme Court observed that the legislature had consciously provided for a power to condone delay under Section 10(3) of the said Act and had excluded the said power in relation to Section 4(2). The Supreme Court held that the provision relating to time limit contained in Section 4(2) of the said Act was mandatory in the sense that the prescribed period cannot be extended by the Court under any inherent jurisdiction of the Special Court. The Supreme Court observed that the prescribed period for taking steps in legal proceedings is intended to be abided by, subject to any power expressly conferred on the court to condone any delay. While coming to this conclusion, the Supreme Court observed that it is not for the courts to determine whether the period of 30 days is too short to take into account the various misfortunes that may be faced by notified persons, who wish to file objections under Section 4(2) of the said Act nor can the section be held to be directory because of such alleged inadequacy of time. The Supreme Court quoted observations of the Privy Council in *Nagindra Nath Dey v. Suresh Chandra Dey* AIR 1932 PC 165 which are to the following effect: The fixation of periods of limitation must always be to some extent arbitrary and may frequently result in hardship.

But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is, their Lordships think, the only safe guide. 68. The following propositions emerge from the above judgments: a) There is no inherent power in the court to condone delay. b) The prescribed period for taking steps in legal proceedings is intended to be abided by subject to any power expressly conferred on the court to condone delay. Page 0769 c) The fixation of period of limitation must always be to some extent arbitrary and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide. (d) The provisions of Sections 4 to 29 of the Limitation Act, 1963 will apply when i) there is a special law or local law which prescribes a different period of limitation for any suit, appeal or application and, ii) the special or local law does not expressly exclude those sections (*Union of India v. Popular Construction Company* (supra)). e) A mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of section. f) If on an examination of the relevant provisions of the special law, it is clear that the provisions of the Limitation Act are necessarily excluded then the benefits conferred therein cannot be called in aid to supplement the provisions of the Special Act. g) Where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent the nature of the provisions or the nature of the subject matter and the scheme of the special law exclude their operation. (h) If the Special Act and the Limitation Act can be read harmoniously without doing violence to the words used therein then there is no prohibition in doing so. [*State of Goa v. Western Builders* (supra).] 69. In this case, we are concerned with a special law which prescribes a different period of limitation so far as application made by the borrower under Section 17(1) are concerned. Section 17(1) reads as under: 17. Right to appeal.(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 authorized officer under this Chapter, (may make an application along with 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. 70. So far as secured creditor is concerned, Section 36 of the NPA Act states that the period of limitation as prescribed in the Limitation Act would be applicable. Section 36 reads as under: 36. Limitation. No secured creditor shall be entitled to take all or any of the measures under subsection (4) of Section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963 (36 of 1963). Page 0770 71. Therefore, the Legislature has made two different provisions for the borrower and the secured creditor so far as period of limitation is concerned. On a proper reading of the NPA Act and the DRT Act, we are unable to come to a conclusion that this indicates that the legislature has consciously excluded the application of the Limitation Act to applications made by the borrower or the aggrieved person under Section 17 of the NPA Act. 72. Section 35 of the NPA Act gives it an overriding

effect. Section 37 states that application of other laws is not barred. It reads thus: 37. 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. 73. Section 17(7) states that the DRT shall, as far as may be, dispose of the applications in accordance with the DRT Act and the Rules made thereunder. Under Section 22 of the DRT Act, the DRT is not bound by the procedure laid down by the Civil Procedure Code, but shall be guided by the principles of natural justice and shall have power to regulate its own procedure. Under the said section, Debts Recovery Tribunal, Maharashtra & Goa Regulations of Practice, 2003 have been enacted. Under Regulation 3(7), "interlocutory application" inter alia means application for condonation of delay. 74. Section 24 of the DRT Act states that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to an application made to a Tribunal. In Transcore's case (supra), the Supreme Court has, after considering the statement of objects and reasons of the NPA Act, the scheme of the NPA Act and the nature of its provisions, held that the enactment of NPA Act is not in derogation of the DRT Act. Their object is recovery of debts by non- adjudicatory process and they provide cumulative remedies to the secured creditor. In fact, Section 37 of the NPA Act states that the provisions of the NPA Act shall be in addition to and not in-derogation to the DRT Act. If we examine the relevant provisions of the NPA Act and the observations of the Supreme Court in Transcore's case (supra), the conclusion is irresistible that Section 5 of the Limitation Act is applicable to the NPA Act. There is no express exclusion of the Limitation Act. So far as borrower's applications under Section 17(1) are concerned, a different period of limitation is prescribed. Hence, on a bare reading of Section 29 (2), Section 5 of the Limitation Act would be applicable to them. So far as the secured creditor is concerned, he can take measures under Section 13(4) within the period prescribed under the Limitation Act. Though Section 35 gives overriding effect to the NPA Act, Section 37 states that application of other laws is not barred and the NPA Act is in addition to DRT Act and not in derogation thereof. It is important to note that under Section 17(7), the DRT has to dispose of the applications in accordance with the DRT Act and the rules made thereunder and Section 24 of the DRT Act makes provisions of the Limitation Act applicable to the application before the DRT. Since after considering the scheme, provisions and object of the NPA Act, the NPA Act Page 0771 and the DRT Act are held complementary to each other by the Supreme Court in Transcore's case (supra), we hold that the provisions of Section 5 of the Limitation Act are applicable to the provisions under the NPA Act. This will also lead to even treatment to the secured creditor as well as to the borrower or any aggrieved person. We may quote the observations made by the Supreme Court in Mardia Chemical's case (supra), while disposing of the matter. The Supreme Court observed as under: Before we part with the case, we would like to observe that where a

secured creditor has taken action under Section 13(4) of the Act, in such cases, it would be open to borrowers to file appeals under Section 17 of the Act within the limitation as prescribed therefor, to be counted with effect from today. 75. We are aware that the powers of the Supreme Court are far more extensive and perhaps the above observations were made by the Supreme Court because the matters with which it was concerned were pending for a long time. But we draw some support from these observations to strengthen our view that if Section 5 of the Limitation Act is held to be applicable to the appeal/application under Section 17(1) of the NPA Act that will be in the interest of justice. 76. We are mindful of the fact that expeditious and speedy disposal of proceedings is the essence of the NPA Act. This is seen from Section 17(5) which requires DRT to dispose of an application within 60 days from the date of the application. Under proviso thereof, DRT can extend the said period for reasons to be recorded in writing but the total period of the application shall not exceed four months from the date of the application. If the application is not disposed of by the DRT within four months, any party to the application may make an application to the DRAT for appropriate direction to the DRT for expeditious disposal and the DRAT shall make an order for expeditious disposal. In the light of the settled legal principles as regards applicability of the Limitation Act and in the interest of justice, we have held that Section 5 of the Limitation Act is applicable to the proceedings under Section 17(1) of the NPA Act. However, while dealing with applications for condonation of delay, the DRT must bear the scheme of the NPA Act in mind and should not allow any person to procrastinate the proceedings by making frivolous applications for condonation of delay. 77. The above discussion leads us to the following conclusions: a) Forty-five days' period of limitation prescribed under Section 17(1) of the NPA Act starts running from the date when symbolic possession is taken or from the date when actual possession is taken as there is no dichotomy between the two. b) The provision of Section 5 of the Limitation Act is applicable to the proceedings under Section 17(1) of the NPA Act. 78. The petition is disposed of in the aforesaid terms.