

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
DECIDED ON: 24th July, 2013

+ **W.P.(C) 4621/2013**
SCHAEFCO INTERNATIONAL
AND OTHERS Petitioners
Through : Mr. Hashmat Nabi, Adv.

versus

HDFC BANK AND OTHERS Respondents
Through : Mr. Kunal Tandon and Ms.Nidhi Jain,
Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)**
Cav. Nos. 627/2013, 628/2013 & 629/2013

Since there is representation on behalf of the respondents,
the caveats stand discharged.

CM 10595/2013(exemption)

Allowed, subject to all just exceptions.

The application stands disposed off.

W.P.(C) 4621/2013 & CM 10594/2013(stay)

1. The petitioner is aggrieved by an order dated 31st May, 2013 passed by the Debt Recovery Appellate Tribunal (DRAT). The DRAT upheld the appeal by which the Debt Recovery Tribunal (DRT)

refused to receive the petitioners' counter-claim.

2. The respondent Bank had initiated the proceedings before the DRT for recovery of amounts allegedly advanced to the petitioners. The account was declared NPA by the Bank as on 1st May, 2010. Thereafter, the Bank proceeded to take action. In the meanwhile, it proceeded for recovery of the amount in terms of the Recovery of Debts Due to Banks and Financial Institutions Act 1993. The petitioners filed their counter-affidavit/written statement on 23rd December, 2011. Subsequently, on 6th August, 2012, they sought to move a counter-claim along with application IA 588/2012. The DRT refused to receive the counter-claim and rejected the application. This necessitated an appeal to the DRAT which, by the impugned order, rejected it.

3. Learned counsel urges that the impugned order is *ex facie* erroneous. It is submitted that there was no delay in presenting the counter-claim since the Bank, i.e. the respondent unduly delayed the proceedings. It is sought to be highlighted that the Bank took considerable time in exhibiting the documents filed with the claim and the affidavit. In the circumstances, the petitioners could not be faulted

for presenting the counter-claim on 6th August, 2012.

4. This Court has considered the materials on record. The notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was issued on 23rd February, 2011. The petitioners had submitted that on 16th April, 2010 the account was declared an NPA. Therefore, they were acutely aware of the fact that there was a cause to agitate their grievances. The opportunity for filing the counter-claim concededly arose in 2011 when the Bank presented the claim before the Tribunal. The petitioner did not prefer the counter-claim at the time it chose to file the written statement or soon thereafter.

5. The DRAT in its impugned order had discussed the various points in time when a counter-claim can be placed on record under Order VIII Rule 6A CPC. The Tribunal also took notice of binding decisions of the Supreme Court reported as *Mahender Kumar v. State of Madhya Pradesh*, AIR 1997 SC 1395 and the subsequent judgment in *Ramesh Chand Ardawatiya v. Anil Panjwani* AIR 2003 SC 2508. The Tribunal took note of the fact that the law enables a defendant to place on record a counter-claim to avoid multiplicity. At the same

time, it chose to exercise discretion in not receiving the counter-claim stating that having regard to the stage of proceedings, such course would be inappropriate.

6. This Court is unpersuaded by the petitioner's submission that the Tribunal's order is unjustified in the circumstances. The facts narrated would disclose that the written statement was filed after about five months of the preferring of the claim. The petitioner chose not to prefer the counter-claim even though the cause for agitating grievance articulated in the counter-claim existed at that time. It chose to file the counter-claim much later by which the proceedings have got underway. We are informed that the recording of the evidence by the Bank had been concluded by the Tribunal at that stage. In these circumstances, the Court is satisfied that there is no illegality or irregularity in the order challenged.

The writ petition is dismissed.

**S. RAVINDRA BHAT, J
(JUDGE)**

**NAJMI WAZIRI, J
(JUDGE)**

JULY 24, 2013/'sn'