

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1149 OF 2023**

Praful Kanhaiyalal Talera

... Petitioner

V/s.

Union of India & Ors.

... Respondents

**WITH
INTERIM APPLICATION (ST) NO. 369 OF 2024
IN
WRIT PETITION NO.1149 OF 2023**

Mr. Praful K. Talera, Petitioner-in-person.

Mr. S. R. Nargolkar Amicus Curiae a/w Neeta Patil present.

Mr. Mohamedali M. Chunawala a/w P. S. Gujar for Respondent No.1 and 2-2D.

Mr. Nishin Shrikhande a/w Nidhi Fagariya i/by Vidhii Partners for Respondent No.5.

Mr. Vinod Joshi for Respondent No.6.

Mr. Harjot Singh i/by Raval Shah & Co. for Respondent No.10 (through VC).

Mr. Rafiq Dada, Senior Advocate a/w Yuvraj Narvankar for Respondent No.14.

Mr. Ashish Kamat, Senior Advocate a/w Vinita Hombalkar for Respondent No.15.

Ms. Roopdaksha Basu a/w Heenal Wadhwa i/by The Law Point for Respondent No.16.

Mr. P. P. Kakade, GP a/w O. A. Chandurkar, Addl. GP and R. A. Salunkhe, Addl. GP for State.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

RESERVED ON : 22th JANUARY, 2024

PRONOUNCED ON : 29th JANUARY, 2024

P.C.: (PER ARIF S. DOCTOR, J.)

1. By the present Writ Petition, the Petitioner, who appears in person, has sought various diverse reliefs which we shall set out shortly.

2. We have heard Mr. Talera, at some length. Before however adverting to the rival contentions, it will be useful, in order to give context to the same, to briefly set out the relevant facts in a nutshell, viz.

- a. The Petitioner claims to be a promoter/director of Respondent No.10 i.e., Dynamic Logistics Pvt. Ltd. Respondent No. 15 i.e., IDBI Bank had initiated recovery proceedings by filing an Original Application (OA) in the year 2001 under the provisions of the

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDBI Act) *inter alia* against Respondent No. 10 and several other companies stated to be of the Talera Group. The Petitioner was Respondent No. 3 to the OA.

- b. It is not in dispute that thereafter, a decree was passed in the OA and a Recovery Certificate was issued in favour of Respondent No. 15 in the year 2003. It appears that thereafter, Respondent No. 15 assigned the Recovery Certificate to Respondent No. 14 in the year 2004. Thereafter in the year 2013, Consent Terms came to be entered into between Respondent No. 14 and 15 on the one hand and Respondent No. 10 on the other hand by which Respondent No. 10 *inter alia* agreed to settle its account under One Time Settlement Scheme (OTS) within time bound schedule as more particularly set out in the Consent Terms.
- c. It is these Consent Terms which the Petitioner is primarily aggrieved by and seeks to challenge on the

ground that (i) the consent terms were fraudulently and unauthorizedly entered into by Respondent No. 10 (ii) the payment made under the consent terms to Respondent No. 14 was also fraudulent and benami (iii) that the original documents / security documents have still not been returned to Respondent No. 10 despite a passage of 13 years and (iv) that on account of continuation/non closure of proceedings before the DRT, the Petitioner would continue to be liable under the Recovery Certificate and no remuneration has been paid to the Petitioner from Respondent No. 10 company for the past several years.

3. Mr. Talera then, in support of his contention that the transactions between Respondent No. 10, 14 and 15 were fraudulent, benami and illegal made the following submissions, viz.

- (a) That the Consent Terms which had been entered into on behalf of Respondent No.10 pursuant to board resolution which was passed/signed by only three independent directors, who did not own a single share in Respondent No.10.

- (b) That despite the fact that the debt had been assigned by Respondent No. 15 in favour of Respondent No. 14, Respondent No.14 had not yet been substituted as the recovery certificate holder in place and stead of Respondent No. 15.
- (c) That the consent terms were filed by the Parties before the Recovery Officer DRT Pune despite the fact that this Court had vide an order dated 5th September 2011 passed in WP 6639 of 2010, WP 6742 of 2010 and WP 6715 of 2019 recorded the statement of Counsel that all further proceedings were to be conducted by the DRT Aurangabad.
- (d) That the former Advocate of Respondent No. 14 had since been appointed as the Presiding Officer, of the DRT Pune.
- (e) That the security documents of Respondent No. 10 continued to be in the custody of the Prothonotary and Senior Master of this court for the last 17 years.

It was basis the above that Mr. Talera submitted that the conduct of Respondent No. 10, 14 and 15 was entirely fraudulent and illegal. He submitted that by entering into the consent terms, Respondent No. 14 and Respondent No.15 have acted against the interest of the Petitioner, Respondent No.10 and public interest by syphoning of funds and misappropriating shares and assets of various group companies of Respondent No.10. That the very fact that the consent terms were filed before the Recovery Officer Pune and not before the DRT Aurangabad, made manifest the fraudulent intention and malafides on the part of Respondent No. 10, 14 and 15. He thus submitted that the monies collected by Respondent Nos. 14 pursuant to the consent terms was benami and illegal since Respondent No. 14 was not even the holder of the Recovery Certificate since the same stood in by the name of Respondent No. 15.

4. At this stage, Mr. Kamat, learned senior counsel appearing on behalf of Respondent No.15 raised a preliminary objection as to the very maintainability of this Writ Petition. He at the outset pointed out what according to him were four very crucial dates, (i) the date of the Decree in the OA, which was in

the year 2003 (ii) the date of the Recovery Certificate i.e., 29th December, 2003 (iii) 30th September 2004 when the debt of Respondent No. 15 was assigned to Respondent No. 14 and (iv) the date of Consent Terms, i.e. 1st October, 2013. Mr. Kamat then invited our attention to the Petition, more particularly, paragraphs 28 and 29 of the Petition and pointed that the real dispute/grievance of the Petitioner appeared to be with family members of the Talera family *qua* certain testamentary matters/proceedings.

5. Mr. Kamat then invited took us through each of the prayers which had been sought for in the Petition viz.

"(a) *This this Hon'ble Court may be pleased to issue a Writ of Prohibition or a Writ in the nature of Prohibition or any other appropriate Writ, Order or direction barring the Sale of R. No. 15 IDBI Bank Ltd and the creation of Third Party interests by the Govt of India by Respondent No 1 and 3 to 7 ; and the Respondents No 2A, 2B and 2C be barred from further interfering and conducting the RP No 67/2004 in OA No 791-P of 2001 till the final decision of this Writ Petition.*

(b) *That this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, thereby calling upon record and papers pertaining to MA No. 81/2019 and the unnumbered Appeal before the Presiding Officer, DRT- Pune and after examining the legality and validity of the same, be pleased to dispose the same*

on merits; thus bringing to final closure the Recovery Proceeding bearing RP No. 67/2004.

- (c) That this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, direction or order to Quash all the earlier orders passed by the Respondent No. 2A and 2B in the Recovery Proceeding No 67 / 2004 in OA No 791-P/ 2001 and release the securities and shares of the Petitioner.*
- (d) Issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, quashing the orders dated 10.3.2022, 20.5.2022 and 26.7.2022, passed by the Debt Recovery Tribunal, Pune, in M.A. No. 81/2019 giving permission to file reply to R .No. 15 IDBI Bank Ltd and R .No. 14 SASF and other Respondents, inspite of seven such opportunities being given to them, and serious objections being raised by the Petitioner.*
- (e) Issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction thereby granting all the prayers sought by the Petitioner in his unnumbered Appeal filed before the Ld. Presiding Officer, DRT, Pune and criminal proceedings be initiated against the wrong doers viz. R.No. 15 IDBI Bank Ltd., R.No. 14 SASF, Vasumati Talera and others.*
- (f) That this Hon'ble Court may please issue a Writ of Mandamus, or Writ in the nature of Mandamus or any other appropriate Writ, Order or direction awarding Mesne Profits be awarded to the Petitioner in light of the frauds, forgeries and perjuries committed by R.No. 15 IDBI Bank Ltd, R.No. 14 SASF and Third Party Intervener Vasumati Talera in the Recovery Proceedings No 67/2004 and they be ordered to make good the losses suffered by the Petitioner.*

- (g) *That this Hon'ble Court may be pleased to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ, Order or direction for dismissal of recovery proceedings pending before the Learned Recovery Officer being R.P. No. 67 of 2004, having become infructuous and Recovery Officer has become functus officio.*
- (h) *That this Hon'ble Court may pleased to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, Order or direction dismissing the Misc Application No. 44 of 2013 filed before the Respondent No 2A by R.No. 15 IDBI Bank Ltd & R.No. 14 SASF.*
- (i) *That this Hon'ble Court may please issue a Writ of Certiorari, or Writ in the nature of Certiorari or any other appropriate Writ, Order or direction dismissing the Misc Application No. 15 of 2011 before the Respondent No 2D filed by R.No. 15 IDBI Bank Ltd & R.No. 14 SASF on merits.*
- (j) *That this Hon'ble Court may please issue a Writ of Certiorari, or Writ in the nature of Certiorari or any other appropriate Writ, Order or direction quashing the order dated 23.12.2009, passed in Appeal No. 22 of 2009, restraining R.No. 10 Dynamic Logistics Pvt. Ltd and the Guarantors from taking possession of Memorandum of Entries dated 13.1.1998, 2.3.1998, 17.3.1998 with the title deeds deposited under the same from the Prothonotary and Senior Master, High Court at Judicature at Bombay, until decision of the Appeal.*
- (k) *That the Hon'ble Court may please issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, Order or direction directing the Prothonotary and Senior Master, High Court of Judicature at Bombay to release the documents to the respective Shareholders of R. No. 10 Dynamic*

Logistics Pvt. Ltd deposited under Contempt Petition No. 07/2009.

- (l) That the Hon'ble Court may please issue a direction to decide all the matters in the present Writ Petition and put an end to the plethora of litigation pending since, 2001, for last 22 years.*
- (m) Cost of this petition be awarded to the Petitioner.*
- (n) Any other relief, order or direction as this Court may deem fit and proper under the facts and circumstances of this case.*
- (o) Any other just and equitable orders/directions in favour of this Petitioner."*

Form the above, Mr. Kamat, pointed out that the Petitioner had an alternate remedy under the provisions of the RDBI Act in respect of each of the reliefs which had been sought for, except the relief seeking on order and/or direction barring the sale of Respondent No. 15. Not only that, he also invited our attention to Exhibit 'DD' of the Petition which was the very appeal filed by the Petitioner before the DRT Pune in which the Petitioner had specifically impugned the Consent Terms. From the Appeal he pointed out that the Petitioner had himself stated viz.

"5.16 During the pendency of the said R.P. No.67/2004 before the Ld. Recovery Officer, the Respondents No.1(a) and (b) entered into One Time Settlement (OTS) with Dynamic

Logistics Pvt. Ltd on 01/10/2013. The said Consent Terms were filed before the Hon'ble Presiding Officer, DRT, Pune under MA No.44/2013. The Appellant herein neither signed nor consented to the said Consent Terms. The Appellant was not aware of the said Consent Terms and after getting knowledge, filed various applications before the Ld. Recovery Officer challenging the said Consent Terms and locus standing of Respondents No.1(a) and 1(b) to enter into the Consent Terms, as they were not the assignees. True Copy of the OTS dated 01/10/2013 is hereto annexed as Annexure 'J'"

Basis this, he submitted that the present Writ Petition was a complete abuse of the process and was required to be dismissed at the threshold.

6. Mr. Dada learned senior counsel appearing on behalf of Respondent No.14 equally submitted that the Petition was wholly misconceived. He submitted that Respondent No. 14 had received the amounts due under the consent terms and thus there was no subsisting liability qua Respondent No. 10 and therefore the question of making any claim against the Petitioner did not arise. He stated that therefore the Petitioners apprehension of there being a subsisting liability against the Petitioner was entirely misplaced and devoid of merit. He then invited our attention to the Petition itself and pointed out that the

Petitioner had himself in paragraph 37 of the Petition stated that no amounts remained outstanding and thus his apprehension of being held liable was entirely misconceived. Mr. Dada submitted that the consent decree having been satisfied, Respondent No.14 would not be taking any steps against the Petitioner in his capacity as guarantor or otherwise in respect of the amounts that were due/payable by Respondent No.10 under the consent decree.

7. In dealing with the contention that the consent terms were filed before the Pune Bench of the DRT, Mr. Dada submitted that the matter was transferred to the Pune Bench of the DRT since the Aurangabad Bench was not available at the time and that the same was in no manner *malafide* or contrary to any order.

8. Mr. Nargolkar, learned *Amicus Curiae*, submitted that the Petition did not appear to be *bonafide* at all. He submitted that the same appeared to have been filed for some ancillary or collateral purpose only to delay the proceedings before the DRT. In support of his contention, he invited our attention to

paragraph 37.14 in which the Petitioner had stated that the proceedings before the DRT were not stayed despite the pendency of the present Writ Petition. Basis this, he submitted that the conduct of the Petitioner did not appear to be *bonafide* and it appeared that the Petitioner was only attempting to stay/delay the proceedings before the DRT Pune. He submitted that the Petition thus appeared to have been filed for this ancillary purposes.

9. After having heard Mr. Talera in person at length and considering the submissions made by the learned counsel for the respective Respondents as also the learned *Amicus Curiae*, we find that this Petition is thoroughly misconceived and is neither maintainable nor entertainable for the following reasons, viz.

A. The Petitioners principal grievance is to the Consent Terms dated 1st October 2013. We find that not only does the Petitioner have an alternate remedy to challenge/set aside the consent terms, but that the Appellant has infact availed of that remedy. Not only has the Petitioner on his own admission made, various applications to set aside the consent terms, but there

is infact a present challenge to the Consent Terms which is subsisting before the DRT Pune. Given this, we find absolutely no reason why we should in our jurisdiction under Article 226 of the Constitution of India to embark upon any enquiry/challenge to Consent Terms when the DRT Pune is already ceased with the same.

- B. The essence of other prayers which have been sought for by the Petitioner is for this Court to hear and dispose of all the proceedings filed by the Petitioner, Respondent No. 10, 14 and 15 and which are pending before the DRT Pune. Again, we see absolutely no reason for us to embark upon such an exercise. Apart from the fact that given the nature of allegations of fraud, forgery etc. which have been made by the Petitioner, a Civil Court/Tribunal is best suited to hear and deal with the same, these proceedings are already instituted and pending. Hence, the same must reach their natural conclusion under the regime provided for by the RDBI Act.

C. *Additionally*, the Petition also raises various questions of fact and law which are also best suited to be decided in a civil proceeding before the competent Civil Court/Tribunal. We must also note that we are not wholly satisfied with the conduct of the Petitioner. The Petitioner has while making very serious allegations of fraud, forgery etc. failed to explain why he has after over ten years from the date of filing of the Consent Terms, chosen to approach this, Court. There is no explanation for this inordinate delay.

10. Hence, for the aforesaid reasons, we find the Petition to be entirely without merit. We therefore pass the following order :-

:ORDER:

- i) Petition dismissed.
- ii) The DRT Pune to hear and decide all pending applications/Appeals filed in and/or arising out of OA 791-P/2001 within a period of six months from the date a copy of this order is placed before the Presiding

Officer, DRT Pune who shall then issue directions for the hearing of all the said Applications.

- iii) It is made clear that the DRT Pune shall decide said Applications/Appeals on their own merits uninfluenced by this order.
- iv) All rights and contentions to be kept open, including of maintainability of the said Applications/Appeals and the jurisdiction of the DRT Pune, if raised by the Petitioner.

11. In view of the above order, Interim Application (St.) No.369 of 2024 does not survive and is accordingly disposed of.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)