

**Case :-** MATTERS UNDER ARTICLE 227 No. - 5526 of 2024

**Petitioner :-** LIC of India Central Office, Mumbai, North Central Zonal Office, Lko. Thru. Its Authorized Signatory

**Respondent :-** The Debts Recovery Tribunal, Lko. University Road Thru. Its Registrar And Another

**Counsel for Petitioner :-** Sanjeev Singh

**Counsel for Respondent :-** Gaurav Mehrotra, Akber Ahmad

**Hon'ble Pankaj Bhatia, J.**

1. Heard Sri Sanjeev Singh, learned Counsel for the petitioner as well as Sri Gaurav Mehrotra and Sri Akber Ahmad, learned Counsel for the opposite party no.2.
2. The present petition has been filed challenging the order dated 16.08.2024 passed by the Presiding Officer, Debts Recovery Tribunal, Lucknow in Misc. Application No.146 of 2022, by means of which, he has allowed the said misc. application filed by the opposite party under Section 22(2) read with Section 19(25) of The Recovery of Debts and Bankruptcy Act, 1993 (in short "the RDB Act") recalling the final judgment and order dated 21.06.2022 passed in O.A. No.715 of 2019, filed by the petitioner.
3. The contention of the Counsel for the petitioner in brief are that the petitioner had filed an O.A. No.715 of 2019, under Section 19 of the RDB Act for recovery of an amount of Rs.73,47,06,501/- along with future interest, costs etc. against the opposite party no.2, in which, notices were issued for filing reply. It is stated that no reply was filed, however, an application dated 18.09.2019 was filed objecting to the authority letter of the person, who had signed the O.A. It was stated that thereafter O.A. was listed on various dates and after lapse of time, a written statement was filed against the O.A., to which a replication was also filed. It is stated that the arguments in the O.A. were heard

on 03.02.2022 through virtual mode and the judgment was reserved for pronouncement on 25.02.2022. It is stated that on 25.02.2022, the judgment could not be pronounced, however, before the said date the opposite party no.2, gave an application on 19.05.2022 seeking rehearing of the O.A. mainly on the ground that the hearing was not effective because of technical disruptions. The said application is on record as Annexure No.8 to the writ petition. The said application was opposed by the petitioner through objection dated 10.06.2022. The Presiding Officer, DRT finally decided the O.A. on 21.06.2022 and allowed the application.

4. It is also stated that the application for rehearing filed by the opposite party no.2 was considered in the order dated 21.06.2022 and the preliminary objection were also considered. It is stated that thereafter the recovery certificate was issued against the opposite party no.2. It is further stated that an application was once again filed by the opposite party no.2 seeking recall of the order dated 21.06.2022 on various grounds, which was registered as Misc. Application No.146 of 2022, to the said application, objections were filed by the petitioner on 19.09.2022 stating that the application was not maintainable. It is stated that on 17.02.2023, the Presiding Officer, DRT summoned the record of O.A. No.715 of 2019 as well as DRC Case No.351 of 2023 (the said case was the recovery case instituted by the petitioner). It is stated that thereafter the opposite party no.2 filed a supplementary affidavit on 16.05.2023 and reply thereto was also filed on 21.08.2023. It is stated that the cause list dated 22.07.2024 had shown that the matter was fixed with remarks "*order on maintainability*", however, the judgment was not pronounced on the said date and thereafter on 16.08.2024, by means of the impugned order, instead of deciding the maintainability, the entire misc. application was allowed, which is under challenge in the present petition.

5. The Counsel for the petitioner argues that the said order has been passed without hearing the parties on the entire application and the order was to be pronounced only on the question of maintainability, however, the DRT erred in recalling the entire order and allowing the application, which is a wrong exercise of power by the DRT and as such, the same should be quashed. It is further argued that noticing the conduct of the DRT, this Court had passed an order for CBI inquiry against the Presiding Officer in another case.
6. While arguing the present petition emphasis is led on the arguments that there are no power of recall vested in the DRT after passing of the final order and the only remedy available to the parties is to file an appeal before the Debts Recovery Appellate Tribunal (DRAT). Reliance is placed upon the provisions of Section 22 (2) read with Section 19 (25) of RDB Act, under which, the application is filed. To impress that under the said provisions, there is no power of recall. The Counsel for the petitioner draws my attention to the provisions of Section 22(2) and states that even the sub-section was not stated in the application and none of the provisions prescribes for recalling the order once it has been passed on merits. He further argues that the power conferred upon the DRT under Section 19(25) is a residuary powers and can only be exercised in a limited manner and cannot supplant the other provisions of the RDB Act. To impress that the powers under Section 151 of C.P.C., which is a *pari materia*, Section 19 (25) cannot be exercised for supplanting the statutory provisions. Reliance is placed upon the judgment the Hon'ble Supreme Court in the case of ***My Palace Mutually Aided Co-operative Society vs B. Mahesh and others; MANU/SC/1030/2022***, wherein the powers conferred by virtue of Section 151 of C.P.C. was considered with the following observations:

*“27. In exercising powers under Section 151 of the CPC, it cannot be said that the civil courts can exercise substantive jurisdiction to unsettle already decided issues. A Court having jurisdiction over the relevant subject matter has the power to decide and may come either to a right or a wrong conclusion. Even if a wrong conclusion is arrived at or an incorrect decree is passed by the jurisdictional court, the same is binding on the parties until it is set aside by an appellate court or through other remedies provided in law.*

*28. Section 151 of the CPC can only be applicable if there is no alternate remedy available in accordance with the existing provisions of law. Such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under the Code. Section 151 cannot be invoked as an alternative to filing fresh suits, appeals, revisions, or reviews. A party cannot find solace in Section 151 to allege and rectify historic wrongs and bypass procedural safeguards inbuilt in the CPC.*

*29. The respondents in the present case had access to recourse under Section 96 of the CPC, which allows for appeals from an original decree. It must be remembered that the present matter was being heard by the High Court exercising its original jurisdiction. The High Court was in effect conducting a trial, and the final decree passed by the High Court on 19.09.2013 was in effect a decree in an original suit. As such, there existed a right of appeal under Section 96 of the CPC, for the respondents. Though they were not parties to the suit, they could have filed an appeal with the leave of the Court as an affected party. Section 96 of the CPC reads as under:*

*“96. Appeal from original decree. - (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.*

*(2) An appeal may lie from an original decree passed ex parte.*

*(3) No appeal shall lie from a decree passed by the Court with the consent of parties.*

*[(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed [ten thousand rupees.]”*

*35. Therefore, we are of the firm opinion that recalling a final decree in such circumstances cannot be countenanced under Section 151 of the CPC. The High Court erred in exercising its jurisdiction under Section 151 of the CPC, to hear and pass a detailed judgment recalling its earlier final decree dated 19.09.2013, rather than directing the respondents to pursue the effective alternate remedies under law. Having said the above, we must clarify that we are not, in any way, doubting the proposition of law that fraud nullifies all proceedings, or that the Court has power to recall an order which was passed due to a fraud played on the Court. However, while exercising the power under Section 151 CPC for setting aside the final judgment and decree, the Division Bench should have taken into consideration the restriction which was observed by this Court in the captioned judgment. Once we have come to the irresistible conclusion that exercising power under Section 151 CPC in the facts and circumstances of the case is bad, we are not inclined to go into further issues that were extensively argued.”*

7. When a specific query was raised on the petitioner as to why he cannot avail the statutory remedy prescribed under the RDB Act by filing an appeal and why the jurisdiction of this Court be invoked under Article 227 of the Constitution of India, he argues and places reliance on the judgment of the Hon’ble Supreme Court in the case of *Assistant Commissioner of State Tax and others vs Commercial Steel Limited; MANU* as well as in the case of *Whirlpool Corporation vs Registrar of Trade Mark, Mumbai and others; MANU/SC/0664/1998*, to impress that it is well settled that the powers under Article 226 are extraordinary and the bar of alternative remedy will not come in the way, if there is a breach of fundamental rights, violation of principles of natural justice, excess of jurisdiction or challenge to the vires of the statutes. He argues that in the present case, the order impugned is in violation of principles of natural justice

and in excess of jurisdiction and thus the statutory appeal could not be a bar in exercise of power under Article 226 of the Constitution of India. The other issues have been raised with regard to the right of closure of the opposite party till filing of the written statement, which was closed even before the DRT proceedings.

8. Controverting the said submissions, Sri Gaurav Mehrotra, learned Counsel for the opposite party no.2 argues that admittedly, when the O.A. was heard, the same was during the COVID period and there was disconnections in the internet connections as such, arguments could not be advanced, for which an application was also filed by the petitioner for rehearing, however, the judgment was pronounced without even taking into consideration the arguments that needed to be advanced on behalf of the opposite party and thus, under the advise, the opposite party had filed an application under Section 22(2) read with Section 19(25) for recalling of the order. He further argues that merely because the sub-section of Section 22 was not mentioned, the same could not effect the merits of the order. It is argued that it is well settled that merely because the section is not properly described that the same could not denude the court from exercising the powers which are otherwise vested in the court. He further states that in terms of the mandate of Section 22(2) specifically clause (e) of the said provisions confers the power of reviewing on the DRT. He further argues that it is otherwise merely settled that even if, the power of substantive review is not conferred, the power of procedural review is inherent in all the courts and in the present case, the case of the opposite party was that the hearing could not be accorded properly on account of disruption in the internet connectivity. He further argues that it is well settled that the power of alternative remedy is not an absolute bar and can be exercised in the circumstances as carved out, however, it is essential that the petitioner coming before this Court has to specifically plead the prejudice caused on account of the said order

prior to invoking the extraordinary jurisdiction under Article 226 of the Constitution of India. He lastly argues that it is fairly well settled in catena of decisions and lastly in the case of ***CELIR LLP vs Bafna Motors (Mumbai) Pvt. Ltd.; (2024) 2 SCC 1*** wherein the Hon'ble Supreme Court had specifically held that the statutory powers conferred under the DRB Act should be availed off and in the present case, the petitioner has straightway approached this Court under Article 227 of the Constitution of India, which is contrary to the mandate of Supreme Court.

9. Considering the submissions made at the Bar, from the record it transpires that allegedly an advance in the form of credit facility was taken by the opposite party, which is a body managed the funds of the State Government and is a multiple state co-operative societies governed under the provisions of Multi State Co-operative Societies Act. The said Co-operative Society had taken the advance for the members of the said society and there were inherent defects in the O.A. as none of the persons, who are the ultimate beneficiary were impleaded in the O.A. He further draws my attention to the agreement through which a floating charge was recorded on the property as security for the money taken from the petitioner and the said properties were under the ownership of various societies members and thus it is proposed to be argued that ultimately the property, which was the security, could not have proceeded, without impleading the said person.
10. Without going into the contention on merits with regard to the claim filed by the applicant or the advance taken by the respondents, what transpires is that against an order recalling the earlier judgment, the jurisdiction of this Court have been invoked under Article 227. Considering the submissions which were recorded in the application filed by the respondents and the consequent order which has been

passed, there is *prima facie* no material to suggest that the tribunal did not have the jurisdiction, once there is no pleading with regard to the prejudice suffered by the petitioner, I do not deem it appropriate invoke my powers under Article 227 of the Constitution and on the sole ground alone, the petition deserves to be dismissed and is accordingly dismissed.

11. The parties would be at liberty to avail their statutory remedies as may be available in law.

**Order Date:-28.11.2024**  
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**(Pankaj Bhatia,J.)**