

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9274 OF 2014

M/s. Mithila Polyplaster Pvt. Ltd.
and others.

..Petitioners

Versus

Punjab & Sind Bank
and others.

..Respondents

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Mr. Rakesh Pathak a/w. Ashwin Kumar Mishra i/b. Minesh Shah, for the Petitioners.
Mr. Ashish Kamat a/w. Ms. Daksha Raghani i/b. Haridas & Co. for Respondent No.1.

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CORAM : V. M. KANADE, &
A.R. JOSHI, JJ.

DATE : FEBRUARY 26, 2015

P.C.

1. The petitioners are aggrieved by the order passed by the DRAT in dismissing the appeal filed on behalf of original defendant Nos.1, 2 and 4. The DRAT came to the conclusion that the written statement was signed by only defendant No.5 and not by other defendants and, therefore, the defendant Nos.1, 2 and 4 have not filed the written statement. On the other hand, learned Counsel appearing for the petitioners has submitted that in fact the written statement was filed on behalf of defendant Nos.1, 2, 4 and 5 and not only defendant No.5.

2. In our view, the DRAT ought to have taken into consideration all the submissions made on behalf of the parties. Secondly, the DRAT

also should have considered whether there was any defect which could be cured subsequently and taking into consideration all these aspects should have decided the appeal. We are of the view that, therefore, the order of the DRAT deserves to be quashed and set aside and the matter needs to be remanded back to the DRAT for reconsideration of the matter on merits afresh and in accordance with law. Accordingly, the impugned order of the DRAT is quashed and set aside and the matter is remanded back to the DRAT for reconsideration of the matter on merits afresh and in accordance with law. All contentions of both sides are kept open. The DRAT shall decide the appeal within four weeks after receipt of this order. Till that time the recovery proceedings shall not be initiated.

3. We clarify that we have not expressed any opinion on the merits of the case.

4. The Petition is disposed of accordingly.

(A. R. JOSHI, J.)

(V.M. KANADE,J.)

Deshmane, (P.S.)