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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10325 OF 2004

Amit Jhaveri & Anr. … Petitioners
Versus
Bank of Baroda and Ors. … Respondents

WITH

WRIT PETITION NO.8136 OF 2004

Bank of Baroda … Petitioner
Versus
Amit Jhaveri & Ors. … Respondents

Mr. K.H. Halani a/w Mr. P. Ranjan i/by M/s. Halai & Co., for the Petitioners in WP No.10325 of 2004 and for Respondent Nos.1 and 2 in WP No.8136 of 2004.

Mr. Satish Upadhyay i/by M.V. Kini & Co., for the Petitioner in WP No.8136 of 2004 and for Respondent No.1 in WP No.10325 of 2014.

Mr. Vishal Kanade a/w Ms. Sneh Mehta and Ms. Juhi Mathew i/by M/s. Wadia Ghandy & Co., for Respondent Nos.2 and 3 in WP No.10325 of 2014 and for Respondent Nos.3 and 4 in WP No.8136 of 2004.

CORAM : A.S. OKA &
V.L. ACHLIYA, JJ.

DATE : 22nd SEPTEMBER, 2015

P.C.

. In these two Petitions, the challenge is to the same orders passed by the Debt Recovery Tribunal (for short "DRT") as well as by the Debt Recovery Appellate Tribunal (for short "DRAT"). Original application was filed by the Bank of Baroda before the DRT, Mumbai for recovery of certain amount. The Petitioners in Writ Petition No.10325 of 2004 were the Respondents/Opponents in the said original application.

2. An application for intervention in the Original Application was made by the second and third Respondents in Writ Petition No.10325 of 2004. On the said application, the learned Presiding Officer of DRT-II, Mumbai passed an order on 7th May, 2004 which reads thus :-

> "ORDER
>
> On the Interveners' depositing within 10 days from today with the Applicant Bank Rs.1.70 crores with interest @ 15% p.a. with quarterly rests from 10/06/1999 till 17/5/2004 and paying costs Rs.5,000/- each to the Bank, Defendant No.1 and the Tribunal, the Applicant Bank shall return within the next ten days to the Interveners those shares of HCL-HP Ltd. (now Infosys) as are in his name upto maximum of 2,64,000 shares."

3. An application for review was made by Bank of Baroda seeking review of the said order. By order dated 31st May, 2004, the learned Presiding Officer of the DRT-II, Mumbai dismissed the review application. An appeal was preferred by Bank of Baroda before DRAT for challenging the order passed on review application. The Appeal was

dismissed by the learned Presiding Officer of the DRAT by judgment and order dated 6th August, 2004.

4. The aforesaid three orders have been challenged by the Respondent Nos.1 and 2 in the Original Application by filing a Writ Petition No.10325 of 2004. The Bank of Baroda challenged the same orders by filing a Writ Petition No.8136 of 2004. Both the Petitions have been admitted by this Court. The orders impugned have been stayed during the pendency of these Petitions.

5. Original Application filed by the Bank of Baroda was finally allowed by Judgment and Order dated 27th March, 2006 by the learned Presiding Officer, DRT-II. The opponents therein were directed to pay a sum of Rs.8,09,58,000/- with interest @ 18% per annum from 27th December, 1993 till realisation. We must note here that the order dated 27th March, 2006 passed in the Original Application was reviewed by the order dated 3rd October, 2010 and the amount recoverable was modified as Rs.11,20,14,000/- with interest @ 18% per annum from 27th December, 1993 till full realisation. An Appeal was preferred by the Petitioners in Writ Petition No.10325 of 2004 against the said final Judgment and Order in the Original Application. The learned Chairperson of the DRAT by Judgment and Order dated 12th January, 2010 dismissed the Appeal. In paragraph 23 of the said Judgment and

Order, the learned Chairperson of the DRAT referred to order dated 7th May, 2004 by which the second and third Respondents in Writ Petition No.10325 of 2004 were directed to deposit a sum of Rs.1.70 Crores with interest @ 15% per annum with quarterly interest. In paragraph 23, a reference was made to the notice issued by the Income-Tax Department under Section 226(3) of the Income-Tax Act, 1961 to the first Petitioner in Writ Petition No.10325 of 2004 raising a demand of Rs.4,63,01,666/-. The order notes that against the said demand, the second and third Respondents in Writ Petition No.10325 of 2004 (Intervenors in the original application) moved this Court by filing a Writ Petition. The Writ Petition was dismissed. The order of dismissal was challenged by the second and third Respondents in this Petition by filing a Special Leave Petition before the Apex Court. By order dated 14th September, 2009, the Apex Court in the said SLP directed that the Income-Tax Department shall be made a party in the proceedings of Appeal before the DRAT. Accordingly, in the said Appeal No.336 of 2006 preferred by the Petitioners in Writ Petition No.10325 of 2004, the Income-Tax Department was added as a party Respondent No.2. The final order was passed by the learned Chairperson of the DRAT in Appeal on 12th January, 2010 reads thus :-

> " Appeal is dismissed with no order as to costs.
>
> The Respondent No.2 shall have first charge on the amount of Rs.3,51,85,723/- deposited by SAIPL

with the Registrar, DRT-II, Mumbai.

In view of the above, M.A. No.1072/2009 stands disposed of.”

6. Hence while passing the final order dated 12th January, 2010 in Appeal while confirming final order passed by the DRT on the Original Application filed by the Bank of Baroda, the DRAT directed that the amount deposited by the second and third Respondents (Interveners in Original Application) in Writ Petition No.10325 of 2004 on the basis of order dated 7th May, 2004 will not go to the Bank of Baroda but the Income-Tax Department will have a first charge on the said amount. It is not in dispute that the said amount deposited by the second and third Respondent in Writ Petition No.10325 of 2004 has been transferred to the Income-Tax Department. The aforesaid Judgment and Order dated 12th January, 2010 was challenged by the Petitioners in Writ Petition No.10325 of 2004 by filing a Writ Petition in this Court. The said Writ Petition stands dismissed. It is not in dispute that the Judgment and Order dated 12th January, 2010 has attained finality as of today. This order has been passed during the pendency of these two Petitions.

7. The orders impugned in these two Petitions have been passed during the pendency of the Original Application. The Original Application was finally decided during the pendency of these Petitions. The impugned orders are in the nature of interim or interlocutory

orders passed during the pendency of the Original Application. As stated earlier, the Original Application has been finally allowed and even the Appeal against the final order passed in the Original Application has been dismissed by order dated 12th January, 2010. Apart from the clear legal position that after disposal of the Original Application, the impugned orders cannot be operative and enforceable, the result of the order dated 12th January, 2010 passed by the DRAT is that the order dated 7th May, 2004 passed by the learned Presiding Officer of the DRT – II on the application made by the second and third Respondents in Writ Petition No.10325 of 2004 cannot be now implemented. Under the said order dated 7th May, 2004, on deposit of the requisite amount by the said two Respondents, the said Bank was directed to return the shares of HCL-HP Ltd. Now, the amount deposited by the second and third Respondents in the said Writ Petition in terms of the order dated 7th May, 2004 has not gone to the Bank of Baroda but to the Income-Tax Department. For this reason now the order dated 7th May, 2004 cannot be implemented. The Judgment and Order dated 12th January, 2010 passed in Appeal which holds that the Income-Tax Department will have first charge on the amount deposited by the second and third Respondents in Writ Petition No.10325 of 2004 in terms of order dated 7th May, 2004 has attained finality and the second and third Respondents have not chosen to challenge the said order.

8. Thus, the position which clearly emerges is that the order dated 7th May, 2004 passed by the learned Presiding Officer to the DRT-II cannot be implemented now as the said order does not survive on dismissal of the Original Application and in view of the order of DRAT passed during the pendency of these two Petitions.

9. As the orders impugned in these two Petitions are no longer operative and cannot be implemented, the Petitions do not survive. Petitions are accordingly disposed of. Rule is discharged with no order as to costs.

(V.L. ACHLIYA, J) **(A.S. OKA, J)**

Certified to be true and correct copy of the original signed Judgment/order.