IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2506 OF 2009

State Bank of India ... Petitioner
v/s
Dileep Balkrishna Nevatia and others ... Respondents

WITH
WRIT PETITION NO.1751 OF 2008

Dileep Balkrishna Nevatia ... Petitioner
v/s
State Bank of India and others ... Respondents

Mr S.H. Patel for the Petitioner in WP No.2506 of 2009 and for Respondent No.1 in WP No.1751 of 2008.

Mr Dileep B. Nevatia, Petitioner in person in WP No.1751 of 2008 & for Respondent Nos.1 & 2 in WP No.2506 of 2009

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.

Reserved On : 26th August, 2015
Pronounced On : 23rd September, 2015

JUDGMENT ***[Per B. P. Colabawalla J.]:-***

1. Both these Writ Petitions are filed under Article 226 of the Constitution of India challenging the order dated 14th February, 2008 passed by the Debt Recovery Appellate Tribunal (hereinafter referred to as the **"DRAT"**). The Petitioner in Writ Petition No.2506 of 2009 (State Bank of India) has challenged the order of the DRAT to the extent that the DRAT set aside the decree passed in its favour in the sum of Rs.22,16,153/- by the Debt Recovery Tribunal – II, Mumbai, (for short the **"DRT"**) on the basis of alleged admissions contained in the letters dated 19th July, 1999 and 16th June, 2000 respectively.

2. The Petitioner in Writ Petition No.1751 of 2008 (Dileep Nevatia) has also challenged the very same order of the DRAT in so far as the DRAT did not refund to him an amount of Rs.43,06,912.18

deposited by him (and withdrawn by the State Bank of India) pursuant to certain interim orders passed by this Court. Since both the Writ Petitions challenge the same order of the DRAT, which arises out of Suit No.3217 of 1991 (subsequently transferred to the DRT and renumbered as Original Application No.2693 of 2000), both Writ Petitions are being disposed of by this common order and judgment. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the DRT, the Petitioner in Writ Petition No.2506 of 2009 (State Bank of India), being the Plaintiff, and the Petitioner in Writ Petition No.1751 of 2008 (Mr. Dileep Nevatia), being Defendant No.1.

3. Before deciding the rival contentions, it would be necessary to set out a few facts. The Plaintiff is a Bank and a body corporate constituted under and governed by the State Bank of India Act, 1959. Defendant No.1 (Dileep Nevatia) is the sole proprietor of a firm called M/s Sundeep Industries and Defendant No.2 is mother of Defendant No.1 and also sued in her capacity as a guarantor.

4. At the request of Defendant No.1, in or around 26th October 1987, the Plaintiff granted the following facilities to Defendant No.1:-

Sr.No.	Name of Facility	Amount (Rs.)
1	Cash Credit Facility against hypothecation of goods	25 lakhs
2	Cash Credit Facility against book debts	4.50 lakhs
3	Medium Term Loan	10 lakhs

5. To secure the aforesaid facilities, Defendant No.1 executed several security documents, the details of which are more particularly set out in paragraphs 4 to 6 of Writ Petition No.2506 of 2009. In addition to the aforesaid security documents, Defendant No.2 also executed a separate deed of guarantee inter alia guaranteeing the repayment of the amounts that may be due and payable by Defendant No.1 under the aforesaid facilities. Thereafter, several revival letters were also executed, the details of which are set out in paragraphs 8 to 10 of Writ Petition No.2506 of 2009. It is the case of the Plaintiff that Defendant No.1 had acknowledged his debt to the Plaintiff in respect of all the aforesaid three facilities as under:-

Sr.No.	Name of Facility	Date of acknowledgment	Amount (Rs)
1	Cash Credit Facility against hypothecation of goods	25-04-1990	37,81,974.50
2	Cash Credit Facility against hypothecation of book debts	25-04-1990	4,24,398.80
3	Term Loan Facility	25-04-1990	6,84,963.95

6. According to the Plaintiff, since the level of operations of Defendant No.1 were reduced to a considerable extent and the Defendants failed to pay the amounts due under the facilities granted, the Plaintiff filed a suit in this Court being Suit No.3217 of 1991 inter alia seeking a decree for the following amounts:-

Sr.No.	Name of Facility	Amount (Rs)
1	Towards Cash Credit Facility against hypothecation of goods	49,18,393.98
2	Towards Cash Credit Facility against hypothecation of book debts	5,56,855.75
3	Towards Term Loan Facility	8,81,069.81
	TOTAL:-	**63,56,319.54**

Interest was also claimed on the aforesaid amounts from 2nd July, 1991 till payment and/or realisation.

7. In this suit, the Plaintiff filed Notice of Motion No.2574

of 1991 seeking interim reliefs inter alia for appointment of a Court Receiver and injunction. This Court, by its ad-interim order dated 11th October, 1991 appointed a Court Receiver and directed the Court Receiver not to take possession if the Defendants deposited in Court a sum of Rs.70,000/- per month. Liberty was also granted to the Plaintiff – Bank to withdraw these amounts subject to furnishing accounts. Thereafter, on 1st December, 1994 this Notice of Motion was made absolute in terms of the ad-interim order dated 11th October, 1991. Accordingly, the entire amount of Rs.43,06,912.18 deposited by the Defendants in this Court was withdrawn by the Plaintiff – Bank from time to time.

8. Thereafter, the Defendants filed their written statement in the suit. After the promulgation of *the Recovery of Debts Due to Banks and Financial Institutions Act, 1993* **("RDDB Act, 1993")**, this suit was transferred to the DRT and renumbered as Original Application No.2693 of 2000.

9. In the written statement filed by the Defendants, it was

inter alia contended that the claim of the Plaintiff – Bank was time barred and that their signatures were obtained on blank documents. The defendants also denied the acknowledgments on the balance statements signed by them. Thereafter, the parties filed their respective affidavits of claim and evidence.

10. After considering the evidence led by the parties, the DRT negated the contentions of the Defendants. The DRT held that the claim of the Plaintiff – Bank was not barred by the law of limitation and held that the Defendants had acknowledged the debts by signing the balance statements issued by the Bank. The DRT however, did not approve the manner and mode adopted by the Bank with reference to its claim for interest. The DRT was of the opinion that the Bank ought not to have acted on the advise of its statutory auditors and that in any case nothing prevented the Plaintiff Bank from showing the amount of interest in the statement filed with the Prothonotary and Sr. Master, High Court, Bombay. By not reflecting the interest component in the statement filed before the Prothonotary and Sr. Master, not only had the Plaintiff – Bank acted in a highly improper

manner but also created a mess and in the process got its own interest jeopardized. The DRT came to this conclusion because when Defendant No.1 deposited the entire amount with the Prothonotary and Sr. Master as per the statement of account filed by the Bank, the Defendants got a chance of contending that the Plaintiff's claim had been satisfied. However, despite this, the DRT relied upon two letters dated 19th July, 1999 and 16th June, 2000 on the basis of which the DRT, after recording that the Bank had appropriated the sums deposited by the Defendants pursuant to interim orders of this Court, passed a decree in the sum of Rs.22,16,153/- on the basis of the alleged admissions contained in the aforesaid two letters.

11. Being aggrieved by this order, only the Defendants preferred an Appeal before the DRAT. The Plaintiff – Bank did not file any Appeal before the DRAT. The DRAT, after hearing the parties at length, by its order dated 14th February, 2008 allowed the Appeal of the Defendants to the extent that the decree passed against the Defendants in the sum of Rs.22,16,153/- was set aside. However, before the DRAT, the Defendants, for the first time, sought to contend

that they were entitled to the refund of the amount of Rs.43,06,912.18 deposited by them in this Court pursuant to the interim orders passed on 11th October, 1991 and 1st December, 1994 respectively. On this aspect, from the tenor of the judgment of the DRAT, it appears that this sum of Rs.43,06,912.18 deposited by the Defendants, and withdrawn by the Plaintiff – Bank, was adjusted towards the claim of the Plaintiff – Bank with the consent of the Defendants. After taking into account this adjustment, the DRT passed a decree against the Defendants in the sum of Rs.22,16,153/- on the basis of the alleged admissions contained in the two letters dated 19th July, 1999 and 16th June, 2000 respectively. After hearing the parties, the DRAT held that the Defendants had accepted the withdrawal of the amount of Rs.43,06,912.18 by the Plaintiff – Bank as an adjustment towards its claim. Therefore, the contention of the Defendants that they were entitled to a refund of the said amount was rejected by the DRAT. The DRAT specifically recorded that this issue, and which was unnecessarily argued by the Defendants, was not even within the scope of the Appeal. As stated earlier, as far as the decree passed by the DRT in the sum of Rs.22,16,153/- is concerned, the DRAT set aside the said decree for the reasons more particularly mentioned in paragraphs 14 to 24 of the impugned order. It is in these circumstances, the Plaintiff – Bank as well as the Defendants are before us in our writ jurisdiction. As stated earlier, the Plaintiff – Bank is aggrieved by that portion of the impugned order which sets aside the decree in its favour whereas the Defendants are aggrieved with the fact that the Plaintiff – Bank was not directed to refund the amount of Rs.43,06,912.18 that was withdrawn by them pursuant to the interim orders passed by this Court.

12. We have heard Mr Patel, learned counsel appearing for the Plaintiff and Mr Dileep Nevatia, Defendant No.1 appearing in person. We have also carefully perused the papers and proceedings in both Writ Petitions as well as the order of the DRAT impugned therein. Before the DRAT, Defendant No.1 (Mr Dileep Nevatia) was the Appellant. At the time of arguments before the DRAT, an attempt was made by him to challenge not only the decree passed against the Defendants in the sum of Rs.22,16,153/-, but also the adjustment of Rs.43,06,912.18 towards the claim of the Plaintiff – Bank. It was

argued by Defendant No.1 that the amount claimed by the Plaintiff – Bank was time barred and the Bank's claim ought to have been dismissed totally and the amount of Rs.43,06,912.18 deposited by Defendant No.1, and withdrawn by the Plaintiff – Bank, ought to have been refunded to the Defendants. Before the DRAT, Defendant No.1 argued that the amount of Rs.43,06,912.18 was deposited pursuant to interim orders passed by this Court and since the Plaintiff – Bank had not proved its claim, the said amount could not have been adjusted against its claim. It is on this basis that Defendant No.1 claimed refund of the aforesaid amount. The exact same argument is also canvassed before us. On going through the impugned order we find that this issue has been dealt with by the DRAT in great detail in paragraphs 10 to 13 of the impugned order, and which read as under:-

> *"10. As regards the said adjustment the learned advocate for the respondent bank has argued that the present appeal has been filed by the appellant challenging only the decree passed by the DRT in the sum of Rs.22,16,153/- and not about the adjustment of the claim of the bank which was done on the basis of the admission of the appellant. He argued that all the grounds taken up in the memorandum of this appeal pertain to the decree passed by the DRT in respect of the sum of Rs.22,16,153/-. He relied in particular on ground (m) of the memorandum of appeal and argued that the said ground also shows that the appellant had not challenged the adjustment of the claim of the bank made out of the amount deposited by the appellant pursuant to the interim order*

passed by the High Court. It would be relevant here to quote the ground (m) of the memorandum of appeal which reads as follows:-

> *"The learned Presiding Officer erred in not dismissing the claim of the bank on account of having suppressed from the Hon'ble Tribunal the various orders pursuant to which the entire suit claim was paid over to bank and still had sought to proceed with O.A. on the basis of original suit amount."*

11. By the aforesaid ground the appellant only seeks to challenge the decree passed by the DRT which is in the sum of Rs.22,16,153/- and not the adjustment of the amount deposited by the appellant towards the claim of the respondent bank. The counsel for the appellant was not in a position to point out from the memorandum of appeal any ground raised or an averment made challenging the adjustment of the amount. Moreover, since the point has been raised it would not be out of place to make reference here to the approval and acquiescence on the part of the appellant for the adjustment of the claim of the bank from the amount deposited by him pursuant to the interim order passed by the High Court. In paragraph 5 of the affidavit dated 26/4/2002 filed by the appellant it is stated that no amount is due and/or payable by the defendant and therefore, the application filed by the respondent bank deserves to be dismissed with costs. In the said paragraph an objection has been raised only with regard to the adjustment of the amount from the date when the amount was withdrawn by the bank and not from the date when the amount was deposited by the appellant for the purpose of calculation of interest. Thereafter in paragraph 3 of the affidavit filed in September 2002 it is stated that from various documents and other pleadings it would be evident that nothing would be due and payable by the defendant to the applicant bank as pursuant to the order of the court the defendant from time to time made payments to the applicant bank and on the basis of applicant bank's own statement of account defendant had made the complete payment. Reference to 'other pleading' in the aforesaid paragraph must be to the earlier affidavit filed by the appellant i.e. affidavit dated 26/4/2002, paragraph 5 whereof has been referred to earlier.

12. Then reference can be made to the observation of the Presiding Officer in paragraph 5 of the impugned order wherein it has been stated that the advocate of the defendant no.1 had contended that the defendant had deposited the sum of Rs.70,000/-

per month in the office of Prothonotary and Senior Master, High Court, Bombay from 4/11/1991 and thus the total deposit of Rs.43,06,912.18 having been withdrawn by the respondent bank the bank's claim is satisfied which amount would be refundable to the defendant in case the suit for damages filed by the defendant in the High Court being Suit No.3254 of 1991 is decreed. It is true that but for the above stand taken on behalf of the appellant the amount deposited by the appellant and withdrawn by the bank pursuant to the interim order could not have been adjusted against the claim of the bank in the absence of the decree passed after the bank proved its claim.

13. Thus, not only in two affidavits the appellant had made reference to the payment of the claim of the bank but an argument was also advanced by the defendants' advocate about the claim of the applicant bank being satisfied because of the payment made as per the interim order passed by the High Court. That stand is reiterated by the appellant even in the present appeal. The absence of any challenge made to the adjustment of the said amount towards the claim of the bank and the stand taken in ground (m) in the memorandum of appeal clearly go to show that the appellant had accepted the withdrawal of the amount by the respondent bank as an adjustment towards the claim of the bank. In view of the aforesaid position the counsel for the appellant unnecessarily went on arguing the points which were beyond the scope of the appeal filed by the appellant and therefore, the judgments cited in respect thereof need not be referred to and considered, which otherwise also do not quite support the points raised by the counsel."

(emphasis supplied)

13. On carefully perusing the impugned order, we find that proper and cogent reasons have been assigned by the DRAT whilst negating the contentions of the Defendants. As recorded in the impugned order, there was no ground in the memo of appeal

challenging the adjustment of Rs.43,06,912.18 towards the claim of the Plaintiff –Bank. Even though no ground was raised to challenge the said adjustment, the DRAT thereafter even took note of how Defendant No.1 had approved and acquiesced to the aforesaid adjustment by inter alia referring to the contents of several affidavits filed by the Defendants before the DRT. We do not think that the order of the DRAT on this aspect suffers from any perversity or patent illegality to persuade us to interfere with the same in our extraordinary, equitable and discretionary jurisdiction under Article 226 of the Constitution of India.

14. Despite this, we ourselves perused the order of the DRT dated 31st December, 2002 and more particularly paragraph 5 thereof wherein the DRT has specifically recorded the contention of the Defendants as under:-

> *"5. It is then contended that the Defendant No.1 has been depositing Rs.70,000/- p.m. in the office of Prothonotary and Sr. Master, High Court, Bombay from 4th November 1991 and total deposit being Rs.43,06,912.18. The Hon'ble High Court had permitted the Bank to withdraw the amount subject to furnishing the statement of account. As such the applicant was submitting the accounts in the Hon'ble High Court as per which the Defendant no.1 made payments, last installment paid in April 1997 being of*

> *Rs.1,06,912.18.* *Thus in any case, the applicant's case is satisfied though the applicant is in law obliged to refund money as claimed by the Defendants in Suit No.3254 of 1991 wrongly recovered from the Defendants.*"
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> (emphasis supplied)

15. We must mention here that this Suit No.3254 of 1991 was dismissed by this Court on 9th February, 2015. On perusal of paragraph 5 of the order of the DRT, it is clear that it was the contention of Defendant No.1 that on the Plaintiff – Bank withdrawing the amount of Rs.43,06,912.18 deposited by him, the claim of the Plaintiff – Bank stood satisfied. In this view of the matter, we are clearly of the view that the findings of the DRAT on this aspect are fully justified and in any event are a reasonable and plausible view requiring no interference by us. In view of this factual background and the specific stand taken by Defendant No.1 before the DRT, we think it unnecessary to deal with the judgments cited Mr Nevatia as they are wholly irrelevant in the facts of this case.

16. Faced with this situation, Mr Nevatia, party in person, submitted that the observations made by the DRT in paragraph 5, and

reproduced above, are factually incorrect and do not correctly set out the contentions of the Defendants. We are afraid, we cannot take cognizance of this argument. The contention of the Defendants is recorded in specific terms in the aforesaid paragraph, and till date, no application has been made, either for correction of the order or having the same clarified. We therefore have to go by what is recorded in the order and cannot take cognizance of an argument that is directly contrary to what is recorded therein. In fact, even the DRAT in paragraph 4 of the impugned order, has inter alia recorded that from the tenor of the judgment of the DRT, it appears that the sum of Rs.43,06,912.18 was adjusted towards the claim of the Plaintiff – Bank with the consent of Defendant No.1. In this view of the matter, we find that there is no substance in the argument of Defendant No.1 on this aspect.

17. Having dealt with the objection of the Defendants regarding the adjustment of Rs.43,06,912.18 towards the claim of the Plaintiff – Bank, we shall now deal with the objection of the Plaintiff – Bank in so far as the DRAT set aside the decree of Rs.22,16,153/-

passed in its favour. This decree was passed on the basis of the alleged admissions contained in the letters dated 19th July, 1999 and 16th June, 2000 respectively. We have carefully perused these two letters to see whether they would amount to an admission that would bind the Defendants, and on the basis of which a decree could have been passed by the DRT.

18. The letter dated 19th July, 1999 is a letter written by the Advocates for the Defendants to the Advocates for the Plaintiffs. In this letter, a reference is made to two separate suits viz. Suit No.3217 of 1991 (the present suit) and Suit No.3354 of 1991. As far as the second suit is concerned, the same is not a subject matter of these proceedings. In the said letter, it is stated that the Defendants met the representatives of the Plaintiff – Bank and that the above two suits have been settled in the sum of Rs.22,16,153/- and Rs.17,02,748/- respectively. The Advocates for the Defendants therefore called upon the Advocates for the Plaintiff – Bank to forward to them draft consent terms which could be filed in Court. The second letter is dated 16th June, 2000 and starts with a heading "WITHOUT

PREJUDICE". This letter refers to the discussions that were held between the parties on 10th June, 2000 and thereafter it is recorded that the Defendants would be paying the dues as agreed but by a different payment schedule as more particularly set out in the said letter.

19. As far as the letter dated 16th June, 2000 is concerned, in our view, the contents thereof can never amount to an admission as the said letter admittedly starts with the heading "WITHOUT PREJUDICE". Therefore, the reliance placed by the DRT on this letter as the basis for passing a decree on admission was wholly incorrect and the DRAT was fully justified in holding that the aforesaid letter can never be relied upon for passing a decree on admission against the Defendants.

20. As far as the letter dated 19th July, 1999 is concerned, we are in agreement with the reasoning of the DRAT that even this letter cannot amount to an admission so as to pass a decree against the Defendants in the sum of Rs.22,16,153/-. Though the said letter does

not contain the remark “WITHOUT PREJUDICE”, the letter itself contemplates that the settlement was not complete and in fact consent terms were to be forwarded by the Advocates for the Plaintiff – Bank to the Defendants, which could be filed in Court. We are fortified in taking this view because there were further negotiations between the Plaintiff – Bank and the Defendants for settling the dues. This is reflected in the letter dated 8th September, 2000 written by Defendant No.1 to the Plaintiff – Bank wherein it is recorded that the Plaintiff – Bank had offered a one time settlement to the Defendants under the scheme announced by the RBI. We therefore find that the reliance placed by the DRT even on this letter for the purpose of passing a decree on admission, was wholly misplaced and the DRAT was fully justified in setting aside the decree passed in favour of the Plaintiff – Bank on the basis of the alleged admissions contained in the aforesaid letter.

21. On the aspect whether the DRT was justified in passing a decree on admission, the DRAT, in paragraphs 14 to 21 of the impugned order, has dealt with this issue in great detail. After

considering both the letters relied upon by the Plaintiff – Bank, the DRAT held thus:-

> *"17. The aforesaid letter mentions at the top 'without prejudice'. There is reference to the discussions which took place on 10/6/2000 between the parties and then it is stated that the total amount payable shall be Rs.22,16,153/- which would be repaid at the rate of Rs.60,000/- per month within a total period of 36 months and further interest would be paid at the rate of 11% per annum on the aforesaid amount.*
>
> *18. Reading of the aforesaid two letters makes it clear that the said letters were addressed pursuant to the talks of settlement which took place between the parties about the claim of the respondent bank. That the talks of settlement were going on between the parties is obvious from the said letters. The respondent bank had also given proposal to the appellant by its letter of 28/8/2000 as per the RBI guidelines.*
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> *19. In my view, the alleged admission in the two letters one of July 1999 and another of June 2000 relied on behalf of the respondent bank cannot be said to be an admission on the part of the appellant for passing the decree on admission against the appellant. It is well settled that any offer made for settlement of the claim by the defendant cannot amount to an admission of liability. In this respect reference may be made to section 23 of the Indian Evidence Act which reads as follows:*
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> > *"23. Admissions in civil cases, when relevant - In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the court can infer that the parties agreed together that evidence of it should not be given."*
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> *20. So far as the letter dated 16/6/2000 addressed to the respondent bank by the appellant is concerned it expressly mentions that the said letter was written 'without prejudice'. It meets the requirement of the express condition referred to in section 23 of the Indian Evidence Act. That letter refers to and is in continuation of the earlier letter addressed by the advocate of the appellant to the advocate of the respondent bank. No doubt,*

the advocate's letter does not expressly mention that it was 'without prejudice' but it refers to the talks of the settlement between the parties and therefore, it can be said that there was implied condition that the admission was made only for the purpose of settlement and therefore, it cannot amount to an admission as it falls under the latter portion of section 23 of the Indian Evidence Act which refers to the implied condition.

21. The counsel appearing for the appellant has also relied on the judgment of the Orissa High Court in the case of Sri Bauribandhu Mohanty and another v/s Sri Suresh Chandra Mohanty and others, reported in AIR 1992 ORISSA 136 wherein it has been held that where the compromise is not acted upon and is, therefore, not binding on the parties, any recital therein is of no value as evidence. It was observed in that case as follows:

> *"The parties are often willing to make admissions for the purpose of affecting a compromise to which it would be unfair to hold them if the compromise falls through."*

That was a case wherein reliance was sought to be placed on the terms of settlement in the compromise petition for due purpose of treating it as a valid admission but that contention was negatived after considering various decisions of the other High Courts on the point."

22. On perusing the impugned order, we find that the DRAT has given cogent and proper reasons for setting aside the decree on admission in favour of the Plaintiff – Bank. The view taken by the DRAT can by no stretch of the imagination, be said to be perverse. It is certainly a plausible view and one with which we are not inclined to interfere under Article 226 of the Constitution of India.

23. In view of our earlier discussion, we uphold the order of the DRAT. We find no merit in both the Writ Petitions. They are accordingly dismissed. Rule is discharged. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

(B.P. COLABAWALLA, J.) **(S.C. DHARMADHIKARI J.)** **

** **CERTIFICATE:**
Certified to be a true and correct copy of the original signed Judgement/Order.