IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.2272 OF 2015

Marwah Finance Pvt.Ltd. ... Petitioner
v/s
Vipul Impex and Infrabuild Ltd. and others ... Respondents

Mr Venkatesh Dhond, Sr. Counsel with Mr Rohan Cama, Mr T.N. Tripathi, Ms Sapna Rachure i/b M/s T.N. Tripathi and Co. for Petitioner.
Mr Meghnath Navlani for Respondent Nos.1, 3 and 6.
Mr Vijay Thilakan for Respondent No.2.
Mr Rishabh Shah i/b M/s Raval Shah and Co. for Respondent Nos.4 and 5.
Mr Anup Khaitan i/b M/s Anup Khaitan and co. for Respondent No.9.

CORAM: V.M. KANADE &
B.P. COLABAWALLA JJ.

DATE : 5TH AUGUST 2015

P.C. :-

1. Heard learned counsel appearing on behalf of the Petitioner and the learned counsel appearing on behalf of the Respondents.

2. Oriental Bank of Commerce had filed an Original Application

(OA) under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 for recovery of the amounts due and payable by Respondent No.1 to the Bank. During the pendency of the said Original Application, a Deed of Assignment was entered into between the Petitioner and Oriental Bank of Commerce under which the debts owed by Respondent No.1 were assigned in favour of the Petitioner.

3. In view of the said Assignment, the Petitioner herein, a Non-Banking Financial Company, therefore filed a Substitution Application before the Debt Recovery Tribunal to substitute itself in place of Oriental Bank of Commerce. This Substitution Application was rejected by the DRT and the DRT came to the conclusion that either Oriental Bank of Commerce should withdraw the Original Application or file an Application for recording full and final satisfaction of its claim.

4. This order of the Debt Recovery Tribunal was challenged by the Petitioner herein before the DRAT. However, the DRAT refused to

grant any interim relief on the ground that the third party viz. the Petitioner herein could not seek an order of injunction restraining the Oriental Bank of Commerce from withdrawing the Original Application filed by it. Since the DRAT refused to grant any interim relief and is also not available now on account of illness of the Chairperson, the Petitioner has approached this Court.

5. The learned Senior Counsel appearing on behalf of the Petitioner submitted that in view of the Notification issued by the Reserve Bank of India dated 13th July 2015, an assignment by a NBFC to a Bank / Financial Institution is legally possible. He submitted that the Apex Court in the case of ***ICICI Bank Ltd. v/s Official Liquidator of APS Star Industries Ltd. and others***[1], has also held that assignments of debts between NBFCs and Banks was a permissible banking business. The learned Senior Counsel appearing on behalf of the Petitioner submitted that the Petitioner being a NBFC would not be in a position to continue the Original Application before the DRT as it is not a Bank or Financial Institution as contemplated

1 (2010) 10 SCC 1

under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993. In view of this, the learned Senior Counsel submitted that once its Substitution Application was allowed by the DRT and the Petitioner was substituted in place of Oriental Bank of Commerce, the DRT would have to dismiss the Original Application and grant liberty to the Petitioner to file a Suit in the Civil Court on the basis of the Deed of Assignment executed in its favour.

6. On the other hand, the learned counsel appearing on behalf of Respondent No.1 submitted that in the Deed of Assignment which was executed between the Oriental Bank of Commerce and the present Petitioner, there are averments which indicate that the debt of Oriental Bank of Commerce was satisfied and that being the position, the Petitioner now could not file a claim for recovery of Rs.168/- crores (as claimed in the Original Application filed before the DRT) since it has paid only Rs.30/- crores to the Oriental Bank of Commerce. Secondly, it was submitted that in the Deed of Assignment executed between the Oriental Bank of Commerce and the Petitioner herein, it has been mentioned that there is a full and

final settlement of the debt and as such therefore even the debt against the Respondents was satisfied and the Petitioner therefore could not file a claim against the Respondents herein. This however is disputed by Mr Dhond, learned Sr. Counsel appearing on behalf of the Petitioner.

7. In our view, the legal position is quite well settled. A debt can be assigned either to a Bank or to a NBFC and it is recognised as a legally permissible transaction by the RBI whose directions are binding and have statutory effect. This has also been so held by the Apex Court in the case of ***ICICI Bank Ltd. (supra)***. It is also equally well settled that a NBFC cannot file an Original Application in the DRT for recovery of its debt as it is not a Bank or a Financial Institution as understood under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Therefore, after assignment of the debt by Oriental Bank of Commerce, and the Petitioner being substituted in place of Oriental Bank of Commerce, the Petitioner cannot proceed with the Original Application before the DRT.

8. In our view, the DRT could not have passed the impugned order of dismissing the Substitution Application of the Petitioner. The correct course of action that ought to have been adopted by the DRT would have been to allow the Substitution Application filed by the Petitioner herein and thereupon dismiss the Original Application granting liberty to the Petitioner to file a Suit on the same cause of action in a Civil Court. So far as Respondent No.1 is concerned, after the Suit is filed by the Petitioner in the Civil Court, it could always raise all the objections which are raised before us, and the same would be decided by the Civil Court on merits and in accordance with law.

9. In these circumstances, the impugned order of the DRT is unsustainable and is therefore set aside. Substitution Application filed by the Petitioner before the DRT is allowed and Petitioner is substituted as the Applicant in place of Oriental Bank of Commerce in Original Application No.71 of 2012. On the Petitioner being substituted in place of Oriental Bank of Commerce, the said Original

Application shall stand dismissed with liberty to the Petitioner to file a Suit in the appropriate Civil Court. The Oriental Bank of Commerce is also restrained from withdrawing the said Original Application or for according full satisfaction by filing an appropriate Application as directed in the impugned order of the DRT. In view of the order that we have passed hereinabove, the Appeal filed before the DRAT does not survive and is disposed of accordingly. Writ Petition is accordingly disposed of in the aforesaid terms. There shall be no order as to costs.

(B.P. COLABAWALLA, J.) **(V.M. KANADE J.)**