

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.685 OF 2015

M/s.Manik Engineering Pvt.Ltd. & another	Petitioners
versus	
State Bank of India and others	Respondents

WITH
WRIT PETITION NO.1027 OF 2015

State Bank of India	Petitioner
versus	
M/s.Manik Engineering Pvt.Ltd. and others	Respondents

Mr.Haresh Jagtiani, Senior Advocate, with Ms.Vandana Mehta, Ms.Gauri Vaidya, Ms.Harshita Joglekar, Mr.Abdulla Cutlariwala i/by M/s.Maniar Srivastava & Associates for Petitioners in WP No.685 of 2015 and for Respondent nos.1 and 2 in WP No.1027 of 2015.

Mr.Nitin Thakkar, Senior Advocate, with Ms.Hina A. Mody for Petitioner in WP No.1027 of 2015 and for Respondent no.1 in WP No.685 of 2015.

Mr.M.S.Bhardwaj for Respondent nos.6 and 7.

CORAM : S.C.DHARMADHIKARI AND
B.P.COLABAWALLA, JJ.

DATE : 2 December 2015

PC :

The Petitioners in these writ petitions have challenged an order passed by Debts Recovery Appellate Tribunal, Mumbai (`DRAT') in Miscellaneous Application No.814 of 2012 in Appeal No.202 of 2012 with Miscellaneous Application No.815 of 2012, dated 31 October 2014.

2. The Petitioner no.1 in Writ Petition No.685 of 2013 is a company incorporated and registered under the Indian Companies Act, 1956 and the second Petitioner is a Director thereof. The Petitioner no.1 company was proceeded against by Respondent no.1 State Bank of India in its capacity as a guarantor. Original Application No.34 of 2001 was filed before Debts Recovery Tribunal, Mumbai (`DRT'). Rather this was a suit filed in this Court in the year 1986, which stood transferred to DRT on the Parliament enacting Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (`RDDB Act'). After RDDB Act was brought in force, the said suit came to be transferred to DRT and numbered as above.

3. The respondent nos.2 to 5 in Writ Petition No.1027 of 2015 are the principal borrowers and they availed the facilities from the Petitioner State Bank of India in Writ Petition No.1027 of 2015.

4. There were two proceedings which are referred to in paragraphs 2 and 3 of Writ Petition No.685 of 2013. One is Suit No.198 of 1986 which was filed against present Petitioners, Respondent nos.2, 4, 5 and one Chellaram Assandas Manik. Suit No.197 of 1986 was filed against the Petitioners in Writ Petition No.685 of 2013. The Petitioners state that as far as the claim raised by the bank against them is concerned, that is subject matter of Original Application No.271 of 2001. That has been worked out by the parties and nothing remains for adjudication therein.

5. It is the suit which was filed against the principal borrowers and now numbered as Original Application No.34 of 2001 in which the DRT passed an order based on some arrangement between the principal borrowers and the bank. That order and decree dated 14 October 2005 and which the Petitioners state that is directed against them alone, calls upon them to pay Rs.1,91,32,997/- with interest @ 12% p.a. with quarterly rest. Annexure-D is the copy of that order. Then, what has been relied upon is a further order dated 12 November 2010, a copy of which is at Annexure-C. On the Petitioners being made aware of such orders, that they approached the DRAT. Prior thereto, they moved DRT requesting it to set aside its ex-parte decree. That application was rejected by the Tribunal on 18 June 2008. Being aggrieved by this order, the

Petitioners-Applicants filed an appeal being Miscellaneous Appeal No.295 of 2008 before DRAT. DRAT initially passed an order on 16 April 2012 disposing of the appeal. Then the Petitioners filed Writ Petition before this Court being Writ Petition No.5441 of 2012 which was also dismissed on 19 June 2012. The Petitioners pointed out that the Respondent bank has taken possession of the residential premises.

6. After the Petitioners' application to set aside the decree passed ex-parte was dismissed and equally Miscellaneous Appeal directed against it so also a writ petition, they were advised to file a substantive appeal being Appeal No.202 of 2012. The registry of DRAT raised an objection that this appeal is barred by 2,562 days. In other words, the same is filed after a delay of 2,562 days. That is how the Petitioners applied for condonation of delay in filing the substantive appeal. At the same time, the bank, first Respondent before us, was also aggrieved by the orders dated 14 October 2005 and 12 November 2010. The bank's appeals against these orders were also barred by limitation. Accordingly, the bank moved an application for condonation of delay in these appeals.

7. All these applications were consolidated and the impugned order is passed thereon.

8. This order is impugned by the applicants in Miscellaneous Application No.814 of 2012 and 815 of 2012. It has also been challenged by the Appellants-Applicants in Miscellaneous Application No.505 of 2012.

9. After perusing this common order with the assistance of Mr.Jagtiani, learned Senior Advocate for the Petitioners in Writ Petition No.685 of 2015 and Mr.Thakkar, learned Senior Advocate for Respondent no.1 bank, we are of the view that a common/consolidated order could have been passed if the Chairperson deemed it fit and proper, but he ought to have considered the individual applications for condonation of delay and the contents thereof. Based on that, the reasons should have been assigned either to refuse or to condone the delay. That admittedly has not been done and it is not possible to discern from the conclusions as to what the Chairperson had in mind as far as Applicants in individual applications and their conduct is concerned. It would be just, proper and fair to set aside this common order.

10. Accordingly, the impugned common order dated 31 October 2014 in Miscellaneous Application No.814 of 2012 in Appeal No.202 of 2012 with Miscellaneous Application No.815 of 2012 by DRAT is set aside without expressing any opinion on the rival contentions. Learned Chairperson of DRAT shall now

take-up the miscellaneous applications for consideration filed by the Petitioners/Guarantors as also by the bank in the respective appeals. He shall pass a fresh order uninfluenced by his earlier conclusions. Since public money is involved, the learned Chairperson should take-up the miscellaneous applications at an early date and decide the same expeditiously. No order as to costs.

(S.C.DHARMADHIKARI, J.)

(B.P.COLABAWALLA, J.)

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