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

WRIT PETITION (L) NO. 2945 OF 2015

Macrocosm Metal and Energy	}	
and Ors.	}	**Petitioners**
versus		
State Bank of India	}	**Respondent**

WITH
WRIT PETITION (L) NO. 2950 OF 2015

Macrocosm Industries Pvt. Ltd.	}	
and Ors.	}	**Petitioners**
versus		
State Bank of India	}	**Respondents**

Mr. S. U. Kamdar – Senior Advocate with Mr. Prakash Shinde and Ms. Chinmayee Ghag i/b. M/s. MDP and Partners for the Petitioners in both Petitions.

Mr. Prakash Punjabi i/b. M/s. Prakash Punjabi and Co. for the Respondent.

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

DATED :- NOVEMBER 30, 2015

P.C. :-

We have heard Mr. Kamdar, learned Senior Counsel appearing for the Petitioner and Mr. Punjabi appearing for Respondent No. 1 Bank.

2) The impugned order passed by the Debt Recovery Appellate Tribunal (DRAT) is on an Appeal which was directed

against the interim order dated 19th January, 2015 of the learned Presiding Officer, DRT – I, Mumbai ((Debt Recovery Tribunal) in original application No. 97 of 2014.

3) The learned Presiding Officer directed the Petitioner/original Appellant/Defendant to pay a sum of Rs.50,78,10,107/- within one month from the date of the order, as provided under Rule 12(5) of the Recovery of Debts Due to Banks and Financial Institutions Rules.

4) The argument of the Petitioner/Appellant in the Appeal was that no order in terms of this Rule could have been passed nor this order is sustainable under the substantive provision, namely, section 19(12) and 19(13) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

5) The second contention of the Petitioner/Appellant was that the order has been passed invoking the provisions of the Code of Civil Procedure, 1908(for short "CPC"). In that regard, the attention of the Tribunal was invited to Order XII Rule 6 of the CPC enabling passing of a Decree on admission. The argument was that even if that is applied and could be read into the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, still, there has to be material in the form of

unconditional admission of the bank's liability. There is no such material on record and nothing is found to have been referred in the DRT's order.

6) Surprisingly, the learned Member of the DRAT finds merit in both the contentions. He is of the firm opinion that even at the stage of considering the interim application being MA/121/2015 of the Petitioner/Appellant requesting dispensation of the condition of pre-deposit he can pass a final order in the Appeal. There is no admission which could be said to be on record. Yet, While setting aside the order and directing that the matter must go down to the DRT for trial, the learned Chairperson directs the Petitioner/Appellant to deposit a sum of Rs.2 crores within eight weeks from the date of his order, namely, from 16th September, 2015.

7) It is this limited order and direction which is challenged before us.

8) We have heard Mr. Kamdar, learned Senior Counsel appearing for the Petitioner and with his assistance, perused the order passed by the DRAT in its entirety. We inquired from Mr. Punjabi as to how in the face of the clear findings by the learned Chairperson, could this direction be sustained. Mr. Punjabi would

submit that the Petitioner has borrowed huge sums and the Petitioner's balance-sheet would reflect the receipt of the money from the bank and which is treated as liability. That is how the bank has every right to seek imposition of a reasonable condition while setting aside the impugned order.

9) We are unable to accept Mr. Punjabi's contention and for more than one reason. Some four decades back, the Hon'ble Supreme Court, in the case of *M/s. Bareilly Electricity Supply and Ors. vs. The Workmen and Ors.* reported in **AIR 1972 SC 330** has held that mere reflection of a sum in the column of liability in the balance-sheet cannot be taken as a proof of a debt or admission of a liability by itself and without anything more. This cannot be taken to be an admission and the proof independent of the same would have to be produced. That is because, the Hon'ble Supreme Court holds that the Code of Civil Procedure, 1908 and Law of Evidence are both founded and fully grounded on the principles of natural justice. These principles mean that any contested or disputed statement in writing can be read in evidence provided the maker of the same comes forward and deposes about the truthfulness of the same or files an affidavit. Meaning thereby, a proof is furnished so that the written statement can be relied upon and accepted. This would follow

after such person submits himself to a cross examination by the opponent. These principles are salutary and on which the whole edifice of administration of justice is built. If that is how the Hon'ble Supreme Court reads these principles, then, the impugned order cannot be sustained. For the benefit of all concerned, we reproduce the following paragraph of the Hon'ble Supreme Court judgment.

> "…..
> 14. An attempt is however made by the learned Advocate for the Appellant to persuade us that as the Evidence Act does not strictly apply the calling for of the several documents particularly after the employees were given inspection and the reference to these by the witness Ghosh in his evidence should be taken as proof thereof. The observations of Venkatarama Aiyar J., in Union of India v. Varma, 1958-2 Lab LJ 259 at Pp. 263-64 = (AIR 1957 SC 882) to which our attention was invited do not justify the submission that in labour matters where issues are seriously contested and have to be established and proved the requirements relating to proof can be dispensed with. The case referred to above was dealing with an enquiry into the misconduct of the public servant in which he complained he was not permitted to cross-exmine. It however turned out that he was allowed to put questions and that the evidence was recorded in his presence. No doubt the procedure prescribed in the Evidence Act by first requiring his chief-examination and then to allow the delinquent to exercise his right to cross-examine him was not followed, but that the enquiry Officer, took upon himself to cross-examine the witness from the very start. It was contended that this method would violate the well recognised rules of procedure. In these circumstances it was observed at page 264:
>
>> "Now it is no doubt true that the evidence of the Respondent and his witnesses was not taken in the mode prescribed in the evidence Act; but that Act has no application to enquiries conducted by Tribunal even though they may be judicial in character. The law requires that such Tribunals

> should observe rules of natural justice in the conduct of the enquuiry and if they do so their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a Court of Law."

> But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the question that naturally arises is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balance-sheet and profit and loss account of the Company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure under Order XIX Civil Procedure Code and the Evidence Act both of which incorporate these general principles. Even if all technicalities of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced. ....."

10) Thus, what the judgment of the Hon'ble Supreme Court denotes is that mere tendering of a balance-sheet would not suffice. The entries therein would have to be explained and supported by filing an affidavit by the concerned official and who

is ready and willing to subject himself to the above process, but, if the opponent, despite all such opportunities, does not avail of the same, in that event, the Court or the Tribunal can proceed and pronounce a judgment. It is no doubt true that in certain facts and circumstances, when there is no denial of the correctness of the books of account and the bankers can take recourse to Bankers Book Evidence Act, then, production of the original balance sheet and related materials would suffice. It is not necessary that opportunity to cross examination must be afforded in every case. What principle of natural justice would apply depends upon the nature of the inquiry, the lis, the statutory prescription to the contrary, the object and purpose to be achieved by the enactment etc. Importantly, any technical breach is not sufficient to set aside the orders in the inquiries and trials and proof of prejudice independent of the plea of denial of natural justice would have to be furnished. However, what we find is that the learned Chairperson faulted the DRT for passing an order only on the balance-sheet. That was found to be impermissible. In other words, the production of the balance-sheet by the Petitioner before the bank was for some different purpose. No doubt, it reflects the receipt of some amount from the bank, but the impact of the same would have to be considered at the trial. Once this process of reasoning has gone in to set aside the order of the DRT, then, the condition to deposit a sum of Rs.2 crores could not have been imposed. That is patently unsustainable in law. The impugned orders are thus vitiated by an error of law apparent on the face of the record. These deserve to be interfered with in our Writ Jurisdiction and are accordingly set aside. The Petitions are allowed in the aforesaid terms.

11) While we set aside the orders, all that we have done is to invite the attention of the concerned persons to the observations in the Hon'ble Supreme Court judgment, but we would be failing in our duty if we do not invite the attention of the Tribunal to a further judgment of the Hon'ble Supreme Court in the case of *Uttam Singh Dugal and Co. Ltd. vs. Union Bank of India and Ors.* reported in **AIR 2000 SC 2740**. If the Decree is on admission but is not in tune with the principles set out in Order XII Rule 6 of the CPC, then, it is unsustainable in law. The Hon'ble Supreme Court in the said judgment held as under:-

> "…..
> 11. Learned Counsel for the appellant contended that Order XII, Rule 6 comes under the heading 'admissions' and a judgment on admission could be given only after the opportunity to the other side to explain the admission, if any, made; that such admission should have been made only in the course of the pleadings or else the other side will not have an opportunity to explain such admission, that even though, the provision reads that the Court may at any stage of the suit make such order as it thinks fit effect of admission, if any, can be considered only at the time of trial; that the admission even in pleadings will have to be read along with Order VIII, Rule 5(1) of CPC and Court need not

necessarily proceed to pass an order or a judgment on the basis of such admission but call upon the party relying upon such admission to prove its case independently, that during pendency of other suits and the nature of contentions raised in the case, it would not be permissible at all to grant the relief before trial as has been done in the present case; that the expression 'admissions' made in the course of the pleadings or otherwise will have to be read together and the expression 'otherwise' will have to be interpreted ejusdem generies.

12. As to the object of the Order XII, Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled." We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. <u>Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed.</u>

13. The next contention canvassed is that the resolutions or minutes of meeting of the Board of Directors, resolution passed thereon and the letter sending the said resolution to the respondent bank cannot amount to a pleading or come within the scope of the Rule as such statements are not made in the course of the pleadings or otherwise. <u>When a statement is made to a party and such statement is brought before the Court showing admission of liability by an application filed under Order XII, Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the Court, we do not think the trial Court is helpless in refusing to pass a decree.</u> We have adverted to the basis of the claim and the manner in which the trial Court has dealt with the same. When the trial Judge states that the statement made in the proceedings of the Board of Directors meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made is in dispute. And the Court had a duty to decide the same and grant a decree. We think this approach is unexceptionable.

14. Before the trial Judge, there was no pleading much less an explanation as to the circumstances in which the said admission was made so as to take it out of the category of admissions which created liability. On the other hand, what is stated in the course of the pleadings, in answer to the application filed under Order XII, Rule 6, CPC, the stand is clearly to the contrary. Statements had been made in the course of the Minutes of the Board of Directors held on 30th May, 1990 to which we have already adverted to in detail. In the pleadings raised before the Court, there is a clear statement made by the respondent as to the undisputed part of the claim made by them. In regard to this aspect of communicating the resolution dated 30th May, 1990 in the letter dated 4th June, 1990 what is stated in the affidavit-in-opposition in application under Order XII, Rule 6, CPC is save, what are matters on record and save what would appear from the letter dated 30th May, 1990 all allegations to the contrary are disputed and denied. This averment would clearly mean that the petitioner does not deny a word of what was recorded therein and what is denied is the allegation to the contrary. The denial is evasive and the learned Judge is perfectly justified in holding that there is an unequivocal admission of the contents of the documents and what is denied is extent of the admission but the increase in the liability is admitted.

15. Even without referring to the expression 'otherwise' in Rule 6 of Order XII, CPC, we can draw an inference in the present case on the basis of the pleadings raised in the case in the shape of the applications under that Rule and the answering affidavit which clearly reiterates the admission. If that is so, interpretation of the expression 'otherwise' becomes unnecessary.

16. The learned counsel for the appellant relied on a decision of this Court in Nagubai Ammal v. B. Shama Rao, 1956 SCR 451: (AIR 1956 SC 593), as to when an admission becomes relevant. In Nagubai Ammal (supra) which is locus classicus on the subject states that merely because a written admission made in a different context, such admission may not become relevant if the party making it has a reasonable explanation of that. But that is not the position in the present case at all. Learned counsel for the appellant further adverted to the decision in Balraj Taneja v. Sunil Madan (1999) 8 SCC 396 : (1999 AIR SCW 3345 : AIR 1999 SC 3381) in which the Court was concerned with a case of the effect of not filing a written statement and whether a decree could be passed only on that basis. That was a suit for specific performance and it

was held it could not be granted without even writing a detailed judgment and adverted to various provisions of Code of Civil Procedure and reference was made to Order XII, Rule 6 by way of analogy and referred to the dictum in Razia Begum v. Sahebzadi Anwar Begum, 1959 SCR 1111 : (AIR 1958 SC 8860), to state that Order XII, Rule 6 should be read along with proviso to Rule 5 of Order 8, CPC. In that case, what was noticed was that in cases governed by Section 42 and Section 43 of Specific Relief Act, 1877, the Court is not bound to grant declaration prayed for on the mere admission of the claim by the defendant if the Court has reason to insist upon a clear proof apart from admission. The result of a declaratory decree confers status not only on the parties but for generations to come and so it cannot be granted on a rule of admissions, and therefore, insisted upon adducing evidence independent of the admission. That is not the position in the present case at all. We fail to see how this decision can be of any use to the petitioner. The decision in re Pandam Tea Co. Ltd., AIR 1974 Cal 170, pertains to the manner in which the balance-sheet should be read and has no bearing on the case. The decision in Shikharchand v. Mst. Bari Bai, AIR 1974 Madh. Pra 75, is to the effect that the Rule is wide enough to afford relief not only in cases of admissions in pleadings but also in the case of admission dehors pleadings. State Bank of India v. M/s. Midland Industries, AIR 1988 Delhi 153, and Union of India v. M/s. Feroze & Co., AIR 1962 J & K 66, cannot have relevance because the facts in arising cases and the present case are entirely different.

17. Learned counsel for the petitioner contended that admissions referred to in Order XII, Rule 6, CPC should be of the same nature as other admissions referred to in other rule preceding this Rule. Admissions generally arise when a statement is made by a party in any of the modes provided under Sections 18 to 23 of the Evidence Act, 1872. Admissions are of many kinds they may be considered as being on the record as actual if that is either in the pleadings or in answer to interrogatories or implied from the pleadings by non-traverse. Secondly as between parties by agreement or notice. Since we have considered that admission for passing the judgment is based on pleadings itself it unnecessary to examine as to what kinds of admissions are covered by Order XII, Rule 6, CPC."

12) It is this judgment which is followed by Division Benches of this Court in the case of *Ultramatix Systems Pvt. Ltd.*

vs. State Bank of India and Ors. reported in **2007(4) Mh. L. J. 847** and in the case of *Inteltek Automation Pvt. Ltd. and Ors. vs. Indusind Bank Ltd. and Anr.* reported in **2011(1) Bom. C. R. 592**. Hence, the principles having been outlined with sufficient clarity, their application to given facts and circumstances is the function and duty of the Tribunal. If the learned Chairperson found any material on record justifying imposition of a condition to deposit Rs.2 crores, that should have been specifically referred. The reasons assigned do not refer to such material. It is only on a general ground based on alleged enormity of the bank's claim, that the impugned condition has been imposed. That is patently unsustainable and the discretion is thus not exercised judiciously. The imposition is arbitrary and hence, unfair, unjust and unreasonable in the face of para 8 of the impugned order.

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