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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on 7th April, 2015

+ W.P.(C) 3011/2010

YOGI TRADING COMPANY PRIVATE LIMITED

..... Petitioner

Through Mr. Ajay Chaudhary, proxy

versus

CANARA BANK & ANOTHER

..... Respondents

Through Mr. V K Tandon, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petition is directed against an order of the Debt Recovery Appellate Tribunal (DRAT) dated 10.3.2010. The impugned order had affirmed the order of the Debt Recovery Tribunal (DRT) which had rejected the application for setting aside of a decree made by that Tribunal earlier on 29.9.2008. The petitioner was arrayed as a respondent in the DRT in the earlier proceedings.
2. The brief facts are that the first defendant in the proceedings before DRT M/s Vega Clocks Pvt. Ltd., had availed credit facilities to the tune of Rs.1.36 crores from the bank. The second defendant was one of its Directors. The third defendant was the petitioner, a company, and was arrayed as a party since it had furnished a guarantee to secure

the loan. The default of the borrower led to the initiation of recovery proceedings before the DRT ultimately. During the proceedings the present petitioner was not represented. Apparently, the DRT had issued noticed despite which there was no appearance. Ultimately the final order was passed on 29.8.2008 ex-parte against all the defendants therein.

3. It was in these circumstances that the petitioner approached the DRT with an application to set aside the ex-parte order/decreed being MA No.63/09. The DRT after issuing notice to the bank and the other respondents was of the opinion that the record disclosed that one Sh. P C Chopra had filed *Vakalatnama* on behalf of defendants. Taking note of this and that said counsel was appearing in the proceedings, it was of the view that no sufficient cause was shown to set aside the ex-parte order. It was also held that validity of mortgage could not have been looked into by the DRT in proceedings which were miscellaneous proceedings. Nevertheless, it did consider the submissions of the writ petitioner and rejected them. The DRAT by the impugned order affirmed this decision. The record of proceedings before this Court portrays a very dismal picture. Right from end of 2011, the petitioner kept on seeking adjournment. The order dated 04.11.2011 directed that service be effected on respondents 3A to 3D on the ground that respondents 3A to 3D would be impleaded since they are the legal representatives of the directors. It was submitted that liabilities arose on the basis of the director's acts. On 18.7.2012 the Court recorded that the respondent No.3A to 3D had proposed to the bank for a settlement and posted the matter to 21.8.2012. Further

orders dated 16.10.2012, 3.12.2012, 21.2.2013, 17.5.2013, 4.9.2013, 18.11.2013 and 11.2.2014 reveal that repeated adjournments were sought. On 19.3.2014, request was made that dispute be referred to Delhi High Court Mediation and Conciliation Centre, which the Court did on the very same day. Thereafter, adjournment was sought and granted repeatedly on 12.5.2014, 28.7.2014, 24.9.2014 and again on 27.11.2014, 16.1.2015 and 11.3.2015. The order dated 16.1.2015 recorded that respondent 3A had to come to India from the United States and was likely to be in the city on 3.2.2015. The Court in the circumstances adjourned the matter to 11.3.2015. On that date again a request was made for adjournment. However, this Court noticed that the matter was lingering for quite a while and directed the Secretary, Delhi High Court Mediation and Conciliation Centre to file a report as to the number of opportunities granted to the parties to arrive at a settlement. That report is not on record since the registry has not communicated the order. We have considered the entire facts and are of the opinion that there is no infirmity with the order of the DRAT which took into consideration the materials in concluding that no sufficient cause has been shown for setting aside the final order dated 29.8.2008. Having regard to the fact that the disputes in this case were unnecessarily protracted and appeared to have prolonged further on account of mediation (which are essentially meant to arrive at just and mutually acceptable solution early), the Court is of the opinion that the order in this case should be marked to the Delhi High Court Mediation and Conciliation Centre to ensure that when matters are referred for mediation, proceedings in mediation are not used as a

pretext to prolong the case before the Court itself and are preferably concluded within a definite time span. The curious result in this case has been that mediation proceedings have acquired greater primacy over the Court proceedings, which have at least yielded to mediation proceedings. In view of the conclusions recorded by the DRAT on merits this Court finds no merit in interfering with the order of the DRAT and the appeal is accordingly dismissed.

4. Learned counsel says that he has a cheque for the amount agreed upon by the bank and that the same may be directed to be accepted. It is up to the bank to accept the terms of settlement in accordance with the agreement arrived at by the parties. Copy of the order shall be marked to the concerned Registrar for appropriate action against the concerned officers given that they did not forward copy of the previous order of this Court to the Delhi High Court Mediation and Conciliation Centre.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

APRIL 07, 2015

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