$~33

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

Decided on 3rd February, 2015

\+ W.P.(C) 1072/2015

GURBACHAN SINGH SALUJA ..... Petitioner
Through: Mr.Adarsh B. D. and Mr.Pushkar Sood, Advs.

Versus

HONG KONG & SHANGHAI BANKING CORPORATION ..... Respondent
Through: Mr.Deepak Biswa, Mr. Ankur Ved Tuli and Mr.Arjun Minocha, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)
%

1. Issue notice.

2. Mr.Deepak Biswa, Advocate accepts notice on behalf of the respondent. With consent of the parties, matter is taken up for final hearing.

3. The petitioner is aggrieved by two orders of the Debts Recovery Tribunal (DRT) dated 21.07.2014 and 22.08.2014, in which they were impleaded as respondents in O.A.No.97/2009. Briefly stated, the petitioners entered into a factoring agreement with the respondent bank on 05.09.2007. Apart from its factoring fee of 0.8% of total contract value, i.e. ₹8 lacs, the arrangement also included credit insurance protection upto 90% of the

amount.

4. The petitioner is an exporter and had sent consignments to buyers in Dubai, for a total value of over ₹10 crores. The banking crisis of 2008 and its adverse fallout resulted in the buyers defaulting on their commitments. Consequently, the insurer became liable to pay the amount. Since, the responsibility and the right to claim the amount was factored, the respondent apparently sought for settlement of such dues. Claiming that the amounts were yet unpaid, the respondent approached the DRT by filing O.A.No.97/2009.

5. During the pendency of the said O.A., the petitioner repeatedly asked for production of documents, cross-examination and even had approached this Court on two occasions. On both the occasions, however, the Court permitted him to withdraw the writ petition, leaving all contentions open to be addressed on merits before the DRT.

6. In the present background the petitioner approached the DRT yet again, claiming that its contentions be decided before the final arguments were addressed. His other application i.e. I.A.No.660/2014 was rejected on 22.08.2014.

7. It was submitted during the course of arguments that the petitioner was able to source, with great difficulty, an information letter by the New India Assurance Company Ltd, through the Right to Information Act, which disclosed that the sum declared under the policy for buyers, in respect of his policy, was ₹9,26,26,369.98 and the premium worked out to ₹1.94 lac. The names of the two foreign (UAE based) buyers of the petitioner were also disclosed, and importantly, the amounts claimed on account of default of such buyers was further disclosed. The total amount claimed by the

respondent-factor was over ₹10.06 crores. As against this, the credit limit approved was ₹9.2 crores (i.e. the amount approved for recovery).

8. During the course of hearing, learned counsel apparently brought to the notice of the Court, an affidavit filed by the respondent disclosing, *inter alia,* that as against its claim in respect of petitioner's account, a sum of US$2.94 million was received, against which amounts on account of petitioner were appropriated and adjusted at ₹2,01,43,124.86. The petitioner's contention is that apart from this bald assertion, no details are forthcoming as to why such vastly reduced amounts were received, which ultimately resulted in the respondent's claim. Counsel for the respondents, on the other hand, urged that the affidavit and disclosure made during the course of the DRT proceedings are sufficient for a full appreciation of the entire controversy and final disposal of the application which has been pending for long.

9. We notice that the main claim of the petitioner is for an appropriate direction to the DRT not to proceed with the final hearing of the application. Undoubtedly, the petitioner had approached this Court once and had approached the DRT time and again, with diverse requests such as permission to cross-examine the bank's employees, summoning insurance companies' representations etc. The Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, enables the Tribunals set up under it – especially by Section 22(2)(b) to make appropriate orders requiring discovery and production of documents.

10. In this case, the DRT has passed certain general orders which has led to filing of one affidavit. At the same time, the petitioner's basic grievance i.e. lack of information as to the reasons why the amounts were vastly

reduced, when received at the time of settlement with the insurance company, remains unaddressed. In the circumstances, we hereby direct the respondent/bank:

(i) to file a comprehensive affidavit disclosing all the relevant facts pertaining to the correspondence with the insurance company, status vis-à-vis the petitioner's assigned debt, and also enclose copies of such letters as well as the replies received by it;

(ii) to furnish certified copies of its relevant books of accounts showing extracts of the amounts received generally, from the insurance company on account of this and other contemporaneous deals, and also, particularly, containing the details with respect to the amounts concerning the petitioner's accounts;

(iii) the copy of the contract of insurance entered into between the respondent and its insurer in respect of the petitioner's account.

11. The above affidavit along with its annexures shall be filed within three weeks from today. The parties are directed to be present before the DRT for further directions towards final hearing. The DRT shall proceed to set down the matter for final hearing at the end of March, 2015 depending upon the affidavit by both the parties to address their arguments in respect of the petitioner's account. List before the DRT on 11.02.2015.

12. The petitioner shall ensure compliance of DRT's previous directions dated 23.04.2009 and 20.10.2009, to disclose his assessment and properties. This affidavit shall be filed with the necessary documentary evidence within

three weeks from today.

13. The writ petition is disposed of in the above terms.

14. Dasti.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

FEBRUARY 03, 2015
mr