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

Decided on: March 09, 2015

+ W.P.(C) 2630/2014 & C.M.No.5465/2014 (Stay)

PREM KUMAR GUPTA

..... Petitioner

Through: Mr.Vineet Sinha and Mr.Rahul
Malhotra, Advs.

versus

BANK OF INDIA & ORS.

..... Respondents

Through: Mrs.Manjula Gandhi, Ms.Aayushi
Gupta and Mr.Aditya Kapoor, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE R.K.GAUBA

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1. The writ petition at hand brings a challenge to the validity of the order dated 18.02.2014 passed by the Debts Recovery Appellate Tribunal (DRAT) dismissing *inter alia* Appeal No.426/2013 which had been instituted by the petitioner to assail the order of the Debts Recovery Tribunal (DRT) in Original Application (OA) No.34/2007. He has to consequently deposit 25% of the amount claimed by the first respondent bank in the OA.

2. When the matter was taken up for final hearing, it was submitted by the counsel on both sides that the proceedings on the OA are now at final stages before the DRT. Though, in the submission of the counsel, no substantial question survives insofar as the parties herein are concerned, having regard to the manner in which the proceedings have been conducted, this Court has proceeded to hear the parties to pass a detailed judgment so that the wholly wrong notions which the two forums below seem to have

entertained as to the jurisdiction, power and procedure of the authorities under RDDBFI Act are dispelled and such that the improprieties noted here are not indulged in again.

3. It is necessary to trace, *albeit* briefly, the background facts.

4. The first respondent (hereinafter referred to as “the bank”) instituted on 2.3.2007 the OA (No.34/2007) before the DRT seeking recovery of ₹27,62,059/- with future interest, impleading the petitioner as defendant No.2, alleging him to be the proprietor of M/s S P Enterprises, the second respondent (arrayed as defendant No.1). The third respondent Raman Gupta was joined in the OA as defendant No.3 *inter alia* on the averments that he had stood guarantee for due repayment of cash credit facilities taken by the petitioner in the name of the second respondent. The OA came up before the Registrar of DRT on 26.9.2007 when after scrutiny he directed “notices” to issue to the defendants in terms of Section 19(4) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI Act) for 19.11.2007. On 19.11.2007 the Assistant Registrar recorded the proceedings *inter alia* noting that the petitioner had “refused” to receive the process issued by DRT on the OA also observing that in view of this report he was “deemed” to have been served. Noting non-appearance *inter alia* on behalf of the petitioner, the Assistant Registrar directed fresh notices to issue. On 18.12.2007, the third respondent (third defendant in the OA) appeared through counsel. There was no appearance on behalf of the petitioner or the second respondent. The Assistant Registrar recorded the proceedings holding the service to be complete and while noting non-appearance directed the matter to be listed before the Registrar on 23.01.2008 for completion of pleadings.

5. Eventually, the matter came up before the presiding officer of DRT on 3.6.2009. There is lack of clarity in the proceedings drawn, in that there is reference to appearance of a counsel for one Mrs. Preeti Singhal. It appears from some of the subsequent proceedings (particularly the order sheet dated 25.11.2009) that Mrs. Preeti Singhal was petitioner in Securitization Application (SA) No.116/2008, presumably submitted under Section 17 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) that had come to be connected with the OA. Be that as it may, in the order dated 3.6.2009 the DRT observed that the three defendants (which include the petitioner) had been “found absent” on the date of hearing “in spite of communication made to them”. The record does not clarify as to which communication was being referred by the DRT in the said proceedings of 3.6.2009. On a subsequent date 18.9.2009, the DRT directed the Registrar to communicate the order being passed on the said date to the petitioner (wrongfully describing him as Pradeep Kumar Gupta, Defendant No.3) requiring personal appearance on the next date of hearing (25.11.2009) with caution that in case of default “there shall be proclaimed the warrant of arrests against themselves (*sic*)”.

6. On 25.11.2009, the third respondent appeared through counsel. Taking note of the absence of the petitioner, the DRT issued directions qua him *inter alia* to the following effect :

“This tribunal proclaims the warrant of arrest against the defendant No.2, the proprietor of M/s S.P. Enterprises to be executed by the two police stations of Rohini and Priyadarshni Vihar within a period of seven days from the date of receipt of this order. The Station House Officer of those police stations

shall place before this tribunal the compliance report.”

7. It appears that for various reasons no effective proceedings took place thereafter before DRT, till the matter came up for further hearing on 19.4.2012. The order passed on the said date may be extracted as under:

*“Present: Ms. Manjula Gandhi, counsel for applicant bank.
Shri Vijay Kumar, counsel for Ms. Preeti Singhal,
applicant in SA no.116 of 2008.*

The ld counsel for the applicant bank has drawn my attention that the notice is required to be issued to Shri Prem Kumar Gupta, defendant No.2 as already directed by this Tribunal vide order dated 25.11.2009. The defendant No.2 is stated to be residing at Flat No.141, Bhagirath apartment, Sector-9, Rohini, Delhi.

Registry is hereby directed to issue fresh arrest warrant to defendant No.2 through concerned Police Stations Rohini and Priyadarshni Vihar. The ld counsel for the applicant bank is directed to collect the same from the registry of this Tribunal and serve upon the concerned SHO. The concerned SHO is hereby directed to serve on all these addresses and produce Shri Prem Kumar Gupta before this Tribunal on the next date of hearing.

Applicant bank has also given liberty to publish the notice in newspaper “Indian Express”.

Matter be listed on 17.09.2012 for further proceedings.”

8. On 17.9.2012, the petitioner appeared, indeed for the first time, before the DRT in the proceedings arising out of OA. It is necessary to extract the order recorded on the said date in *xtensor* as under :

*“Present: Sh. S.K. Gandhi, counsel for applicant bank.
Shri Rajat Joneja, counsel for defendant No.2.
Shri S.K.Gupta, counsel for defendant No.3.*

It is observed from the records that this O.A. is pending since 2007 and not a single penny is deposited by the defendants.

Today, the defendant No.2 has put appearance through Counsel Shri Rajat Joneja. Vakalatnama is filed.

Defendant No.2 is hereby directed to be present in person on the next date of hearing. In the meantime, he is directed to deposit 25% of the amount demanded by the applicant bank; failing which appropriate action will be taken against him as he is avoiding the proceedings in this matter. Applicant bank is directed to keep this amount in no lien interest bearing account.

Matter be listed on 16.11.2012 for further proceedings.”

9. The petitioner feeling aggrieved with the direction for deposit of 25% of the amount “demanded by the applicant bank” made an application invoking Section 22 of RDDBFI Act seeking review and recall, *inter alia* pleading that he had no connection with the cash credit facility or with the second respondent in whose favour the bank had allowed the said arrangement. He claimed that he had been working for the said concern merely as an employee at the instance of the third respondent (a nephew) and had a good defence on merits and further that the direction was onerous and prejudicial.

10. The application for review moved by the petitioner (registered as IA No.1266/2012) was considered by the DRT on 21.11.2012. It was disposed of in the following manner :

“The present I.A. is moved by the defendant No.2 as well as to be proprietor of the firm request for review and recall the order dated 17.09.2012. The defendant No.3 has stated to have been guarantor to the loan granted by the applicant bank to proprietor firm.

The ld. Counsel for the applicant bank has drawn my attention to the order dated 19.04.2012 whereby this Tribunal was directed to defendant No.2 to appear in person failing with the arrest warrant be issued but the defendant No.2 was not appeared and arrest warrant was executed through concerned police station. Then defendant No.2 put his appearance through counsel and filed this application. In this application ld. Counsel drawn my attention on certain proceeding with the custom authorities which is not relating to this matter and he has made presence on behalf of defendant No.3 and also relied upon observation made by the custom authorities.

On the other hand the ld. Counsel appearing for defendant No.3 submits that present applicant had stand same business with him and having 3 to 4 firm and he was purchasing goods and making payment to Maxsun the proprietorship firm and due to the same reason business relation and personal relation issued certain cheques for payment of the custom authority for this reason this debt upon passing liability towards him. The ld. Counsel also submits that he stood as guarantor.

The ld. Counsel appearing for the applicant bank submits that there is no error on the part of the bank. The ld. Counsel further submits that both are equally liable towards bank as well as custom authority. The ld. Counsel further submits that since 2004 the defendant no.2 has knowledge of all proceedings. She further drawn my attention on the custom authority observation wherein it is stated that both are held guilty and imposed penalty.

I heard both the sides the defendant No.2 has put appearance only after issuance of arrest warrant by this Tribunal that too after 4 years both defendants prima facie delay the recovery of dues of public sector bank. This Tribunal is of the view interest of justice would be served if these 2 defendants deposit atleast 25% amount as earlier directed jointly or severally and order dated 17.09.2011 would remain as it is. Prima facie I am of this view that defendant No.2 is proprietor of the firm and defendant No.3 is stood as guarantor however, this question would be decided only after going through evidence lead by the

parties.

It is made clear this direction are subject to final adjudication of the amount by this tribunal finally.

With the above observation this review application is disposed of.

Matter be listed before Ld. Registrar on 18.02.2013 for completion of pleadings.”

11. Noticeably, the direction initially given only to the petitioner, by order dated 17.9.2012, would now cover, by virtue of order dated 21.11.2012, both the petitioner as well as other defendant (third respondent) “jointly or severally”.

12. The third respondent (Raman Gupta) challenged the aforementioned direction by way of appeal (inward No.13/13 – later registered as miscellaneous appeal No.50/13) before DRAT. The appellate authority by order dated 29.1.2013 directed the operation of the order, to the extent it concerned the said third respondent only, to remain “suspended” pending hearing on the appeal.

13. It appears that the petitioner had also instituted (appeal No.426/13) before the DRAT challenging the directions of DRT through the above noted orders for 25% of the claimed amount to be deposited. While his such appeal and the application for stay were still under consideration the proceedings in the OA before DRT continued and came up for hearing on 8.8.2013. No deposit had been made by the petitioner in terms of abovementioned orders. The petitioner was also not present in person before the DRT on 8.8.2013. Taking note of these facts the DRT while adjourning the matter issued directions by order dated 8.8.2013 to the

following effect :

“Issue show cause notice to defendant No.2 as to why appropriate proceedings shall not be initiated against him for defying the orders of this Tribunal as he has not complied with the statement given by him on 17.09.2012 before this Tribunal. Defendant No.2 is hereby directed to remain present before this Tribunal on the next date of hearing.

It is made clear that in case defendant No.2 fails to appear before this Tribunal on the next date of hearing, Registry is directed to send summon through the concerned SHO for presenting the defendant No.2 before this Tribunal.

The ld counsel for the defendant No.2 submits that they have filed appeal but no stay order has been produced before this Tribunal.

Parties are directed to file their respective evidence within 2 weeks; failing which right to file evidence shall automatically be closed.

The applicant bank is directed to file replication by the next date of hearing.

Matter be listed on 11.11.2013 for further proceedings.”

14. The petitioner was constrained to move this Court for requisite relief through writ petition (civil) No.7011/2013 which was allowed by order dated 8.11.2013 granting interim protection and with a direction to DRAT to consider the prayer for stay at an early date. The DRAT by order dated 18.11.2013 repelled the objection of non-deposit, in terms of Section 21 of the RDDBFI Act and decided to entertain the appeal on merits.

15. The appeals of the petitioner and of the third respondent against the directions of DRT for deposit of 25% of the amount claimed in the OA were, however, dismissed by DRAT by the impugned order dated 18.2.2014. In upholding the orders to such effect passed by DRT, the

appellate forum referred to Section 19(25) of RDDBFI Act to hold that it bestows “inherent power” on the Tribunal to prevent abuse of process of Court or otherwise to secure the ends to justice, similar to the jurisdiction conferred on the High Court by virtue of Section 482 of the Code of Criminal Procedure. It noted that proceedings before the DRT had been protracted wherein the presence of petitioner could be secured only after a duress process in the nature of warrant of arrest had been issued. It observed that the third respondent (“concededly a guarantor”) could not escape the liability for delay which had occurred on account of “his connivance” since he had made no effort “to ensure the presence” of the petitioner (“the borrower”).

16. The writ petition at hand challenging the abovementioned order of DRAT was entertained by this Court on 29.4.2014. While issuing notice the directions in the impugned order of DRAT as well as order passed by DRT requiring deposit of 25% of the amount claimed by the respondent-bank were stayed though clarifying that the proceedings in OA shall continue. This order was reiterated by subsequent order dated 6.8.2014.

17. The RDDBFI Act was enacted to provide for the establishment of Tribunals “for expeditious adjudication and recovery of debts” due to banks and financial institutions. This legislative measure was considered necessary *inter alia* because it was felt that the existing procedure for recovery had blocked a significant portion of the funds of banks and financial institutions in unproductive assets. With a large number of cases filed by such institutions pending in various courts, huge amount of public money had got locked up in litigation preventing its proper utilization and recycling of funds required for the development of the country.

18. The RDDBFI Act created, by Section 3, Debts Recovery Tribunals conferring upon them, by virtue of Section 17, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions “for recovery of debts” due to them. The procedure of such Tribunals is prescribed in Section 19. The orders passed by the appellate Tribunal are subject to appeal before the Debts Recovery Appellate Tribunal, established under Section 8.

19. A bare look at the various clauses contained in Section 19 shows that the status of DRT is akin to that of a civil court entertaining a civil cause brought for recovery of money. Shifting the jurisdiction for adjudicating upon a claim for recovery of money (which would ordinarily lie before a civil court) to the DRT in the cases where the claimant is a bank or a financial institution, the trial forum as indeed the DRAT, have been conferred, by virtue of Section 22, “powers to regulate their own procedure”. Section 22(1) declares that these forums “shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908” but adds that they shall be “guided by the principles of natural justice”. To enable the DRT, and DRAT, to discharge their functions under the Act”, they have been bestowed, by Section 22(2), with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908” while trying a suit, *inter alia* in respect of the following matters : -

- “(a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of documents;*
- (c) receiving evidence on affidavits;*
- (d) issuing commissions for the examination of witnesses or documents;*
- (e) reviewing its decisions;*

- (f) dismissing an application for default or deciding it ex parte;*
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;*
- (h) any other matter which may be prescribed.”*

20. While entertaining an application for recovery of a debt presented by a bank or a financial institution, the DRT is required to follow the procedure set out at length in Section 19. Thus, the DRT issues “summons”, under Section 19(4), “requiring the defendant to show cause” as to why the relief prayed for should not be granted. The defendant is given ordinarily a period of 30 days from the date of service of summons to submit his “written statement” of defence. The period can be enlarged in terms of the proviso appended to the said sub-section. Just as in a civil suit the defendant may claim set off [under Section 19(6)] or set up a counter claim [under Section 19(8)].

21. A civil court while dealing with money suit is vested with the power and jurisdiction to grant interlocutory orders, in terms of Order 39 of the Code of Civil Procedure, amongst others, to protect the subject matter of the dispute or to preclude the suit property from being wasted, damaged or alienated so as to cause injury to the claimant (plaintiff) or defraud the creditors etc. Order 38 of the Code of Civil Procedure empowers the civil court to order the defendant to furnish security for production of his property to the extent it would be required to satisfy the decree that may be passed against him if it is shown at any stage of the suit that the defendant with the intent to obstruct or delay the execution of such decree is about to dispose of his property or to remove it beyond the jurisdiction of the court. The civil court is further bestowed with the authority by virtue of provisions

contained in Order 38 to proceed to direct the property of the defendant to be attached in the event of he failing to show cause as to why he should not furnish security or failing to furnish such security when required to do so. Order 38 further empowers the civil court the jurisdiction to direct a defendant to furnish security for his appearance, even before the judgment is rendered, if it is shown to the satisfaction of the Court that in order to cause delay or avoid the process of the Court or obstruct or delay the execution of a decree that may be passed against him, he has absconded or is about to abscond from the local limits of the jurisdiction of the Court. Order 40 of the Code of Civil Procedure permits a civil court to appoint a receiver of the property in dispute; “whether before or after decree”, the prime objective again being to ensure that the claim under adjudication is not frustrated by intentional acts of commission or omission of the defendant.

22. Provisions similar to those mentioned above are made vis-à-vis the procedure applicable to DRT, by sub-sections (12) to (18) of Section 19 of RDDBFI Act, as under :

“(12) The Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

(13) (A) Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him, -

(i) is about to dispose of the whole or any part of his property; or

(ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the

Tribunal; or

(iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest,

the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of the debt, or to appear and show cause why he should not furnish security.

(B) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the defendant as appears sufficient to satisfy any certificate for the recovery of debt.

(14) The applicant shall, unless the Tribunal otherwise directs, specify the property required to be attached and the estimated value thereof.

(15) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property specified under sub-section (14).

(16) If an order of attachment is made without complying with the provisions of sub-section (13), such attachment shall be void.

(17) In the case of disobedience of an order made by the Tribunal under sub-sections (12), (13) and (18) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Tribunal directs his release.

(18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order—

(a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver;

(d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending application before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and

(e) appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof.”

(emphasis supplied)

23. The litigation brought before a Debts Recovery Tribunal essentially involves a civil dispute. It concerns primarily the claim of a bank or a financial institution to “a debt” which it seeks to recover from the person impleaded as a defendant. In dealing with such an application instituted before it by a bank or financial institution, the DRT may not be strictly bound by the procedure laid down in the Code of Civil Procedure or may have been vested with the power to regulate its own procedure. But there is nothing in the statutory provisions to indicate that the procedure which DRT adopts may be what it fancies.

24. As noted earlier, Section 22(2) confers upon DRT, and DRAT, certain specific powers vested by the Code of Civil Procedure in the Civil court.

These include the power to enforce the attendance of a person. But the rider is that the attendance being enforced must be with the objective of “examining him on oath”. Necessarily, a person required to attend to be examined on oath would be a person called as a witness and not a party to the suit.

25. The clauses (f) and (g) of Section 22(2) leave no room for doubt that for regulating the appearance of parties and consequences of their non-appearance, DRT (and DRAT) are to be guided generally by the provisions contained in order 9 of the Code of Civil Procedure. If the applicant under Section 19 fails to appear, the application may be dismissed in default. Conversely, if the defendant, duly served, does not appear, the proceedings on the application under Section 19 may be held *ex parte*. An application dismissed in default may be restored upon application being made on sufficient cause being shown for such order to be set aside. Similarly, the defendant having been set *ex parte*, may join the proceedings and may be permitted to participate and *ex parte* proceedings being set at naught subject of course to sufficient cause being shown for earlier non-appearance. This power also extends to setting aside of a judgment rendered *ex parte* resulting in the hearing on the application being reopened.

26. The forums constituted under RDDBFI Act are not criminal courts. To put simply, they do not adjudicate upon criminal causes or criminal charges. There is nothing in the provisions of the statute which establishes them to show that they are vested with any powers of the criminal court. These tribunals are expected to follow and be guided by the principles of natural justice. Their obligation is to ensure that no one is condemned unheard. Their application is to ensure that the dispute brought before them

is adjudicated upon after both sides have been given proper “opportunity of being heard”. It is inherent in this that, having issued summons to the defendant in terms of Section 19(4), the Tribunal must ensure that the process is duly served. The prime objective of summons is to give opportunity to the defendant “to show cause” as to why relief prayed for should not be granted. If the defendant, duly served, chooses not to appear, he suffers the proceedings *ex parte*. The Tribunal is within its jurisdiction to set such a defendant *ex parte* and proceed further towards adjudication on the basis of the pleadings and material brought before it by the applicant. There is no power vested in the Tribunal to compel or enforce the attendance of the defendant at the stage of adjudication on the claim under Section 19, not the least by issuing a warrant of arrest or for such duress process to be executed through the agency of police. It may be added that there is, generally speaking, no obligation on the part of one defendant to “ensure” the appearance of a co-defendant, unless there is material to show collusion or one is the agent (or principal) of the other.

27. The provision contained in Section 19(25) of RDDBFI Act has been referred by the DRAT in the impugned order. The clause reads as under :

“ The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.”

28. In the specific context of Section 19(25) of RDDBFI Act, the Supreme Court in the case reported as *Standard Chartered Bank V. Dharminder Bhohi* [Judgments Today (2013) 13 SC 69] held that the Debts Recovery Tribunal is required to function within statutory parameters and that “*the Tribunal does not have any inherent powers and it is limpid that*

Section 19(25) confers limited powers”.

29. We do not approve of the observations of DRAT that the above noted clause Section 19(25), confers upon the DRT a jurisdiction akin to the one vested in the High Court under Section 482 of the Code of Criminal Procedure. The language employed in the two provisions may be similar but the import thereof cannot be equated. The provision in Section 19(25) may at best be compared with the one contained in Section 151 of the Code of Civil Procedure which saves the “inherent power” of the civil court to secure ends of justice or make orders to prevent abuse of the judicial process. It is trite that such inherent jurisdiction to render justice cannot be taken resort of so as to nullify the other statutory provisions put in position to regulate the procedure. Where the legislation deals expressly with a particular matter, the provisions so enacted would normally be regarded as exhaustive.

30. The provisions contained in sub-section (12) to (18) of Section 19 of RDDBFI Act dealing with the interim orders including for attachment of property, furnishing of security, appointment of receiver etc. have been noted above in *extenso*. These provisions are not available to the DRT unless a case is made out for their invocation. The Tribunal is not vested with a general power to direct a defendant to furnish security or in case of default on his part to order attachment of his property. There is indeed no power conferred by the statute on the Tribunal to ask the defendant to deposit the amount claimed in the application under Section 19 before the claim is adjudicated upon. In analogous circumstances, taxing statutes enjoin assesseees to deposit finally determined amounts as condition precedent for hearing and deciding appeals; yet such pre-deposit is not

authorized at the stage of determination by the Tribunal or authority of first instance. It follows that the Tribunal has no jurisdiction to demand of the defendant a pre-deposit, even of a part of the claimed amount, as a condition precedent, during the process of adjudication on the claim only because delay has occurred in the appearance of the defendant in response to the process issued under Section 19(4). Further, no adverse order can be passed against a defendant for reasons attributable to the co-defendant, unless there is material showing concert.

31. In *Mardia Chemicals Ltd. V. UOI* (2000) 44 SCC 311, while examining the constitutional validity of Section 17(2) of SARFAESI Act (which, as it then existed, required deposit of the 75% of the amount claimed by the secured creditor as a condition precedent to the appeal being entertained by DRT) held the statutory clause to be onerous, oppressive, unreasonable and arbitrary, *inter alia* on the ground that such pre-condition could not be imposed where there had been as yet “no determination”. By the same logic, the pre-condition imposed by the DRT, as upheld by DRAT in the impugned order, must be held as onerous, oppressive, unreasonable and arbitrary. Above all, there was no occasion for the DRT to require the petitioner to deposit a part of the amount claimed on the bank even before liability was determined particularly when there has been no allegation of the petitioner attempting to frustrate the claim by disposing of his assets.

32. We may sum up.

33. There being no authority of law to compel the appearance of a defendant in a civil dispute, the DRT had no jurisdiction to issue warrants of arrest. It is no solace that the said orders did not result in the defendant being put under arrest. The mere issuance of warrants of arrest had unduly

jeopardized the liberty of the petitioner and so the directions towards this end were impermissible and illegal. There may have been a delay on the part of the petitioner in putting in appearance before the DRT. But satisfaction having been reached that there was a case for service being deemed to have been effected (in view of the report of refusal), the DRT could and should have proceeded further by setting the defendant *ex parte*.

34. We thus hold that the DRT had no jurisdiction to enforce the attendance of the petitioner in the proceedings arising out of the application under section 19 of the RDDBFI Act in the manner it proceeded to do through the series of orders noted earlier.

35. The mere fact that the defendant appeared after a long delay did not confer upon the DRT jurisdiction to order pre-deposit of a part of the amount claimed by the bank as a pre-condition. The order of deposit of part of the claimed amount (“the amount demanded” as DRT puts it) does not fall in any of the kinds of the interim orders that may be passed under Section 19. Penal action is permitted under Section 19(17) only in the context of interlocutory orders permitted by the provisions quoted earlier. Since such an order of deposit made before determination of the liability is not envisaged in the legislation, no action on account of “default” (or “defiance”, as DRT terms it) could have been initiated. The notice to show cause given by order dated 08.08.2013 was, thus, untenable. The impugned orders and the one upholding the direction for such deposit, therefore, must be held to be oppressive, unjust and without legal sanction and consequentially inoperative.

36. We, thus, set aside the impugned orders of DRT and DRAT. We hope and trust that the said statutory forums created by RDDBFI Act shall

hereafter bear in mind the circumspection of the law within which they are expected to function and exercise jurisdiction.

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

R.K.GAUBA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

MARCH 09, 2015
slh

