$~36

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

% **DECIDED ON: 25.03.2015**

\+ W.P.(C) 3003/2015

GOPAL KRISHAN BHASIN ..... Petitioner
Through Mr. Vinny Shangloo, Adv.

versus

STATE BANK OF PATIALA & ANR ..... Respondent
Through Mr. Sanjeev Kakra and Mr. Bheem, Advs. for R-1

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

S.RAVINDRA BHAT, J. (OPEN COURT)

C.M. No.5384/2015

Exemption is allowed subject to all just exceptions.

The application is disposed of.

W.P.(C) 3003/2015 & C.M. No.5385/2015 (stay)

1. Issue notice. Mr. Sanjeev Kakra, Advocate accepts notice. With consent, the petition was heard finally.

2. The petitioner in these proceedings under Article 226 of the Constitution of India is aggrieved by an order of the Debt Recovery Tribunal (DRT) dated 27.05.2014 made in two applications filed by the respondent (hereafter referred to as "the Bank"), i.e., OA 59/2005 and OA 79/2005.

3. The DRT had for the same reasons, dismissed the petitioner's

Securitisation Application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The two applications OA Nos.59 & 79/2005 - were proceedings under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereafter referred to as the Recovery Act) filed by the Bank.

4. One Group Apparel Business Services (GABS) had availed of export packing credit and certain facility by way of overdraft from the respondent bank.

5. Independently, the partners of GABS G.K. Bhasin (the petitioner herein) and Neelam Bhasin (hereafter collectively referred to as "the Bhasins") - had availed a housing loan from the bank which they secured by equitable mortgage i.e. deposit of title deeds.

6. The bank declared the housing loan as a "non-performing asset" (NPA), sometime in June, 2014 and accordingly issued notice under Section 13 (2) of the SARFAESI Act sometime in July, 2014. It thereafter sought to put the property to auction. Thereupon, the borrowers, i.e., Bhasins preferred a Securitization Application under Section 17 of the SARFAESI Act in 2005. This unnumbered - though registered application under Section 17 was pending before the DRT when the Bank preferred OA Nos.59 & 79/2005. The subject matter of OA 59/2005 was the recovery of the housing loan. The bank claimed the principal amount of ₹23.6 lakhs plus 10.85% per annum with monthly rests as the final order. Soon thereafter, the bank filed OA79/2005 claiming ₹29,93,277.77 on account of two amounts. The major component of this was the outstanding amount in respect of

export packing credit availed of by GABS. The bank claimed 9% *pendente lite* interest per annum on monthly rests in respect of this outstanding amount, i.e., ₹29,24,947/-. The other decree sought for was a personal decree in respect of unrecovered interest on the current account overdraft to the extent of ₹68,330.77 with *pendente lite* and future interest @ 15% per annum with monthly rests. Since the entire dispute in this proceeding pertains to the rate of interest, it would be crucial to extract the relief claimed in OA 79/2005 from the relief clause of the application filed by the bank; the same is as under:

> *"(a) That Defendants No.1 to 3 may be ordered to pay jointly and severally, individually and coextensively by way of a personal decree or order in respect of the aforesaid Export Packing Credit Limit a sum of Rs.29,24,947/- to the Applicant Bank together with pendente lite and future interest at the rate of 9% per annum with monthly rests till the date of actual and final realization along with all costs and charges and a Recovery Certificate may be issued in favour of the Applicant Bank for the said amount.*
>
> *(b) That Defendants no.1 to 3 may be ordered to pay jointly and severally, individually and coextensively by way of a personal decree or order in respect of the unrecovered interest on the Current account overdraft a sum of Rs.68,330.77 to the Applicant Bank, together with pendente lite and future interest at the rate of 15% per annum with monthly rests, till the date of actual and final realization alongwith all costs and charges and a Recovery Certificate may be issued in favour of the Applicant Bank for the said amount."*

7. In addition, the bank also sought for sale of the mortgage property by the DRT which was - as noticed earlier - hearing submissions of the Securitization Application (SA) preferred by the

Bhasins.

8. During the pendency of these proceedings, the borrowers, i.e., Bhasins as well as GABS had offered to deposit the entire principal amount and requested that the interest claims of the bank to be adjudicated so as to crystallise (and possibly minimise) their liability. The orders of the DRT were appealed against in this regard, i.e., in MA 251/2007. The petitioner relied upon two orders of the DRAT dated 10.12.2010 and 01.09.2011. The order of the DRAT dated 10.12.2010 reads as follows: -

> *"Counsel for the parties present.*
>
> *Counsel for the appellant, Mr. Harish Katyal, Advocate wants to make a statement. The statement is as under:*
>
> *"Sh. Harish Katyal, Advocate without SA*
>
> *The appellant is ready to pay the entire dues of the bank provided the Bank would issue sale certificate of both the properties pledged with them in the account of Housing Loan A/C G.K. Bhasin, M/s GABS, M/s GABS Global and M/s Mint Fortunz in favour of the person forwarded by the appellant."*
>
> *Sd/-*
> *CHAIRMAN*
>
> *Sd/-*
> *(Harish Katyal)*
> *Advocate*
>
> *In view of the above statement it is hereby directed that on receipt of the entire dues within fifteen days, the mortgaged papers be returned to the appellant with the consent of the mortgagor for M/s Mint Fortunz only and sale certificate for others. The Bank is directed to submit*

the properties papers with the Ld. Registrar DRAT who will hand over to the appellant and sale certificate will also be issued by the DRAT. The Bank is further directed to furnish a copy of the statement of the accounts to the counsel for the appellant as per Ravindra Judgment within one month. It is made clear that capitalization penal interest is not permissible that view must be kept in mind.

The appeal stands disposed of.

Copies of this order be given to the parties as per law and one copy of this order be dispatched to the Ld DRT forthwith."

Likewise these directions were again reiterated by the DRAT in another proceedings, i.e., Miscellaneous Case No.382/2011 (in MA 251/2007) on 01.09.2011: -

"Under these circumstances, since the matter is still pending before the DRT and, therefore, the due amount is actually is still be gone into, and, no other point will be decided by the DRT because before this Tribunal statement was given on behalf of Gopal Krishan Bhasin that they are ready to pay the entire dues. The Tribunal will only decide as to what are the entire dues which are recoverable by the bank and no other issue shall be decided. The case is remanded back to the Tribunal to this extent.

Parties present today shall appear before the Tribunal on 8.9.2011. The Tribunal while arriving at an amount which is recoverable shall take into account the amount which has already been paid by Gopal Krishan Bhasin. Till such final adjudication the property papers not to be returned.

The application stands disposed off....."

9. It would, therefore, be evident that the DRT was directed more

than once to decide the interest liability of both GABS and Bhasins in respect of the pending proceedings, i.e., the Securitisation Application as well as the Original Applications under the Recovery Act. This was a logical consideration given that the subject matter of OA59/2005 and the Securitisation Application were identical, i.e., housing loan whereas OA 79/2005 pertained to the commercial liabilities of GABS, a partnership firm of Bhasins. In these circumstances, unfortunately, the DRT in its order dated 27.05.2014 went about exploring the contractual nature of the relationship between the parties and held that the petitioner was liable. Given the fact that the petitioner's liabilities – as regards the principal amount claimed – was never in dispute, the DRT was under an obligation to have decided what really the interest liability was. However, the DRT completely ignored the directions of the DRAT and proceeded to record as follows: -

> *"11. After hearing both the parties at length and after perusal of record, I am of this view that the applicant bank has legitimate claim against the defendants.*
>
> *12. As per the provision of Section 19 (20) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 which is analogous to Section 34 of CPC, on filing of the suit/claim, the contract between the parties comes to an end and the Court/Tribunal has a discretion to award the same depending upon the circumstances of each case. Same principle has been laid down by the Hon'ble Apex Court in the case of Central Bank of India Vs. Ravindra & others. Taking stock of all the circumstances and keeping in view that there is a drastic fall in rates of interest globally and drastically, I am of the opinion that interest of justice will be served if interest @ 13% p.a. with monthly rests is awarded from*

the date of filing of the OA till the actual date of realization.

13. In view of directions issued/orders passed by Hon'ble DRAT on 1.9.2011, this OA is disposed off with the following directions: -

(i) that defendants no.1 to 3 shall pay the dues of the applicant bank i.e. Rs.29,93,277.77 (Rupees Twenty Nine Lacs Ninety Three Thousand Two Hundred Seventy Seven and Paise Seventy Seven only) which comprises Rs.29,24,947/- in respect of Export Packing Credit Limit and Rs.68,330.77 in respect of Current Account Overdraft along with interest @ 13% p.a. with monthly rests from the date of filing of this OA till actual date of realization along with cost and expenses of the applicant bank. Defendants are directed to pay the same to the applicant bank within 30 days.

(ii) That applicant bank shall give due adjustment of the money recovered from the defendants, during the pendency of the case.

(iii) Recovery Certificate be issued after 30 days, in case amount is not deposited and case be listed before Ld. Recovery Officer on 30.07.2014.

(iv) In view of above, the OA No.79/2005 is disposed off.

(v) Since present OA is disposed off, connected SA No. Nil/2005 (Gopal Krishan Bhasin Vs. SBP) also stands disposed off accordingly.

(vi) File is hereby closed and consigned to records.

Dasti."

10. The petitioner, aggrieved by the above directions, contends that the impugned order requires to be set aside since facially it ignored the mandate of the directions of the DRAT. It is also contended that a deposit of over ₹71 lakhs was made during the pendency of the proceedings before the DRAT which was not taken note of and on the other hand when the offer was made to deposit a further ₹40 lakhs in compliance with the DRAT's directions, the DRT merely rejected the application on 31.01.2013 and even directed payment of ₹10,000/- as costs. Counsel also mentioned that on a previous occasion, the Bhasins had to approach this Court by filing W.P.(C)6608/2014 which was disposed of on 26.09.2014 relegating the parties to the appellate remedy available before the DRAT. It was urged that given these conspectus of circumstances, this Court should set aside the order of the DRT and having regard to the undisputed claim of the bank, modify the decree of the DRT itself.

11. Counsel for the bank contested the maintainability of the present proceedings and stated that once in respect of the same common order, this Court declined to exercise jurisdiction expressing a particular view and relegating the aggrieved parties (Bhasins) to the remedy of appeal under the Recovery Act, it would be inexpedient to concede or allow the present petitioner any relief. Learned counsel urged that in compliance with the orders of this Court in W.P.(C)6608/2014, the Bhasins in fact approached the DRAT and their appeal is pending and under the given circumstances this Court should follow its previous order dated 26.09.2014.

12. It is evident from the above discussion that the bank essentially had two claims. One pertained to the commercial transaction of the Bhasins' partnership firm i.e., GABS; this commercial claim comprised of two elements, i.e., export packing credit - which accounted for a major share of the claim in OA 79/2005 (₹29,24,947/-). The second was a smaller, and if one may say so, an insignificant element, i.e., ₹68,330.77. As against the EPC claim, the bank had sought a decree for the principal with *pendente lite* and future interest at 9% per annum with monthly rests. As against the smaller current account overdraft liability, it had sought 15% interest per annum at monthly rests. The housing loan claim, on the other hand, was for ₹26,41,299/- with 10.85% interest per annum with monthly rests. Facially, the DRT's decision reveals a complete misapplication of mind to the claims of the bank in OA 79/2005. The bank had sought 15% *pendente lite* and future interest only in respect of sum of ₹68,330.77 and not in respect of the other amounts. Its interest claims were much lower. Given the orders of the DRAT in MA 251/2007 i.e. (10.12.2010 and 01.09.2011) which were noticed by the DRT in its impugned order, it was expected for that Tribunal to strictly adhere to the directions of its appellate body; the bank did not dispute the applicability of those directions. In these circumstances, the impugned order is untenable.

13. The bank's objection is that this Court should not entertain the present petition and should follow the route recommended by the previous order dated 26.09.2014. We are of the opinion that it is precisely to correct jurisdictional errors that a citizen is empowered to

approach the Courts under Article 226 of the Constitution of India. To deny this remedy in the present instance when the untenability of the impugned order is writ large, and on the face of the record would be to negate the very purpose for which the writ jurisdiction was conferred upon the High Courts - (Ref. *T. C. Basappa v. T. Nagappa and Another*, AIR 1954 SC 440; *Dwarkanath v. ITO*, AIR 1966 SC 81). In such circumstances, insistence on adherence to the alternative remedy may not only be ritualistic, but lead to multifariousness. In proceedings for certiorari, against orders of Tribunal, a rigid adherence of alternative remedy availability rationale to deny relief might actually result in failure of justice - (Ref. *State of U.P. v. Mohd. Nooh*, AIR 1958 SC 86; *Century Spinning & Manufacturing Co. v. Ulhasnagar Municipal Council*, 1970 (1) SCC 582).

14. This Court is mindful of the fact that in W.P.(C) 6608/2014, jurisdiction was declined on the ground of availability of appellate remedy. However, at the same time that order cannot be treated as a precedent so as to the present writ petitioner to be forced to appear before the DRAT and suffer the mandate of the Recovery Act i.e. to deposit certain amount as a condition precedent for hearing of the appeal. Relegating the petitioner in these circumstances would certainly amount to manifest injustice to which the Court cannot be a party.

15. Given the totality of the facts and circumstances noticed by this Court, the most appropriate order would be to relegate the parties to the DRT which is directed to determine afresh the limited controversy before it, considering that the partnership firm of the Bhasins is not

disputing its liabilities. Likewise, the Bhasins also did not apparently dispute their principal liability. In the circumstances, the DRT shall determine afresh, the interest liability in accordance with the orders of the DRAT dated 10.12.2010 and 01.09.2011 within a period of three months. While doing so, the DRT shall also return the findings as to the amounts deposited by GABS – as well as the Bhasins: on account, in respect of various liabilities from time to time, and give due adjustments thereof to them. The impugned order dated 27.05.2014 is accordingly set aside.

16. Learned counsel says that the appeal pending before the DRAT against the impugned order in this case would also be withdrawn. Liberty is granted in this regard. The impugned order is accordingly set aside.

17. Writ Petition is allowed.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

MARCH 25, 2015
vld