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

Decided on: February 05, 2015

+ **W.P.(C) 8068/2014, CAV.1028/2014, C.M.NO.18843/2014**

PUNJAB & SIND BANK

..... Petitioner

Through: Sh. Rajinder Wali, Advocate.

versus

RAMANJIT KAUR & ORS.

..... Respondents

Through: Sh. Rajeeve Mehra, Sr. Advocate with  
Sh. Aditya Malhotra and Ms. Shruti Aggarwal,  
Advocates, for Respondent Nos. 1 and 5.

**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. This writ petition questions the legality of the order dated 26.09.2014 passed by Debts Recovery Appellate Tribunal (hereinafter referred to as “the DRAT”) in appeal No. 308/2011 arising out of OA No. 276/1996 (Delhi-II) whereby relief in the form of reduced rate of *pendente lite* and future interest has been granted on considerations of equity, fairness and reasonableness to the respondents No. 1 and 5 (hereinafter “the contesting respondents”).

2. The respondents No. 2 to 4 did not appear or contest before the DRT or DRAT. The issues raised here essentially pertain to the liability of the contesting respondents. Therefore, notice to respondents No. 2, 3 and 4 is

dispensed with.

3. M/s Skipper Builders Pvt. Ltd. was the principal borrower; it requested and was granted ODP limit to the tune of ₹6.50 Lacs. The contesting respondents were amongst the guarantors/mortgagors. Property No. 6/13, Vasant Vihar, New Delhi and No. C-148, Naraina Industrial Area, Ring Road, New Delhi were accepted as security by way of equitable mortgage. The borrower became irregular in availing credit facility. It approached the bank for release of the afore-mentioned mortgaged properties and in their lieu offered property No. 8/25, West Patel Nagar, New Delhi as security. The ODP limit was reduced and converted into term loan of ₹4 Lacs. On 03.01.1979, a sum of ₹4 Lacs was credited in the earlier ODP account which was running irregular by debiting the new LAP account. The borrowing company executed various documents on 03.01.1979 at which stage the first respondent with another (second respondent) executed guarantee agreements. In spite of various communications, the borrowing company did not pay the amount with interest accrued thereon. On 19.12.1981, debit balance of ₹6,85,791.80 was acknowledged and fresh documents executed. An application was eventually filed for recovery of ₹19,41,696/- outstanding in the ODP account along with ₹24,50,965/- outstanding on debit sought in the LAP account.

4. The DRT decided the OA by judgment passed on 21.04.2011 holding all the defendants (including the contesting respondents) jointly and severally liable. A recovery certificate in the sum of ₹41,26,988.58 along with interest @ 13.5% per annum with quarterly rests was issued from the date of filing of the application (initially suit No. 2752/88 instituted in this

court on 29.09.1988) till realization within 60 days of the said judgment failing which the amount was made recoverable from sale of the secured assets.

5. The judgment dated 21.04,2011 further directed that the title deeds of property No. E-22, Panchsheel Park, New Delhi be returned to defendant/respondent No. 5. This part of the direction was challenged by the bank through appeal No. 296/2011 which was allowed by DRAT by judgment dated 17.06.2014.

6. The first Respondent, in the meantime, had preferred appeal No. 308/2011 which came up for hearing before DRAT on 26.09.2014. Midway the hearing, it was submitted on her behalf that the appeal was restricted only to the question of rate of *pendente lite* and future interest. It was pointed out that respondent No. 1 had deposited a sum of ₹25 Lacs in the year 2001 followed by another similar deposit of ₹25 Lacs by respondent No. 5. The appellant before the DRAT submitted that if the rate of interest *pendente lite* and future as awarded by DRT were to be enforced, it would result in a liability to deposit a sum more than ₹4 Crores which was highly unfair inasmuch as she had stood guarantee only for an amount of ₹4 Lacs in the LAP account. Taking note, *inter alia*, of the facts that modification of the directions in the order of DRT by requiring the interest to be charged as simple, instead of compound, would still result in an outstanding liability of ₹1.81 Crores and that the bank had earlier received deposits of the total value of ₹50 Lac, though kept in a no lien account fetching no interest, and the discretion available under Section 19(20) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 for passing the order for payment of interest as found “fit” to meet the ends of justice, the appeal was

disposed of with directions in following terms:-

*“I have considered the entire case and issues and find that this case deserves some sympathetic consideration to ensure equity, fairness and reasonableness. The prayer made by the appellant is to allow interest to the bank @6%, which as per her would be fair, and then permit the appellant to claim adjustment of their amount which they had paid in the year 2001. Allowing interest @6% as prayed for by the appellant to me would not sound fair and reasonable. After having deliberated on the issue, I find that allowing the bank, interest the rate 10% p.a. simple on reducing balance from the date of filing of the O.A. on the O.A. amount would be fair, just and reasonable. It would also be fair to allow interest on Rs.50 lac @6% p.a. from the date of deposit till date. The bank accordingly will intimate the balance amount due after making this adjustment of the amount as per above directions. The appellant and respondent No.5 would have eight weeks' time to discharge the complete liability from the date of receipt of copy of this order and in the event of their failure to do so the bank would be at liberty to proceed against the property in accordance with law. If the entire liability intimated by the bank is discharged by appellant m and respondent 5, then it shall satisfy the claim in the present O.A. and only property of the appellant may be released if not under any change in any other account. This order would not have effect on any other liability of anyone else or of respondent No.5.”*

7. The bank has invoked the extra-ordinary civil writ jurisdiction claiming for the quashing of the order of DRAT and restoration of the DRT order mainly contending that such interference by the appellate authority was unwarranted. It is agreed that the DRT had awarded appropriate rate of interest as against the contractual rate of 17.5% (and 19%) per annum with quarterly rests. It has been submitted that the deposits of ₹25 Lacs each made by the contesting respondents had been kept in accounts where they would not earn any interest for the bank and consequently granting further

credit to the extent of 6% per annum interest on such deposits in favour of the depositors (respondents No. 1 and 5) was erroneous.

8. We have given our anxious considerations to the submissions made by the petitioner bank but find no good reason to interfere in the relief granted in the matter of interest and respecting release of the property of respondent No. 1 from the charge upon deposit of her liability in terms of the recovery certificate granted by DRT to be enforced against her as modified by DRAT.

9. Concededly, the respondent No. 1 had stood guarantee for loan liability of the principal borrower to the extent of ₹4 Lacs only. The litigation has continued for more than 26 years. The delay in conclusion, insofar as respondents No. 1 and 5 are concerned, is not for reasons attributable to either of them. The contesting respondents had made deposits to the tune of ₹25 Lacs each in 2001. It may be that the bank has kept the said deposits in interest-free accounts. But, the fact remains that if these respondents had not constrained to make such deposits, the money in their hand would have earned corresponding interest. The contractual rate of interest on the loan liability has been taken into account and allowed in the decree/recovery certificate granted by DRT, for the pre-litigation period. The rate of interest for the pendency of the suit/proceedings and also future interest (post-decree) is a matter within the discretion of the adjudicating authority. The reasons setting out which discretion has been exercised by DRAT in the impugned order for reducing the interest liability (*pendente lite* and future) cannot be said to be unreasonable or perverse. The entitlement of the petitioner bank to proceed against the other judgment debtors (respondents No. 2 to 4) and also for recovery by sale of the mortgaged

property including of respondent No. 5 still survives.

10. In above facts and circumstances, the relief granted by the impugned order of DRAT being on account of discretion properly exercised, there is no reason for interference by this court.

11. The petition is, therefore, dismissed.

12. Parties are left to bear their own costs.

**R.K.GAUBA**  
**(JUDGE)**

**S. RAVINDRA BHAT**  
**(JUDGE)**

**FEBRUARY 05, 2015**

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