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

+ W.P.(C) 7877/2015

% *judgment dated 06.10.2015*

V.K.MODI

..... Petitioner

Through : Mr.Rajeev Mehra, Sr. Adv. with Mr.S.
Jayashree Shukla Dasgupta and
Mr.Aseem Swaroop, Advs.

versus

IFCI LTD.

..... Respondent

Through : Mr.C.S. Chauhan and Mr.Purti Marwaha,
Advs.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by petitioner under Articles 226 and 227 of the Constitution of India seeking a direction to quash the Order dated 13.8.2015 passed by Debts Recovery Appellate Tribunal (hereinafter referred to as the "DRAT") in Misc. Appeal No.225/2015 and the Order dated 23.4.2015 passed by Debts Recovery Tribunal (hereinafter referred to as the "DRT") in O.A.No.159/2001.
2. Out of three applications, being I.A.Nos.96/2010, 393/2010 and 826/2010, filed by the petitioner herein before the DRT, two applications were dismissed. By the First application petitioner sought leave to cross-examine two witnesses, namely, Sh.S.K. Majumdar and Sh.M.P. Sethi, who were the officers of the respondent Bank. The second application was to seek leave of the Tribunal to summon witnesses.
3. Learned senior counsel appearing on behalf of the petitioner submits that one of the defendants (before the Tribunal) has already been granted leave to cross-examine both the witnesses i.e. Sh.Majumdar and Sh.Sethi vide

Order dated 11.12.2006 passed by DRAT and petitioner being similarly placed should have allowed to cross-examine the witness. Senior counsel further submits that one of the witnesses, Sh.Sethi, has not been discharged and is still under cross-examination, and in case leave is granted, cross-examination would be concluded in one day in the maximum period of two hours.

4. As far as the second application seeking leave to summon witnesses is concerned, learned senior counsel for the petitioner submits that no reasons have been given in the order passed by the DRAT for rejection of the application. Mr.Mehra contends that to summon a witness is the right of any litigant, which cannot be curtailed.
5. Learned counsel for the respondent has opposed the present petition and submits that the only aim of the petitioner is to prolong the litigation, as the Original Applications filed by the petitioner have been pending for fourteen years. Counsel relies on the judgment rendered in the case of *Union of India v. Delhi High Court Bar Association*, reported at BC 2004 II SC 33, as noticed by the DRT and DRAT in the impugned Orders, in support of his submission that cross-examination is to be allowed only in rare cases and no such ground has been made out by the petitioner. Reliance is also placed by the counsel on the judgment rendered in the case of *Continental Construction Ltd. v. State Bank of India*, W.P.(C)Nos.8705/2014, 8707/2014 and 8138/2014.
6. We have heard learned counsel for the parties, considered their rival submissions and also perused the impugned orders passed by the DRT and DRAT. As far as the application filed by the petitioner seeking leave to summon witnesses is concerned, we find that both the impugned orders are bereft of any reasons. Accordingly, leave is granted to the petitioner to make a fresh application before the DRT seeking leave to summon

witness. The DRT shall decide the application in accordance with law.

7. As far as the second prayer made by the petitioner in the application seeking leave to cross-examine Sh.Sethi is concerned, we find that the DRAT in the order passed in the year 2006 had allowed one of the co-respondents to cross-examine Sh.Sethi.
8. We also find that primarily the DRAT has rejected the prayer of the petitioner herein on the ground that the matter has been pending for fourteen years and in case leave is granted to the petitioner to cross-examine Sh.Sethi the matter would be delayed further.
9. We may notice that leave was granted to a co-defendant to cross-examine two witnesses. The petitioner is similarly placed. We find that Sh.Majumdar has already been cross-examined and discharged. As agreed by, Mr.Mehra, prayer regarding cross-examination of Sh.Majumdar is not pressed, however, to ensure that the matter is not delayed and having regard to the fact that Sh.Sethi is still under cross-examination, we permit the petitioner herein to cross-examine Sh.Sethi, for which the Tribunal shall fix one date. The cross-examination shall not be for more than two hours.
10. Writ petition stands disposed of in above terms.

CM APPL. 15755/2015

11. In view of the order passed in the writ petition, application stands disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

OCTOBER 06, 2015 msr