IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

WRIT PETITION NO.2461 OF 2010

1) M/s Mule Brothers at Jawali,
Post Lamjana, Tq. Ausa,
District Latur, through its Proprietor
Trimbak Narisng Mule,
Age 48 years, Occ. Agri.,
R/o Jawali, Post Lamjana,
Tq. Ausa, District Latur.

2) Smt. Sudhamati Prabhakar Mule,
Age 45 years, Occ. Household,
R/o Beside Lifestyle Building,
Near Rajiv Gandhi Chowk,
Ausa Road, Latur.

3) Hanmant Raoji Jirmire,
Age 55 years, Occ. Business,
R/o Jawali, Post Lamjana,
Tq. Ausa, District Latur. ... PETITIONERS

VERSUS

The State Bank of India
through its Branch Manager,
At Killari, Taluka Ausa,
District Latur ... RESPONDENT

.....

Shri A.V. Patil, Advocate for petitioners
Shri P.B. Paithankar, Advocate for respondent

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CORAM: S.V. GANGAPURWALA AND A.I.S. CHEEMA, JJ.

DATED: 16th March, 2016.

ORAL JUDGMENT (PER S.V. GANGAPURWALA, J.):

1. Mr. Patil, learned counsel for the petitioners states that, the petitioners had filed an appeal before the Debts Recovery Appellate Tribunal against the judgment and order passed by the Debts Recovery Appellate Tribunal. The Tribunal, vide order dated 8.12.2009, had directed the present petitioners to deposit an amount of Rs.10,00,000/- within six weeks. The petitioners could not deposit the said amount within the stipulated period, however, subsequently, the petitioners had filed an application along with the Demand Draft of Rs.10,00,000/-. The petitioners sought extension of time to deposit the said amount. The Court rejected the said application. The learned counsel submits that, it was because of the financial constraints, the amount could not be deposited within the stipulated period. According to the learned counsel, the petitioners be given an opportunity to deposit the said amount and contest the appeal on merits. Because of the non deposit of the amount, the appeal itself was dismissed by the Debts Recovery Appellate Tribunal.

2. Mr. Paithankar, the learned counsel for respondent submits that, the petitioners were directed to deposit only Rs.10,00,000/-. As per the judgment of the Debts Recovery Tribunal, the dues against the present petitioners at the relevant time was Rs.25,57,631/- in 2006. As on the date of the order, the same was more than Rs.35,00,000/- to Rs.40,00,000/-. As such, the petitioners were directed to deposit less than 25% of the amount. The learned counsel further submits that, this Court had directed the petitioners to deposit Rs.15,00,000/- vide order dated 11.4.2012. Even the petitioners have not deposited the said amount. This shows that the contention of the petitioners is not bonafide.

3. We have considered the submissions canvassed by the learned counsel for the parties.

4. As per Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the petitioners have to deposit 75% of the amount. The Appellate Tribunal exercised discretion and directed the petitioners to deposit only Rs.10,00,000/-. The said amount is also not deposited within the period stipulated. Six years have lapsed from the date of the

impugned order.

5. No doubt, appeal is a substantial right. However, the same is circumscribed by the conditions laid down in the provisions itself. The amount outstanding must have bulged by now because interest is mounting.

6. It does not appear that the petitioners have paid any amount to the respondent Bank after filing of the appeal.

7. We would exercise our discretion and allow the petitioners to contest the appeal on merits. However, the petitioners are required to deposit the additional amount. We are exercising our discretion in favour of the petitioners considering the fact that after the time stipulated by the Appellate Tribunal, the petitioners had approached the Appellate Tribunal with a demand draft of Rs.10,00,000/-.

8. In light of the above, we pass the following order :

9. The impugned order is quashed and set aside. The Appeal No.75/2009 filed by the petitioners shall be restored to its original position subject to following conditions :-

(i) The petitioners shall deposit an amount of Rs.25,00,000/- (Rupees twenty five lakhs) with the respondent Bank within four weeks from today. If the amount as directed is deposited with the respondent Bank, then the Appellate Tribunal shall hear the appeal of the petitioners on its own merits.

(ii) In case the petitioners fail to deposit the amount of Rs.25,00,000/- (Rupees twenty five lakhs) with the respondent Bank within four weeks, then the appeal filed by the petitioners before the Appellate Tribunal shall stand dismissed.

10. Rule accordingly disposed of. No costs.

(A.I.S. CHEEMA, J.) (S.V. GANGAPURWALA, J.)