

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**WRIT PETITION NO. 4537 OF 2015**  
**WITH**  
**CIVIL APPLICATION NO. 11107 OF 2016**

M/s. Manohar Automobiles  
and others

.. **Petitioners**

**Versus**

Industrial Development Bank  
of India Ltd.,  
Through its Assistant Manager  
and another

.. **Respondents**

Shri Shailesh P. Brahme, Advocate for Petitioners.  
Shri S. S. Deve, Advocate for Respondent No. 1.  
Shri B. B. Kulkarni, Standing Counsel for Respondent No. 2.  
Shri Amol S. Sawant, Advocate for Intervenor.

**CORAM : S. V. GANGAPURWALA AND**  
**K. K. SONAWANE, JJ.**  
**DATE : 10TH AUGUST, 2016.**

**PER COURT :-**

1. We have heard Mr. Brahme, the learned counsel for the Petitioners, Mr. Deve, the learned counsel for the Respondent – Bank.

2. Mr. Brahme, the learned counsel for the Petitioners submit that, the order under challenge before the appellate tribunal was with regard to the rejection of the application of the Petitioners for setting aside the ex-party recovery certificate. According to the learned counsel for the Petitioners, only on the ground that entire

amount is paid the court did not pass any order with regard to the recovery certificate issued, so also, with regard to the setting aside the ex-party certificate. According to the learned counsel, even the same is not set aside by the appellate authority.

3. Mr. Deve, the learned counsel submits that, entire amount has not been deposited by the Petitioners, some amount is still due.

4. It appears that during the pendency of the appeal before the appellate tribunal the Petitioners have deposited an amount of Rs.67,90,000/-. The said amount is deposited on 20<sup>th</sup> July, 2011. The Bank had filed a purshish on 23<sup>rd</sup> June, 2011 that an amount of Rs. 67,87,000/- and odd amount is outstanding against the Petitioners. The appellate court has observed that, as entire amount is paid no further orders are required and had directed the Petitioners to approach Recovery Officer with regard to the sale of property.

5. The order of the appellate tribunal proceeds on the premise that Appellants have deposited the entire amount prior to the confirmation of sale. There does not appear to be any adjudication about the amount which was exactly due and payable. The bank claims that some amount is due and payable. As far as sale is concerned the confirmation of the sale was postponed subject to the outcome of the judgment in the appeal preferred by the present Petitioners before the Debt Recovery Appellate Tribunal. The Petitioners property is sold for an amount of Rs.1,06,00,000/-. It would be appropriate for the appellate court to decide about the exact amount due and payable by the Petitioners and whether the liability towards the bank has been totally wiped out and ought to have passed an order with regard

to the application of the Petitioners for setting aside ex-party recovery certificate.

6. Considering the above, it would be appropriate to relegate the parties before the appellate tribunal. In the result we pass the following order -

**ORDER**

A] The impugned judgment and order is quashed and set aside.

B] The parties are relegated before the appellate tribunal.

C] The parties shall appear before the appellate tribunal in Miscellaneous Appeal No. 54 of 2011 on 2<sup>nd</sup> September, 2016.

D] The appellate tribunal shall decide the appeal on its own merits, in accordance with law, after hearing the parties concerned. Considering the fact that the matter is remitted back the appellate tribunal may endeavour to dispose of the said appeal expeditiously.

E] Needless to state, the interim order that may have been passed by the appellate tribunal would continue till decision of the appeal.

7. The Writ Petition is accordingly disposed of. No costs.

8. In view of disposal of Writ Petition, the Civil Application also stands disposed of.

**[ K. K. SONAWANE, J. ]**

**[ S. V. GANGAPURWALA, J. ]**