

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1119 OF 2016

M/s. Kartik Internatinal & others ... Petitioners

V/s.

Central Bank of India & ors. ... Respondents

Mr. Rohit Gupta i/b. Mr. Yogesh K. Deshpande for the petitioners.

Mr. Madhur Rai i/b. R.J. Singh for respondent no.1.

Mr. Sunil Humbre for respondent no.2.

Mr. D.D. Madon, Senior Counsel a/w. Mr. Jay Choksi and Mr. Jay Mehta
i/b. Law Frame for respondent no.3.

**CORAM : NARESH H. PATIL AND
A.A. SAYED, JJ.**

2nd February, 2016.

P.C.

This appeal is directed against the order passed by the Debts Recovery Appellate Tribunal (hereinafter referred to as DRAT for short), Mumbai dated 31st December, 2015. The appellants are borrowers/guarantors. Respondent No.1 is the original Lender Bank. The respondent no.2 is the auction purchaser of the property. Respondent no.3 is the assignee.

2. It is the case of the Bank that the respondent no. 1-Central Bank of

India had originally filed Suit No. 3809/1993 against the petitioners before the High Court of Bombay. It is contended that after enactment of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as RDDB & FI Act, for short) and with the establishment of DRAT, Mumbai, the said Suit No. 3809/1993 was transferred for trial before the DRT-1, Mumbai. The Suit was numbered as Original Application No. 234/2001.

3. The original application No.234/2001 was disposed of by a judgment dated 6th November, 2009 delivered by Presiding Officer, DRT-1, Mumbai. The petitioner filed Appeal No. 69/2010 before the DRAT, Mumbai. The Misc. Application No. 225/2010 was filed in Appeal No. 69/2010. The petitioner had filed Misc. Application No. 223/2010 for condonation of 90 days delay in filing the appeal.

4. By an order dated 31st December, 2015 the DRAT directed the petitioner/appellant to deposit the sum of Rs. 2 Crores before Registrar, DRAT Mumbai on or before 4th February, 2016.

5. Learned Counsel appearing for the petitioner submitted that there was delay of more than seven months in passing order by the DRAT. Learned Counsel referred to the Roznama maintained by the DRAT in support of his contentions. According to learned Counsel the delay has caused prejudice to the petitioners. Learned Counsel placed reliance on order passed by Division Bench in Writ Petition No. 2209/2011 on 22nd November, 2011. It was submitted that subject bills were not produced by the respondent Bank. The impugned order was harsh and

unreasonable. In the facts the DRAT ought to have waived deposit. The learned Counsel has referred to other documents which were part of the paper-book.

6. Learned Senior Counsel Madon appearing for respondent no.3 submitted that debt is acknowledged by the buyer. As on today amount due from the borrower is calculated to the tune of Rs.12 Crores. In respect of two flats Court Receiver was appointed. In defiance to the orders the petitioner had created third party interest in the flat.

7. The Court Receiver had sold flat at Wadala but the purchaser is not getting possession of the flat. Learned Counsel submitted that in the facts of the case the DRAT has exercised its discretion which does not call any interference by this Court.

8. We have heard the submissions of Shri Sunil Humbre, learned Counsel appearing for respondent no.2. Perused the record. It was contended on behalf of Bank that the petitioner is to pay Rs. 2,67,15,840/- towards royalty regarding the subject flats. In the facts we do not find any reason to set aside the order of Appellate Court on account of delay in passing order but we may hasten to add here itself that Tribunal shall make every endeavour to pass orders within reasonable period.

9. We are not inclined to discuss the merits of the appeal pending before the DRAT. Considering the provisions of the RDDB & FI Act and the facts of the case, we are of the view that DRAT had adopted a

reasonable view of the matter. We do not find that discretion exercised by the DRAT was unreasonable or harsh in nature. There is no merit in the petition. The same is dismissed.

(A.A. SAYED, J.)

(NARESH H. PATIL, J.)

L.S. Panjwani, P.S.