

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1192 OF 2015

M/s. Marine Products & Ors.

... Petitioners
(Orig. Appellants in DRAT)

Vs

Central Bank of India

... Respondent
(Orig. Resp. in DRAT)

....

Mr. Satish Shetye a/w B. Choudhary i/b Jose George for the Petitioner.
Mr. Mikhail Behl a/w Ganesh Ambekar i/b M/s Thakore Jariwada &
Associate for the Respondent.

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**CORAM: DR. MANJULA CHELLUR, C. J. AND
M.S. SONAK, J.**

DATE : 20th SEPTEMBER, 2016

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P. C.:

1. Heard the learned counsel for the parties.
2. Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
3. The challenge in this petition is to the judgment and order dated 13th November, 2014 made by the Debt Recovery Appellate Tribunal ("DRAT") at Mumbai in Appeal No. 199 of 2005. By the impugned judgment and

order, the DRAT has dismissed the appeal instituted by the Petitioners questioning the order dated 9th November, 2004 made by the Debt Recovery Tribunal (“DRT”) at Pune.

4. Mr. Satish Shetye, the learned counsel for the Petitioners submitted that the DRAT has failed to address itself to the several contentions raised by the Petitioners or in any case, has considered the main contentions raised by the Petitioners, in quite a perfunctory manner. Mr. Satish Shetye submitted that the material on record indicates that the Bank had received an amount of Rs. 2.50 lacs in the year 1979 and this was even acknowledged by the Bank in its communication dated 16th November, 1981. However, the Petitioners have not been given any credit for such deposit. Mr. Satish Shetye submitted that if such credit were to be given, the position of dues, if any, would be absolutely minimal. Mr. Satish Shetye also submitted that the DRAT has failed to taken into consideration the Petitioners submissions that one of the Respondent before the DRT had already expired and the DRAT proceeded to dispose of the proceedings, even without bringing on record the legal representatives. For all of these reasons Mr. Satish Shetiye submitted that the impugned judgment and

order warrants interference.

5. Mr. Mikhail Behl, learned counsel for the Respondent submitted that the determination by the DRT and the DRAT is on the basis of statement of accounts. He submitted that due credit has been given for the amounts received and therefore, there is no case made up to interfere with the impugned judgment and order.

6. We have duly considered the rival submissions. We have also perused the impugned judgment and order. We agree with the contention of Mr. Satish Shetye that the DRAT has not dealt with the various contentions raised by the Petitioners in the appeal instituted before the DRAT. In any case, we are satisfied that the DRAT has not scanned the record in its proper perspective while disposing of the appeal and making the impugned judgment and order.

7. In particular, we find that the DRAT has failed to appreciate communication dated 16th November, 1981 addressed by the Chief Manager of the Bank. In Paragraph 4 of this communication, it is stated

thus;

“An amount of Rs. 2.50 lacs was credited to your account with Pune Camp branch late by about 4 months because you did not give clear instructions as to which account it was to be credited. Hence, the delay. However, on receipt of suitable instruction from Central Officer the amount was immediately credited in your account”.

8. Atleast *prima facie*, the aforesaid paragraph indicates that an amount of Rs. 2.50 lacs was credited to the loan account, though, after some delay. No doubt, the Bank may have its own explanation, including *inter alia* that such credit has in fact been taken into account. However, we find that these aspects have not been considered by the DRAT whilst making the impugned judgment and order. We also find that the other contentions raised by the Petitioners have not been considered by the DRAT while making the impugned judgment and order. The right of appeal is a valuable right, since, the appellant is entitled to satisfy the Appeal Court both on facts as well as law that the order made by the DRT warrants interference. In this case, were satisfied that the Petitioner has been deprived of this valuable right of appeal, in as much as most of the contentions raised by the Petitioners have not been considered by the DRAT or in any case, the contentions have not been considered, having due

regard to the material on record.

9. In the aforesaid circumstances, we are satisfied that the impugned judgment and order is required to be set aside and the matter remanded to the DRAT for fresh consideration of the appeal instituted by the Petitioners. Accordingly, we set aside the impugned judgment and order and remand the matter to the DRAT for fresh consideration of Petitioners Appeal No. 199 of 2005 in accordance with the law and on its own merits. Since we are remanding the matter, we make it clear that we have not adverted to the merits and demerits of the matter and we therefore leave it to the DRAT to decide the appeal on its own merits and in accordance with law.

10. Accordingly, we clarify that the observations if any, in this order, are only *prima facie* and the DRAT, need not be influenced by them, at the stage of disposing of the appeal finally. All contentions of all parties are accordingly left open for consideration by the DRAT.

11. We are informed that the Petitioners have deposited an amount of Rs. 7.50 lacs before the DRAT. This amount shall abide by the final orders

which may be made by the DRAT at the stage of disposal of the appeal.

12. Taken into consideration the appeal is of the year 2005, we request the DRAT to dispose of the Appeal No. 199 of 2005 as expeditiously as possible and in any case within a period of four months from today. We direct the parties to appear before the DRAT on 3rd October, 2016 and file authenticated copy of this order.

13. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

14. All concerned to act on the basis of authenticated copy of this order.

CHIEF JUSTICE

(M.S. SONAK, J.)