

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

WRIT PETITION NO. 1253 OF 2016

The Sri Ganapathy Mills Company Limited .. Petitioner
versus
Oriental Bank of Commerce & Anr. .. Respondents

Ms Jaymala Raut with Ms Dipti Shah i/b. M/s. A. S. Khan & Associates for Petitioner.

Mr. Niket Mehta i/b. Mr. Rabindra Hazari for Respondent No. 1.

Mr. S. A. Bhagwat for Respondent No. 2.

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

DATE : 29 AUGUST 2016

P.C.:

- 1] Service is complete since both the respondents are represented.
- 2] Heard learned counsel for the petitioner. The impugned order is dated 10 December 2014. It would be proper to bring on record certain facts which laid to the filing of the present writ petition.
- 3] Way back in 2010 precisely on 25 January 2010 the DRAT at Mumbai in Appeal No. 409 of 2006 referred to order dated 8 August 2005 passed by DRT – I, Mumbai, wherein in O.A. No. 685 of 2001 the amount to be recovered was Rs.1,64,00,000/- along with 12% interest with quarterly rests from 2001 onwards. We are in 2016, 15 years after the said date. At the time of disposal of the appeal, appellants were directed to deposit a sum of Rs.50,00,000/- with the Registrar of the Appellate Tribunal within six weeks and the matter was listed to 9 March 2010. Aggrieved by the order of the Appellate Tribunal, petitioner came in writ petition 531 of 2010. This Court did

not entertain the writ petition in favour of the petitioner by order dated 18 March 2010. This became subject matter of special leave to appeal and the same came to be dismissed on 29 August 2011. Right from 2001 till 29 August 2011 not even a single rupee came to be deposited by the petitioner company and even now the contention is that they are not at all liable to pay any amount since there is no privity of contract between them and the respondent no. 1 bank – Oriental Bank of Commerce. The impugned order is dismissal of the miscellaneous applications on the ground that the learned Advocate for the appellant was not ready to argue the matter on 10 December 2014. Aggrieved by this order, the present writ petition is filed, it is one year eight months since the disposal of the matter by the Appellate Tribunal. Till date no *bona fides* are shown by depositing Rs.50,00,000/- which was directed to be deposited way back in 2010. Now, learned counsel for petitioner submits that on 10 December 2014 further time was sought or extension of time was sought for deposit of Rs.50,00,000/- but in the impugned order nothing is mentioned so far as seeking extension of time to deposit. Unfortunately, for what reliefs the miscellaneous applications were filed not made clear and also not annexed to the writ petition. This is the eagerness and enthusiasm the petitioner evincing in prosecuting the matter. The factual issues raised by the writ petitioner have to be dealt only by fact finding authority and we cannot refer to the allegation of no privity of contract between the parties in this writ petition. Since the petitioner lacked in establishing *bona fides* to fight the matter on merits. We decline to intervene and accordingly the petition is dismissed.

CHIEF JUSTICE

(M. S. SONAK, J.)