IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4848 OF 2015

Shamsunder Ramgopal Mohatta & Ors. .. Petitioners
versus
The Ratankar Bank Limited .. Respondent

Ms Mamta Saadh i/b. Mr. Joseph Fernandes for Petitioners.
Mr. Gautam Bhagwat i/b. Divekar Bhagwat & Co. for Respondent.

CORAM: D. H. WAGHELA, C. J. AND
M. S. SONAK, J.
DATE : 7 MARCH 2016

P.C.:

1] The Petitioners challenge orders dated 8 December 2005 made by the Debt Recovery Tribunal (DRT) and the Debt Recovery Appellate Tribunal (DRAT) to the extent, they upset the judgment and order dated 11 January 2005 made by the DRT dismissing the Respondent bank's claim against the Petitioners (guarantors).

2] The Respondent bank, instituted Original Application No. 190 of 2002 before the DRT, Pune, seeking *inter alia* recovery of the amount of Rs.95.18 lacs (approximately) from M/s. Madhusudan Synthetics Processors (P) Ltd. (MSPL), which were impleaded as Respondent no. 1, to Original Application No. 190 of

2002 (principal borrower), and the Petitioners herein, who are stated to be Directors of MSPL, as well as guarantors to the loan / cash credit facility availed by the MSPL. The Petitioners were impleaded as Respondent nos. 2 to 7 to the Original Application No. 190 of 2002. The DRT by its judgment and order dated 11 January 2005, directed issuance of recovery certificate in an amount of Rs.95.18 lacs (approximately) against MSPL but dismissed the claim against the Petitioners herein.

3] The Respondent bank, thereupon instituted Review Application no. 4 of 2005 before the DRT pointing out *inter alia* that documents at Exhibits A-26 to A-32 were not at all taken into consideration by the DRT before dismissing the claim against the Petitioners. By judgment and order dated 8 December 2005, the DRT allowed the Review Application and held the Petitioners also jointly and severally liable in the matter.

4] The Petitioners thereupon instituted Appeal No. 184 of 2006 before the DRAT, which has since been disposed of by the DRAT by its order dated 7 January 2015, which is impugned in this Petition. The DRAT, in paragraphs 8 and 9 of the impugned judgment and order dated 7 January 2015, issued the following directions :

> *"8. Realizing this, this court is cautiously considered that this fact has to be decided by the trial court therefore, review application has been allowed in part by setting aside the order of the O.A. and directed the DRT to consider it with available materials after hearing both the sides arguments and to dispose of the matter expeditiously if necessary. The court at least can grant 2-3 adjournments if it is genuine one*

> *otherwise the court is at liberty to pass an order in accordance with law against the defendant nos. 2 to 7.*
> *9. In view of the above, the appeal is disposed of accordingly."*

5] Ms Mamta Saadh, the learned counsel for the Petitioners, by relying upon the provisions contained in Rules 23 and 25 of Order XLI of the CPC contended that the DRT has exceeded jurisdiction in ordering an open ended remand in the matter. She submitted that the documents in the form of Exhibits A-26 to A-32 were on record before the DRAT and therefore, the DRAT should have itself decided the issue of liability, if any, of the Petitioners. In the alternate, she submitted that the DRAT ought to have framed issues as contemplated by Rule 25 of Order XLI of the CPC and thereafter, remanded the matter to the DRT for record of evidence. Ms. Saadh submitted that the documents at Exhibits A-26 to A-32 were not sufficient to fasten any liability upon the Petitioners and open ended remand will possibly enable the Respondent bank to fill in the *lacunae* in the matter. For all these reasons, she submitted that the impugned orders are liable to be quashed and set aside.

6] Having heard the learned counsel for the parties, and perused the material on record, we see no reason to interfere with the impugned judgment and order dated 7 January 2015 made by the DRAT, particularly since, the DRAT has merely directed the DRT to consider the available materials, hear both the parties, and decide upon the liability, if any, of the Petitioners in the matter.

The apprehensions, expressed by Ms Saadh are quite misplaced, particularly since the impugned judgment and order made by the DRAT has granted equal opportunity to both the parties to present their case in the matter. The DRT, in its order dated 8 December 2005 had recorded that the documents at Exhibits A-26 to A-32 had escaped its notice and further, the execution of these documents had not even been seriously disputed before the DRT. The Petitioners are the Directors of MSPL and there is certainly a case made out to examine as to whether they are liable as guarantors, along with the principal borrower MSPL. There is no jurisdictional error on the part of the DRAT in ordering the remand in the manner in which it has ordered. In fact, the DRAT has observed that if it were to itself decide the matter, the parties would be deprived of a right of an appeal.

7] The provisions contained in Rules 23 and 25 of Order XLI of CPC do not *ipso facto* apply to the procedure and the powers of the DRT and the DRAT, in view of the provisions contained in Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Even otherwise, the principles contained in the said provisions were not required to be exercised in the fact situation of the present case. In fact, the impugned order has balanced the rights of both the parties and to that extent, the impugned judgment and order made by the DRAT promotes procedural fairness.

8] In so far as Ms Saadh's contention that proceedings before the DRT may be delayed is concerned, the DRAT has itself ordered expedition. In any case, the DRT has directed to dispose of the proceedings, in pursuance of remand as expeditiously as possible and in any case, within a period of three months from the date of production of authenticated copy of this order.

9] Before we part, there is necessity to make reference to one disturbing aspect of the matter. As noted earlier, the DRT, by its judgment and order dated 8 December 2005 had allowed the Respondent's Review Petition and thereby held the Petitioners jointly and severally liable to pay the amount of Rs.95.18 lacs. The Petitioners' Appeal No. 184 of 2006 was directed against the judgment and order dated 8 December 2005 made by the DRT. In such circumstances, ordinarily, before entertainment of such appeal, the DRAT ought to have insisted upon compliance with the provisions contained in Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (said Act), which provides that the Appellants deposit with the Appellate Tribunal 75% of the amount of debt so due from them, as determined by the DRT under Section 19 of the said Act. In this case, we were neither apprised of any such deposit by the Petitioners nor was any order of the DRT under the proviso to Section 21 of the said Act, if any, brought to our notice. The order impugned in this petition, as noted earlier, as directed the DRT to dispose of the Respondent's O.A. No. 190 of 2002 expeditiously. Thus, on the basis of Appeal No. 184 of 2006 instituted by the Petitioners, the proceedings in O.A. No. 190 of 2002, have been delayed for over a decade and that too, possibly without the Petitioners having deposited 75% of the debt as determined by the DRT, in the order which was impugned before the DRAT. In this view of the matter, we reiterate our directions for disposal of the proceedings by the DRT within a period of three months from the date of production of an authenticated copy of this order.

10] The parties to appear before the DRT on 22 March 2016 at 3.00 p.m. and produce authenticated copy of this order.

11] All concerned to act on basis of authenticated copy of this order.

12] With the aforesaid observations, this Petition is dismissed. There shall be no order as to costs.

CHIEF JUSTICE

(M.S.SONAK, J.)

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