

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5528 OF 2015**

State Trading Corporation
of India Limited.

.. Petitioner.

Vs.

Barclays Bank PLC

.. Respondent

Mr. A.C. Singh, ASG a/w. Mr. A.D. Yadav and Mr. Hemant
Prabhulkar i/b. Jurisperitus Mumbai for the Petitioner.

**CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.**

DATE : 7 MARCH 2016

P.C.:

1] By this petition under Articles 226 and 227 of the Constitution of India, the petitioner challenges the orders dated 2 June 2010 and 16 October 2014 made by the Debt Recovery Tribunal (DRT) and the Debt Recovery Appellate Tribunal (DRAT) rejecting the petitioner's application for dismissal of Original Application No. 178 of 2009 instituted by the respondent seeking recovery of an amount of Rs.20,38,81,353.14, against acceptance of Bills of Exchange.

2] Mr. A.C. Singh, learned ASG, submitted that the original application instituted by the respondent did not disclose any cause of action and therefore, the two authorities have erred in not dismissing the original application at the threshold, and requiring the petitioner to file written statement and proceed with the trial. Mr. Singh submitted that the Bills of Exchange, upon

which the cause of action is purported to be based are not adequately stamped. In any case, acceptance thereof was by no means unconditional, since the liability allegedly accepted was subject to several conditions which have not been fulfilled. Mr. Singh placed reliance upon the decision of the learned Single Judge of this Court in case of ***Jaikisan J. Bhaiyya vs. United Western Bank Ltd., Akola***¹ to submit that it is the duty of the DRT to examine whether any cause of action is indeed disclosed in the original application and to reject the original application where no cause of action is found to be disclosed. In this view of the matter, Mr. Singh submitted that the impugned orders warrant interference.

3] Upon consideration of the aforesaid submissions, perusal of the record and the examination of the impugned orders, we are satisfied that there is no interference warranted. In terms of Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (said Act), neither the DRT nor the DRAT is bound by the procedure laid down by the Code of Civil Procedure, 1908, but it shall be guided by the principles of natural justice and, subject to other provisions of the said Act or the Rules made thereunder, the DRT and DRAT shall have powers to regulate their own procedure. In this case, upon examination of the pleadings in the original application as well as other material on record, both the DRT and DRAT have ruled that cause of action has indeed

¹ 2004(5)Bom.C.R. 705

been disclosed and the contentions raised by and on behalf of the petitioner, are really in the nature of defences, which cannot be taken into consideration at the stage when the rejection of original application is applied for on the ground of failure to disclose cause of action. There is neither any jurisdictional error nor any perversity in the approach. The impugned orders are quite consistent with the jurisdictional limits prescribed under Section 22 of the said Act.

4] At the stage of determination whether the original application deserves rejection for failure to disclose cause of action, reference is necessarily required to be made only to the averments in the original application as they stand, without addition or subtraction of words or by changing their apparent grammatical sense. Further, at this stage, the original application, as a whole has to be read and there cannot be any compartmentalisation, dissection, segregation and inversion of the language of various paragraphs in the original application. If such a course is adopted it would run counter to the cardinal canon of interpretation, according to which a pleading has to be read as a whole to ascertain its true import. It is impermissible to cull out a sentence or a passage and to read it out of context or in isolation. There is no scope for any pedantic approach or hair-splitting technicalities. The defence, which opposite party may have, is quite irrelevant, at this stage.

5] The contentions raised by the petitioner, are really in the nature of defence. Whether the Bills of Exchange were accepted unconditionally or not, the liability or the extent thereof of the petitioner upon such Bills of Exchange, inadequate stamp duty, are really matters which can be gone into at the stage when the petitioner files its written statement and raises all such defences. The DRT as well as DRAT have expressly left open all such defences for consideration at the appropriate stage, once the petitioner files its written statement/reply in the matter. The decision in a case of *Jaikisan Bhiyya (supra)*, is not applicable to the fact situation of the present case, inasmuch as both the DRT as well as DRAT, upon examination of the pleadings have held that the cause of action is indeed disclosed and the contentions raised by the petitioner are basically in the nature of defences, which can be considered at the appropriate stage once the petitioner files its written statement in the matter.

6] For all the aforesaid reasons, there is no case made out to interfere with the impugned orders. This petition is therefore dismissed.

7] There shall however, be no order as to costs.

(CHIEF JUSTICE)

(M.S.SONAK, J.)