

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9432 OF 2016**

PUNJAB & SIND BANK .. Petitioner
V/s.
M/s. Tornado Motors Pvt. Ltd. and ors. .. Respondents.

Mr. O.A. Das for the Petitioner.
Ms Preeti Gaikwad and Mr. Kiran i/b Mr. Mathew Nedumpara
for the Respondents.

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

DATE : 22 AUGUST 2016.

P.C. :-

1] We have heard learned counsel for the parties and taking into consideration the issue involved and the order which we propose to make, the petition is disposed of finally.

2] The petitioner-bank is a body corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. It is the case of the petitioner-bank that the respondents are due and payable to the petitioner-bank an amount of approximately Rs.34,68,05,138.66 as on 21 August 2015 alongwith interest until payment and realization. For this purpose, the petitioner-bank has instituted Original Application No. 1008 of

2015 in the Debts Recovery Tribunal No.II (DRT-II), Mumbai under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (said Act). The petitioner-bank, in the said original application, had also applied for certain interim reliefs.

3] Before the application for interim reliefs made by the petitioner-bank could be taken up for consideration, the respondents had filed an application before the DRT-II urging recusal by the learned Presiding Officer, on the ground that the respondents have engaged services of certain advocates to appear for them and there is a Resolution dated 19 May 2014 passed by the Presiding Officers of the Debt Recovery Tribunals to the effect that the Presiding Officers will not take up matters wherever the advocates named in the Resolution appear.

4] Upon such application, DRT-II has made the impugned order dated 17 March 2016, which reads thus:

“OA 1008/2015

*Resumed,
Applicant Present through Adv.Mr.O.A. Das
Defts. Present through adv.Ms. Rohini Amin*

*Heard both sides, The Petitioner filed photocopy of order dt;
3/3/2016 passed on Notice of Motion (L) No. 170 of 2016 in*

Writ Petition (L) No. 2715 of 2015 passed by the Hon'ble High Court.

Taking note of the observation as per para 4 of the said order, let a request letter for transfer of the present OA to any other DRT be sent to the Hon'ble Chairperson, DRAT, Mumbai.

Registrar shall comply the above order.

*Adjd. For Compliance/
WS of Defts./
Heg.Exh.20"*

5] Mr. O.A. Das, learned counsel for the petitioner-bank, submits that the respondents cannot be permitted to frustrate legitimate modes of recovery of dues by the petitioner-bank by insisting upon engaging a particular set of advocates and thereafter urging that the Presiding Officers, either recuse themselves or that the matters be transferred to some distant Debt Recovery Tribunals. Mr. Das further submitted that the Resolution dated 19 May 2014 relates to matters which were pending in the Registry of the DRT prior to 19 May 2014 and the direction to the Registry was not to place such matters before the Presiding Officers. Mr. Das submitted that the parties like the respondents cannot be permitted to take any undue advantage of the Resolution dated 19 May 2014 and on the said basis object to or obstruct the taking up of matters by the DRT, by simply engaging the services of the advocates referred to in the Resolution.

6] Ms Preeti Gaikwad, learned counsel for the respondents, on the other hand, submits that the advocates engaged by the respondents merely pointed out to the Tribunal the Resolution dated 19 May 2014 and in terms thereof, urged the Presiding Officer to recuse from hearing of the matter. In such circumstances, Ms Preeti Gaikwad submitted that there was no case made out to interfere with the impugned order dated 17 March 2016 and there is no option, but to transfer the petitioner's original application to some other DRT.

7] The Resolution dated 19 May 2014, which is the basis of plea for recusal/transfer made by the respondents, reads thus:

“ RESOLUTION

A very unfortunate and shocking situation has been created today by Advocate Mr. Mathews J. Nedumpara along with his juniors Mr. Navneet Krishnan. Mr. Nishant. Ms Rohini and alleged clients in the open Court Hall of DRT-I, II, III and that to the extent that the smooth functionality of the Tribunal has come to halt and justice delivery system has got obstructed. They have willingly and intentionally created this scenario in the open court with ulterior motive. The dignity and trust of the Tribunal has been lowered down and all the Officers and staff of the Tribunal has been offended. Presiding Officers of the Tribunals have to retire to their chambers and complaint has also been lodged with the police by the Presiding Officer of DRT-I, Mumbai in this regard. We are apprehending that this kind of bad and turbulent situation may again taken place and working of the Tribunal may be disturbed Considering the dimension and seriousness of the situation we all felt that this situation may be averted by taking Resolution that we should not take up the

matters in which the aforesaid Advocates are engaged.

The litigants may engage other lawyers in the case in which the above Advocates are engaged. Meanwhile the Registry is directed to shortlist the case in which the abovesaid lawyers are engaged and not to plan their case before the Tribunal.

This Resolution be notified for information.

Copy of this Resolution is also transmitted to Hon'ble Chairperson, DRAT-Mumbai for necessary information and needful.

Dated this 19th May 2014.

Sd/-

(H.V. Subba Rao)

Presiding Officer

*Debts Recovery Tribunal-I,
Mumbai.*

Sd/-

(MD. Zafar Imam)

Presiding Officer

*Debts Recovery Tribunal-II,
Mumbai.*

Sd/-

(V.N. Lothey Patil)

Presiding Officer

*Debts Recovery Tribunal-III,
Mumbai.*

8] We are informed by the learned counsel for the respondents that the Resolution dated 19 May 2014 has been challenged, but the same, as yet, holds the field. At this stage, therefore, we wish to make no observations concerning the Resolution dated 19 May 2014.

9] However, we agree with the submissions made by the learned counsel for the petitioner that no party is entitled to obstruct or

delay the proceedings before the Debt Recovery Tribunals, relying upon the Resolution dated 19 May 2014. The Resolution had directed the Registry to shortlist the cases in which the advocates named in the Resolution had already filed their appearance and not to place such cases before the Tribunal. However, that does not mean that any party, who wishes to obstruct or delay the proceedings before the Debt Recovery Tribunals, must simply engage or appoint one of the advocates named in the Resolution and on the said basis, virtually as a matter of right, insist that the Presiding Officer either recuses himself or applies to the Debts Recovery Appellate Tribunal (DRAT) for transfer of the matter to some other Tribunal. Such a modus operandi, if permitted to prevail, will frustrate the very purpose of establishment of Debts Recovery Tribunals and the expeditious recovery of dues, if any, to the banks.

10] In case of *Standard Chartered Bank Vs Dharminder Bhohi and ors. - (2013) 15 SCC 341*, the Hon'ble Apex Court, in the context of object of establishment of Debt Recovery Tribunals, has made the following observations:

“1. Leave granted. The present appeal depicts a factual score where this Court is constrained to say that delay in disposal of the application by the Debts Recovery Tribunal and the appeal by the Debts Recovery Appellate Tribunal have the effect

potentiality of creating corrosion in the economic spine of the country. It exposit a factual expose which is not only perplexing but ushers in a sense of puzzlement which in the ultimate eventuate compels one to ask: "How long can the financial institutions suffer such procrastination? How far the public interest be put to hazard because of small, and sometimes contrived individual interest? To what extent the defaulters be given protection in the name of balancing the stringent powers vested in the banks and the statutory safeguards prescribed in favour of loanees? Even assuming there are legal lapses and abuses, how long the statutory tribunals take to put the controversy to rest being oblivious of the fact that the concept of flexibility is insegregably associated with valuation of any asset? One is bound to give a wake-up call and we so do by saying "Tasmat Uttistha Kaunteya", "Awake, Arise, 'O' Partha."

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25. Thus, the intendment of this legislation is for speedy recovery of dues to the bank. In this backdrop, the tribunals are expected to act with quite promptitude regard being had to the nature of the lis and see to it that an ingenious litigant does not take recourse to dilatory tactics. *It may be aptly noted that an action taken by the bank under SARFAESI Act is subject to assail before the DRT and a further appeal to the DRAT. Neither the DRT nor the appellate tribunal can afford to sit over matters as that would fundamentally frustrate the purpose of the legislation. In the case at hand, we really fail to fathom what impelled DRAT to keep on adjourning the matter and finally dispose it by passing an extremely laconic order. It is really perplexing. A tribunal dealing with an appeal should not allow adjournments for the asking. It should be kept uppermost in mind of the Presiding Officer of the tribunal that grant of an adjournment should be an exception and not to be granted in a routine and mechanical matter. In the case at hand, such a delineation by the DRAT only indicates its apathy and indifference to the role ascribed to it under the enactment and the trust bestowed on it by the legislature. A curative step is warranted and we expect that the Chairman and the members of the DRAT shall endeavour to remain alive to the obligations as*

expected of them by such special legislations, namely, the SARFAESI Act and the RDB Act.

26. Be it noted, the principal purpose is to see that recovery of dues which is an essential function of any banking institution does not get halted because of procrastinated delineation by the tribunal. It is worthy to note that the legislature by its wisdom under section 22 of the RDB Act has provided that the DRT and the appellate tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, but shall be guided by the principles of natural justice and subject to the rules framed. They have been conferred powers to regulate their own procedure as given to them. It is so, for the very purpose of their establishment is to expedite disposal of the applications and the appeals preferred before them. They have the character of specialized institutions with expertise and conferred jurisdiction to decide the lis in a speedy manner so that the larger public interest, that is, the economy of the country does not suffer. But, a pregnant one, in the case at hand DRAT did not dispose of the appeal for four-and-a-half years. We can only say that apart from the curative step the tribunal as well the DRAT have to rise to the occasion, for delay in adjudication of these type of litigations brings a long term disaster. Acute slumber shall not do.

(emphasis supplied)

11] Besides, we are satisfied that if such *modus operandi* is permitted to prevail, parties will be facilitated, not just to obstruct and delay proceedings before Debt Recovery Tribunals, but further, to indulge into forum shopping.

12] In this regard reference is necessary to the decision of this Court in the matter where one of the advocates referred to in the Resolution dated 19 May 2014 applied to the learned Single Judge

of this Court (Shri. S.J. Kathawalla, J.) to recuse himself from hearing all matters in which the said advocate appears. Such plea for recusal was dismissed by the learned Single Judge by detailed order dated 23 December 2014 made in Official Liquidators Report No. 347 of 2014 in Company Petition No. 452 of 2010 and connected matters. In the said order, there is reference to Resolution dated 19 May 2014, upon which the respondents, now rely. The learned Single Judge in his order dated 23 December 2014, whilst dismissing the plea for recusal, has made the following observations.

“2. In an order dated 1st August, 2014, made in the above Official Liquidator's report, this Court had commented on the conduct of Advocate Nedumpara. In paragraphs 56 to 70 of the said order this Court observed:

- (i) That Advocate Nedumpara was addressing the Court in an aggressive, discourteous and offensive manner; that he was not willing to listen to the Court and kept addressing and making remarks that were most inappropriate;*
- (ii) That it was clear to the Court that this was nothing but a stalling tactic to ensure that matter on the Official Liquidator's Report did not proceed;*
- (iii) That he was disrespectful and offensive in the manner in which he addressed the Court and that his tone and tenor was accusatory;*
- (iv) That he resolutely refused to address even a single query from the Court, or address the court on the merits of the Official Liquidator's report that was before the Court;*
- (v) That his demeanour was obstructive and intended to interfere with the administration of justice and lower the dignity and authority of the Court; and*
- (vi) That such conduct constituted sufficient reasons to issue a show cause notice for criminal contempt, or to be dealt with immediately and summarily as contempt in the face of the Court.*

(vii) However, in paragraph 70 of the order this Court only issued a warning to Advocate Nedumpara that the Court would not tolerate this conduct and that if such conduct was repeated, the Court would be constrained to act.

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22. The Court has in its order dated 1st August, 2014, made certain observations as set out in para 2 hereinabove with regard to the conduct of Advocate Nedumpara. Advocate Nedumpara did not dispute the factual observations about his conduct as recorded in the Order dated 1st August, 2014. In matters heard by Courts, the Courts wherever necessary may reprimand an Advocate with regard to his conduct/behaviour in Court and/or with regard to the manner in which he conducts the matter. The Courts in their judicial orders, wherever necessary may also make certain observations about the manner in which a matter is conducted and may record its findings in this regard. However, the same cannot be a basis for a party or its Advocate seeking recusal in subsequent applications in the action on the ground that the party and/or his Advocate apprehends bias or the Advocate or his client is embarrassed in appearing before the Court. I am fortified in this view by the English decision of *Bahai vs. Rashidian* (supra). In this case, the Court of Appeal has pointed out that:

“ ... the fact that a judge has determined issues in the action and in so doing has expressed views on the conduct of the parties and of the witnesses, neither constitutes bias, nor the appearance of bias in relation to subsequent applications in the action” (Pg. 1342H) Sir John Donaldson MR.

“A Judge properly exercising his judicial function, e.g. by criticizing the conduct of a party's solicitor in the course of his judgment on a matter which he considers relevant to his decision cannot by that process be said to be biased...” (Pg. 1346F): Balcombe LJ”.

If an Advocate is embarrassed about appearing before the Court, he is always free not to accept the brief or return the same before a particular Court but he cannot insist that since he wants to appear in a matter which is placed/assigned to a Judge before whom he is not comfortable or embarrassed to appear, it is the Judge who should pass a blanket order and recuse himself from all the

matters in which he appears. If such a submission is accepted and allowed, all the litigants desirous of avoiding a Judge or a Bench from hearing their matters would brief the lawyer who has sought and obtained such a blanket order of recusal. Alternatively, another way to engage in such “forum shopping” would be to express a completely unfounded apprehension of bias and expect a particular Judge to recuse himself/herself. If the Court allows itself to be susceptible to such measures or practices, it will, in my opinion, seriously undermine the functioning of the system of justice and the institution of the Courts. Advocate Nedumpara’s request seeking recusal on this ground therefore cannot be accepted and is hereby rejected.

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33. *In present times, a huge number of disputes are brought before the Courts for adjudication. The monetary stakes involved in the matters are also very substantial. In other cases, personal status of parties is involved, and these matters are invariably emotionally charged. The demands of the litigants over their Advocates have seemingly increased. Many dishonest/ desperate litigants along with some lawyers, who are not as honest as they are expected to be, leave no stone unturned to avoid a Judge that they perceive to be inconvenient or unfavourable or to obfuscate issues or to delay the proceedings and frustrate the course of justice. To achieve this end, they attempt to criticize judges, cast uncalled for aspersions on Judges with the intention that the Judge so attacked will give up the matter. A judge who is showered with criticisms and insinuations, though baseless, may be inclined to recuse himself so as to stay out of harm’s way of the baseless suspicion or allegation or to avoid being unpopular or to just avoid taking over the burden of a matter which is intentionally made heavier by litigants and/or their Advocates. However, as held by the Hon’ble Supreme Court in Subrata Roy’s case (supra), a Judge who prefers the recusal route despite knowing that the criticisms/insinuations made against him are baseless, would not be true to his oath of dispensing justice without fear or favour. In my view, a Judge would be failing in his duty if he endeavours to become popular amongst the members of the bar or members of the public by avoiding*

difficult situations or following the route of appeasement. A Judge accepts judgeship to dispense justice without fear or favour and not to attain popularity of any kind. Again, he will not be true to his oath if he feels that it is convenient to recuse himself from a matter rather than facing a lawyer or a litigant who gives him sleepless nights by criticizing him or casting aspersions on him which are totally incorrect and untrue. In this regard, the observations made in the case of *Triodos Bank NV vs. Dobbs* (*supra*) are apposite:

“ It is always tempting for a judge against whom criticisms are made to say that he would prefer not to hear further proceedings in which the critic is involved. It is tempting to take that course because the judge will know that the critic is likely to go away with a sense of grievance if the decision goes against him. Rightly or wrongly a litigant who does not have confidence in the Judge who hears his case will feel that if he loses, he has in some way been discriminated against. But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is that – If judges were to recuse themselves whenever a litigant – whether it be a represented litigant or a litigant in person – criticized them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select judges to hear their cases, simply by criticizing all the judges that they did not want to hear their case. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he had been criticized – whether that criticism was justified or not.”

34. I am therefore of the view that the grounds on which the Application of recusal is made by Advocate Nedumpara and his client are wholly baseless and unfounded. **I have no doubt that the present Application seeking recusal of this Court, to borrow the language of the Hon'ble Supreme Court is to avoid this Court, obfuscate issues, delay the proceedings and frustrate the course of justice.** The Application is therefore rejected. I have decided not to deal with the compilation of documents relied upon by Mr. Kapadia in support of his contention. Instead I would rather join Mr. Chinoy, the Learned Amicus Curiae, in advising Advocate Nedumpara to introspect and find fault with oneself before finding faults with others. I may end

by expressing a sincere hope that the assurance given by Advocate Nedumpara to this Court that he takes the advice of Mr. Aspi Chinoy to heart, that he will introspect and correct himself wherever he has gone wrong, is fulfilled in the right spirit”.
(emphasis supplied)

13] If parties like the respondents are permitted to take advantage of the Resolution dated 19 May 2014 by simply engaging the advocates named in the said Resolution and on the said basis insisting upon recusal of the Presiding Officers or transfer of the proceedings to some other DRT, then, the proceedings before the Debt Recovery Tribunals will be indefinitely delayed. In any case, banks and financial institutions will be put to undue and unwarranted hardships, entirely for reasons, not even remotely, of their own creation. Besides, such a situation, will virtually amount to awarding the advocates named in the Resolution dated 19 May 2014 a premium for the acts alleged to have been committed by them before the Debt Recovery Tribunals, thereby, constraining the Presiding Officers of the Debt Recovery Tribunals to make the Resolution dated 19 May 2014, which by itself, is quite unprecedented.

14] The order dated 3 March 2016 in Notice of Motion (L) No. 170 of 2016 in Writ Petition (L) No. 2715 of 2015 made by this

Court, is neither a precedent nor a licence for the parties to engage the advocates referred to in the Resolution dated 19 May 2014 and on the said ground alone insist upon recusal of Presiding Officers or transfer of proceedings to some other DRT. The order dated 3 March 2016 directs transfer on basis of consent recorded by the parties. We cannot permit the parties to interpret the observations in para 4 as some institutional approval to the *modus operandi* of engaging advocates referred to in the Resolution dated 19 May 2014 and on the said basis insisting upon recusal of Presiding Officers or transfer of proceedings to some other DRT.

15] For all the aforesaid reasons, we set aside the impugned order dated 17 March 2016 and direct the DRT-II to take up and decide Original Application No. 1008 of 2015 instituted by the petitioner-bank alongwith any interim/miscellaneous applications made therein, in accordance with law and on their own merits, as expeditiously as possible.

16] The petition is accordingly, allowed in the aforesaid terms. There shall however, be no order as to costs.

(M.S.SONAK, J.)

(CHIEF JUSTICE)