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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6130 OF 2015
WITH
CIVIL APPLICATION NO. 2710 OF 2015

Networth Stock Broking Ltd.	...	Petitioner
Vs.		
Bank of India	...	Respondents

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Mr. Rishab Shah a/w. Ms Jaymala Ostwal and Mr. Krishna Parvatkar i/b. M/s. J.J. Associates for the Petitioner.
Mr. O.A. Das for the Respondent.

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CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.
DATE : JULY 26, 2016.

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1] By this petition under Articles 226 and 227 of the Constitution of India, the petitioner challenges the following orders:

a] The order dated 28 February 2012 made by the Debts Recovery Tribunal (DRT), Mumbai in Original Application No. 172 of 2003, by which the petitioner has been directed to pay to the respondent a sum of Rs.70,65,300/- with interest at the rate of 6% per annum; and b] The order dated 21 November 2014 made by the Debts Recovery Appellate Tribunal (DRAT), Mumbai in Appeal No. 154 of 2012, dismissing the appeal instituted by the petitioner against the aforesaid order dated 28 February 2012.

2] Mr. Rishab Shah, learned counsel for the petitioner, has submitted that the claim of the respondent did not constitute *“debt”* within the meaning assigned to this term under the Recovery of of Debts Due to Banks and Financial Institutions Act, 1993 (said Act) and therefore, the Original Application No. 172 of 2003 instituted by the respondent before the DRT was not maintainable. In any case, even on merits, the petitioner was not liable to pay any amount to the respondent bank. Mr. Shah also submitted that the order dated 21 November 2014 made by the DRAT contains no reasons and consequently, there is violation of principles of natural justice and fair play.

3] Mr. O.A. Das, learned counsel for the respondent-bank, submitted that the DRT and the DRAT have concurrently rejected the contentions raised by and on behalf of the petitioner. There is no illegality, much less, any jurisdictional error in the view taken by the DRT and DRAT. There was overwhelming material on record which establishes that the petitioner was due and payable the amounts claimed together with interest. This Court had remanded the matter to DRT for consideration of Original Application No. 172 of 2003. This remand order has neither been annexed nor challenged by the petitioner. In such circumstances, the petitioner is dis-entitled to once again raise the issue of jurisdiction or maintainability of the Original Application No. 172 of 2003 before the DRT. Mr. Das submitted that the petitioner is only bent upon delaying the recovery proceedings, even though, there is no serious dispute with regard to liability of the petitioner to pay amounts to the respondent-bank.

4] The rival contentions now fall for determination.

5] The record in the present case indicates that the respondent-bank had initially instituted a summary suit before this Court for recovery of sum of Rs.1,14,55,464/- together with interest at the rate of 21% per annum against the petitioner. In such suit, the petitioner raised the usual defence that the contract notes were issued under "***undue influence***" and consequently, the same were "***void ab initio***" and that there is no debt in terms of Section 2(g) of the said Act owed by the petitioner to the respondent-bank.

6] In the year 2003, this Court, transferred the suit to the DRT. This order was not challenged by the petitioner before the Hon'ble Apex Court, although, it is now the case of the petitioner that the DRT lacked jurisdiction to entertain the matter. The matter proceeded before the DRT, wherein, the petitioner raised all kinds of defences in order to stall the expeditious disposal of the matter. This included *inter alia* objections to production of evidence or secondary evidence in the matter. Ultimately, as per the synopsis appended to the petition, the DRT made some orders in the transferred matter. Although, the petition is vague, it appears that the matter was once again taken up in this Court, by way of challenge to such orders made by the DRT. This Court, in 2009, once again, remanded the matter to the DRT and the matter was renumbered as Transferred Original Application No. 172 of 2003. Again, the petitioner, raised all sorts of objections, including *inter alia*, objections as to jurisdiction. During pendency of the proceedings before the DRT, the petitioner, instituted miscellaneous appeals to question certain procedural aspects like clubbing of application under Section 9A of the C.P.C. with applications in the matter of leading of secondary evidence. It is apparent that the petitioner was bent upon delaying the proceedings before the DRT. Ultimately, on 28 February 2012, the DRT made the impugned order directing the petitioner to pay sum of Rs.70,65,300/- alongwith interest at the rate of 6% per annum.

7] Aggrieved by the order dated 28 February 2012, the petitioner instituted Appeal No. 154 of 2012 before the DRAT, which has since been dismissed by the impugned judgment and order dated 21 November 2014.

8] We are unable to accept the contention of Mr. Rishab Shah that the order dated 21 November 2014 made by the DRAT is a non-speaking order. The DRAT, has in fact, agreed with and affirmed the detailed order made by the DRT in Original Application No. 172 of 2003. The DRAT has adverted to the definition of debt under Section 2(g) of the said Act as also the decision of the Hon'ble Apex Court, interpreting the said provision and concluded that the proceedings, in the facts and circumstances of the present case, were maintainable before the DRT.

9] The DRT has also relied upon the decision of the Hon'ble Apex Court in ***Union Bank of India Vs. D.R.T.-III***[1], held that the liability of the petitioner towards respondent-bank constituted debt within meaning assigned to this term under Section 2(g) of the said Act. In this view of the matter, we are unable to accept the petitioner's contention with regard to maintainability of the original application or any lack of jurisdiction in the DRT.

10] Besides, in the facts and circumstances of the present case, the petitioner, having failed to challenge the orders made by this Court, on at least two occasions remanding the matter to the DRT,

1 (1999) 96 Company Cases 602

cannot, at this belated stage, be permitted to once again raise the issue of jurisdiction. As noticed earlier, even otherwise, the plea of lack of jurisdiction lacks merits.

11] Since, both the DRT as well as DRAT have concurrently found the petitioner to be liable and since no perversity is demonstrated in the findings of fact concurrently recorded by the two authorities, there is really no scope to interfere with the impugned orders. The petitioner, solely with a view to delay the proceedings, has raised pleas of undue influence or lack of liability. The petitioner, however, has failed to make good such pleas. In fact, the material on record establishes the petitioner's liability towards the respondent-bank.

12] We must note that the petitioner, in the present case, has from time to time raised frivolous objections, in order to stall the proceedings before the DRT and DRAT. The objections of every nature were raised from time to time before the DRT, particularly upon procedural matters. The matter was carried to the DRAT and some times to this Court. In this manner, the petitioner, has succeeded in delaying the proceedings and thereby avoiding payments. Even orders by which the petitioner was directed to deposit certain amounts as *pre - condition* for entertainment of appeal or for grant of interim relief were initially not complied with by the petitioner. Such orders were challenged right upto the Hon'ble Apex Court. In terms of the order of the Hon'ble Apex Court, however, some amounts were ultimately deposited by the petitioner. Taking into consideration such conduct, the petitioner, even otherwise, is not entitled to any relief under Articles 226 and 227 of the Constitution fo India.

13] In ***Standard Chartered Bank vs. Dharminder Bhohi & Ors.***[2] the Hon'ble Supreme Court, in the context of delay in disposal of applications by DRT's and DRAT's, at paragraph 1 has observed thus :

> *"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 exposits 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 indivudal 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."*

2 (2013) 15 SCC 341

14] In the aforesaid decision, the Hon'ble Supreme Court has emphasised the necessity of speedy disposal of matters by DRT and DRAT as such speedy disposal is the fundamental object of the said Act and *'time factor'* has inextricable nexus with the sustenance of economy. In the same judgment, the Hon'ble Supreme Court has explained that the purpose of enacting Section 22 in the said Act, was to ensure that the DRT and DRAT are not bogged down by undue procedural restraints, stalling the speedy disposal of such matters.

15] For all the aforesaid reasons, we dismiss this petition. There shall however, be no order as to costs.

16] Civil Application No. 2710 of 2015 does not survive and the same is also hereby dismissed.

[M. S. SONAK, J.] [V. M. KANADE, J.]