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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1820 OF 2016

Bankim Mehta ... Petitioner
Vs.
Oriental Bank of Commerce ... Respondent

Mr. Satish Shetty a/w. Bharat V. Bhatia for the Petitioner.
Mr. Anup Bhatia for the Respondent.

CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.
DATE : JULY 13, 2016

P. C.

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the order dated 1 October 2014 made by the Debts Recovery Appellate Tribunal (DRAT) at Mumbai, directing the petitioner to deposit a sum of Rs. 25 Lacs as a pre-condition for entertainment of Appeal No. 10 of 2014 instituted by the petitioner.

3] Mr. Satish Shetty, learned counsel for the petitioner, has submitted that in this case the petitioner was not the borrower in respect of the respondent-bank. The petitioner had merely issued a

cheque for payment of an amount of Rs.30 Lacs to a third party. This cheque was dishonoured as there were insufficient funds in the account of the petitioner. At a later stage, without any notice to the petitioner, such third party represented the cheque to the respondent bank and the respondent bank honoured the same, even though, there were no sufficient funds in the petitioner's bank account. Mr. Shetty has submitted that this aspect has not at all been considered by the DRAT whilst making the impugned order. Further, the petitioner had also set out the extreme hardships which will be occasioned, in case, the deposit requirement is not waived. This aspect has also not been taken into consideration by the DRAT and therefore, the impugned order deserves to be interfered with.

4] Mr. Anup Bhatia, learned counsel for the respondent, submitted that the petitioner was having a current account with the bank and in terms of regular banking practice, the cheque issued by the petitioner was honoured by the bank. Mr. Bhatia submitted that the DRT has directed the petitioner to pay sum of Rs. 78,23,758.94 together with interest to the bank. In these circumstances, the directions to deposit Rs. 25 Lacs as a pre-condition for entertainment of the appeal was fair and proper.

5] Having heard learned counsel for the parties and perused the material on record, we are satisfied that this was a fit case for grant of complete waiver in the matter of deposit in terms of proviso to

Section 21 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (said Act). The aspect of hardship has not at all been taken into consideration whilst making the impugned order. Normally, we would have remanded the matter to the DRAT for reconsideration of the application seeking waiver on this ground. However, the impugned order in the present case was made on 1 October 2014. Rather than occasion further delay, in the peculiar facts and circumstances of the present case, we deem it appropriate that the directions are issued to the DRAT for final disposal of the appeal instituted by the petitioner, in a time bound manner.

6] We also find that the DRAT, in making the impugned order, has given no consideration whatsoever to *prima facie* case made out by the petitioner. It is not even the case of the bank that the petitioner was a borrower in the usual sense. Further, there is no dispute that when the bank purported to honour the cheque issued by the petitioner and make payments of Rs.33 Lacs to a third party, there was an amount of hardly Rs.6000/- in the bank account of the petitioner. In fact, this very cheque had been dishonoured by the bank on the earlier occasion. This was a relevant consideration, which has however, been ignored by the DRAT whilst making the impugned order.

7] Upon cumulative consideration of the aforesaid circumstances and with a view to dispose of the main appeal itself

within a time bound manner, we set aside the impugned order, grant the petitioner waiver in terms of proviso to Section 21 of the said Act and further direct the DRAT to dispose of the petitioner's Appeal No. 10 of 2014, on its own merits and in accordance with law, as expeditiously as possible and in any case within a period of ten weeks from today. We direct all the parties to cooperate in the matter of expeditious disposal of the appeal. In particular, we direct the petitioner not to seek any unnecessary adjournments or delay the disposal of the appeal, now that the waiver application stands granted.

8] Rule is made absolute to the aforesaid extent. There shall however, be no order as to costs.

9] The petitioner is directed to file an authenticated copy of this order before the DRAT latest by 1 August 2015, so that the DRAT is in a position to indicate the date/dates for the hearing and disposal of Appeal No. 10 of 2014.

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

[M. S. SONAK, J.]

[V. M. KANADE, J.]