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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 105 OF 2016

Edelweiss Asset Reconstruction Company Limited …Petitioners
Versus
Avis Motors Private Limited & 2 Ors. …Respondents

Mr. Viraag Tulzapurkar, Senior Advocate, *a/w Mr. Sachin Chandarana, Mr. Akhil Tiwari, i/b M/s. Manilal Kher Ambalal & Co., for the Petitioners.*
Mr. Rohaan Cama, *a/w Mr. T. N. Tripathi, Ms. Sapna Rachure, i/b M/s. T. N. Tripathi & Co., for the Respondent No. 1.*

CORAM: S.C. DHARMADHIKARI & G.S. PATEL, JJ.
DATED: 15th February 2016

PC:-

1. This Petition under Article 226 of the Constitution of India is directed against the order passed by learned Chairperson of the Debt Recovery Appellate Tribunal (**"DRAT"**). The DRAT had before it an Appeal. That Appeal was preferred by the Appellants. The Appeal No. 196 of 2015 with two miscellaneous Applications therein were filed by the contesting Respondent before us, namely the Respondent No. 1.

2. The Respondent No. 1 before us Original Appellant has filed a Securitisation Application. That was before the Debt Recovery Tribunal (**"DRT"**), Mumbai. In that Securitisation Application, the 1st Respondent/Appellant sought to amend the paragraphs of the same and, therefore, moved an amendment application. On that application an order came to be passed by the DRT on 9th July 2015. That order was adverse to the 1st Respondent, namely, it dismissed the amendment application.

3. Aggrieved by such an order, the Appeal was carried to the DRAT and on 6th January 2016 the same has been allowed in the following terms:

> "1. The respondent can at the most claim the maximum rate of interest @12.75% or @14% not with penal interest since the assignor himself not claimed. The appellant is at liberty to claim lower percentage of interest before the DRT.
>
> 2. As per the above said calculation the due form the appellant would be Rs.10.00 Crores or Rs.12.00 Crores as the case may and the appellant can claim of lower rate of interest is left open to the DRT to consider at the appropriate time.
>
> 3. The respondent is directed to produce the documents other than the 'A' wing of Kailash Height before the DRAT and it will be kept open for 45 days enable the applicant to made

finance arrangement to get a loan to pay sum of Rs.9.00 Crores since the Central Bank of India is willing to advance the amount to the appellant.

4. In the event of depositing the amount of Rs.9.00 Crores the documents is ordered to be returned to the borrower appellant simultaneously by the Registrar of DRAT.

5. In the event of deposit of Rs.9.00 Crores, Kailash Height of 36 car parking and actual possession can be handed over to the appellant retaining the symbolic possession with the respondent to enable the appellant to put the tenant in possession on condition the rent will be credited in the account of the respondent for one year. The respondent is at liberty to mention this condition in the agreement also.

6. The parties are at liberty to take appropriate proceedings before the appropriate forum regarding the percentage of interest.

7. *Until the clause nos. 3 and 4 are complied, all the SARFAESI proceedings pending before the respective courts have been stayed till the period of compliance (or) 3 months whichever is latter as per para 24 of the Judgment.*

> *On praecipe after hearing both the sides the words in "Italic" alone has been amended as per the order.*
>
> *Amended copy of the order has been issued.*
>
> 8. The amendment application is allowed as per direction as indicated above with costs."

4. The assignee of the debt is the Petitioner before us. The assignee of the debt was the contesting Respondent in the Securitisation Application as well as the Appeal before the Appellate Tribunal.

5. Mr. Tulzapurkar, Senior Counsel appearing for the Petitioner/assignee of the debt would submit that in the garb of deciding an Appeal which involved the limited issue namely, whether the amendment sought to the Securitisation Application should be granted or not, the DRAT has gone into various aspects on merits. It has predetermined and prejudged the controversy, particularly, on the quantum and rate of interest. This was completely impermissible. Given the limited nature of the proceedings, all that the DRAT was obliged to consider was whether the amendments as sought by the original Applicant/1st Respondent before us ought to be granted and on the applicable judicial principles. The merits of the amended pleas could not have been gone into and at this stage. This would mean that not only these amended please are allowed to be incorporated as a part of the substantive Securitisation Application but the Securitisation

Application itself is granted to the extent indicated above. Thus, the Chairperson of the DRAT has exceeded his powers and has passed an order which is vitiated by error of law apparent on the face of the record.

6. On the other hand Mr. Cama appearing on behalf of the contesting Respondent No. 1 submits that the order passed by the Tribunal may appear to have been including and seeking to resolve certain issues relating to the rate and the quantum of interest but it essentially proceeds on the footing that the 1st Respondent is desirous of putting an end to the dispute. It has paid the substantial amount, namely, the principal sum and some sort of adjudication in the rate of interest and which may if favourable to the said 1st Respondent would result in the scaling down the interest.

7. Mr. Cama, therefore, seeks to support the impugned order.

8. After the matter was argued for some time and finding that the course adopted by the learned chairperson was not permissible in law and we were inclined to allow the Petition, Mr. Cama appearing for the 1sr Respondent, on instructions, states that this Court may pass an order which would enable the parties to resolve the disputes early. Mr. Cama stated on instructions that he would have no objection to the impugned order being set aside, the amendments to the Securitisation Application being granted and on the basis of these amended pleas, an interim application in the Securitisation Application being dealt with and decided by the learned Presiding Officer.

9. Mr. Tulzapurkar, learned senior counsel appearing for the Petitioner would submit that so long as the impugned order is set aside, all contentions and on all aspects are kept open, then, the Petitioner would have no objection to the amendments being granted and, equally, the interim application being argued by the Petitioners and the Respondent No. 1 on the basis of the amended pleas. However, this Court should not express any opinion on the rival contentions.

10. Once this broad agreement is reached, we need not assign any detailed reasons for the conclusion that we reached in this Petition. For that would prejudice the case of both sides and on merits. Hence, the following order:

ORDER

(a) The order passed by the Chairperson and impugned in this Petition is quashed and set aside;

(b) The Appeal No. 196 of 2015 to stand allowed to a limited extent, namely, the order of the Presiding Officer of the Debt Recovery Tribunal dated 9th July 2015 is quashed and set aside;

(c) The amendments at pages 325 and 339 of the paper-book, namely, the schedule to the amendment application are allowed. Those would stand incorporated in the Securitisation Application;

(d) The Securitisation Application and the interim application therein shall now be decided by the learned Presiding Officer of the Debt Recovery Tribunal on their own merits and in accordance with law, uninfluenced by any earlier observations, as also, that of the learned chairperson in the impugned order;

(e) All contentions including on the rate and quantum of interest and the liability, so also, the merits of the Securitisation Application and of both sides are kept open;

(f) The amendment to be carried out within a period of two weeks from the date of receipt of a copy of this order.

11. Reply Rejoinder Affidavit is taken on record.

12. If the interim application and after the amendments are carried out is ready for hearing, let the learned Presiding Officer of the DRT concerned decide it as expeditiously as possible and within a period of two months from the date it is listed before him.

13. Needless to clarify that the application shall be decided after the Petitioners put in their detailed reply on the merits of the amended pleas as well.

14. We direct that for a period of eight weeks from today, there shall be no steps taken in furtherance of Sale notice impugned in the Securitisation Application. However, this direction is without prejudice to the rights and contentions of all parties and shall not bind the Tribunal while dealing with the application.

(G. S. PATEL, J.) **(S. C. DHARMADHIKARI, J.)**