

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO. 648 OF 2016**

Patel Engineering Works & Ors.	..	Petitioners
versus		
Bank of India & Ors.	..	Respondents

Mr. Sunil A. Humbre for petitioners.
None for respondents.

**CORAM: D. H. WAGHELA, C. J. AND
M. S. SONAK, J.**
DATE : 28 MARCH 2016

P.C.:

1] The challenge in this petition is to the order dated 7 September 2015 made by Debt Recovery Appellate Tribunal (DRAT) declining to restore appeal no. 70 of 2009, which came to be dismissed on account of failure on the part of the petitioners to deposit the amount of Rs.10,00,000/- as directed by DRAT by its order dated 19 February 2015 in M.A. no. 226 of 2009.

2] Mr. Sunil Humbre, learned counsel for the petitioners has submitted that DRAT by order dated 19 February 2015 had reduced the amount which the petitioners would otherwise be required to deposit in terms of section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (said Act). In terms of the said order, amount of Rs.10,00,000/- was required to be deposited by the petitioners in two instalments from the date of receipt of copy of the

order. Copy of the order was received by the petitioners only on 6 May 2015 and on 8 May 2015, the petitioners offered to deposit the entire amount of Rs.10,00,000/- by means of a pay order drawn for the purpose. Mr. Humbre submitted that the petitioners cannot be faulted for the delay in receipt of copy of the order dated 19 February 2015 and in the facts and circumstances of the present case, the petitioners have made out sufficient cause for seeking restoration of appeal.

3] Having heard the learned counsel for the petitioners and perused the record, we are satisfied that there is no case made out to interfere with the discretion exercised by DRAT, whilst making the impugned order. In fact, we are of the opinion, that DRAT was unduly generous towards the petitioners, in the matter of directing the petitioners to deposit only an amount of Rs.10,00,000/- and that too, by way of two instalments, when in fact the dues payable by the petitioners, in terms of the determination made by the Debt Recovery Tribunal (DRT) were in the range of Rs.1,00,00,000/- or thereabouts, even after grant of due credit to the petitioners, in the matter of payments effected in the meantime. Despite such generous terms, the petitioners, failed to deposit amount of Rs.10,00,000/- within the prescribed period, upon the spacious plea that copy of the order was made available to the petitioners only on 6 May 2015.

4] DRAT, upon perusal of the record, has rightly observed that the order dated 19 February 2015 was made in the open court, in the presence of the counsel appearing for the petitioners. This means that the petitioners had knowledge about the order on 19 February 2015 itself. Further, the record also indicates that the copy of the order was ready and available on 16 March 2015, and even the respondent bank collected the same on 20 March 2015. The circumstance that the

petitioners, for reasons attributable to themselves, chose to collect copy of the order on 6 May 2015, does not mean and imply that the petitioners had further eight weeks from the said date to effect payments. The petitioners, have not at all been diligent in the matter. Even after obtaining over generous terms vide order dated 19 February 2015, the petitioners, chose not to comply with the same, for reasons, which have really not been explained by the petitioners. The petitioners obviously, cannot take advantage of their own indolence in the matter of collection of copy of order dated 19 February 2015, and on the said basis, seek some extension of time for the purposes of compliance. In such circumstances, there is neither any arbitrariness or unreasonableness in exercise of discretion by DRAT.

5] We made inquiries with learned counsel for the petitioners as to whether, the petitioners were willing to at least deposit an amount of Rs.1,00,00,000/- with DRAT, considering that the amount now payable by the petitioners to the respondent bank, in terms of determination made by DRT, would far exceed the said amount. Learned counsel for the petitioners however submitted that the petitioners, at the highest, owe the respondent bank an amount of not more than Rs.33,00,000/- and therefore, the petitioners will not be in a position to deposit any amount in excess of Rs.10,00,000/-. Learned counsel further stated that settlement talks are in progress with the bank. We note that the petitioners, by litigating on the issue of deposit of the amount, have succeeded in prolonging the appeal instituted by them in the year 2009. The petitioners have thereby, frustrated the objective behind enactment of the said Act i.e. speedy disposal of such matters. This is an additional reason as to why we are not inclined to interfere with the discretion exercised by DRAT in this matter.

6] For the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

CHIEF JUSTICE

(M.S.SONAK, J.)

chandka