

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO. 834 OF 2006**

State Bank of Hyderabad .. Petitioner
versus
Dynavox Industries Limited & Anr. .. Respondents

None for Petitioner.

Mr. Dhaval Patil i/b. K. Ashar & Co. for Kotak Mahindra Bank.

**CORAM: V. M. KANADE AND
M. S. SONAK, JJ.**

DATE : 26 JULY 2016

P.C.:

1] Mr. Patil, learned counsel appearing for Kotak Mahindra Bank has submitted that the petitioner i.e. State Bank of Hyderabad has assigned the debt, which is the subject matter of the present petition to the Kotak Mahindra Bank. He submitted that in pursuance of the chamber summons taken out, Kotak Mahindra Bank has already been impleaded as respondent in the present petition and is interested in pursuing the present petition. Accordingly, we have heard Mr. Patil, learned counsel appearing for Kotak Mahindra Bank in support of the present petition.

2] We have perused the orders passed by the DRT and DRAT. The DRT has in fact allowed the claim of the petitioner and directed the respondent nos. 1 and 2 to jointly and severally pay Rs.8,94,43,109.30 ps. with simple interest at the rate of 9% per annum from the date of filing of the application till the realisation of the amount. The DRT

however also held that the respondent nos. 1 and 2 were entitled to a set off in an amount of Rs.514.79 lacs. Aggrieved by this part of the DRT's order, the petitioner State Bank of Hyderabad appealed to the DRAT.

3] The DRAT after considering the material on record has upheld the order of the DRT. In paragraph 6 of the impugned order the DRAT has observed that though the respondent nos. 1 and 2 had specifically raised a set off in an amount of Rs.514.79 lacs in their written statement, the petitioner bank did not even bother to refute the said claim of set off, by filing any affidavit. Even otherwise, the DRAT, upon examination of the material on record, has held that there was no legal infirmity in the matter of set off awarded in favour of the respondent nos. 1 and 2. Accordingly, the DRAT confirmed the order made by the DRT.

4] The learned counsel for Kotak Mahindra Bank was unable to point out serious error in the orders made by the DRT and DRAT, as would warrant interference by this court in the exercise of its jurisdiction under Article 226 and 227 of the Constitution of India. Accordingly, we see no reason to interfere with the impugned orders.

5] Petition is dismissed. There shall however be no order as to costs.

(M. S. SONAK, J.)

(V. M. KANADE, J.)