

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1537 OF 2016

APM Terminals Pvt. Ltd. .. Petitioner
versus
United India Insurance Co. Ltd. & Ors. .. Respondents

Mr. U. K. Ramabhadran, Senior Advocate, for Petitioner.
Mr. Rohit Gupta i/b. Ms Sapna Rachure for Respondent No. 1.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

DATE : 21 DECEMBER 2016

P.C.:

1] The present writ petition is filed challenging the order dated 25th June 2014 passed by the DRT-I Mumbai. Before the DRT-I, Mumbai. The first respondent herein filed claim petition for recovery of certain amounts said to be the amounts payable by appellant by virtue of a Subrogation Agreement between the first respondent and the third respondent. The writ petitioner took up an objection to the maintainability of the very claim by contending that the amount claimed by the first respondent before the DRT-I, Mumbai cannot be termed as a 'debt' as contemplated under section 2(g) of the then RDDB Act now referred to as the Recovery of Debts and Bankruptcy Act of 1993. However, by the impugned order dated 25th June 2014, DRT-I, Mumbai held against the petitioner and the petitioner initially filed an appeal before the Appellate Tribunal. During the course of submissions, the first respondent took serious objection with regard to the maintainability of the present writ petition on the ground that the impugned order must be challenged before the Appellate Tribunal constituted under the above statute and not by way of a writ petition.

2] Initially, when the appeal came to be filed before the Appellate Tribunal, it is submitted that it was coming up on several dates but was not taken up for hearing due to want of time by the Appellate Tribunal. Ultimately, in February 2016 the chairperson of the Tribunal was transferred to another Bench of the DRAT, therefore, the post became vacant. When the writ petitioner felt that the matter is not likely to be disposed of before the Appellate Tribunal, by making an application before the Appellate Tribunal, they withdrew the appeal. It is pertinent to mention that a writ petition was also filed challenging the impugned order of the DRT-I, Mumbai. When the writ petitioner felt that two proceedings cannot be prosecuted parallelly, they withdrew the appeal before the Appellate Tribunal since the Presiding Officer was not posted. Therefore, the present writ petition continued. However, as it stands now, the DRAT Presiding Officer is posted w.e.f. August 2016, we are of the opinion that all the contentions raised before us need to be raised before the Appellate Tribunal which is the final fact finding authority. Therefore, we dispose of the writ petition by directing the writ petitioner to approach the Appellate Tribunal.

3] In the light of circumstances which compelled the petitioner to withdraw its appeal, Misc. Appeal No. 52 of 2014 is restored back to its file and the same shall be heard on merits and disposed of by the DRAT, Mumbai.

4] Having regard to the time consumed on account of transfer of the DRAT Member and then filing of this writ petition, we request the DRAT, Mumbai, to dispose of the matter as expeditiously as possible. All contentions of all parties are kept open.

(M. S. SONAK, J.)

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CHIEF JUSTICE