

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2257 OF 2014**

International Asset Reconstruction
Company Pvt. Ltd. .. Petitioner.

vs.

Tushar Shah and ors. .. Respondents.

WITH

WRIT PETITION NO. 1532 OF 2015

Air Coil Shopping Centre (Vapi) .. Petitioner.

vs.

Tushar Shah and ors. .. Respondents.

Mr. Rohit Gupta a/w. Nikhil Rajani i/b V. Deshpande & Co. for the petitioner in WP 2257/14.

Mr. P.G. Pandit i/b A.G. Pandit for the petitioner in WP 1532/15.

Mr. Jay Choksi i/b Law Frame for respondent No.1 in both petitions.

**CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.**

DATE : 18 MARCH 2016

P.C.:

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

2] Learned counsel for the parties state that both these petitions can be conveniently disposed of by a common judgment and order, since, the challenge in both the petitions is to the order dated 7 May 2014 made in Miscellaneous Appeal No. 232 of 2012 by the Debts Recovery Appellate Tribunal (DRAT), Mumbai.

3] For the order, which we propose to make, it is not necessary to advert to the facts in detail. Respondent no.1 in both these petitions, who is admittedly a guarantor to the loan obtained by respondent no.2 preferred Miscellaneous Appeal No. 232 of 2012 before the DRAT challenging the common judgment and order dated 18 September 2012 in Appeal Nos.17, 18 and 19 of 2012 made by the learned Presiding Officer, Debts Recovery Tribunal (DRT), Mumbai. Alongwith this appeal, respondent no.1, conscious of provisions contained in section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (said Act) filed an application seeking waiver of the amount payable under the said section as a pre-condition for entertainment of the appeal. By the impugned order dated 7 May 2014, the DRAT, without taking cognizance of such application for waiver, has not only proceeded to entertain the respondent no.1's appeal, but further to allow the same.

4] Learned counsel for the petitioners have submitted that the appeal as filed, in the first place, was not at all maintainable at the behest of respondent no.1, who was only guarantor, seeking to set aside the auction sale of the property, earlier held by the principal borrower, i.e., respondent no.2. In any case, they submitted that such appeal could never have been entertained by the DRAT, without complying with the provisions contained in section 21 of the said Act.

5] Learned counsel for respondent no.1, however, submitted that the circumstance that the appeal has been allowed by the DRAT, is itself an indication that the DRAT has exercised powers under the proviso to section 21 of the said Act, which permits the DRAT to waive or reduce the amount to be deposited under the said section.

6] The section 21 of the said Act, which is quite clear, reads thus :

21. Deposit of amount of debt due, on filing appeal.

—Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent. of the amount of debt so due from him as determined by the Tribunal under section 19:

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

7] Whilst we do not propose to deal with the petitioners' first contention with regard to maintainability of appeal at the behest of guarantor, we find substantial merit in their second contention that the DRAT ought not to have entertained the appeal instituted by respondent no.1, without taking some decision upon the application seeking waiver/reduction as contemplated by proviso to section 21 of the said Act. We cannot accept the contention of the learned counsel for respondent no.1 that since the appeal has been allowed, there is deemed waiver by

the DRAT. Such contention, if accepted, would virtually frustrate both the provisions as well as the legislative intent in enacting the provisions contained in section 21 of the said Act. Besides, even the proviso to section 21 of the said Act requires the DRAT to record reasons in writing, in case the DRAT decides to waive or reduce the amount to be deposited under said section. It is therefore, quite clear, that there cannot be any deemed waiver as suggested.

8] The very entertainment of Miscellaneous Appeal No. 232 of 2012 by the DRAT, without respondent no.1 depositing 75% of the amount of debt so due from him and as determined by the DRAT in the present case, or without taking some decision upon application for waiver or reduction, was an exercise without jurisdiction. The DRAT could have entertained such appeal only after consideration of an application made by respondent no.1 seeking waiver or reduction subject to the DRAT having granted such application for waiver or reduction, but not otherwise.

9] On the aforesaid short ground, we set aside the impugned order dated 7 May 2014. However, we restore Miscellaneous Appeal No. 232 of 2012 before the DRAT for fresh consideration in accordance with law. The DRAT, to begin with, shall deal with and dispose of the application made by respondent no.1 seeking waiver/reduction. We clarify that we have not examined the rival contentions on merits and therefore, we leave such contentions open for determination by the DRAT, if

ultimately, predicates of section 21 of the said Act are complied with and the appeal is entertained by the DRAT.

10] Further, we direct the parties to maintain *status quo* in respect of suit property for a period of two months from today. Respondent no.1 shall however, be at liberty to apply for interim reliefs before the DRAT, which shall decide such application in accordance with law and on its own merits, uninfluenced by the indulgence now granted by this Court.

11] Rule is accordingly, made absolute to the aforesaid extent, in both the petitions. In the facts and circumstances of the present case, there shall however be no order as to costs.

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

(CHIEF JUSTICE)

(M.S.SONAK, J.)