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

WRIT PETITION NO.598 OF 2014
WITH
NOTICE OF MOTION NO.137 OF 2015

Madhavpura Mercantile Co-operative Bank Limited, through Liquidator of MMCB ... Petitioner
versus
Bank of India and others ... Respondents

Mr.S.U.Kamdar, Senior Advocate, with Mr.D.P.Desai for Petitioner.

Mr.Kevic Setalwad, Senior Advocate, with S.D.Shetty, Sumeet R.L Singh i/by M.V.Kini & Co. for Respondent no.1.

Mr.Nikhil Rajani i/by V.Deshpande & Co. for Applicant in Notice of Motion No.137 of 2015.

CORAM : D.H.WAGHELA, C.J. AND
SMT.V.K.TAHILRAMANI, J.

DATE : 29 February 2016

PC :

1. Rule. Learned counsel for Respondent no.1 bank waives service. By consent, the Rule is made returnable forthwith. The writ petition is taken up for hearing and final disposal, by consent and on the request of learned counsel.

2. The Petitioner co-operative bank, in liquidation, is invoking Article 226 of the Constitution of India mainly to call

into question the order dated 4 June 2013 of Debts Recovery Appellate Tribunal (`DRAT') in Miscellaneous Appeal No.188 of 2012 whereby, while dismissing the appeal of the Petitioner, it is provided that the amounts sought by Respondent no.1 Bank of India, may be released in its favour on condition that Respondent no.1 will bring back the amount along with accrued interest admissible on the fixed deposit scheme, as and when asked by the Tribunal, Appellate Tribunal, the Hon'ble High Court or by the Hon'ble Apex Court.

3. The original order of the Debts Recovery Tribunal (`DRT') in the pending Original Application No.647 of 2001, allowing Interim Application No.189 of 2012, had the effect of direction to the Petitioner bank (in liquidation) to release Rs.138.94 crores in favour of Bank of India. In view of the undisputed fact that the Petitioner bank (in liquidation) was being taken into liquidation and a Liquidator was in fact appointed on 17 July 2012, the contention of the Petitioner bank before DRAT was that the Liquidator was required to make disbursement as per the order of priority, whereas, the Respondent no.1 Bank of India was not a secured creditor.

4. It appears from the record that the proceedings before DRT are pending and the impugned order of DRAT has taken note of the contentions of the Petitioner that the license of the Petitioner bank (in liquidation) was already cancelled and there was likelihood of appointment of Official Liquidator. The

discrepancy is not explained as to why it was not argued before DRAT that Official Liquidator was already appointed a day before the impugned order was made. The Petitioner has admittedly not filed any application for review of the impugned order but pressed the contention that after the appointment of Official Liquidator, DRAT ought not to have made the impugned order. Instead, it was submitted at the bar, on behalf of the Petitioner, that the Respondent Bank of India cannot be disbursed the amount even subject to the provision made in the impugned order for ensuring the security of the amount and subject to final and further orders that may be made in the proceedings pending before DRT or the liquidation proceedings. It was submitted that even if the amount has to be parted in favour of Respondent Bank of India, it should remain in the name of Official Liquidator to make it clear that Bank of India never acquired any right in law or by any order of the Court over the amount that may remain with the bank as fixed deposit and earning interest as at present.

5. In view of the submission that the amounts with the Official Liquidator are already lying deposited as fixed deposits with various other banks, the Petitioner bank (in liquidation) requires time of one year from now to collect the amounts after maturity and deposit the said amounts with Respondent Bank of India. Having heard learned counsel, the Petitioner is allowed to deposit with Respondent Bank of India the above deposits, within a period of one year, as prayed by the Petitioner.

6. Learned counsel for Bank of India has, on instructions, agreed to receive the amount as aforesaid, subject to the condition contained in the impugned order of DRAT and also agreed to keep it as fixed deposit in the name of Official Liquidator.

7. The writ petition is, therefore, without prejudice to the rights and contentions of the parties and on the basis of limited consensus arrived at, partly allowed so as to modify the order of DRAT to the extent that the amount required to be disbursed to the Respondent Bank of India, shall be in fact invested in the name of the Petitioner in the form of fixed deposit with Bank of India itself, so as to bring back the amount along with interest accrued thereon as fixed deposit, as and when such order is made by DRT or DRAT or by High Court or Hon'ble Apex Court. Rule is made absolute to that extent with no order as to costs.

8. In view of disposal of Writ Petition No.598 of 2014 itself, Notice of Motion No.137 of 2015 seeking intervention does not survive and stands dismissed.

(CHIEF JUSTICE)

(SMT.V.K.TAHILRAMANI, J.)

MST