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

WRIT PETITION No. 12 OF 2016

Homi Faramroz Patrawala ….Petitioner
(Org. Defendant No.1)

Vs.

State Bank of India and Ors. ….Respondents
(Respondent no.1
Org. Applicant
Respondent Nos.2 to 4)
Org.Defendant Nos.2 to 4)

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Mr. Mayur Khandeparkar a/w. Mr. A.P. Fanibanda for Petitioner

None for the Respondents

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CORAM : V. M. KANADE &
M.S. SONAK, JJ.

DATE : JUNE 8, 2016

P.C. :

1. The Petitioner, who is Original Defendant No.1 in the proceedings which are initiated by State Bank of India- Respondent No.1 herein before the DRT, has challenged an order passed by the DRAT dated 6th November, 2015, asking the Petitioner to deposit 50%

of the principal amount with the Registrar of the Appellate Tribunal in two equal installments within a period of six weeks.

2. The DRT had allowed the Original Application filed by Respondent No.1-Statement Bank of India against the Petitioner herein as well as Original Respondent Nos.2 to 4 and directed them to pay a sum of Rs.2,63,62,848/- with interest at the rate of 12% p.a. Being aggrieved, the Appellant- Petitioner herein had preferred an appeal before the DRAT and while passing the order in the Appeal, the DRAT has observed that the Appellant – Petitioner herein should deposit Rs.1.30 Crores within a period of six weeks in two equal installments. Being aggrieved by the said order of not granting the total waiver of deposit, the Petitioner has approached this Court by filing this petition.

3. Shri Mayur Khandeparkar, learned counsel appearing on behalf of the Petitioners has submitted that firstly, no reasons have been assigned by the DRAT while giving a direction to deposit the 50% amount. It has been held by this Court that when an order, directing to deposit an amount under section 21 of the RDDBF Act, reasons have to be assigned by the DRAT. He submitted that no reasons have been

assigned and have merely said that on the submissions made by both the parties, the DRAT came to a conclusion that the the amount to be deposited by the Appellant. He submitted that the allegation against the Petitioner was that he dishonestly credited an amount of Rs.35,00,000/- in his account. It is submitted that, in fact, Original Defendant No.2 had admitted that neither the Petitioner / Original Defendant No.1, nor the Bank Officials were responsible when the signatures of Defendant Nos.3 and 4 were forged. He submitted that, therefore, even the allegation that the amount of Rs.35,00,000/- was deposited to his account, can be said to be incorrect.

4. In the Original Application No. 184 of 2003 filed by the State Bank of India, the following allegations have been made against Defendant No.1:

> "(ii) The Defendant No.1 is found to be closely involved in all the fraudulent transactions. He dishonestly filled up Application Form for obtaining two Bankers Cheque from NRE account of the Defendant Nos. 3 and 4.

> (iii) The Defendant No.1 dishonestly credited an amount of Rs.35.00 lacs in his accounts as aforesaid and misappropriated the same.
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> (iv) The Defendant no.1 made cash withdrawals from the Bank. The writing on the cheques used for cash withdrawals with forged signatures of the Defendant Nos. 3 and 4 viz. Mr. Hussainali Sultanali Nensey and Mrs. Nissa Hussainali Nensey is found to be that of the Defendant No.1."

The DRT has considered these allegations from the material which was brought on record and in paragraphs 20 and 21, has considered the involvement and liability of the Petitioner - Defendant No.1, arising from the said transaction.

4. In paragraph No.21, the DRT has considered the culpability of Defendant No.1 for the purpose of the Original Application and given detailed reasons and has observed that the culpability of Defendant No.1/Petitioner herein is apparent from the fact that it was he, who took the monies of various cheques by which the amount of

demand loans and proceeds of premature liquidation proceedings were withdrawn. It has also observed that behind these cheques, endorsement of Defendant No.1 is made by putting his signature. The DRT has further observed that the Defendant No.1 had not specifically and categorically denied his signatures on overleaf of the cheques. Finally, the DRT has made the following observations:

> " I therefore do not feel hesitated to believe that the signatures on the overleaf of the aforesaid cheques are of Defendant No.1 which means that he is the beneficiary. Such a person can surely be said to be involved in the illegal act of getting monies of Defendant Nos.3 and 4 from the Bank.

5. In paragraph 22, the DRT has further observed that the part of the money withdrawn by cheques is alleged to have been credited in the Defendant No.1's account in Citibank and in Defendant No.1's account in the name of M/s. Siddhivinayak Developers in National Co-op. Bank.

6. After recording these findings, the DRT has observed that Defendant No.1 is jointly responsible with Defendant No.2 for illegally withdrawing

the monies of Defendant Nos.3 and 4 from the Applicant Bank. The DRT, therefore, came to the conclusion that both the Defendant Nos.1 (Petitioner herein) and Defendant No.2 are liable to pay the amount of the Bank. Therefore, the contention of Shri Mayur Khandeparkar, learned counsel for the Petitioner that only the amount of Rs.35,00,000/- was deposited by the Petitioner in his account and he is liable to that extent, cannot be accepted.

7. Though it is true that the DRAT apparently has not given any reasons in paragraph 5 of its order but it is apparent that the DRAT has applied its mind which can be seen from the fact that the DRAT has said that the direction is given on the basis of the submissions made by both the parties. In fact, the DRAT, prima facie has recorded the finding and kept the issue open.

8. Hence, we do not see any reason to interfere with the order passed by the DRAT. The writ petition, therefore, is dismissed.

Sd/- Sd/-
M.S. SONAK, J. ***V.M. KANADE, J.***