

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Writ Petition No. 3315 of 2016
[Arun Narendra Rudkar Vs. State Bank of India, Amravati & another]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. P.R. Agrawal, Adv., for the petitioner.
 Mr. S.N. Kumar, Adv., for respondent no.1.
 Mr. Ambarish Joshi, Adv., for respondent no.2.

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**CORAM : B. P. DHARMADHIKARI
AND
A.S. CHANDURKAR, JJ.**

DATE : 27th September, 2016

Heard learned Adv. Mr. Agrawal for the petitioner, learned Adv. Mr. S. N. Kumar, for respondent no.1 and learned Adv. Mr. Ambarish Joshi for respondent no.2.

Question is whether on 28th December, 2015, by the impugned order the Debts Recovery Appellate Tribunal could have rejected Compromise Petition?

Effort of learned Adv. Mr. Agrawal is to demonstrate that it was not the Compromise Petition, but an exercise of right under "One-time Settlement [OTS] Scheme." As per OTS Scheme, thirty per cent

payment in advance plus some more amount was already available with Debts Recovery Appellate Tribunal which could have made over to Bank and appropriated towards OTS proposal. He also states that if interest earned on that amount from the date of deposit till 28th December, 2015 could have been taken into account, perhaps, the petitioner would not have been and may not be required to pay any additional amount. He, however, by way of abundant precaution states that after completing all these formalities, as per Bank, amount of Rs.11,388-00 only was in deficit and that has been also deposited. As such, OTS proposal was finally accepted and hence Bank could not have withdrawn from it and Debts Recovery Appellate Tribunal could not have refused to record it.

Learned Adv. Mr. Kumar invites our attention to terms and conditions of the OTS. He submits that the concerned Branch Manager had no power to accept OTS, as the proposal was not accompanied by thirty per cent upfront payment. He argues that amount in deposit with Debts Recovery Appellate Tribunal could not have been taken into consideration for finding out compliance with this obligation. He further states that correspondence done by that branch thereafter or its readiness and willingness to appropriate that amount towards OTS is of no assistance, as OTS is non-discretionary and non-discriminatory.

Learned Adv. Mr. Joshi submits that he is appearing for the adjudicating authority and as such has got no particular defence in the matter.

Perusal of the order dated 28th December, 2015 shows that present petitioner sought adjournment as his counsel was unable to appear on that day. Counsel for respondent-Bank was in attendance. After noticing these facts, in a single line, Debts Recovery Appellate Tribunal has observed that "The Compromise Petition filed by the appellant and respondent-Bank is dismissed."

In the last line of the order, appeal came to be adjourned to 16th February, 2016 for disposal. It is not in dispute that appeal is pending even today.

Considering the above mentioned arguments advanced by parties, we find that petition, though styled as a "Compromise Petition", could not have been viewed as such only. Whether petitioner fulfills the obligations expected of him as per OTS or then the respondent-Bank is right in submitting that its Branch Manager exceeded jurisdiction, ought to have been looked into by the Debts Recovery Appellate Tribunal. That exercise has not been undertaken. The order, thus, is unreasoned and, therefore, unsustainable.

As the appeal is pending, as a part of final hearing of that appeal, even today this verification can

be undertaken by Debts Recovery Appellate Tribunal.

Hence we restore the Compromise Petition back to the file of Debts Recovery Appellate Tribunal with a direction that said Compromise Petition shall be decided along with the appeal on merits and at the stage of final hearing of appeal preferred by the present petitioner.

Writ Petition is, thus, partly allowed and disposed of.

Judge

Judge

[hedau]

C E R T I F I C A T E

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.

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Pvt. Secretary.

Uploaded on : 28th Sept., 2016