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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 2262/2016

NAND KUMAR TANEJA & ORS ..... Petitioners

Represented by: Mr.Ankur Chhibber, Advocate with Mr.Aditya Chhibber, Advocate

versus

BANK OF BARODA & ORS ..... Respondents

Represented by: Mr.R.P.Agrawal, Advocate for R-1

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

<u>O R D E R</u>

% 17.03.2016

1. Learned counsel as above appears for the contesting respondent No.1. As per Rules of this Court advance copy of the writ petition had been served upon the respondent No.1 and learned counsel for respondent No.1 says that the writ petition could be heard today itself for final disposal because counter affidavit is not warranted. Accordingly, we have heard learned counsel for the parties.

2. Case of Nand Kumar Taneja and Late Mohini Somnath, whose son and daughter have stepped into her shoes as her legal heirs, was that they had resigned as partners of the firm M/s.Mercantile Construction Company and thus they would not be liable for any debts of the partnership firm post date of their retirement.

3. Order dated October 15, 2013 passed by the Debts Recovery Tribunal has jettisoned the plea by recording as under:-

"19. That the next plea taken by defendants No.2 and 5 that they were retired from the partnership business on/from 01.11.1992. The applicant relied upon the judgment M/s.DCM Shri Ram India Ltd. Vs. Indo Organics 2003(67, DRJ256 and Syndicate Ban Vs. RSR Engineering Works (2003) 6 SCC 265, which hold that retirement of a partner would absolve him from the liability of the firm only if the creditor agrees to such arrangement and released him from the onus of discharge of liability. This not the factual status in the instant case and the plea of defendant Nos.2 & 5 have no merits in this case and hence rejected. As regards to the point raised that the present application is based upon forged fabricated documents is also not tenable as no material is placed on record to controvert the same."

4. The appellate order dated February 17, 2015 passed by the Debts Recovery Appellate Tribunal has jettisoned the plea observing as under:-

"The primary plea for discharge of the appellants in Appeal No.173/2014 is based on Section 32 of the Partnership Act. As noticed above, retiring partner may be discharged from the liability of the act done before his retirement by an agreement with such third party and partners of the reconstituted firm. This agreement may be implied by course of dealing with such third party and reconstituted firm after it had the knowledge of retirement. The appellants have not pleaded any agreement to seek discharge of their liability under Section 32(2) of the Partnership Act. They, however, would plead that such agreement may be implied as the bank continued to deal with the reconstituted firm after the knowledge of appellants' retirement. The bank has not only refuted having any knowledge on their part about the retirement of the appellants, but has even pleaded that the document available on record would show that no limitation in

this regards was ever given to the bank. The reference to the notice etc. is only of their intention to retire and that too in respect of late Ms.Mohini Somnath. The arbitration award is also in regard to the dispute between appellants Mr.N.K.Taneja and Ms.Mohini Somnath on the hand and Mr.Sanjeev Kapoor and Ms.Surinder Kapoor on the other with regard to the retirement of Ms.Mohini Somnath, thus, no clear cut case of knowledge of retirement of the appellants from this partnership concern on the part of the bank is forthcoming from the material and evidence on record. The plea by the counsel for the bank is that no partnership deed of reconstituted firm was never brought on record and this could have easily been done to prove the act of discharge of the appellants.

Once it is held that the bank had no knowledge or the bank cannot be attributed with the knowledge of the retirement of the appellants, the agreement cannot be implied by course of dealing with such third party or the reconstituted firm. The dealing of the bank was with the company and the appellants have not been able to establish that there was any dealing between the bank and the reconstituted firm. Thus, the appellant cannot be discharged of their liability even if they have retired. If the appellants wanted to prove their discharge, they ought to have entered into an agreement with the bank and the reconstituted firm. The appellants could be expected to inform the creditors individually as the retiring partners were dealing with various creditors who might enter into transaction with the partnership firm."

5. We have been lamenting repeatedly that orders passed by the Debts Recovery Tribunal as also the Debts Recovery Appellate Tribunal are extremely loosely worded. Hardly we come across any order where reference is made to the documentary evidence proved at the trial.

6. In the instant case Ex.RW-2/4, Ex.RW-2/7 and Ex.RW-2/8A dated May 27, 1992, August 26, 1992 and September 07, 1992, which have been duly proved show that the bank was informed that Nand Kumar Taneja and Mohini Somnath have resigned as partners of the partnership firm. It is unfortunate said documentary evidence has not even been considered either by the Debts Recovery Tribunal or the Debts Recovery Appellate Tribunal.

7. The documents proved by the Debts Recovery Tribunal have been filed along with the writ petition and the same would evince that two bank guarantees were issued by the bank at the asking of the partnership firm after the date Nand Kumar Taneja and Mohini Somnath claimed to have resigned as partners. Ten bank guarantees, though issued when they were partners, were extended on March 11, 1994 i.e. after the two had resigned from the partnership firm. Since the bank had to honour the bank guarantees it debited the account of the partnership firm. In this context it would assume importance whether Nand Kumar Taneja and Mohini Somnath proved having resigned from the partnership firm under intimation to the bank.

8. Since the Debts Recovery Appellate Tribunal as also the Debts Recovery Tribunal has done a shoddy job, and it being the duty of the Appellate as well as the Tribunal of original jurisdiction to discuss all relevant evidence, we dispose of the writ petition quashing the order dated February 17, 2015 passed by the Debts Recovery Appellate Tribunal and allow the appeal filed by the petitioners and as a consequence set aside the order dated October 15, 2013 passed by the Debts Recovery Tribunal-III. We restore TA No.561/2002 qua the writ petitioners filed by respondent No.1-bank with a direction to the Debts Recovery Tribunal to note each and every exhibited document relevant to decide whether Nand Kumar Taneja

and Mohini Somnath have proved to have resigned from the partnership firm under intimation to the bank. Thereafter, giving reasons with reference to the documents exhibited, the Debts Recovery Tribunal would decide the liability of said two persons as partners of the firm.

9. No costs.

CM No.9760/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

MARCH 17, 2016
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