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

+ W.P.(C) 8811/2014

M K MODI

..... Petitioner

Represented by: Mr.Rajeeve Mehra, Sr.Advocate
instructed by Mr.Abhay Chauhan and
Ms.Shruit Aggarwal, Advocates

versus

BANK OF INDIA & ORS.

..... Respondents

Represented by: Mr.S.K.Gandhi, Advocate with
Ms.Nishtha Gupta, Advocate for R-1
Mr.R.P.Agrawal, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **11.05.2016**

1. Respondent No.1 : Bank of India, filed an Original Application under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 which was registered as OA No.14/1997.
2. Only two defendants were impleaded probably for the reason the principal borrower was in liquidation. Claim against the two respondents in the Original Application was premised on the plea that the two stood guarantee.
3. During the pendency of the Original Application which was registered as OA No.14/1997, the first respondent assigned the debt to respondent No.2, an entity which was entitled to prosecute the claim because it is an W.P.(C) 8811/2014

asset reconstruction company. Just before the Original Application was decided the debt was assigned to respondent No.3 M/s.Ace Stone Craft Ltd., an entity which is not an asset reconstruction company and thus cannot maintain a claim under the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

4. Overlooking said fact, OA No.14/1997 resulted in an order being passed on November 26, 2012 fastening liability on the petitioner and his correspondent in sum of ₹1,57,96,642/- together with pendente lite and future interest at the rate mentioned in the order.

5. Petitioner filed an appeal before the Debts Recovery Appellate Tribunal which was registered as Inward No.82/2013. The same was disposed of vide order dated May 07, 2014 which reads as under:-

“Mr.Dinkar Singh appearing for respondent No.2 states that the OA as well as Recovery Certificate have been withdrawn. Though copy of the order has not been obtained, the order, according to the counsel, reads as under:-

“22.04.2014

Present: Mr.R.P.Aggarwal, for ACE Stone Pvt. Ltd.

Applicant M/s.Stone Craft Ltd. has filed this MA No.191/2012 in OA No.14/1997 on the reason that the debt involved therein is assigned in their favour and the applicant being not covered by the RDDBFI Act, 1993, they intend to pursue the remedy before civil Court. Application is allowed with liberty to

move appropriate Court in accordance with law. RC in OA No.14/1997 stands withdrawn.”

In view of the above, the present appeal is rendered infructuous and is disposed as such.”

6. The impugned order notes that vide MA No.191/2012 filed in OA No.14/1997, M/s.Ace Stone Craft Ltd. had wanted to withdraw the Original Application because it had no right to prosecute the same.

7. As per the impugned order the appeal has been disposed of as infructuous noting the order dated April 22, 2014 passed by the learned Debts Recovery Tribunal.

8. Now, there is a slight problem. The problem is that vide order dated April 22, 2014 passed by the Debts Recovery Tribunal the recovery certificate has been withdrawn. The final order passed in OA No.14/1997 has remained.

9. On the facts noted above no order could have been passed in OA No.14/1997 allowing the claim because during the pendency of the Original Application the debt came to be assigned to a company which is admittedly neither a bank nor a financial institution nor an asset reconstruction company and thus order dated November 26, 2012 allowing OA No.14/1997 is set aside observing simultaneously that as claimed by respondent No.3 it may institute such remedy before a Civil Court as would be available to it and such defences as are available to the petitioner would open. Under no circumstances order dated November 26, 2012 passed by learned Debts Recovery Tribunal in OA No.14/1997 shall be tendered or read in evidence

determining any right or liability of the parties.

10. No costs.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

MAY 11, 2016
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