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

\+ **W.P.(C) 5790/2015**

NAND KUMAR TANEJA AND ORS. ..... Petitioners

Represented by: Mr.Sanjeev Puri, Advocate with Mr.Aditya Chibber, Advocate

versus

BANK OF BARODA AND ORS. .... Respondents

Represented by: Ms.Priyadarshini Verma, Advocate for R-1

W.P.(C) 281/2016

SANJEEV KAPOOR & ORS. ..... Petitioners

Represented by: Mr.Sachin Datta, Sr.Advocate instructed by Ms.Gayatri Verma, Ms.Nauras S. and Ms.Prity Sharma, Advocates

versus

BANK OF BARODA & ORS. ..... Respondents

Represented by: Ms.Priyadarshini Verma, Advocate

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

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

% 22.01.2016

1. Mercantile Construction Company, a partnership firm, had four partners : (i) Nand Kishore Taneja, (ii) Mohini Somnath (since deceased and now represented by her legal heirs Aman and Neeta), (iii) Surender Kapoor;

and (iv) Sanjeev Kapoor.

2. The partnership firm had obtained a credit from Bank of Baroda. At the asking of the partnership firm various bank guarantees were issued by Bank of Baroda in favour of Steel Authority of India, which were invoked and after paying Steel Authority of India the guaranteed sum, Bank of Baroda debited the account of the firm.

3. The bank instituted recovery proceedings.

4. The partnership firm and its four partners were impleaded as defendants.

5. Amongst other pleas one plea taken was that the bank guarantees were invoked beyond the date of their expiry and thus the bank was not to make any payment to Steel Authority of India and any payment made could not be debited to the account of the firm.

6. Nand Kishore and Mohini Somnath took an additional plea of having retired from the partnership firm on November 01, 1992 with notice given to the bank and thus according to them they could not be liable for debts incurred by the firm after they had retired from the partnership firm.

7. Since the letters invoking the bank guarantee and the date of their receipt were not in the knowledge of the four partners and additionally for the reason initially the bank took the stand that the bank guarantees were not invoked in terms of the guarantee(s) and the matter was referred to a High Power Committee which took the decision that the bank guarantees were invoked as per the terms thereof, which documents were not in the possession of the four partners they filed an application seeking direction against the bank to discover on oath and produce the documents which they had listed in their application. The Debts Recovery Tribunal passed a very

perfunctory order.

8. Since the Debts Recovery Tribunal was not understanding the law of discovery and production of documents, in W.P.(C) No.6307/2006, filed by Sanjeev Kapoor and Surender Kapoor a Division Bench of this Court directed that the provisions of Rule 13 of Order 11 required an affidavit to be filed concerning an order passed by a Court under Rule 12 thereof.

9. The claims being decreed; whereas the partnership firm, Surender Kapoor and Sanjeev Kapoor filed Appeal No.311/2014 against the order dated October 15, 2013 passed by the Debts Recovery Tribunal, Nand Kishore Taneja and the legal heirs of Mohini Somnath filed Appeal No.173/2014. Vide order dated February 17, 2015 the Debts Recovery Appellate Tribunal has dismissed both appeals.

10. We find that the aspect of the matter concerning the discovery to be made has been dealt with by the Debts Recovery Appellate Tribunal in a very perfunctory manner. The argument has been noted and dealt with in one paragraph in the following words:-

> *"The counsel for the appellant in Appeal No.311/2014 did not make much submission except for stating that invocation of the bank guarantees has to be in terms of the bank guarantee. In addition, the counsel would refer to an application filed by the said appellants under Order XI Rule 12 CPC requiring the bank to disclose the document relating to decision taken by the High Power Committee. Though this application was dismissed by the Tribunal and the Appellate Tribunal, but the High Court allowed the prayer made in the application, but still such document was not disclosed and thus in terms of Order XI Rule 21 the consequence is to follow. In response, the counsel for the bank would submit that affidavit of one Mr.Tika Ram was filed, which is available on record, and all the relevant documents were placed on record. In view of this there would*

not be any need or requirement to press for consequences arising out of Order XI Rule 21."

11. Whether the affidavit of Mr.Tika Ram is in compliance with the requirement of law has not been discussed at all.

12. We have been shown the affidavit filed by Mr.Tika Ram, but refrain from commenting thereon because we are remanding the matter to the Debts Recovery Appellate Tribunal to re-decide the two appeals before it with a direction that the Appellate Tribunal would note the provisions of Order 11 of the Code of Civil Procedure concerning discoveries sought and made. The Appellate Tribunal would look into the sweep of the span of the discoveries sought for in the application filed seeking discovery and production. The Appellate Tribunal would then decide whether a correct order was passed by the Debts Recovery Tribunal dealing with the relevance of the documents discovery and production whereof was sought and further whether it was ensured that all documents which were relevant were produced.

13. At the remanded stage the Debts Recovery Appellate Tribunal need not deal with the issue raised by Nand Kishore Taneja and legal heirs of Mohini because we find that the Debts Recovery Appellate Tribunal has dealt with the same concerning their plea of having resigned from the partnership firm under intimation to the bank.

14. As we proceeded to consider said part of the finding returned by the Debts Recovery Appellate Tribunal against Nand Kishore and legal heirs of Mohini we find complete waywardness in the pleadings which are loose and laconic. The issue raised by these two impacts the liabilities of the partners concerning debts incurred post retirement from a partnership firm.

15. Since the claim of the bank has been allowed in proceedings initiated under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993, parties led evidence. Documentary evidence was led. The findings against the two on the issue is that they have failed to prove having intimated to the bank that they had retired from the partnership firm on November 01, 1992, the writ petition must have specific pleadings with reference to the evidence led and documents proved by referring to the exhibit marks of the documents with reference to the testimony of the witnesses. The reason is obvious. On questions of fact findings returned by specialised Tribunals, writ jurisdiction concerning facts is restricted. Unless it is shown that a material document has been overlooked by a Tribunal it would be impermissible for the writ court to re-appreciate the evidence; of course issues of perversity of findings of fact returned is in a different domain.

16. We therefore permit learned counsel for the petitioners of W.P.(C) No.5790/2015 to withdraw the writ petition with right reserved to file a properly drafted writ petition laying a challenge to the order dated February 17, 2015 passed by the Debts Recovery Appellate Tribunal in Appeal No.311/2014 but limited to the aspect of the two partners having retired on November 01, 1992 under intimation to the bank.

17. Lest there be any confusion we make it clear that any decision at the remanded stage by the Debts Recovery Appellate Tribunal concerning liability of the partnership firm could be challenged by the writ petitioners of W.P.(C) No.5790/2015 while laying a challenge to the decision should they be aggrieved therefrom. They would be permitted to file a fresh petition limited to the impugned order in its sweep embracing only the finding that

they have failed to prove having retired from the partnership firm on November 01, 1992.

18. W.P.(C) No.281/2016 is disposed of setting aside the order dated February 17, 2015 passed by the Debts Recovery Appellate Tribunal to re-decide the two appeals keeping in view the present order and in particular paragraph 12 above.

19. Costs.

<u>CM No.10417/2015 in W.P.(C) No.5790/2015</u>
<u>CM No.1157/2016 in W.P.(C) No.281/2016</u>

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

JANUARY 22, 2016
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