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

\+ W.P.(C) 8590/2015 & CM No.18631/2015

RAJ KUMAR GUPTA ..... Petitioner

Represented by: Mrs.Prathiba M.Singh, Sr.Advocate instructed by Mr.B.S.Nagar and Ms.Radha Chawla, Advocates

versus

PUNJAB NATIONAL BANK & ANR. .....Respondents

Represented by: Ms.Bindu Das, Advocate for R-1

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

O R D E R

% 18.01.2016

1. Heard learned counsel for the parties.

2. Pleadings of the bank which culminated in the order dated June 17, 2003 passed by the Debts Recovery Tribunal, succinctly stated, would be that the bank had, at its branch at London, made available certain credit facilities to International Builders and Property Developers Inc. a Lousiana Corporation; for which facility the writ petitioner had executed two written guarantees. It was pleaded that the amount claimed in the suit was due and payable by the principal and co-extensive liability would, therefore, be that of the writ petitioner in terms of the written guarantee.

3. Of the various defences taken by the writ petitioner, two jurisdictional were taken, the first was concerning territorial jurisdiction and for which it was pleaded that the bank itself had instituted proceedings in the competent court of jurisdiction in district of Arizona against the principal borrower. The second was that the claim against the principal borrower was held to be barred by limitations as per the decision of the court of competent jurisdiction in the district of Arizona as per the order dated April 20, 1995**.** The technical objection taken was that the contract between the parties required the dispute to be decided as per law in England.

4. The said aspects, as urged by learned counsel for the petitioner, has not been taken note of by the Debts Recovery Tribunal while decreeing the claim of the bank as per order dated June 17, 2013.

5. Challenge in the instant writ petition is to an order dated July 24, 2015 passed by Debts Recovery Appellate Tribunal deciding the application filed by the writ petitioner concerning pre-deposit.

6. Influenced by the fact that after initially participating in the proceedings before the Debts Recovery Tribunal the writ petitioner remained ex-parte resulting in the claim of the bank being decreed ex-parte, but noting the fact that the Debts Recovery Appellate Tribunal had to proceed in terms of the order passed by this Court in W.P.(C) No.5127/2015, the Appellate Tribunal has considered waiver of pre-deposit.

7. The appellate tribunal has noted that waiver was sought on two grounds. Firstly, concerning the three objections noted by us hereinabove, concerning the very maintainability of the proceedings by the bank and the second concerning the age of the writ petitioner.

8. Without expressing any prima-facie opinion on the merits of the objections raised to the decree passed by the Debts Recovery Tribunal, the learned Appellate Tribunal has noted that the bank was struggling for the last 25 years for recovery of amount and, thus, 50% pre-deposit has been directed.

9. From the facts noted hereinabove, two things emerge clearly. First by the bank itself invoked jurisdiction against the principal borrower in Arizona. The second being the proceedings by the bank resulted in the claim being dismissed on the reasoning that the claim has become time barred.

10. Under the circumstances we are of the opinion that the peculiar facts in the present case warrant 100% of waiver of pre-deposit in the appeal filed by the writ petitioner between the Debts Recovery Appellate Tribunal.

11. We allow the appeal setting aside the impugned order dated July 24, 2015.

12. We grant writ petitioner 100% waiver from the pre-deposit to pursue the appeal before the Debts Recovery Appellate Tribunal.

13. The writ petitioner would diligently prosecutes the appeal, because the impugned order shows that before the Debts Recovery Tribunal the writ petitioner was very callous in defending the proceedings.

14. No costs.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

JANUARY 18, 2016/rb