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

\+ W.P.(C) 10232/2015

STANDARD CHARTERED BANK ..... Petitioner
Represented by: Mr.Ateev Mathur, Advocate

versus

M/S. RADNIK EXPORTS & ORS. ..... Respondents
Represented by: Mr.S.L.Gupta, Advocate

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

<u>O R D E R</u>
% 29.04.2016

1. Grievance of the petitioner is to the order dated September 22, 2015 dismissing an application filed praying to recall the order dated July 02, 2015 by which appeal filed by the petitioner against the order passed by the learned DRT permitting the respondents to amend the written statement to the claim filed by the bank had been allowed.

2. Learned DRAT has noted that on July 02, 2015 the lawyers were observing a strike and it being impermissible for members of the Bar not to work the Appellate Tribunal was fully justified in dismissing the appeal for non-prosecution. Reason for non-appearance pleaded of the counsel being stuck in a traffic jam has been held to be a ruse.

3. In the order dated September 22, 2015 learned DRAT has noted that in RFA (OS) No.139/2014 a consent order had been passed on October 10, 2014.

4. Suffice it to record that the petitioner bank has filed an Original Application before DRT and the respondents filed a suit for declaration concerning the credit facility on the plea that the agreement in question was a wager and hit by Section 30 of the Indian Contract Act. The said suit registered as CS (OS) No.2296/2009 was dismissed holding that any defence and even by way of a counter claim or a set of could be pleaded before the DRT in view of various sub-Sections of Section 19 of the Recovery of the Debts Due to Banks and Financial Institutions Act.

5. The suit was dismissed by the learned Single Judge vide decree dated July 01, 2014 against which RFA (OS) No.139/2014 was filed. It was disposed of by passing the following order:-

RFA(OS) 139/2014 and CM Nos.16656-57/2014

> *"1. By way of the instant appeal, a challenge is laid to the judgment dated 1st July, 2014 passed by this court in CS(OS)No.2296/2009.*
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> *2. It is submitted by Mr. S.L. Gupta, learned counsel for the appellant that the by the impugned judgment, it was held that the learned Single Judge does not have the jurisdiction to entertain the suit for the reason that the suit was barred under Section 34 of the Debt Recovery Tribunal Act, Sections 17 and 18 of the RDDBFI Act and Section 34 of the SARFAESI Act. The submission of the learned counsel is that the appeal has been necessitated inasmuch as the appellant would not be permitted to establish its case or challenge the case of the respondent's bank before the Debt Recovery Tribunal for the reason that the appellant would not be given an opportunity to lead evidence; summon the witnesses; or cross-examine the witnesses of the bank.*

3. We may note that the respondent has filed O.A.No.345/2010 before the Debt Recovery Tribunal-II, Delhi which is pending. The appellant herein has filed his written submissions wherein all the pleas raised by the appellant on the original side of this court have already been taken.

4. On the other hand, Mr.Sumit Bansal, learned counsel for the respondent submits that the Debt Recovery Tribunal has adequate power under Section 22 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 statute to permit the parties to lead evidence which would include summoning its witnesses as well as cross-examining of witnesses of the other side. Based on this submission, learned counsel for the appellant prays for leave to withdraw this appeal with liberty to agitate all grounds on which the suit was filed; to press the prayers which were made in the plaint before the Debt Recovery Tribunal; lead evidence and be given an opportunity to cross-examine the witnesses of the respondent's bank.

5. In view of the above, the instant appeal is dismissed as withdrawn with liberty as prayed for. As a result, both the parties would have the right to lead evidence by summoning witnesses as well as cross-examining the witnesses on the other side.

6. The pending applications are also disposed of.

Dasti to the parties."

6. The result is an amendment to the written statement being allowed, and rightly so by the DRT for the reason it would be a misnomer to say that a counter claim has been permitted to be laid. The defence of the plea of wager has been permitted to be raised. Assuming for the sake of argument that an issue of limitation would arise, the bank can always take a plea that

the claim by way of counter claim when raised was barred by limitation and the said issue would be decided by the learned DRT.

7. The writ petition is accordingly dismissed.

8. No costs.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

APRIL 29, 2016
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