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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9415 OF 2017

**VEER GURJAR ALUMINIUM INDUSTRIES PVT LTD THROUGH ITS
MANAGING DIRECTOR BALULAL GURJAR AND ORS
VERSUS
ASSET RECONSTRUCTION COMPANY LTD DADAR AND OTHERS**

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**Advocate for Petitioner : Adwant S.V. WITH Mr.Gajendra Rajput
Adv for Respondents 1 to 3: Mr.A.A.Mishra**

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**CORAM : S.C.DHARMADHIKARI &
MANGESH S. PATIL,JJ.**

DATE : 26/07/2017

PER COURT :-

We have heard both sides. The Petition is presented only because the Presiding Officer/learned Chairperson of Debt Recovery Appellate Tribunal was not available and on leave for some time.

2] The argument of Mr.Adwant appearing for the petitioners is that the respondents may proceed with the Original Application No.172/2013. They may proceed to file their evidence in the form of claim affidavit and thereafter no opportunity would ever be provided to the petitioners to contest the Original Application, a decree may follow.

3] The argument is that in February 2016 the matter was listed before the Registrar of the Debt Recovery Tribunal, Aurangabad for carrying out amendment and substitution of parties. Thereafter, it was posted for filing of written statements by petitioner-defendants. A conditional order was passed on 30/12/2016.

4] That would mean no Written Statements can ever be taken on record unless the compliance with this order and the conditions therein is reported. An Interlocutory Application No.162 and 163 of 2017 was filed seeking to set aside the conditional order.

5] That Application was contested by the bank by pointing out the dilatory tactics and the conduct of the petitioners. It was urged that they are deliberately delaying the process and in such circumstances, the Presiding Officer should reject the Applications. The Applications were rejected on 6/7/2017 but a copy of the order was made available on 17/7/2017. As stated above, the learned Chairperson was not available and hence this Writ Petition to challenge the order passed on 6/7/2017.

6] We have with the assistance of the learned advocates appearing for both sides perused the common order, copy of which is at page 48 of the paper book. It is clear that the contentions of both

sides have been noted. The learned Presiding Officer relied upon certain judgments of the Hon'ble Supreme Court on the point that if the other side is deliberately delaying the proceeding and by raising technical objections, then the Presiding Officer can go to the extent of striking of defence and an adjournment to file Written Statement should not be granted for the asking and as a matter of course.

7] While we are aware of this principle and applied to the facts of the present case by the learned Presiding Officer, what we find is that the provisions and particularly the procedural provisions do not rule out exercise of discretion so as to balance the rights and equities. Eventually the person who is defending the cause deserves an opportunity to contest it on merits and that opportunity should not be snatched or taken away merely because there was a delay or there was an attempt to avoid the contest. It may be that there are several adjournments sought but despite the summons being served and the Vakalatnama being filed on 17/09/2014 the petitioners collected a copy of the proceeding on 20/09/2014. The matter was adjourned thereafter and last chance was provided on 9/1/2015 but no written statement was filed.

8] Be that as it may, for certain procedural compliance the matter could not be taken up. The Original Application was then amended.

Thereafter, the advocates appearing for the petitioners collected the copy of the amended application and the matter was adjourned for filing written statements time and again. On 19/11/2016, the written statements were permitted to be filed but on condition of payment of costs. That right was forfeited because costs were not paid. Though time was sought to pay the costs, even in the enlarged or extended period, the costs were not paid. It is in these circumstances that the conditional order operated.

9] We do not think that the learned Presiding Officer was in error in refusing to condone the delay unconditionally. He was also not in error in imposing conditions for defending the claim. The conditions imposed are also reasonable, however, despite the Original Application being filed as early as in 2013, till date it has not been disposed of. It is not as if it has been disposed of only because of the dilatory tactics of the petitioners-original defendants. It is in these peculiar circumstances we grant a final opportunity to the petitioners. They shall file their written statements within a period of ten days from today. But they must pay the costs quantified by learned Presiding Officer in the sum of Rs.50,000/- and the costs are condition precedent. If the costs are not tendered or paid or proof is not produced, the written statements shall not be taken on file. If the written statements are filed within ten days and proof of payment of

costs is produced, they shall be taken on record. Thereafter the petitioners can participate in the proceedings in accordance with law. The Writ Petition is allowed in these terms but without any order as to costs.

(MANGESH S. PATIL,J.)

(S.C.DHARMADHIKARI,J.)

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