

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.48 OF 2017

M/s. Mithila Polyplaster Pvt. Ltd.
& Ors.

....Petitioners

V/s.

Punjab & Sind Bank & Anr.

....Respondents

Mr. Shyam Kapadia i/by Mr. Minesh K. Shah, Advocates for
Petitioners.

Mr. Shashank Fadia i/by Haridas & Co., Advocates for the
Respondents.

**CORAM :- B.R.GAVAI &
SANDEEP K. SHINDE, JJ.**

DATE :- 23RD NOVEMBER, 2017.

RC. :-

Rule. Rule made returnable forthwith. Heard by
consent.

2 The Petitioners by way of present Petition challenges
the order dated 16.4.2014 vide which the Appeal filed by the
present Petitioners came to be dismissed.

3 The Petitioners being aggrieved by the judgment and
order passed by the learned Presiding Officer, D.R.T. dated
28.5.2003 had preferred an appeal before the learned DRAT. The
learned D.R.A.T. vide judgment and order dated 11.6.2014 came to

the conclusion that the appeal memo is signed only by the Defendant No.5 and not the other Defendants and, therefore, Defendant Nos.1,2 and 5 have not filed Written Statement. Being aggrieved thereby, the Petitioners have approached this Court by way of Writ Petition No.9274 of 2014.

4 It will be relevant to refer to paragraph 2 of the order passed by the Division Bench of this Court dated 26.2.2015.

“2 In our view, the DRAT ought to have taken into consideration all the submissions made on behalf of the parties. Secondly, the DRAT also should have considered whether there was any defect which could be cured subsequently and taking into consideration all these aspects should have decided the appeal. We are of the view that, therefore, the order of the DRAT deserves to be quashed and set aside and the matter needs to be remanded back to the DRAT for reconsideration of the matter on merits afresh and in accordance with law. Accordingly, the impugned order of the DRAT is quashed and set aside and the matter is remanded back to the DRAT for reconsideration of the matter on merits afresh and in accordance with law. All contentions of both sides are kept open. The DRAT shall decide the appeal within four weeks after receipt of this order. Till that time the recovery proceedings shall not be initiated.”

Perusal of the aforesaid direction issued by this Court would clearly show that the learned DRAT was directed to decide the matter on merits. The learned DRAT was further directed to consider whether there was any defect which could be cured subsequently. By the impugned order, the learned DRAT has passed the same order holding that the appeal before it could not be considered being filed by the other Appellants except the Appellant No.5. We are of the considered view that the learned Tribunal has passed the impugned order contrary to the directions issued by this Court when this Court directed the learned D.R.A.T. to re-consider the matter on merits and in accordance with law. The learned D.R.A.T. has observed that the learned P.O. has already considered the matter on merits.

5 By now, it is settled position of law that every judicial order has to be 'Speaking Order'. The order should reflect as to what weighed with the mind of the judicial officer while deciding the case either way. It has been held that reasons are live link between the consideration of the facts and the conclusions arrived at. We find that the impugned order is liable to be quashed and set aside on the ground of the impugned order being not a reasoned order also being contrary to the directions issued by the Division Bench of this Court.

6 Apart from that learned Judges of this Court while remanding the matter directed the learned DRAT to consider as to whether defect which was noticed by it were curable or not. It is settled principle of law that the procedural laws are handmaid of justice and that they cannot be permitted to come in the way of doing substantive justice to the parties.

7 From the perusal of the order, there are reasons to believe that the learned D.R.A.T. was hurt by its earlier order being carried out before this Court and same being set aside by this Court. Though by an order which was earlier impugned before this Court, the learned DRAT had remanded the case of the Respondent No.5, he now finds that it is not even necessary to remand the matter of the Appellant No.5.

8 Judicial Officer while discharging his duties is not expected to be carried away by sentiments and pass an order merely because he is hurt by the fact that his order is being set aside.

9 In that view of the matter, the impugned order is not sustainable in law and the same is quashed and set aside. Matter is remanded back to the learned D.R.A.T. for consideration afresh in the light of observations of this Court dated 26.2.2015 in Writ Petition No.9274 of 2014 so also observations made by us

hereinabove. Taking into consideration the facts and circumstances of the case that the appeal is old one, the learned DRAT is requested to decide the same within three months from today.

(SANDEEP K. SHINDE, J)

(B.R.GAVAI, J)