IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L) NO. 537 of 2016

IN

WRIT PETITION NO.514 OF 2010

ALONGWITH

NOTICE OF MOTION (L) NO.190 OF 2017

IN

WRIT PETITION NO.514 OF 2010

M/s. Reliable Extractions Industries Pvt. Ltd. ...**Applicant / Petitioner**

Versus

Canara Bank & Ors. ...**Respondents**

Mr. Prajyot Jaggi for the Petitioner.

Mr. Nirman Sharma for the Respondent No.2.

Mr. Bharat Vaishnawa i/b M/s. Bharat Vaishnawa and Co., for the Respondent No.3.

Mr. Satya Prakash Sharma, Applicant In NMWL/190/2017.

CORAM : B.R. GAVAI AND RIYAZ I. CHAGLA, JJ.

DATE : 25 July 2017

JUDGMENT : (Per Riyaz I. Chagla, J.)

1. The Petitioner by the present Petition is challenging the order dated 23rd February 2010 passed by the Debts Recovery Appellate Tribunal, Mumbai upholding the common order dated 4th September 2009 passed by Recovery Officer, Debts Recovery Tribunal-II, Mumbai and the common order dated 6th November 2009 passed by the learned Presiding Officer, Debts Recovery Tribunal- II, Mumbai. The Petitioner has sought directions from this Court directing the Court Receiver to hand over physical possession of the subject properties to the Petitioner Company.

2. The Petitioner Company is a borrower from the Respondent No.1-Bank. Upon the non-payment of dues by the Petitioner, the Respondent No.1-Bank filed two Suits of 1984 against Petitioner Company and Original Respondent No.3 as well as Respondent Nos.4 to 19 as the guarantors. The two Suits came to be transferred to the Debts Recovery Tribunal-II, Mumbai and registered as Original Application Nos.323 and 485

both of 2001. A Court Receiver had been appointed by this Court in the suits over the subject property and by an order dated 21st April 2004, the Respondent No.1 was appointed as Tribunal Receiver in place of Court Receiver. The Tribunal Receiver was discharged while allowing the Original Applications by the Debts Recovery Tribunal-II, Mumbai vide order dated 12th May 2006. The Original Respondent No.3 had filed Review Petitions, one of which was allowed and the other dismissed by order dated 30st August 2006. Subsequently, two Recovery Proceedings Nos.173 and 174 of 2006 were initiated by Respondent No.1. The Petitioner represented by group of persons (hereinafter referred "group of persons") filed an application seeking to restrain the Respondent No.1 from dealing with and entering into correspondence with the Original Respondent No.3 for and on behalf of the Petitioner Company. There was a dispute between the groups of persons claiming to be Directors of the Petitioner-Company and Original Respondent No.3 who claimed to represent the Petitioner-Company. The group of persons were pursuing the proceedings in Debts

Recovery Tribunal-II / Debts Recovery Appellate Tribunal. The group of persons filed an application before the Recovery Officer of the Debts Recovery Tribunal – II, Mumbai seeking declaration that the Respondent No.1 Bank had illegally accepted money from the Original Respondent No.3 and executed registered deed of assignment dated 7th April 2008 in favour of the Original Respondent No.3. The group of persons also filed a Suit before this Court challenging the assignment. The Respondent No.1 Bank had refused to accept the money from the group of persons and upon accepting the money from the Original Respondent No.3 handed over the subject property to the Original Respondent No.3 of which the group of persons were aggrieved. It was their case that the Original Respondent No.3 had been removed as Director way back in 1994 and since then he was not concerned with the affairs of the Petitioner-Company, although, in the year 2007, he got himself and his son fraudulently appointed as Directors. The Recovery Officer has rejected the application filed by the group of persons. The impugned order upheld by the Debts Recovery Tribunal was challenged in the Debts Recovery Appellate Tribunal. The Respondent Nos.1 and the Original Respondent No.3 supported the order of the Recovery Officer as mentioned in the impugned order of the Debts Recovery Appellate Tribunal. It was the contention of the Respondent No.1-Bank that the issue raised by the group of persons was beyond the scope of the Recovery Proceedings and Recovery Officer had rightly not entertained them. Shri. Agarwal, Advocate representing the group of persons/Petitioner before the Debts Recovery Appellate Tribunal had first stated that there was no dispute between the Directors representing the Petitioner-Company and that the Recovery Officer and Presiding Officer had erred in holding that they have no jurisdiction over the matter. Advocate Shri. Agarwal, despite making the statement has filed this proceeding, challenging the status of the Original Respondent No.3 and his right to represent the Petitioner-Company as a Director. The allegations raised by the group of persons have been held by the Debts Recovery Appellate Tribunal to clearly demonstrate that there was a dispute between the Original Respondent No.3 and the group of persons as Directors representing the Petitioner-Company. The Debts Recovery Appellate Tribunal has held that unless a competent forum decides this dispute, the Debts Recovery Appellate Tribunal cannot consider the claim of the group of persons to represent the Petitioner-Company. The Debts Recovery Appellate Tribunal by the impugned order has rejected the Appeals preferred by the group of persons challenging the impugned orders of the Recovery Officer and the Debts Recovery Tribunal.

3. Shri. Nirman Sharma, learned counsel for the Respondent No.2 has contended that there were two Advocates representing the Petitioner-Company, one Advocate appearing for the Applicant in Notice of Motion seeking restoration of the Petition which had been dismissed by this Court and another Advocate representing the Petitioner in the Writ Petition. We are not inclined to go into which Advocate has rightly represented the Petitioner-Company, as we are of the considered view that the Petitioner has approbated and reprobated their stand before the Debts Recovery Appellate Tribunal as to there being a dispute

between the Directors representing the Petitioner-Company. It is settled law that a party cannot be allowed to approbate and reprobate their stand at the same time.

4. We are of the considered view that there is no merit in the present Petition as the Debts Recovery Appellate Tribunal has rightly held in the impugned order that the issue of which group represents the Petitioner Company is left open for an appropriate forum to determine.

5. We are of the considered view that this Court exercising jurisdiction under Article 226 of Constitution of India cannot go into these disputes, particularly since, they involve disputed questions of facts and we leave the determination of which to an appropriate forum.

6. We allow the Notice of Motion seeking restoration of this Petition and dismiss the Petition. There shall be no order as to costs.

[RIYAZ I. CHAGLA J.] **[B.R. GAVAI, J.]**