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

\+ W.P.(C) 748/2017

A.K. BHARDWAJ ..... Petitioner

Through: Mr.Sudhanshu Batra, Sr. Adv. with Mr.M.C. Kochhar & Mr.Mohit Kochhar, Advs.

versus

KOTAK MAHINDRA BANK LTD. & ORS ..... Respondents

Through: Mr.Sanjay Bhatt with Mr.Abhishek Anand, Advs. for R-1.
Mr.R.P. Agrawal with Ms.Priyadarshini Verma, Advs. for R-3.

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE ANIL KUMAR CHAWLA

O R D E R

% **23.02.2017**

CM No.3483/2017

Exemption allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) 748/2017 & CM No.3484/2017

1. In this writ petition, the petitioner a guarantor of a loan granted by the respondent Bank to Utility Engineers India Ltd., which has since gone into liquidation, has challenged an order dated 17.03.2016 passed by the Debt Recovery Tribunal in OA No.350/1999 and an

order dated 06.12.2016 passed by the Debt Recovery Appellate Tribunal in an appeal against the said order dated 17.03.2016 of the Debt Recovery Tribunal.

2. It appears that in 1987, the respondent bank granted a loan to the company which has since gone into liquidation. It is not in dispute that the loan was guaranteed by the petitioner.

3. On 19.08.1999, the bank filed an application in the Debt Recovery Tribunal under Section 19 of the Recovery of Debt due to Banks and Financial Institution Act, 1993, hereinafter referred to as the DRT Act being OA No.350 of 1999 for recovery of the loan.

4. On 08.05.2001, the petitioner along with other defendants filed an application being IA No.218/2001 for dismissal of the application of the respondent bank on the ground that the same was barred by limitation. The application being IA No.218/2001 was dismissed by the learned Tribunal.

5. The petitioner along with others filed an appeal being Miscellaneous Appeal No.81/2001 before the Debt Recovery Appellate Tribunal, hereinafter referred to as Appellate Tribunal, against the order dated 14.05.2001.

6. The appeal was dismissed in *limine* by an order dated 13.07.2001. A writ petition filed in this Court challenging the orders of dismissal was also rejected. In August 2001, the petitioner along with others filed another application being IA No.534/2001 in the Debt Recovery Tribunal pursuant to the liberty given by the learned Appellate Tribunal to seek clarification from the respondent bank as

to the date on which the cause of action arose. The said application being IA No.534/2001 was dismissed by an order dated 16.09.2002.

7. The petitioner and the other defendants impleaded in the application filed by the respondent bank under Section 19, filed their written statement. Written arguments were also filed. However, by an order dated 17.03.2016 impugned in this writ petition the learned Tribunal allowed the application filed by the respondent bank.

8. The petitioner filed an appeal therefrom before the Appellate Tribunal which was numbered Appeal No.313/2013. That appeal has been dismissed, not on merits, but on the ground of inability of the petitioner to deposit 25% of the amount adjudicated by the learned Tribunal as due and payable by the defendants to the respondent bank. The order of the Appellate Tribunal is also under challenge in these proceedings.

9. Section 21 of the DRT Act as amended with effect from 01.09.2016 provides as follows:-

> "21. **Deposit of amount of debt due, on filing appeal.—** Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal fifty per cent of the amount of debt so due from him as determined by the Tribunal under section 19:
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> Provided that the Appellate Tribunal may, for reasons to be recorded in writing, reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent of the amount of such debt so due(to be deposited

under this section).”

10. Under Section 21 of the DRT Act, an appeal is not to be entertained by the Appellate Tribunal unless the appellant has deposited with the Appellate Tribunal 50% of the amount due from him as determined by the Tribunal under Section 19.

11. The proviso to Section 21, however, enables the Appellate Tribunal to reduce the deposit by such amount which shall not be less than 25% of the amount of such debt so due, to be deposited under Section 21. The reduction has to be for reasons recorded in writing. The condition of pre-deposit for entertainment of an appeal being mandatory under Section 21 as amended, an appeal cannot be entertained unless the condition precedent of deposit is fulfilled.

12. In this case, the required deposit not having been made, the appeal was not entertained. The appellate order does not call for interference under Article 226 of the Constitution of India.

13. The scope of scrutiny under Article 226 of the Constitution of India is limited. It is not for this Court exercising jurisdiction under Article 226 of the Constitution of India to step into the shoes of the Appellate Authority and to exercise appellate powers just because an appeal has not been entertained on the ground of failure to make pre-deposit.

14. It would perhaps not be out of context to note that the right of appeal is not an inherent right. Right to appeal is provided by statute and if the right of appeal provided by statute is subject to pre-conditions, those pre-conditions have to be satisfied before an appeal

can be entertained.

15. This Court cannot sit in appeal over the impugned order of the Debt Recovery Tribunal. The question is whether the impugned order of the Debt Recovery Tribunal is totally perverse, based on no evidence at all or suffers from such patent illegality as to warrant interference under Article 226 of the Constitution of India.

16. On a perusal of the impugned order of the Debt Recovery Tribunal, it appears that the Tribunal proceeded to reject the plea of limitation taken by the petitioner, in view of the outcome of an application earlier filed by the petitioner for dismissal of the application on the ground of limitation. The application had been dismissed. An appeal therefrom had also been dismissed. The order of the Debt Recovery Tribunal and the Appellate order were challenged in this Court by filing a writ petition. The writ petition was also dismissed. The petitioner was only given liberty to seek clarification with regard to the date of accrual of the cause of action. The second application seeking clarification was also not pursued.

17. The Appellate Tribunal in effect and substance held that the application was not barred by limitation. It is true that the plaintiff in a suit is required to plead facts to show that the claim is within limitation. In the instant case, after the application under Section 19 which is in the nature of a plaint was filed, the petitioner made an application for dismissal of the suit on the ground of the same being barred by limitation. The petitioner did not succeed. Be it noted that the Court held “I do not find any force in the contention of the learned

counsel for the defendant Nos.2 to 5 that OA is barred by limitation and is liable to be dismissed". Thereafter limitation has been discussed, this Court held:-

> "In the foreign currency loan of US $ 617985 first agreement was executed on 30.04.1984. Subsequently, notes of amendment were executed in respect of this loan itself on 11.2.1985, 14.7.1986 and 10.07.1987 respectively. Supplemental head of agreement was executed on WP(C) 15318/2006 Page 3 of 6 11.2.1985 and thereafter notes of amendment were executed on 14.07.1986 and 10.07.1987. In respect of additional foreign currency loan also equitable mortgage was created on 9.5.1985. In respect of rupee term loan agreement was executed on 9.5.1985 and thereafter a note of amendment was also executed on 14.07.1987. Similarly, in respect of additional rupee term loan the agreement was executed on 14.7.1986. Equitable mortgage was created on 14.7.1986. Cash Subsidy loan agreement was executed on 18.8.1986. In short term loan agreement was executed on 27.10.1987. In this loan category equitable mortgage was created on 27.10.1987. It is apparent from the above that in each facility the last document executed was in the year 1986-87. All these facilities were to be repaid in installments. Equitable mortgage in respect of immoveable property was involved, thus, period of limitation would be 12 years. The proceedings remained pending before the BIFR/AAIFR from 29.5.1995 to 24.2.1997 i.e. for almost two years. This period has to be excluded in the period of limitation. If this period excluded the OA filed on 19.8.1999 would be well within the period of limitation. Besides this, recall notice was issued to the defendant no.1 on 5.4.1999, whereas guarantee agreements were invoked against the defendants no. 2 and 5 on 12.5.1999, therefore, period of limitation would also commence from the date the loan was recalled more so when

> immovable property was involved for this reason also OA is well within the period of limitation and cannot be dismissed merely on an application filed by the defendants no.2 to 5. This application is accordingly dismissed being devoid of merits (emphasis supplied)."

18. In our view, the impugned order of the learned Tribunal does not call for interference in proceedings under Article 226 of the Constitution of India.

19. The writ petition is therefore, dismissed. The pending application is also disposed of.

INDIRA BANERJEE, J

ANIL KUMAR CHAWLA, J

FEBRUARY 23, 2017/gm