

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

% Decided on: 10.10.2017

+ W.P.(C) 9091/2015 & CM No. 20581/2015

VINTRON INFORMATICS LIMITED Petitioner

Through: Mr. N. Kumar, Advocate.

versus

DENA BANK & ORS Respondents

**Through: Mr. Sudhir Nandrajog, Sr. Advocate
along with Mr. Suresh Dutt Dobhal
and Ms. Sonakshi Dhiman,
Advocates.**

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

HON'BLE MS. JUSTICE DEEPA SHARMA

1. The petitioner in the present petition, has challenged the order of the DRAT dated 24.08.2015 (hereinafter referred to as “the impugned order”).
2. The brief facts of the case are that the respondent Nos.1 and 2 (contesting respondents) had filed OA No.561/1991 against the respondent No.3/Company and the petitioner herein before the DRT-II. In that OA, besides the claim relating to the respondent No.3 and the petitioner, other claims against other persons, independent of the claims against the petitioner and the respondent No.3 were also filed by the respondent Nos.1 and 2. The respondents No.1 and 2 (contesting respondents) in the said OA

claimed that the Respondent No. 3/ M/s. Unicorp Informatics Limited had approached the Respondent No. 1/Dena Bank in the year 1996 for grant of various credit facilities which were extended to it on the terms and conditions as agreed upon between the bank, the borrower and the guarantor. Respondent No. 3/ M/s Unicorp Informatics Limited utilized those credit facilities under various heads. It presented four bills of exchange drawn by them and duly accepted by M/s Vintron Informatics Ltd. (the petitioner herein) for payment at par through Oriental Bank of Commerce Nehru Place, New Delhi (hereinafter referred to as “the OBC”),. Respondent No. 1/Dena Bank acceded to the request of the Respondent No.3/ M/s Unicorp and discounted the following four bills of exchange as reproduced by the DRT-II in its order dated 06.01.2014:-

S.No.	Bill of Exchange No.& Date	Amount	Due Date	Bill No.& Date
1	UIL/001 19.02.1998	Rs.11,45,700/-	20.05.1998	UCS/9802/3102 18.02.1998
2	UIL/002 19.02.1998	Rs.9,84,900/-	15.05.1998	UCS/9802/3099 18.02.1998
3	UIL/003 19.02.1998	Rs.9,04,500/-	10.05.1998	UCS/9802/3100 18.02.1998
4	UIL/004 19.02.1998	Rs.10,65,300/-	05.05.1998	UCS/9802/3101 18.02.1998

3. On maturity, the said bills were presented by the contesting respondents to the OBC, the banker of the petitioner/ M/s Vintron Informatics Limited for payment, but the same were returned unpaid by

OBC. The bills were then protested by S.K. Tyagi, the Notary Public on 14.11.1998 against petitioner. The petitioner, however, did not make any payment against those bills. The respondents No.1 and 2 sought directions in the OA to the petitioner to make the payment of the said bills totaling to a sum of Rs.53,17,505/- with interest @ 18% *per annum*. Vide order dated 06.01.2017, the DRT-II directed the petitioner herein to make the payment. Aggrieved by the said order, an appeal was filed by the petitioner before the DRAT. The DRAT vide impugned order dated 24.8.2015, dismissed the said appeal. Hence the present petition.

4. The petitioner has challenged the impugned order on the ground that it has caused grave miscarriage of justice and is also against the principles of natural justice; that there was not enough material on the record to prove that the bills of exchange were accepted by it or that the subsequent handwritten endorsement of the name of the Bank were made by the petitioner; that the petitioner was never informed about the alleged endorsements or the alleged discounting of the bills; that there was no material placed on record to show that the bills of exchange were ever presented for payment to OBC or thereafter, to the petitioner at any time; that since the petitioner had paid the amount under the said bills of exchange to the respondent No.3 as per a

settlement arrived at between them, the subject bills of exchange stood discharged.

5. It was further contended on behalf of the petitioner that the pleadings in the original appeal are devoid of material particulars since there is no mention of the date of presentation of the bills to the OBC or the name of person who had dealt with those bills and rejected them; that the bills of exchange do not bear any mark or stamp of the bank and therefore, it cannot be said that they were ever presented to the banker; that the contesting respondents have not produced any evidence to prove the presentation and rejection of the bills of exchange by OBC or discounting of the bills by them; that the evidence on record is not sufficient to prove that the said bills of exchange were presented or protested by Shri S.K. Tyagi, Notary Public and his alleged noting and protest is not in accordance with the provisions of Negotiable Instruments Act (hereinafter referred to as “the N.I. Act”) and does not fulfil the requirements of Section 99 and 102 of the N.I. Act; that there is no document to support any of the pleas of the respondents and reliance on the oral testimony by the Tribunal is, therefore, is improper and against the canons of justice; that undue credence has been given to the testimony of the Notary Public while the testimony of the petitioner’s

witnesses, who were not even cross-examined, has not been appreciated or considered by the Tribunal.

6. It is further canvassed by learned counsel for the petitioner that the DRAT has failed to consider the ratio of the judgment of the Division Bench of the High Court of Bombay in the case of ***Raj Kumar vs. DRAT*** (reported as *II (2004) BC 485*, decided on 17.06.2003), wherein it was held that there is no presumption in law that the bank documents and the bank officers are always truthful and the citizens or borrowers are always liars. It was contended that for the sake of arguments, even if it is assumed that the petitioner had accepted the said bills of exchanges drawn by the respondent no. 3/ M/s Unicorp Informatics Limited (the borrower) and they were to be presented for payment only through OBC, in that case, it was OBC who would have become the drawee in terms of Section 7 of the N.I. Act and since the bills of exchange were not accepted by the drawee, the same had become infructuous and unenforceable.

7. It was further submitted that prior to the receipt of the legal notice dated 26.10.1999, the petitioner was never informed by the respondent no. 1/Bank that the bills of exchange were in its custody and were discounted by them and there is no explanation for not presenting the bills of exchange to

OBC in the first instance or even thereafter on the alleged refusal by OBC to redeem it. Learned counsel urged that there was no privity of contract between the petitioner and the respondent no. 1/Bank since it was not a party to the transactions between the respondent no.1/Bank and the respondent no. 3/ borrower company. He stated that the DRAT has erred in holding that the petitioner has changed its stand. Based on the above pleas it was submitted that the impugned order is untenable and liable to be set aside.

8. Arguments were heard in the petition at the stage of admission, when the respondent Nos. 1 and 2 recorded their presence pursuant to a caveat petition filed by them.

9. Mr. Nandrajog, learned Senior Advocate appearing on behalf of respondent Nos.1 and 2 argued that the grounds taken by the petitioner to assail the impugned order are baseless and it has been changing its stance all the time. It was submitted that before the DRT-II, in the written statement, the main contention of the petitioner was that the bills of exchange were not accepted by them, but were accepted by a different entity and that the bills were forged and fabricated by the respondent no. 1/Bank and the name of the Bank was inserted without any authority, consent, knowledge, authentication, endorsement, or validation and that the petitioner had never

accepted these bills of exchange and had never given its consent to pay through the OBC. However, on going through the evidence led by the parties before the DRT-II, the pleas taken by the petitioner were rejected. In the written statement filed in response to the OA before the DRT-II, the petitioner did not dispute the fact that the bills of exchange were discounted by the respondents and that on presentation of the said bills to the OBC, the same were returned unpaid. It is submitted that in the challenge laid to the order of the DRT-II before the DRAT, the petitioner changed its stand and took a plea that the bills were in fact never presented to the OBC, prior to the petitioner's settling its liability with the respondent No.2/borrower company. It is further argued that the petitioner's plea that the pleadings in the OA were vague and certain facts were not disclosed, is also contrary to the record and the respondents have categorically pleaded all the relevant facts in the OA. Learned counsel submitted that the petitioner has not taken the plea of the vagueness or suppression or non-disclosure of any facts by the contesting respondents in the written statement filed before the DRT and this aspect has been considered by the learned DRAT in the impugned order and rejected.

10. Learned counsel for the respondent No.2 urged that the jurisdiction of the Court under Article 226 is very limited and the court is not expected to act as an Appellate Court, nor can the court re-appreciate and re-evaluate the evidence led before the Tribunal and substitute those findings by giving its own findings. Learned counsel cited the case of ***State of U.P. v. Lakshmi Sugar & Oil Mills Ltd.*** (reported as (2013) 10 SCC 509), more particularly para 20 thereof where the Supreme Court held that *“these concurrent findings of fact, in our opinion, could not have been reversed by the High Court in its writ jurisdiction. The High Court obviously failed to appreciate that it was not sitting in an appeal over the findings recorded by the authorities below. It could not re-appraise the material and hold that the land was held or occupied for cultivation and substitute its own finding for that of authorities. Inasmuch as the High Court did so it committed an error.”*

11. It was argued that there are concurrent findings of facts returned by the DRT-II and the DRAT to the effect that the bills of exchanges were duly accepted by the petitioner, which were payable through OBC and that the respondents had discounted those bills of exchange and on presentation on maturity, they had remained unpaid by the OBC, and that the said bills of

exchanges were protested by Mr S.K. Tyagi, Notary Public on 14.11.1998 when the petitioner company had failed to make the payment against those bills of exchanges on presentation. It was further submitted that there is a concurrent finding of fact that against those bills of exchanges, a total amount of Rs.53,17,505/- is payable along with interest @ 18% per annum w.e.f. 24.12.1999. It was thus submitted that the present petition has no force and is liable to be dismissed.

12. We have heard the arguments advanced by learned counsels for the parties and given our thoughtful consideration to the rival contentions in the light of the documents placed on record.

13. The petitioner has invoked the jurisdiction of this Court under Article 226 and 227 of the Constitution, while challenging the impugned order. The scope of the jurisdiction exercised by this Court under these Articles, is of a limited nature. It is not an appellate jurisdiction and the Court is precluded from re-appreciating the evidence adduced before the Tribunal in the garb of examining the legality of the impugned judgment. The Supreme Court in the case of ***Sub-Divisional Officer, Konch v. Maharaj Singh***, reported as (2003) 9 SCC 191, had clearly held that “*jurisdiction of the High Court*

under Article 226 is a supervisory one and not appellate one, and as such the Court would not be justified in re-appreciating the evidence....”.

14. In the case of **Transmission Corporation of A.P. vs. Ch. Prabhakar & Ors**, reported as (2004) 5 SCC 551, the Supreme Court had held that “*the High Court cannot interfere with the findings of fact based on evidence and substitute its own independent findings. The only enquiry which the High Court can make under Article 226 is whether there was any evidence at all, which if believed, would sustain the charge before the Special Court or the findings arrived at by it or whether the Special Court acted upon irrelevant considerations neglecting to take into account the relevant factors or whether the decision is so unreasonable that no reasonable person would have made such a decision. The proceedings under Article 226 are not a substitute for an appeal.*”

15. Therefore, the jurisdiction of this Court under Article 226 and 227 of Constitution of India is limited to examining if the findings challenged before it are at all based on some evidence before the Court below and where there is some evidence which the Authority had relied upon while arriving at a conclusion, it must refrain from finding fault with such a conclusion unless and until the Authority has relied on some extraneous

circumstances which do not have any bearing on the case. Interference in the findings of an Authority below is called for only when it is a case of no evidence and the findings are not based on any evidence on record.

16. In the present case, as is clear from the facts proven before the DRT and the DRAT, the respondent No.3/borrower company was granted the credit facilities. The petitioner has not disputed the fact that it had business transactions with the respondent No.3 since the year 1994, which was much prior to the date of filing of OA, in the year 1999. The fact that the petitioner and the respondent No.3 were having a long business association and during that period, had entered into several transactions of sale and purchase, is also an undisputed fact. Issuance of four bills of exchange by the respondent No.3 is also not in dispute. These four bills of exchanges are of the value of Rs.11,45,700/-, Rs.9,84,900/-, Rs.9,04,500/- and Rs.10,65,300/-, aggregating to a sum of Rs.41,00,400/-. These bills were due in the month of 1998. The petitioner has also taken the plea that it had settled the account mutually with the respondent No.3, including the amounts covered under the bills of exchange and presented the details of the payments that it had made by way of DD/acceptance of debit notes before the DRAT. These pay orders are of the dates 09.11.1998, 17.11.1998, 03.12.1998 and 01.05.1999. As per

the admission made by the petitioner itself, till 09.11.1998, when payment of Rs.9,84,900/- was allegedly made by it, the payment against these bills of exchange were still outstanding. On the one hand, the petitioner had taken the plea before the DRAT that it had already made the payment against these bills of exchange, on the other hand, it has disputed the genuineness of these bills of exchange and claimed that they were never accepted by it, but by some different entity. It is, therefore, clear that both the pleas taken by the petitioner are self-contradictory and self-defeating. There is also no dispute to the fact that the said bills of exchanges were accepted by P.K. Mittal, Director of the petitioner, on behalf of the petitioner. Despite the fact that the petitioner took a plea that the bills of exchange were forged and fabricated and never accepted by them but by a different entity, it did not examine its Director and the acceptor of the bills of exchange, Shri P.K. Mittal. In view of the failure on the part of the petitioner to examine the alleged acceptor of the bill, who happens to be its own Director, all the pleas regarding non-genuineness/fabrication of the bills of exchange, fall to the ground. The findings returned by the DRT and the DRAT, rejecting these contentions of the petitioner, cannot be faulted on this count.

17. The petitioner did not raise any grievance before the DRT-II that the bills of exchange were never presented for payment to the OBC. Therefore, this fact remains uncontradicted. Thereafter, the bills of exchange were presented by S.K. Tyagi, the Notary Public to the petitioner on 23.10.1998 at its premises, where the acceptor of the bill, Shri P.K. Mittal, Director of the petitioner Company was not found present. The persons who were present, i.e., Shri Anil Paishena and Rajan Garg, General Manger (Finance) had sought three weeks' time for making payment by 14.11.1998. Thereafter, Shri S.K. Tyagi had protested the bills of exchange against the petitioner. Shri S.K. Tyagi, Notary Public and his clerk Shri Mahender Kumar were examined before the DRT-II and the Tribunal gave credence to the testimony of the Notary Public, he being an independent witness.

18. The challenge to the reliance on the testimony of Shri S.K. Tyagi, Notary Public by the DRT-II was made by the petitioner before DRAT on several grounds, including the ground that undue credence has been given to his testimony while discarding the testimony of the petitioner's witnesses. The petitioner had also relied upon the findings in the case of **Raj Kumar** (*supra*). We can do no better than to reproduce below, the findings returned by the DRAT on the above aspect:-

“I have considered the hotly-contested submissions made before me by the learned Senior Counsel appearing for the parties. The primary plea by the counsel for the appellant is that the evidence led by the respondent was not trust-worthy and the oral account in the absence of any support from the documents cannot be relied upon to bring home the liability of the appellant. The counsel for the appellant has made very laborious efforts to attack the weightage given to the version given by Mr. S.K. Tyagi who was found to be an independent witness by the Tribunal below and hence preferred over interested account given by the witnesses produced by the appellant.

The Tribunal below has noted that the Notary Public is an independent person who had come forward to state that he had met Mr. Rajan Garg when he (Rajan Garg) had sought time up to 14.11.1998 to make payment. The counsel for the appellant would try to find holes in the version of Mr. S.K. Tyagi simply on the ground that he had not made any endorsement on the bills of exchange. Simply on this basis, it is not possible to urge that Mr. Tyagi, who is a Notary Public, had come forward to give false deposition. No reasons or motive can be attributed to Mr. Tyagi to give this evidence unless he had so acted as notary in this case. It is not that he had simply been made to stand up to state so for somebody to urge that he has been created as a witness to falsely depose. It is the requirement of law which the bank had adopted to achieve through Notary Public. For noting and protesting in terms of Sections 99 and 100, of the Negotiable instruments Act, the assistance of Notary Public is envisaged. Section 99 of the Negotiable Instruments Act provides that when a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each. As per Section 100 of the said Act, when a promissory note or bill of exchange has been dishonoured

by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest. In view of these provisions of law, services of Mr. S.K. Tyagi were utilized. He cannot be attributed with any motive to come forward and depose falsely. He certainly can be called an independent witness and was produced by the bank to ensure compliance of legal provisions. The Tribunal below, by placing reliance on the version of Mr. S.K. Tyagi and preferring it over the deposition of Mr. Rajan Garg, who can be termed as interested witness, is certainly seen justified in adopting this approach. There are no golden rules for appraising human testimony. In assessing its worth, Judges can err honestly just as witnesses can make honestly mistaken statements under oath. The extraction of what should constitute the credible foundation of judicially sound judgment is an art which nothing except sound common sense and prudence combined with experience can teach. A sound judgment must disclose a fair attempt to separate the grain from the chaff. The question of credibility of a witness has primarily to be decided by referring to his evidence and finding out as to how the witness has fared. In considering the question as to whether evidence given by the witness should be accepted or not, the court has to examine if the witness is an interested witness and to enquire if the story deposed by him is probable. It would be unsafe to discard the evidence of witness which appears otherwise to be reasonable and probable merely because some suggestions were made to him.

It cannot be a matter of dispute that Mr. Rajan Garg cannot be termed as independent witness. It is true that there is no hard and fast rule that evidence of partisan witness cannot be acted upon but the Court has to be careful in weighing such evidence. It puts the court on guard to scrutinize their evidence with more than ordinary care. As already noticed, the version given by Mr. S.K. Tyagi finds support from

other evidence on record like that of Mr. Y.D. Mathur. This witness may be working with the bank but on that ground he cannot be attributed with any motive to depose falsely.

Much insistence by the counsel for the appellant to challenge the oral evidence in the absence of documentary proof may not have much substance. Evidence means and includes all statements which the Court permits and requires to be made by a witness and such statements are called oral evidence. All documents produced for inspection of the Court are also evidence and are called documentary evidence. The parties are entitled to prove any fact on the support of oral or documentary evidence. One form of evidence is not superior over the others. There is no requirement of law that oral account has to be supported by documentary evidence on record. Thus, the plea by the counsel to challenge the oral evidence on this ground cannot have any significance.

Otherwise, it can be noticed that the oral account given by Mr. S.K. Tyagi is well-supported by documentary evidence as well. The protest certificate is on record. Mere fact that Mr. Tyagi has named a person who concededly was working with the appellant whom he had gone and met would show that his account is not a made-up story but is well supported by this circumstance as well. If Mr. Tyagi had any intention to depose something which is not factually correct, he should have easily shown the presence of Mr. P.K. Mittal at the time of his visit to the office of the appellant. There is nothing to doubt the version given by the witnesses produced by the respondent bank. The Tribunal below cannot be faulted for placing reliance on the evidence produced by the bank and not believing the version given by the witnesses produced by the appellant.”

19. The discussion above clearly shows that the plea taken by the petitioner with respect to the testimony of the Notary Public has been discussed at length by the DRAT and findings were given after appreciating the evidence led by the parties before the DRT. We are inclined to concur with the said findings. The Notary Public is no doubt, an independent witness acting under the authority of law and discharging the duties assigned to him by virtue of the N.I. Act. In the absence of any *mala fides* or bias, being proved against him, his testimony has more credence over any other witness produced before the Tribunal. We therefore find no illegality on the part of the DRT or the DRAT in relying on the evidence of Shri S.L. Tyagi, the Notary Public whose testimony is also supported by the documents which he had maintained during the course of his work and the attending circumstances.

20. The next argument advanced by the learned counsel for the petitioner that the averments in the OA are vague and do not disclose details like the date of presentation of the bills of exchange, the date of discount, the name of the person in the OBC who had returned the bills of exchange unpaid, etc., doesn't have any force. The learned DRAT has recorded in the

impugned judgment that all the necessary facts were pleaded by the respondents and observed as under:-

“Mr A.K. Matta, the Senior Counsel appearing for the respondent, however, would counter the line of submissions pursued by the counsel for the appellant. As per counsel, the averments made in the O.A. were clear and specific. He would refer to the relevant part of the O.A. and the reply filed by the present appellant. In this regard, the counsel has made reference to para 20 of the O.A. where the respondent bank has clearly averred that the borrower company had utilized the credit facilities and that it had presented to the respondent bank four bills of exchange drawn by them and duly accepted by the appellant for payment at par through Oriental Bank of Commerce, New Delhi. The respondent bank acceding to the request of the borrower had discounted these bills. Thereafter, the presentation of bills for payment to Oriental Bank of Commerce and the action by Notary Public Mr. S.K. Tyagi is clearly averred and stated in paras 21 and 22 of the O.A. The counsel for the respondent bank would then refer to the reply filed by the appellant where it had denied acceptance of the alleged four bills of exchange for payment at par through Oriental Bank of Commerce. The appellant had also stated in the reply that they had already made payment to the borrower company. The counsel for the respondent would highlight the date of the payment made by the appellant which are 9.11.1998, 17.11.1998, 3.12.1998 and 1.5.1999. The counsel would refer to the date of presenting these bills for payment to Oriental Bank of Commerce which was prior to 23.10.1998, as on this date Mr. S.K. Tyagi had gone to the premises of the appellant at Okhla Industrial Area once Oriental Bank of Commerce had returned the bills unpaid. Counsel would thus urge that the person present who had met Mr. S.K. Tyagi had promised to make payment up to 14.11.1998 and in this background the action of the appellant in making payment to the borrower

company on the dates as noticed would show the game plan on the part of the appellant and the borrower company.”

21. The contention of the petitioner that since the bills of exchange were required to be presented through OBC, it is OBC which is the drawee and as the said bills were not presented through OBC, the petitioner cannot be held liable, have been dealt by the DRAT and negated as under:-

“To contest the pleas raised by the counsel for the appellant that the respondent bank was required to present these bills to Oriental Bank of Commerce in terms of the endorsement on the bills of exchange, the counsel would refer to the definition of ‘drawer’, ‘acceptor’, ‘payee’ etc. given in Section 7 of the Negotiable Instruments Act. Makers of bills of exchange or a cheque is called the drawer and the person thereby directed to pay is drawee. Acceptor is the one who, after drawee of the bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf. Payee is the person named in the instrument to whom or to whose orders money by the instrument is directed to be paid. On this basis, the counsel would urge that the borrower company (respondent No. 3) was the drawer of these bills of exchange and the appellant was drawee. That being the position, the submission advanced by the counsel for the appellant that the bills were required to be presented through Oriental Bank of Commerce which is not proved to have been done, the appellant cannot be held liable, cannot be accepted. The appellant was the acceptor, it was drawee and thus, according to the counsel for the respondent, liable. For this reason only, the plea of non-joinder of Oriental Bank of Commerce as necessary party has been rejected by the Tribunal below.

22. We find no infirmity in the said findings returned by the DRAT for the reason that the bills of exchange were drawn by the respondent No.3 in favour of the petitioner and were accepted by the petitioner and therefore, the petitioner is the acceptor and the drawee under Section 7 of N.I. Act. The argument of the learned counsel for the petitioner that since the accounts between petitioner and respondents No.3 stood settled, no claim can be raised against the petitioner, is of no consequence. It is noteworthy that the OA was filed in the year 2014 and the DRT-II had passed an order on 06.01.2014. The petitioner alleges that it had settled its accounts with the respondent No.3 between 09.11.1998 to 01.05.1999. Despite the said version, no such plea was taken by the petitioner in its written statement filed before the DRT-II, in response to the OA of the contesting respondents. Even otherwise, the alleged settlement with the respondent No.3 was much after the date when the bills of exchange were presented to the petitioner by Shri S.K. Tyagi, Notary Public on 23.10.1998 and notice of protest was given. It is apparent from the record that the petitioner had been taking contrary stands before the DRT-II and the DRAT and this fact has been noted in the impugned order, the relevant paragraph whereof is reproduced as under:-

“The different stands of the appellant in its written statement and in the appeal also cannot be ignored. The appellant had even denied the acceptance of bills of exchange, by urging that the same was signed by some different entity. By giving a go-by to this stand, the appellant certainly is seen blowing hot and cold at the same time. If this was the stand taken before the Tribunal below, then obviously the other plea that these bills of exchange had to be presented to the bank or to the appellant would show the change in stance. Changing stand and adopting different pleas can itself be fatal and can be enough to cast doubt on the stand of the appellant apart from other grounds as urged.”

23. The argument of the petitioner that the judgment of the DRAT is based on surmises and conjectures is devoid of substance. The DRAT has noted the pleas of the petitioner, as taken before the DRT-II in its written statement and juxtaposed them with the pleas taken in the appeal. The view of the DRAT is therefore not based on surmises and conjectures, but is simply a reproduction of the different and shifting stands taken by the petitioner before different fora.

24. In view of the above facts and circumstances, we are of the opinion that the impugned judgment is based on cogent evidence brought on record. Learned counsel for the petitioner has failed to point out any illegality, infirmity or perversity in the impugned judgment for interference.

25. Accordingly, the appeal is dismissed along with the pending application with no order as to costs.

**DEEPA SHARMA
(JUDGE)**

**HIMA KOHLI
(JUDGE)**

OCTOBER 10, 2017/BG