IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14283 OF 2017

Ruchi Amrish Lalwani (Jain)
Age : 39 years, Occu. : Business,
R/o 43/2 Karve Road,
Nal Stop, Pune 411 004. .. Petitioner

Versus

1. State Bank of India
a body corporate constituted under provisions of State Bank of India Act, Having its Corporate Centre at State Bank Bhavan, Madam Cama Road, Nariman Point, Mumbai - 400 021 and Branch amongst others at MIDC Area, Ajantha Road, Jalgaon and at Stressed Assets Management Branch - II, Ground Floor, Raheja Chambers, Free Press Journal Street, Nariman Point, Mumbai
through Its Chief Manager.

2. M/s Rajmal Lakhichand & Sons
Partnership Firm, having its office at 169, Johari Bazar, Jalgaon through its Partners,

   (i) Manish Ishvarlal Jain
   (ii) Pushpadevi Ishvarlal Lalwani
   (iii) Neetika M. Lalwani

3. Manish Ishvarlal Lalwani (Jain)
Age : Adult, Occu. : Business,
R/o 169, Johari Bazar,

Jalgaon 425 001.

4. Pushpadevi Ishwarlal Lalwani (Jain)
Age : Adult, Occu. : Business,
R/o 169, Johari Bazar,
Jalgaon 425 001.

5. Neetika M. Lalwani (Jain),
Age : Adult, Occu. : Business,
R/o 169, Johari Bazar,
Jalgaon 425 001.

6. M/s Manvi Holdings Pvt. Ltd.
A company incorporated under
the Indian Companies Act, 1956,
and having its registered
address at 169, Johari Bazar,
Jalgaon 425 001

7. M/s Rajmal Lakhichand
a Partnership Firm having its
Address at 169, Johari Bazar,
Jalgaon - 425 001
through its Partners,

(i) Ishvarlal Shankarlal Jain
(ii) Manish Ishwarlal Jain
(iii) Neetika Manish Jain .. Respondents

Shri P. M. Shah, Senior Advocate i/by Shri S. R. Vakil, Advocate for the Petitioner.
Shri S. V. Adwant, Advocate a/w Shri Gajendra A. Rajput and Ms. Neha B. Kamble, Advocates for the Respondent No. 1.
The Respondent Nos. 2 to 7 are formal parties.

CORAM : S. V. GANGAPURWALA AND
A. M. DHAVALE, JJ.

RESERVED FOR JUDGMENT ON : 13.02.2018

JUDGMENT PRONOUNCED ON : 23.02.2018

JUDGMENT (*Per S. V. Gangapurwala, J.*) :-

. Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for respective parties at the stage of admission.

2. The present respondent No. 1 has filed original application for recovery of its loan amount. The present petitioner is defendant No. 7 in the original application filed by the respondent No. 1/bank and is arrayed as a guarantor. The original application is filed on 18.04.2016. On 28.06.2016, the petitioner appeared through her advocate. In July 2016, the petitioner filed an appeal bearing Appeal No. 226 of 2016 before the Debt Recovery Appellate Tribunal, Mumbai (for short "D.R.A.T.") challenging ex-parte ad-interim order passed against her. On 18.10.2016 D.R.T. - I, Mumbai (Incharge) passed a conditional order directing the defendants to file the written statement on or before 09.12.2016 else their right to file written statement would stand forfeited. On 09.12.2016 the right of the defendant No. 7 to file the written statement was forfeited. On 14.02.2017, the petitioner/defendant No. 7 filed Interim Application No. 37 of 2017 for setting aside the order of no

written statement. On 14.06.2017, the petitioner/defendant No. 7 filed Interim Application No. 676 of 2017 to take the written statement on record. The Presiding Officer, Debt Recovery Tribunal, Aurangabad on 15.06.2017 rejected the Interim Application No. 37 of 2017 viz application for setting aside no written statement order. Thereafter on 15.06.2017 even Interim Application No. 676 of 2017 is rejected. The petitioner filed an appeal before the Debt Recovery Appellate Tribunal against orders rejecting application for setting aside no written statement order. The D.R.A.T. Mumbai dismissed the appeal filed by the petitioner for setting aside no written statement order and to accept the written statement. Aggrieved thereby present petition.

3. Mr. Shah, the learned senior advocate for the petitioner submits that, after the petitioner had appeared through her advocate, the petitioner after getting certified copy of the order below Exhibit 05 filed an appeal before the D.R.A.T. Mumbai challenging the order passed below Exhibit 05. The Presiding Officer, D.R.T. Aurangabad was not available. The matter was taken up to the Presiding Officer, D.R.T.-I Mumbai, who was a incharge Presiding Officer for D.R.T. Aurangabad on 18.10.2016. On the said date the conditional order was passed directing the petitioner to file written statement on or before 09.12.2016. The petitioner was not aware of the said order. So also the subsequent order dated 09.12.2016 forfeiting right of the

petitioner to file written statement. On getting knowledge of these orders, the petitioner filed an application for setting aside no written statement order on 14.04.2017 and on 14.06.2017 the petitioner also filed written statement with a prayer to take the written statement on record. Said applications are rejected. Even the appeal filed is dismissed. The learned senior advocate submits that, the Courts below have taken a hyper technical view. The written statement was already filed on 14.06.2017. The same ought to have been taken on record and on the said date, the matter had not proceeded further. Even appeal filed against the ex-parte ad-interim order was pending. The petitioner had no knowledge of the conditional order directing the petitioner to file written statement was passed. The learned senior advocate further submits that, the petitioner is not a borrower and is sued in the capacity of a guarantor. Even while allowing the appeal filed against the ex-parte ad-interim order, the Appellate Tribunal has prima facie observed that, the petitioner is not a guarantor and the bank itself has issued a letter in the year 2014 to the effect that, even bank agrees that the petitioner is not a guarantor. The petitioner has a good case to defend and the opportunity needs to be given to the petitioner to defend the matter. It is not a case of deliberate act on the part of the petitioner in protracting the matter. Mr. Shah, the learned senior advocate relies on the judgment of the Apex Court in a case of **Kailash Vs. Nanhku and others** reported in ***(2005) 4 SCC 480***. The learned senior advocate also relies on the judgment of the Apex Court in a case of **M/s Surendra Trading Company Vs. M/s Juggilal Kamlapath Jute Mills Co. Ltd. and others** reported in ***2017 SCC Online SC 1208*** and submits that, the provision in a statute, which is procedural in the nature although employs the word shall may not be held mandatory. The object of prescribing procedure is to advance the cause of justice.

4. Mr. Adwant, the learned advocate for the respondent No. 1/bank submits that, the defendants are from one family and they are deliberately protracting the matter. No latitude can be shown to such litigant. The learned counsel further submits that, Sub Section 5 of Sec. 19 of the Recovery of Debts and Bankruptcy Act, 1993 (for short "Act of 1993") provides a definite period of thirty days from the date of service of summons to present written statement of defence and if the defendant fails to file written statement within thirty days, the Presiding Officer in exceptional cases for the reasons to be recorded in writing can extend the said period by such further period not exceeding fifteen days to file the written statement of his defence. The learned advocate further submits that, Sub Rule 3 of Rule 12 of the Debt Recovery Tribunal (Procedure) Rules, 1993 also states that, if the defendant fails to file written statement within thirty days, the Presiding Officer may in exceptional cases for reasons to be recorded in writing extend the period by such further period not exceeding fifteen days. The learned advocate submits

that, misplaced sympathy cannot be shown to the party. It will frustrate the object of speedy recovery. The Act of 1993 is enacted for expeditious adjudication of recovery of debt due to banks and financial institutions. The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from. The learned advocate to buttress his submissions relies on the judgment of the Apex Court in a case of **Dr. J. J. Merchant and others Vs. Shrinath Chaturvedi** reported in ***(2002) 67 SCC 635*** and in a case of **Raghunath Rai Bareja and another Vs. Punjab National Bank and others** reported in ***(2007) 2 SCC 230***. The learned advocate also relied on the judgment of the Apex Court in a case of **Authorized Officer, State Bank of Travancore and another Vs. Mathew K. C.** decided on ***30.01.2018*** in *Civil Appeal No. 1281 of 2018*. The learned advocate also relies on the judgment of the Apex Court in a case of **Standard Chartered Bank Vs. Dharmindra Bhohi and others** reported in ***(2013) 15 SCC 341***.

05. We have considered the submissions canvassed by the learned counsel for respective parties. It appears that, as per the case of the respondent No. 1/bank, the petitioner is sued in the capacity of a guarantor and not as a principal borrower. Today by a separate order in the writ petitions filed by the respondent No. 1 bank against the present petitioner, we have allowed writ petitions and directed hearing on application Exhibit 05 on its

own merits. The matter would be relegated at the stage of hearing on Exhibit 05.

06. There cannot be any debate with the proposition that the Act of 1993 is enacted with a prime object of establishment of Tribunals for expeditious adjudication of recovery of debts due to banks and financial institutions.

07. From the dates narrated above, it is clear that, the petitioner appeared in the original application filed by the bank on 28.06.2016. Thereafter, it appears that, the post of Presiding Officer, Debt Recovery Tribunal, Aurangabad is vacant. The matter was taken up before the Incharge D.R.T. - I, Mumbai by some another defendant and a conditional order came to be passed on 18.10.2016 directing the present petitioner to file written statement on or before 09.12.2016, else the right to file written statement would stand forfeited. On 09.12.2016 the right of the defendant to file written statement was forfeited. It appears that, conditional order directing the petitioner to file written statement and subsequent order forfeiting right of the petitioner to file written statement is passed by the Incharge Presiding Officer, D.R.T.-I, Mumbai. It is not clear from the record as to whether the petitioner was intimated of the file being taken to Mumbai before the Incharge D.R.T.-I. The matter was not proceeded at D.R.T. Aurangabad, as the post of Presiding Officer, D.R.T. Aurangabad was vacant.

08. We are told that, still the post of Presiding Officer, D.R.T. Aurangabad is not filled in. It is also matter of record that, ex-parte ad-interim order was passed against the present petitioner below Exhibit 05 and the petitioner had challenged said order before the Debt Recovery Appellate Tribunal, Mumbai by filing appeals and the appeals were subjudice and pending. The appeals filed by the petitioner against ex-parte ad-interim order below Exhibit 05 were allowed on 20.08.2017 and before the said date i. e. on 14.06.2017, the petitioner had filed her written statement and made an application to take written statement on record. It would be seen that, the time schedule provided under Sub Section 5 of Sec. 19 of the Act of 1993 was not adhered to either by the Presiding Officer or the parties. Even conditional order was passed on 18.10.2016. None of the parties including respondent/bank took objection to the said order on the ground Presiding Officer, D.R.T.-I, Mumbai could not have passed the order extending time to file written statement. All the parties have submitted to the order passed by the Presiding Officer, D.R.T.-I, Mumbai on 18.10.2016 directing the defendants to file written statement on or before 09.12.2016.

09. In normal course, time stipulated in the statute has to be adhered to. However, considering the facts of the present case that, the Presiding Officer, D.R.T. Aurangabad was not available and the post is still vacant and the matter was not proceeded

with and the conditional order was passed at Mumbai by the Incharge D.R.T.-I in absence of the petitioner, so also considering the fact that the petitioner is not sued as a borrower, but is sued in the capacity of guarantor and also considering the fact that, today by separate order, we have allowed writ petitions filed by the bank and relegated the present petitioner and the bank before the Presiding Officer, D. R. T. Aurangabad to argue the application for interim orders (Exhibit 05), we are inclined to direct acceptance of written statement filed by the petitioner on 14.06.2017, however, for the delay that is caused, the petitioner also deserves to be mulct with exemplary cost.

10. In the result, we pass following order.

11. The impugned order forfeiting the right of the petitioner and the order rejecting the application filed by the petitioner for taking written statement on record are quashed and set aside and the written statement filed by the petitioner be taken on record on condition that, the petitioner pays cost of Rs. 5,00,000/- (Rs. Five Lacs only) to the respondent No. 1/bank within a period of two weeks from today. The cost shall be paid directly to the bank or may be deposited in Debt Recovery Tribunal, Aurangabad. In case cost is deposited in D.R.T. Aurangabad, the respondent No. 1/bank is entitled to withdraw the same. In case cost is not deposited or paid by the petitioner within the period of two weeks, the right of the petitioner to file the written

statement shall stand forfeited. The petitioner shall not seek any adjournment in further progress of the proceeding and shall co-operate in expeditious disposal of the proceeding.

Rule is made absolute in above terms. No costs.

Sd/-	**Sd/-**
[A. M. DHAVALE, J.]	**[S. V. GANGAPURWALA, J.]**

12. At this stage, Mr. Adwant, the learned counsel for the respondent/bank seeks stay to the judgment and order, so as to assail the judgment before the Apex Court.

13. In view of the request made, the present judgment and order is stayed for a period of three (03) weeks from today.

Sd/-	**Sd/-**
[A. M. DHAVALE, J.]	**[S. V. GANGAPURWALA, J.]**

bsb/Feb. 18