

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2591 OF 2018

HDFC Bank Ltd.,
A Company incorporated under the
provisions of the Companies Act, 1956
having its registered office at
HDFC Bank House, Senapati Bapat
Marg, Lower Parel, Mumbai-400 013.
and a Branch office inter-alia,
amongst other places at 1182/13,
Shivajinagar, Fergusson College Road,
Pune-411 005 acting through its
Assistant Vice President,
Mr. Molahalli Dilip Kumar duly
authorized vide Board
Resolution dated 17th January, 2014 ...Petitioner

: V E R S U S :

1. Vasudeo Shripad Belvalkar (deceased),
through His Legal heir
Vidyanand Vasudeo Belvalkar

1A. Vidyanand Vasudeo Belvalkar
Residing at 810B, Shivajinagar,
Law College Road, Pune-411 004. Respondents

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Mr. Virag Tulzapurkar, Senior Counsel a/w. Mr. Sameer
Pandit, Mr. Sarrah Khambati I/by. Wadia Ghandy &
Co., *Advocate for the petitioner.*

Mr. Ratan Kumar Bhimrao Huded, *Advocate for respondents no.1 and 2.*

Coram : K.K. Tated, &

Sandeep K. Shinde, JJ.

Closed for Judgment : 21st September, 2018.

Judgment Pronounced on : 19th October, 2018.

JUDGMENT (PER : SANDEEP K. SHINDE, J)

1. The question which arises for consideration is whether in view of the facts of the case, claim for refund of security deposit (given against the licensed premises) by the Bank in the proceedings before the Debt Recovery Tribunal under the provisions of the Recovery of the Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the 'said Act' for short), can be said to be a "debt" due and recoverable by the Bank from the respondents, under Section 19 of the said Act.

2. **Facts of the case :**

. The petitioner a Banking Company, a Private Sector Bank had filed Original Application No. 51 of 2011 against the respondents seeking issuance of Recovery Certificate under Section 19(4) of the said Act, on account of default on the part of the respondent in repayment of security deposit in the sum of Rs.37,67,731/- paid from time to time as per the terms of deposit agreement.

3. It is the petitioner's case that, respondents are the owners of office premises on the second floor of a building known as "Netrali Apartments" at Pune ('said premises" for short). The petitioners and the respondents entered into a Leave and License Agreement dated 27th November, 1998 whereby the respondents granted unto the petitioners, a license to use and occupy the office premises in the said building. Besides, the parties entered into a deposit agreement

in the month of December, 1998. The respondents thus, have received Rs.37,67,731/- as and by way of refundable security deposit against the license granted unto the petitioners to occupy the said premises.

4. The Leave and License Agreement expired on 30th November, 2008 by efflux of time. That, vide letter dated 7th October 2009, petitioner demanded refund of the security deposit and requested the respondents to take possession of the licensed premises in terms of Leave and License Agreement and deposit Agreement dated 27th November, 1998. The respondents refused to refund security deposit as well, refused to take back possession of the licensed premises.

5. It is the petitioner's case that, they have removed their belongings from the licensed premises and expressed their readiness and willingness to handover possession of the premises to the

respondents against the refund of entire security deposit.

6. That since the respondents refused to return the security deposit, they were constrained to file Original Application No. 51 of 2011 before the DRT, Pune claiming that amount of security deposit constituted a debt over Rs.10,00,000/- due to the Banks during the course of business activities undertaken by the Bank.

7. The respondent (owner) filed an application on 15th April, 2011 challenging the jurisdiction of the DRT to adjudicate upon the disputes between the parties on the ground that the amount of security deposit due and payable to the Bank did not fall within the purview of the term “debt” as defined under Section 2(g) of the said Act.

8. The Hon'ble Tribunal vide order dated 17th

December, 2013 allowed the application challenging its jurisdiction to adjudicate upon the disputes between the parties and directed return of Original Application to the petitioner for its presentation before the judicial forum.

9. The petitioner, being aggrieved and prejudiced by the order dated 17th December, 2014 has preferred Misc. Appeal No. 19 of 2011 before the Debt Recovery Appellate Tribunal (DRAT) under Section 20(1) of the said Act.

10. The Learned Chairperson vide order dated 2nd November, 2017 dismissed the Appeal and as such upheld the order dated 17th December, 2013 passed by the DRT.

11. Aggrieved by the orders passed by the DRT and by the DRAT as aforesaid, this petition is preferred under Articles 226 and 227 of the Constitution of

India.

12. Thus, the following questions, are to be answered :

*(i) whether refund of security amount (against licensed premises) claimed by the Bank in the proceedings before the DRT under the said Act can be said to be a “debt” due and recoverable by the Bank within the meaning of Section 2(g) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ? - **NO**.*

*(ii) Whether the impugned orders passed by the Learned Presiding Officers of the DRT and the DRAT are legal, valid and proper ? - **YES***

13. Mr. Tulzapurkar, Learned Senior Counsel has

taken us through the definition of “debt” which reads as under :

“DEBT means any liability (inclusive of interest) which is alleged as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institutions or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or whether payable under a decree or order of any civil court or otherwise and subsisting on, and legally recoverable on, the date of the application”.

14. He has also taken us through the “interpretation” clause of the Banking Regulation Act, 1949 and in particular Section 5(b) which defines Banking and reads as under :

“5(b) “banking” means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise;”

. He has also taken us through the provisions of Section 6 of the Banking Regulation Act, 1949 and would submit that Clause-(k) of Section 6 of sub-section (1) of the Banking Regulation Act enables the Banking Company either to acquire or take the premises on leave and license basis in addition to the business of banking. He would therefore submit that, taking premises on leave and license may not be the core activity of the Bank but certainly incidental to the business of banking. He would submit that, herein premises were taken on leave and license basis for starting a bank branch for business of 'banking' and therefore obtaining/taking licensed premises, was incidental to the advancement of business of banking.

15. Mr. Tulzapurkar, Learned Senior Counsel upon analysing the provisions of Section 2(g) would submit that the amount claimed was given as a security deposit against the licensed premises in the course of business activity. It was due and payable by

the respondent to the petitioners upon expiry of license period. Since the respondent refused to pay it, it was “debt” within the meaning of Section 2(g) of the said Act.

16. Mr. Kumar, appearing for the respondents, would however, support the orders passed by the DRT and the DRAT. He would submit that, the claim of the bank for refund of the security deposit is not “debt” within the meaning of Section 2(g) of the said Act. He would submit that, taking premises on leave and license basis does not amount to “acquisition” in terms of Clause-K of Section 6(1) of the Banking Regulation Act, 1949. He submits that, taking premises on leave and license is not “Banking” within the meaning of Section 5(b) nor it is one of the forms of additional business activities within the meaning of Section 6 of the Banking Regulation Act.

17. The first authority on which Learned Senior

Counsel, Mr. Tulzapurkar has relied upon is the **United Bank of India V/s. Debt Recovery Tribunal and Ors reported in AIR 1999 SC 1381**, wherein the question was whether the Tribunal had jurisdiction to decide the claim of an “undetermined” amount and whether such claim was “debt” within the meaning of Section 2(g) of the Act. In the said judgment, the Supreme Court has held the expression “debt” has to be given the widest amplitude to mean any liability which is alleged as due from any person by a bank during the course of any business activity undertaken by the Bank either in cash or otherwise, whether secured or unsecured, whether payable under a decree or order of any court or otherwise and legally recoverable on the date of the application.

18. Relying on these observations, Mr. Tulzapurkar, Senior Counsel would contend that admittedly the security amount was due and payable by the respondent to the petitioner upon expiry of the

license period by efflux of time. He would submit, the expression “any liability” is wide enough to cover and include unpaid security deposit amount and as such it is a “debt” and therefore the application under Section 17 of the said Act before the DRT was preferably maintainable. Mr. Tulzapurkar, Learned Senior Counsel contended that in terms of Clause-(n) of Section 6(1) of the Banking Regulation Act, acquiring the premises on leave and license basis for its banking business is an activity incidental to the promotion and advancement of the business. He would therefore contend that, the DRT, as well as, the DRAT failed to exercise the jurisdiction.

19. The Learned Senior Counsel for the petitioner, would contend that the DRT, as well as, the Appellate Tribunal both failed to appreciate the meaning of the word “debt” defined under Section 2(g) of the said Act which according to him cannot be assigned a narrow or a restricted interpretation. In

support of his contention, he has relied on the judgment of the Supreme Court in the case of **Eureka Forbes V/s. Allahabad Bank**, reported in (2010) 6 SCC 193 and more particularly paras-47 and 64 which read thus ;

“47. The next question of law, that we are called upon to consider, is the ambit and scope of provisions of Section 2(g) of the Recovery Act, on which the entire case of the parties hinges. We have already noticed that the appellant has argued with great vehemence that, there was no privity of contract and they were not covered under the definition of ‘debt’, and as such, recovery proceedings could not be initiated, much less, recovery could be effected from them under the provisions of the Act.”

“64. On the plain analysis of the above stated judgment of this Court, it is clear that the word ‘debt’ under Section 2 (g) of the Recovery Act is incapable of being given a restricted or narrow meaning. The legislature has used general terms which

must be given appropriate plain and simple meaning. There is no occasion for the Court to restrict the meaning of the word 'any liability', 'any person' and particularly the words 'in cash or otherwise'. Under Section 2 (g), a claim has to be raised by the Bank against any person which is due to Bank on account of/in the course of any business activity undertaken by the Bank. In the present case, Bank had admittedly granted financial assistance to respondent nos. 2 and 3, who in turn had hypothecated the goods, plants and machinery in favour of the Bank. There cannot be any dispute before us that the goods in question have been sold by the appellant without the consent of the Bank. Respondent nos. 2 and 3 have hardly raised any dispute and resistance, to the claim of the Bank. In fact, even before this Court there is no representation on their behalf. The documentary and oral evidence on record clearly established that the Bank has raised a financial claim upon the principal debtor, as well as upon the person who had intermeddled and/or at least dealt with the charged goods without any authority in law. Not only this, the appellant

had sold the hypothecated goods and stocks by public auction, despite the fact the appellant had due knowledge of the fact that the goods were charged in favour of the Bank.”

20. Senior Counsel, Mr. Tulzapurkar, has also relied on para-50 of the judgment, of *Eureka Forbes* (supra) and would contend that, plain reading of Section 2(g) would suggest that the Legislature has used a general expression in contradistinction to specific, restricted or a limited expression. We reproduce the observations in para-50 thus ;

“50. In this background, let us read the language of Section 2 (g) of the Recovery Act. The plain reading of the Section suggests that legislature has used a general expression in contra distinction to specific, restricted or limited expression. This obviously means that, the legislature intended to give wider meaning to the provisions. Larger area of jurisdiction was intended to be covered under this provision

so as to ensure attainment of the legislative object, i.e. expeditious recovery and providing provisions for taking such measures which would prevent the wastage of securities available with the banks and financial institutions.”

. He would thus contend that, larger area of jurisdiction was intended to be covered under this provision i.e. Section 2(g) so as to ensure attainment of the legislative object i.e. expeditious recovery and providing provisions for taking such measures which would prevent the wastage of securities available with the banks and financial institutions.

21. Learned Senior Counsel, Mr. Tulzapurkar, also relied on paragraphs-51 and 52 of the judgment of *Eureka Forbes* (supra) which reads as under :

“51. We may notice some of the general expressions used by the framers of law in this provision :

- a) *any liability;*
- b) *claim as due from any person;*
- c) *during the course of any business activity undertaken by the Bank;*
- d) *where secured or unsecured;*
- e) *and lastly legally recoverable.*

52. *All the above expressions used in the definition clause clearly suggest that, expression 'debt' has to be given general and wider meaning, just to illustrate, the word 'any liability' as opposed to the word 'determined liability' or 'definite liability' or 'any person' in contrast to 'from the debtor'. The expression 'any person' shows that the framers do not wish to restrict the same in its ambit or application. The legislature has not intended to restrict to the relationship of a creditor or debtor alone. General terms, therefore, have been used by the legislature to give the provision a wider and liberal meaning. These are generic or general terms. Therefore, it will be difficult for the Court, even on*

cumulative reading of the provision, to hold that the expression should be given a narrower or restricted meaning. What will be more in consonance with the purpose and object of the Act is to give this expression a general meaning on its plain language rather than apply unnecessary emphasis or narrow the scope and interpretation of these provisions, as they are likely to frustrate the very object of the Act.”

22. It is therefore the contention of Mr. Tulzapurkar, Learned Senior Counsel that, the expression “any person” occurring in the definition of “debt” cannot be given restricted meaning inasmuch as, the Legislature has not intended to restrict the relationship of creditor and debtor alone. It is his contention that, the respondent herein is not a debtor, as generally understood but that itself would not oust jurisdiction of Tribunal under Section 17 of the said Act; to adjudge the claim made by the Bank against

him.

23. Before we deal with the contentions of Learned Counsel Mr. Tulzapurkar, it would be appropriate to refer to and read the definition of “debt” under the said Act in the context of the Statute and the purpose for which it is enacted. The Statement of Objects and Reasons of the said Act is;

"STATEMENT OF OBJECTS AND REASONS

Banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The Committee on the Financial System headed by Shri M. Narasimham has considered the setting up of the Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the

financial sector reforms. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realised without delay. In 1981 a Committee under the chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. The setting up of Special Tribunals will not only fulfill a long-felt need, but also will be an important step in the implementation of the Report of Narasimham Committee. Whereas on September 30, 1990, more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs. 5,622 crores in dues of public sector banks and about Rs. 391 crores of dues of financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country.

The Bill seeks to provide for the establishment of Tribunals and Appellate Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions. Notes on clauses explain in detail the provisions of the Bill."

24. It is settled law that the definition clause must be read in the context of subject matter and scheme of the Act and consistently with the objects and other provisions of the Act. It is well settled that, words of a statute when there is a doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of enactment and the object which the Legislature has in view. Their meaning is not much found in strictly grammatical language.

25. Therefore, the expression "debt" is to be assigned meaning and understood in reference to the object and subject matter of scheme of the Act and

further it is to be interpreted consistently with the objects and other provisions of the Act. Undisputedly, the Recovery Act was enacted primarily for the reasons that, the Banks and financial institutions should be able to recover their dues without unnecessary delay, so as to avoid any adverse consequences in relation to the public funds. The Statement of Objects and Reasons of this Act clearly state that Banks and financial institutions were experiencing considerable difficulties in recovering loans and enforcements of securities charged with them. The then existing procedure for recovery of dues of the Bank and the financial institutions blocked significant portion of their funds in un-productive assets, the value of which deteriorated with the passage of time. The Act provided for the establishment of Tribunals and Appellate Tribunals and modes for expeditious recovery of dues to the Banks and financial institutions.

26. That even otherwise, the Apex Court in the case of *Eureka Forbes* (supra) in para-50 has clarified that a larger area of jurisdiction was intended to be covered under this provision so as to ensure attainment of legislative object i.e. expeditious recovery and providing provisions for taking such measures which would prevent wastage of securities available with the Banks and Financial institutions. (emphasis supplied).

27. It is to be seen and noted that, the expression “debt” has been interpreted by the Apex Court in *Eureka Forbes* (supra) in the context of facts of that case. In *Eureka Forbes* (supra) case, the petitioner-Company was not a debtor but a third person, who had given its premises on leave and license basis to the Borrower. The borrower had hypothecated goods to the Bank. Borrower then permitted the petitioner-Company to sell the goods lying in the said premises and adjust the sale

consideration against the outstanding lease rent payable by him to the petitioner-Eureka Forbes. In the given set of facts, the Apex Court in para-69 of the said judgment observed thus :-

“69. In the case in hand, the goods were hypothecated to the Bank and the appellant admittedly had knowledge prior to the sale of the goods, that they were hypothecated to the Bank. If the contention of the appellant is accepted, it will amount to giving advantage or premium to the wrong doers. It would also further perpetuate the mischief intended to be suppressed by the enactment. This could completely defeat the very object and purpose of the Act. A party which had pledged or mortgaged properties in favour of the Bank, then would transfer such properties in favour of a third party. In the event, the Bank takes action under the 47 provisions of the Recovery Act, they would take the objection like the present appellant. This would

tantamount to travesty of justice and would frustrate the very legislative object and intent behind the provisions of the Recovery Act. Therefore, such an approach or interpretation would be impermissible.

28. Thus, in the case of *Eureka Forbes* (supra), as well as, in *United Bank of India* (supra), liability as 'due' arose in course of core banking business. It is in this context of the facts in the given cases, expression "Debt" has been interpreted which is in tune with object and scheme of the Act. In the case in hand, if petitioner's contention is accepted, then, every liability claimed as 'due' in the course of business activity in the terms of Section 6(1) of the Banking Regulation Act has to be adjudged in the proceedings under Section 17 of the said Act. To test the arguments of the petitioners, let us take a hypothetical case, where a Bank in the course of its business activity acquires right or agrees to acquires rights in

immovable property. May the 'right' be proprietary in nature or otherwise for consideration and Bank has paid substantial amount to the owner in terms of the Agreement. Say, if the dispute arises and if the Bank seeks to recover the amount, question would arise, where proceedings would lie ? If we uphold the contention of Learned Senior Counsel, Mr. Tulzapurkar then the consideration or part consideration, paid to the owner would constitute a 'debt' and for its refund, claim has to be filed under Section 17 of the said Act before the DRT. In our view, this would run counter to the object and scheme of the said Act. The object and scheme of the said Act, is to ensure attainment of legislative object i.e. expeditious recovery and provisions of taking such measures, which would prevent wastage of securities available with Banks and Financial Institutions (emphasis supplied). This proposition, if accepted, would invest the Tribunal with all powers of Civil Court, which is not intended by the Legislature.

29. The expeditious recovery; Providing provisions for taking such measures which would prevent wastage of securities available with the Bank and enforcement of such securities is the object of the Act. Thus, whole object of the said Act is to recover debts by enforcing available security by a mechanism provided under the Act.

30. In our view, if we uphold petitioner's contention, it may not attain the object of the said act. This, may also, enlarge the jurisdiction of the Tribunal.

31. The Apex Court in the case of **Axis Bank Versus. SBS Organics Private Limited and Another**, reported in (2016) 12 Supreme Court Cases page 18 while dealing with the provisions of the SARFAESI Act has held that the Act was intended to facilitate easy and faster recovery of loans advanced by banks and financial institutions and thus the Recovery of

Debts Due to Banks and Financial Institutions Act, 1993 was introduced for a special and speedier mechanism for the recovery.

32. Learned Senior Counsel Mr. Tulzapurkar, has relied on the judgment of the Supreme Court in the case of **ICICI Bank Limited Versus. Official Liquidator of APS Star Industries Limited and Others**, reported in (2010) 10 Supreme Court Cases page 1.

33. Mr. Tulzapurkar, Learned Senior Counsel has cited this judgment in support of the argument that acquiring/taking premises on leave and license basis is one of the forms of business contemplated under Section 6 of the Banking Regulation Act. Senior Counsel Mr. Tulzapurkar, has relied on Section 6(1)(n) of the Banking Regulation Act and submitted that taking licensed premises for starting the branch is an activity incidental or conducive to promotion or

advancement of the business of the Bank. He submitted that, Section 6(1) enables Banking Companies to carry on different forms of businesses. Reliance is placed on para-37 of the said judgment which reads as under :

“37. The point we are trying to make is that apart from the principal business of accepting deposits and lending the said 1949 Act leaves ample scope for the banking companies to venture into new businesses subject to such businesses being subject to the control of the Regulator, viz. RBI. In other words, the 1949 Act allows banking companies to undertake activities and businesses as long as they do not attract prohibitions and restrictions like those contained in Sections 8 and 9. In this connection we need to emphasize that Section 6(1)(n) enables a banking company to do all things as are incidental or conducive to promotion or advancement of the business of the company. Section 6(1) enables banking companies to carry on different types of businesses. Under Section 6(1), these different types of businesses are in addition to business of banking, viz., core banking. The importance of the words "in addition to" in Section 6(1) is that even if different businesses under clauses (a) to (o) are shut down, the company would still be a banking company as long as it is in the core banking of accepting deposits and

lending so that its main income is from the spread or what is called as "interest income". Thus, we may broadly categorise the functions of the banking company into two parts, viz., core banking of accepting deposits and lending and miscellaneous functions and services. Section 6 of the BR Act, 1949 provides for the form of business in which banking companies may engage. Thus, RBI is empowered to enact a policy which would enable banking companies to engage in activities in addition to core banking and in the process it defines as to what constitutes "banking business".

. It is therefore submitted by Mr. Tulzapurkar, Learned Senior Counsel, that the security deposit was given to the respondent for obtaining the premises on leave and license basis and therefore it is one of the forms of business in terms of Section 6 of the Banking Regulation Act. He would therefore contend that, since the respondent declined to refund the security amount, which was given to him in the course of the Banking business, it is a "debt" within the meaning of Section 2(g) of the Act and therefore the proceedings filed under Section 17 of the said Act were maintainable.

34. In the case of *ICICI Bank* (supra), the Apex Court was dealing with the issue as to whether, inter-se transfer of Non-Performing Assets by a Bank is legal under the Banking Regulation Act. Thus, has examined the provisions of the Banking Regulation Act and scope of Sections 5(1)(a) and Section 6 of the Banking Regulation Act. Issue therein was, whether assignment of “Debt” is Banking activity within the meaning of Banking Regulation Act. In the case in hand, the issue is altogether different which we have dealt with in the foregoing paras. Mr. Tulzapurkar, Senior Counsel may be right in saying that, acquiring the premises on leave and license basis for the temporary period is one of the forms of businesses contemplated under Section 6 of the Banking Regulation Act but unpaid security amount for acquiring Licensed premises is certainly not a debt within the meaning of Section 2(g) of the said Act for the reasons stated hereinabove.

35. Learned Senior Counsel Mr. Tulzapuarkar, has also relied on a judgment in the case of **Vijaya Bank V/s. A.N. Tewari reported in (1995) 60 DLT 454**. In this case, the Bank was a tenant and in the dispute was pending in the Court. The Bank had engaged the services of the Lawyer. The grievance of the Bank was that, the cheque in the sum of Rs.4,13,483/- was issued in the name of Lawyer for depositing the said amount in the Court as arrears of rent. However, it appears the Lawyer did not deposit the entire amount in the Court. It is in these facts of the case, the Bank had filed a suit before the Debt Recovery Tribunal for recovery of the balance amount due from the lawyer. The lawyer was a defendant in the said suit, wherein an application was moved by the defendant-lawyer contending that the amount claimed was not “on account of or as a result of any business activity” undertaken by Bank as stipulated under Section 2(g) of the said Act and therefore the Tribunal constituted under the Act would have no jurisdiction to

try the suit.

36. In the said proceedings, the application was rejected by the Tribunal and held that the subject amount constitutes a “debt” within the meaning of Section 2(g) of the said Act. We respectfully do not agree with the findings recorded by the Learned Judge of the Tribunal. We have recorded the reasons as to why it would not be a “debt”.

37. That for the reasons aforesaid, we hold and conclude that the unpaid security deposit is not a “debt” within the meaning of Section 2(g) of the said Act and therefore the proceedings instituted under Section 17 of the said Act by the Bank for recovery of the said amount were not maintainable.

38. In view of this, the Writ Petition is dismissed with no order as to costs.

(SANDEEP K. SHINDE, J)

(K.K. TATED, J)