

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO. 3392 OF 2013

Mrs. Kshemankari Nadgir

... Petitioner

V/s.

Indian Bank, Circle Office and Ors.

... Respondents

Ms. Swati Sawant for the Petitioner.

Mr. Jitendra Patil for the Respondents.

**CORAM : K. K. TATED, &
N.J.JAMADAR, JJ.**

DATE : 31st OCTOBER, 2018

P.C.

1. By virtue of this petition under Articles 226 and 227 of Constitution of India, the petitioner has prayed for a writ of mandamus and/or writ of certiorari and/or any writ in the nature of mandamus and certiorari and/or any other appropriate writ, order or direction to quash and set aside the judgment and order dated 06th March, 2013 passed by the Debt Recovery Appellate Tribunal ("DRAT") in Misc. Appeal No 225 of 2012 whereby the DRAT dismissed the Appeal against the order passed by the learned Presiding Officer, Debt Recovery Tribunal-II, Mumbai, on 17th November 2011 in O.A. No. 794 of 2011

rejecting the prayer of the petitioner to call the officer of the Bank (respondent No.1) who has filed the claim affidavit, for cross examination.

2. The petition has been listed for hearing on a number of occasions. Record reveals that on a couple of dates, none appeared for the petitioner. On the last date, an adjournment was sought on behalf of the petitioner. Today also, the learned Counsel for the petitioner sought an adjournment. Having regard to the short point involved in the petition and the pendency of the petition since long, we declined to grant further adjournment.
3. Heard learned Counsel for the petitioner and respondent No.1.
4. The background facts are as under:
 - a) Respondent No.1 Bank had instituted Original Application No. 171 of 2009 against the petitioner and respondent Nos. 2 and 3 herein for a decree of the amount due under the letter of credit and other credit facilities extended to M/s. Latimer (S) Pte Ltd., as the petitioner and respondent Nos. 2 and 3 were guarantors for the said credit facilities extended to M/s. Latimer (S) Pte Ltd.
 - b) In the said application, respondent No.1 Bank tendered an

affidavit of Mr. N.R. Chakroborty, Asst. General Manager, Cuffe Parade Branch, Mumbai, in support of the said claim. The petitioner filed an application seeking to call the said Officer for cross-examination. The learned Presiding Officer, Debt Recovery Tribunal-II considered the application and heard the learned Counsel for the petitioner and respondent No.1. The learned Presiding Officer, Debt Recovery Tribunal-II was persuaded to reject the application on the premise that the cross examination would protract the hearing of the matter. The learned Presiding Officer, however, reserved the option to call the witness for cross-examination, if ultimately the Tribunal at the time of final argument found that oral evidence or cross examination of the said witness necessary.

c) Being aggrieved, the petitioner preferred Misc. Appeal No. 225 of 2012 before the DRAT, Mumbai. After hearing the parties, DRAT was not inclined to interfere with the order passed by the Debt Recovery Tribunal-II, as it was of the view that the Debt Recovery Tribunal has kept the issue of summoning the deponent for cross-examination open for consideration at the time of final argument. Hence, the petitioner approached this Court.

5. The crux of the submissions of the petitioner was that the documents in question were executed in Singapore and the abovenamed deponent was not a privy to the execution of those documents as he was not posted at Singapore and, therefore, cross examination was necessary.
6. It is imperative to note that a special adjudicatory machinery for recovery of debts due to the banks and financial institutions came to be introduced by the Recovery of Debts and Bankruptcy Act, 1993. The said Act constitutes, in a sense, a complete code in itself. Section 22(1) of the Act expressly states that the Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, but, shall be guided by the principles of natural justice, and subject to the other provisions of the Act, 1993 and Rules thereunder, the Tribunal shall have power to regulate their own procedure. Clause (c) of Sub-Section 2 of Section 22 expressly empowers the Tribunal to receive evidence on affidavit.
7. It would be contextually relevant to note the provision contained in Rule 12 of Debt Recovery Tribunal (Procedure) Rules, 1993, especially Sub-Rule (9) thereof. It reads as under:

“(9) *The Tribunal may at any time for sufficient reason*

order that any particular fact or facts shall be proved by affidavit, or that the affidavit of any witness shall be read at the hearing, on such conditions as the Tribunal thinks reasonable:

Provided that after filing of the affidavits by the respective parties where it appears to the Tribunal that either the applicant or the defendant desires the production of a witness for cross examination and that such witness can be produced and it is necessary to do so, the Tribunal shall for sufficient reasons to be recorded, order the witness to be present for cross examination, and in the event of the witness not appearing for cross examination, then, the affidavit shall not be taken into evidence and further that no oral evidence other than that given in this proviso will be permitted.”

8. The contours of the right to cross-examine a witness, who has tendered an affidavit, were considered by a Division Bench of this Court in the case of ***Sonu Textiles, Mumbai and others v/s. Punjab National Bank, Mumbai***¹, In the said case, after referring to the pronouncement of the Supreme Court in the case of ***Union of India and Others v/s. Delhi High Court Bar Association and others***², particularly paragraph 22 thereof, this Court had observed as under

“8. The above enunciation of law clearly indicates that no indefeasible right is vested in the Defendant before the DRT to ask for cross-examination of witnesses whose affidavits have been filed in exercise of the powers of the Tribunal under Rule 12(6) of the Rules. Equally true is that there is a right to file an application making a

¹ 2008(2) Mh. L.J.218

² AIR 2002 Supreme Court 1479

request for cross-examination of witnesses, which has to be considered and decided by the Tribunal in the light of the above parameters. It will be difficult to provide for any strait jacket formula universally applicable as it would primarily depend upon the facts and circumstances of each case, whether or not the Tribunal should pass an order for production of the witnesses for cross-examination or not. However, while exercising such power, the Tribunal has to keep in mind that the purpose of cross-examination is normally to test the veracity of the witness and to bring true and correct facts on record. These are primarily matters relating to procedural law and which should be enforced objectively and with clear intent to serve the ends of justice.”

9. In the backdrop of aforesaid exposition of legal position, it becomes abundantly clear that the party has no right to seek the cross-examination of a deponent, as a matter of course. Determination of the dispute before the Tribunal on the basis of affidavit is normal rule. Resort to the device of cross-examination of the deponent is exceptional and in deserving cases only. Under the proviso to Sub-Rule (9) of Rule 12, the Tribunal is vested with the authority to summon a witness for cross-examination, if the Tribunal finds it necessary to do so and, after recording sufficient reasons. The Tribunal is, therefore, empowered to determine the question of necessity of cross-examination on the touchstone of the requirement for determination of the dispute.

10. Reverting to the facts of the case, it must be noted that in the instant case the Tribunal recorded the view that at that stage of consideration, summoning of the deponent would protract the proceeding and if, at the time of final arguments, it was found necessary to summon the deponent for cross-examination or to record oral evidence, then the Tribunal would suo motu pass such order. In this backdrop, the learned DRAT was within its rights in declining to interfere with the order passed by the Debt Recovery Tribunal-II as the option to summon the deponent for cross-examination was kept open for consideration at the stage of final argument.
11. In this view of the matter, the discretion exercised by the Debt Recovery Tribunal-II, in the backdrop of the provisions contained in Sub-Rule 9 of Rule 12, not to summon the deponent for cross-examination, at that stage, and reserve the option for consideration at the stage of final hearing, can be said to be judicious. The learned DRAT was justified in not interfering with the exercise of the said discretion.
12. For the foregoing reasons, we are not persuaded to interfere with the impugned orders. Thus, the Writ Petition deserves to be dismissed.

13. Hence, the following order.

- a) Writ Petition stands dismissed.
- b) In the circumstances, there shall be no order as to costs.

(N.J.JAMADAR, J.)

(K.K.TATED, J.)