

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2635/2017

National Polymers & Ors.

... Petitioners

V/s.

UCO Bank & Ors.

... Respondents

Mr. Pradeep Mandhyen with Parobi Ghosh Menon I/b. Barsha Basant
Kumar Richhariya for the Petitioner
Mr. O. A. Das for Respondent No.1.
Mr. Mohamedali M. Chunawala with Ashok Varma for Respondent
No.4.

**CORAM: K.K. TATED &
S.K. SHINDE, JJ**

DATED : SEPTEMBER 3, 2018

P.C. :

1 Heard. By this Writ Petition under Article 226 of the Constitution of India, the Petitioner challenges the concurrent findings of fact recorded by both the courts below i.e. order dated 27.08.2012 passed by the Debts Recovery Tribunal (DRT) No.II, Mumbai below Exhibit- 42 Application O.A.No.352/2012 in O.A.No.121/2011 and oral judgment dated 16.04.2013 passed by the Debts Recovery Appellate Tribunal (DRAT), Mumbai in Misc. Appeal No.4/2014 with M.A.No.385/2013 rejecting the Petitioner's Application to carry out amendment in the counter claim.

2 In the present proceedings, the Petitioner original Defendant No.1 has filed written statement cum counter claim claiming following reliefs:

“This Hon'ble Tribunal be pleased to

(i) Declare that Respondent Bank has committed a breach of contract, being the sanctioned proposals dated 4 December 2007, 15th march 2008 and 5th March 2008 entered into between the Respondent Bank and Counter Complainant No.1 & Counter Complainant No2 And Complainant No 3, respectively; in providing buyers' credit and/or financial assistance to the Complainant No 1 and Complainant No 2.

(ii) Declare that there is no legally enforceable debt owing by the Counter Complainants to the Respondent Bank under the DRT Act or any other Act.

(iii) Decree/Direct/Order the Applicant Bank to pay to the Counter Claimant No 1 and Counter Claimant No 2 a sum of Rs 8,74,27,571.00 (Rupees Eight Crores Seventy Four Lakhs Twenty Seven Thousand and Five Hundred and Seventy One Only) together with interest thereon at 16.25 % with as and by way of Damages and Compensation; comprising of:

(a) Rs 90,17,000.00 Cr (Rupees Ninety Lakhs and Seventeen Thousand Only) Profit Before Taxes losses/damages suffered as a direct consequence of the Dank reneging on its contractual obligations under the sanctioned proposals dated 4 December 2007 & 15th March 2008, together with interest thereon at 16.25 per annum with from 1 April 2009 till repayment and/or realisation

(b) Rs 5,81,000.00 Cr (Rupee Five Crores and Eighty One Lakhs only) being the fixed deposits towards margin money maintained with the bank wrongfully, unlawfully and illegally appropriated by

the Bank together with interest thereon at 16.25 % per annum with from 1 April 2009 till repayment and/or realisation

(c) Rs 310571.00 (Rupees Three Lakhs Ten Thousand and Five Hundred and Seventy One Only) being the maturity value of the LIC Policy due on 14.09.2011, wrongfully, unlawfully and illegally appropriated by the Bank together with interest at 16.25% p.a with from 1st October 2011 till payment and/or realisation

(d) Rs 200,00,000.00 (Rupees Two Crores Only) being the compensation for

(1) loss of goodwill enjoyed by the Defendants in Society and Business Circles, and

(2) causing untold mental agony, suffering and trauma.

together with interest thereon at 16.25% per annum from 1" April 2009 till payment and/or realization.

(iv) Decree/Direct/Order the Applicant Bank to pay to the Counter Claimant No 3 a sum of s 100,00,000.00 (Rupees One Crore Only) together with interest thereon at 16.25 % with as and by way of Damages and Compensation comprising of-

(1) trespass of property in taking wrongful, unlawful and illegal possession of the security interest and

(2) causing untold mental agony and trauma the Counter Complainant

(v) Declare that the Applicant Bank Security Interest in respect of Security Interest created by the Bank over the Asset of Counter Claimant/Defendant No 3, being residential flat No 4 at Kalpana Co operative Housing Society Ltd, situated at 96 Marine Drive Mumbai 400 002. in the name of Mrs Surya Prabha Nandkishore Singhal alia Agarwal is vacated and that the same is free from all encumbrances

(vi) Restrain the Applicant Bank by a Direction and/or Order of Permanent injunction from physically dispossessing the Counter complainants/Defendants from residential flat No 4 at Kalpana Co operative Housing Society Ltd, situated at 96 Marine Drive, Mumbai 400002, in the name of Mrs Surya Prabha Nandkishore Singhal alia Agarwal being the Security Interest created by the Bank over the Asset of Counter Claimant/Defendant No 3.

(vii) Restrain the Applicant Bank by a Director and/or Order of Permanent injunction from alienating, selling and or creating third party rights of any nature whatsoever in the residential flat No 4 at Kalpana Co operative Housing Society Ltd, situated at 96 Marine Drive Mumbai 400 002, in the name of Mrs Surya Prabha Nandkishore Singhal alia Agarwal being the Security Interest created by the Bank over the Asset of Defendant No 3.

(viii) direct/order the Respondent Bank to return to Counter Complainant No 1 the documents of title relating to the vacated Security Interest created by the Bank over the Asset of Defendant No 3, being residential flat No 4 at Kalpana Cooperative Housing Society Ltd, situated at 96 Marine Drive Mumbai 400 002, in the name of Mrs Surya Prabha Nandkishore Singhal alia Agarval

(ix) Pending the hearing and final disposal of the Application / Counter Claim ad interim and interim reliefs in terms of prayer (vi) & (vii) above.

(x) for such other and further reliefs as the nature and circumstances of the case may require.

(xi) for costs.”

3 Thereafter the Petitioner has made an Application for amendment in the counter claim. That Application stood rejected by both the Tribunals i.e. DRT and DRAT.

4 The learned counsel for the Petitioner submits that both the courts below erred in coming to the conclusion that the Petitioner has

to take out separate appropriate proceedings for challenging the subsequent events. He submits that both the Tribunals below failed to consider the fact that by way of an amendment, the Petitioner sought permission to elaborate their claim in the counter claim. He submits that both the Tribunals below have failed to appreciate that no new cause of action has sought to be made by the Petitioner nor has the nature or character of the counter claim is going to be changed by the said amendments. He submits that the principles contained in Order XVI Rule 17 of the Code of Civil Procedure, 1908 in respect of amendment of pleadings is applicable to the case in hand and which principles have not been considered by the DRT & DRAT at Mumbai and as such both the orders are required to be set aside. He submits that grave and irreparable injury, harm, damage and /or prejudice will be caused to the Petitioner if the amendment is not allowed. Hence, in the interest of justice, this Hon'ble Court be pleased to set aside both the orders passed by the DRT & DRAT and allow the Petitioner's Application for amendment to the counter claim.

5 It is to be noted that, bare reading of the amendment sought by the Petitioner shows that the Petitioner is challenging the private auction sale confirmed by the Bank on 15.10.2011 and the possession given to the auction purchaser on 18.10.2011. It is to be noted that in the present proceedings, initially the said auction was challenged by the Petitioner before the DRT. The DRT has rejected the Petitioner's Application to set aside the said private auction sale. Against that order the Petitioner had preferred an appeal before the DRAT which was also dismissed. Thereafter the Petitioner has filed the Writ Petition and also

the Special Leave Petition. Though the Petitioner has challenged the earlier private sale auction up to the Supreme Court, indirectly, again the Petitioner wants to challenge the same by carrying out an amendment in the counter claim.

6 Considering these facts, the DRT and DRAT recorded the fact that if the Petitioner wishes, they can file their separate securitisation Applications.

7 Considering these facts, we do not find any reason to entertain the present Writ Petition.

8 Hence, the Writ Petition stands dismissed. No order as to costs.

(S.K. SHINDE, J.)

(K.K. TATED, J.)