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

\+ W.P.(C) 5829/2018

BHAI MANJIT SINGH ..... Petitioner

Through: Mr Vivek Sibal, Ms Jayashre Shukla Dasgupta and Ms Sargam Narula, Advocates.

versus

STATE BANK OF INDIA AND ORS ..... Respondents

Through: Mr Jitendra Kumar, Advocate for R-1.
Ms Jagriti Ahuja and Mr Amol Sharma, Advocates for R-2.
Ms Swathi V. and Mr Hashmat Nabi, Advocates for R-4.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% 21.12.2018

<u>CM No. 36559/2018</u>

1. This is an application for seeking amendment of the writ petition. During the pendency of the present petition, the petitioner has entered into a settlement with Asset Reconstruction Company (India) Ltd. (hereafter 'ARCIL'). The petitioner has, accordingly, sought amendment of the writ petition to include pleadings regarding the aforesaid fact and consequentially also amend the prayer.

2. For the reasons stated in the application, the same is allowed.

3. The application is disposed of.

4. The amended writ petition is taken on record.

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5. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "a) Allow the instant Petition;
>
> b) Issue a Writ of Mandamus or any other appropriate Writ or direction against State Bank of India (earlier State Bank of Patiala) to immediately release Rs.2,00,00,000/- deposited by the Petitioner in compliance of order dated 29.06.2011 passed by the Hon'ble Court in WP(C) No.4057 of 2011 and Rs.1,00,00,000/- deposited with letter dated 03.01.2011 in furtherance of OTS proposal along with interest thereon in favour of ARCIL, Assignee of State Bank of Patiala, to be adjusted towards the principal settlement amount of Rs.23.80 Crore."

6. The petitioner is, essentially, seeking appropriation of the amounts, which were deposited by the petitioner with State Bank of Patiala (hereafter 'SBOP'), which has since merged with State Bank of India (hereafter 'SBI'). It is stated that a sum of ₹1,00,00,000/- was deposited by the petitioner with SBOP, pursuant to a one time settlement (OTS) offer made to SBOP. Admittedly, the said offer was not accepted and the said amount has not been appropriated by SBI.

7. The petitioner had also deposited a sum of ₹2,00,00,000/- in compliance with the order dated 29.06.2011 passed by this Court in W.P.(C)4507/2011. The said petition was filed, *inter alia,* challenging the action instituted by certain lenders under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest

Act, 2002 (SARFAESI Act). During the course of proceedings it was agreed that petitioner would deposit a sum of ₹2,00,00,000/- and the same was recorded in the said order.

8. There is no dispute that the said amount has also not been appropriated as is evident from the SBOP's letter dated 15.11.2012 wherein it had clarified that *"Rs. 2.00 Crores have been deposited as per the directions of Hon'ble High Court in the stay application filed by the company against the SARFAESI action initiated by the consortium. This amount or part thereof cannot be appropriated in the account without the orders of the High Court"*

9. The petitioner claims that it had entered into a settlement with three of its lenders and has paid the amount as settled. The petitioner also asserts that it had entered into a one time settlement with ARCIL and in terms of the settlement is now required to make certain payments to ARCIL.

10. Admittedly, SBI is now no longer interested in the disputes with the petitioner as it has assigned the loan recoverable to ARCIL. Mr Kumar, the learned counsel appearing for SBI also confirms the same. Thus, it is not necessary for SBI to retain any sum paid by the petitioner.

11. The petitioner has filed an affidavit affirming that the amounts deposited were not from the principal borrower (Montari Industries Ltd.) as it accounts were non operational and the funds were arranged by the petitioner.

12. Since a sum of ₹1,00,00,000/- was deposited by the petitioner with

SPOB (now SBI) pursuant to the OTS which did not fructify; it is now no longer open for SBI to retain the aforesaid amount as it has assigned its loan to ARCIL. It would, thus, be incumbent upon SBI to transfer the said sum to ARCIL on behalf of the petitioner.

13. Insofar as the amount of ₹200,00,000/- deposited pursuant to the direction of this Court, it is admitted that the same was in relation to a challenge to the notice, which was issued under Section 13(2) of the SARFAESI Act on behalf of various lenders. In this view, it would not be apposite to direct that the said amount be transferred to ARCIL alone. The proceedings instituted by other lenders are pending before the Debt Recovery Tribunal (ARCIL v. Montari: OA No.31/2003 & OA No.89/2010, PSB v. Montari: OA No.104/2004 and PNB v. Montari: OA No.70/2005).

14. In this view, this Court considers it apposite to direct SBI to transfer the sum of ₹2,00,00,000/- to the Registrar of DRT. The petitioner would be at liberty to approach the DRT for appropriation of the said amount. It is clarified that all contentions of the petitioner in this regard are open.

15. The petitioner claims that said amounts have been lying with SBI for now several years now and SBI must pay interest on the same. Insofar as the sum of ₹1,00,00,000/- is concerned, the same was made as an *ad hoc* deposit for pursuant to an offer for an OTS, which did not materialise. There is no material to indicate that the same ought to be kept in an interest bearing account. The said deposit was made without stipulation of any interest, therefore, this Court is unable to accept that SBI would be required to pay interest on the said amount. However, as far as the deposit made in terms of

the statement recorded in the order dated 29.06.2011 passed by this Court in W.P.(C)4507/2011 is concerned, it is the practice of this Court that any deposit made pursuant to the orders is to be kept in an interest bearing account. Since the deposit was made directly to SBI, apparently no such direction was passed at the material time. Nonetheless, this Court is of the view that SBI must pay some interest on the said amount as it has retained the funds for a considerable period of time. SBI is, accordingly, directed to pay simple interest @ 6% p.a. on the said deposit.

16. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

DECEMBER 21, 2018
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