

Date of decision: 26th November, 2018

Through: Ms. Kiran Suri, Sr. Adv. with
Mr. Ravi Bhushan, Adv.

versus

Through: Mr. Rajeev Mehra, Sr. Adv. with
Mr. Munindra Dwivedi, Ms. Tanya
Chanda and Ms. Aathira Pillai, Adv.
for R1.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CAV Pet. No. 964/2018

As the learned counsel for the caveator appears, caveat stands discharged.

CM. No. 43682/2018 (for delay in re-filing)

This is an application filed by the applicant / petitioner seeking condonation of 33 days delay in re-filing the present petition.

For the reasons stated in the application delay in re-filing the petition is condoned. Application stands disposed of.

W.P.(C) 11247/2018

1. This petition has been filed by the petitioner with the following prayers:

“In view of the foregoing premise, it is most respectfully prayed that this Hon’ble Court may be pleased to:

i) issue a prerogative writ of certiorari or any other writ or order or direction calling for the record of Appeal No. 259 of 2018 titled as “Shri Satyanarayana Rao v. Indian Renewable Energy Development Authority Ltd. & Ors.” and quash the impugned order dated 26.07.2018 passed therein by the learned Debts Recovery Appellate Tribunal, Delhi insofar as it relates to issuance of show cause notices, inter alia, to the petitioner as to why directions as contemplated by Sections 19(13)(A), 19(18) and (25) of Recovery of Debts and Bankruptcy Act, 1993 be not issued, issuance of directions to file affidavit of assets and restraining the petitioner from withdrawing monies lying to the credit of his bank accounts.

(ii) direct the learned Appellate Tribunal to adjudicate upon Appeal No. 259 of 2018 titled as “Shri Satyanarayana Rao v. Indian Renewable Energy Development Authority Ltd. and Ors.” Strictly in accordance with Section 20(4) of Recovery of Debts & Bankruptcy Act, 1993; and

iii) pass such other orders, as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case in favour of the petitioner and against the respondents.”

2. In substance the challenge of the petitioner is to the issuance of show cause notice by the learned DRAT in purported exercise of its *suo moto* powers as to why directions as contemplated under

Sections 19(13)(A), 19 (18) and 19 (25) of Recovery of Debts and Bankruptcy Act, 1993 be not passed against the petitioner herein.

3. In other words, the Tribunal has initiated *suo moto* proceedings for passing orders under Section 19(13)(A), 19(18) and 19(25) of the Act.

4. Mr. Rajeev Mehra, learned Sr. Counsel appearing for the respondent no.1 fairly states that in ***Padam Singhee and Ors. v. SVOGL Oil, Gas and Energy Ltd. and Ors., W.P.(C) 9616/2018*** decided on 18th September, 2018 this court held that DRT/DRAT has no power to initiate *suo moto* proceedings. In view of the said position of law, proceedings initiated by the DRAT needs to be set aside. Having noted the submissions made suffice it to state in the ***Padam Singhee and Ors. (supra)***, this court in Para 21 onwards held as under:

“21. From the reading of the aforesaid paragraphs of the judgement of the Supreme Court, it is clear that:

- (1) The Tribunal / DRAT does not have inherent powers and even Section 19 (25) confers limited powers.*
- (2) The power of the Tribunal / DRAT under Section 19(25) is limited to pass such other orders and give such directions to give effect to the orders or*

to prevent abuse of its process or to secure the ends of justice.

- (3) *Courts established by the State are entrusted with the State's inherent judicial power for administration of justice in general. The Tribunal / DRAT having been established under a statute to adjudicate upon disputes arising under the said statute or disputes of a specialised nature by regulating the procedure, applying the provisions of CPC only where it is required.*
- (4) *The Tribunal / DRAT are required to function within the statutory parameters.*
- (5) *The Tribunal /DRAT have been conferred jurisdiction by special statute to exercise a particular power in a particular manner as provided under the Act.*
- (6) *The Tribunal / DRAT are required to decide the lis that come within their domain.*

22. A Coordinate Bench of this Court also in the case of **Prem Kumar Gupta v. Bank of India 2015 SCC Online Del 8232 in W.P.(C) 2630/2014** decided on 9th March, 2015 has, by referring to the judgment of the Supreme Court in **Standard Chartered Bank (supra)**, in paras 23 to 29 held as under:

*“23. The litigation brought before a Debts Recovery Tribunal essentially involves a civil dispute. It concerns primarily the claim of a bank or a financial institution to “a debt” which it seeks to recover from the person impleaded as a defendant. In dealing with such an application instituted before it by a bank or financial institution, the DRT may not be strictly bound by the procedure laid down in the Code of Civil Procedure or may have been vested with the power to regulate its own procedure. **But there is nothing in the statutory provisions to indicate***

that the procedure which DRT adopts may be what it fancies.

24. As noted earlier, Section 22(2) confers upon DRT, and DRAT, certain specific powers vested by the Code of Civil Procedure in the Civil court. These include the power to enforce the attendance of a person. But the rider is that the attendance being enforced must be with the objective of “examining him on oath”. Necessarily, a person required to attend to be examined on oath would be a person called as a witness and not a party to the suit.

25. The clauses (f) and (g) of Section 22(2) leave no room for doubt that for regulating the appearance of parties and consequences of their non-appearance, DRT (and DRAT) are to be guided generally by the provisions contained in order 9 of the Code of Civil Procedure. If the applicant under Section 19 fails to appear, the application may be dismissed in default. Conversely, if the defendant, duly served, does not appear, the proceedings on the application under Section 19 may be held ex parte. An application dismissed in default may be restored upon application being made on sufficient cause being shown for such order to be set aside. Similarly, the defendant having been set ex parte, may join the proceedings and may be permitted to participate and ex parte proceedings being set at naught subject of course to sufficient cause being shown for earlier non-appearance. This power also extends to setting aside of a judgment rendered ex parte resulting in the hearing on the application being reopened.

26. The forums constituted under RDDBFI Act are not criminal courts. To put simply, they do not adjudicate upon criminal causes or criminal charges. There is nothing in the provisions of the

statute which establishes them to show that they are vested with any powers of the criminal court. These tribunals are expected to follow and be guided by the principles of natural justice. Their obligation is to ensure that no one is condemned unheard. Their application is to ensure that the dispute brought before them is adjudicated upon after both sides have been given proper "opportunity of being heard". It is inherent in this that, having issued summons to the defendant in terms of Section 19(4), the Tribunal must ensure that the process is duly served. The prime objective of summons is to give opportunity to the defendant "to show cause" as to why relief prayed for should not be granted. If the defendant, duly served, chooses not to appear, he suffers the proceedings ex parte. The Tribunal is within its jurisdiction to set such a defendant ex parte and proceed further towards adjudication on the basis of the pleadings and material brought before it by the applicant. There is no power vested in the Tribunal to compel or enforce the attendance of the defendant at the stage of adjudication on the claim under Section 19, not the least by issuing a warrant of arrest or for such duress process to be executed through the agency of police. It may be added that there is, generally speaking, no obligation on the part of one defendant to "ensure" the appearance of a co-defendant, unless there is material to show collusion or one is the agent (or principal) of the other.

*27. The provision contained in Section 19(25) of RDDBFI Act has been referred by the DRAT in the impugned order. The clause reads as under :
"The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."*

28. *In the specific context of Section 19(25) of RDDBFI Act, the Supreme Court in the case reported as Standard Chartered Bank V. Dharminder Bhohi [Judgments Today (2013) 13 SC 69] held that the Debts Recovery Tribunal is required to function within statutory parameters and that “the Tribunal does not have any inherent powers and it is limpid that Section 19(25) confers limited powers”.*

29. *We do not approve of the observations of DRAT that the above noted clause Section 19(25), confers upon the DRT a jurisdiction akin to the one vested in the High Court under Section 482 of the Code of Criminal Procedure. The language employed in the two provisions may be similar but the import thereof cannot be equated. The provision in Section 19(25) may at best be compared with the one contained in Section 151 of the Code of Civil Procedure which saves the “inherent power” of the civil court to secure ends of justice or make orders to prevent abuse of the judicial process. It is trite that such inherent jurisdiction to render justice cannot be taken resort of so as to nullify the other statutory provisions put in position to regulate the procedure. Where the legislation deals expressly with a particular matter, the provisions so enacted would normally be regarded as exhaustive.”*

23. *That further the proceedings before the DRAT were pursuant to the appeal being 336/2018 filed by the petitioners under Section 20 of the Act of 1993 challenging the orders of the DRT dated August 18, 2017 and April 28, 2018. The DRAT exercises its appellate jurisdiction, because of the appeal filed under Section 20. On the withdrawal of the appeal by the petitioners, the DRAT had become functus officio. Reference in this regard is made to the judgment of the Supreme Court in the case of **Ajay Mohan and Ors. v. H.N. Rai and Ors.***

*(2008) 2 SCC 507, wherein the Supreme Court has held that once an appeal is permitted to be withdrawn, the court become functus officio. The said proposition of law squarely applies to the appeal / proceedings before the DRAT. It could not have initiated and / or continued the proceedings between the parties when the proceedings cease to exist. The judgment of this Court, in **Prof. Ram Prakash (supra)** as referred to by Mr. Aggarwal has no applicability to the facts of this case.*

24. *It is surprising despite clear pronouncements of the Supreme Court and this Court, the DRAT still proceeded to exercise its so called “suo moto power” in public interest. We must also refer to the judgment of the the Supreme Court in the case of **State Bank of Travancore & Anr. vs. Mathew K.C.** in Civil Appeal 1281/2018, decided on January 30, 2018 wherein in paras 18 and 19 it was held as under:*

*“18. We cannot help but disapprove the approach of the High Court for reasons already noticed in **Dwarikesh Sugar Industries Ltd. vs. Prem Heavy Engineering Works (P) Ltd. and Another**, 1997 (6) SCC 450, observing :-*

“32. When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.”

19. The impugned orders are therefore contrary to the law laid down by this Court under Article 141 of the Constitution and unsustainable. They are therefore set aside and the appeal is allowed.”

25. Accordingly, the proceedings before the DRAT arising from the show cause notice issued on July 24, 2018, for passing appropriate orders as contemplated under Section 19(13)(A) and 19(18)(25) of the Act of 1993 in purported exercise of suo moto power in public interest are quashed. The order dated April 28, 2018 of the DRT to the extent that the DRT has directed that the IA 284/2018 shall be heard at the time of final arguments is set aside. It is directed the DRT shall hear the IA 284/2018 whereby the petitioners have sought the vacation of order dated August 18, 2018 and decide the same in accordance with law.”

5. In view of the aforesaid position of law, the proceedings initiated by the learned DRAT in purported exercise of its *suo moto* powers for passing order under Section 19(13)(A), 19(18) and 9(25) of the Act are set aside.

6. The petition stands disposed of.

CM. No. 43682/2018 (for Stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

NOVEMBER 26, 2018/jg