

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

LETTERS PETANT APPEAL NO. 196 OF 2009
WITH
CIVIL APPLICATION NO. 10093 OF 2009
IN
WRIT PETITION NO.2168 OF 2008

State Bank of India,
a Banking Co., Constituted
under the State Bank of India,
Act, 1955 and having one of
it's Branch at Industrial Area
Branch, CIDCO, Aurangabad,
Through it's Branch Manager,

...Appellant.

Versus

1. Vinay G. Bathiya
Age Major, Occu. Business,
R/o Bhikulal Petrol Pump,
Kachi Bazar, Parbhani.
2. M/s Guredeo Bricks Industries,
Through it's propriator
Vinay G. Bathiya
Age Major, Ocuu. Business,
R/o Bhikulal Petrol Pump,
Kachi Bazar, Parbhani.
3. M/s Poonam Industries.
Through it's propriator,
Prakash Shekuji Patil.
Age Major, Occu: Business,
R/o Bhikulal Petrol Pump,
Kachi Bazar, Parbhani.

...Respondents.

Mr. Sunil A. Kulkarni, Advocate for Appellant.

Mr. A.S. Deshmukh, Advocate for Respondent Nos.1 & 2.

**CORAM : T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**
DATED : 8th January, 2019.

ORAL JUDGMENT :

1) The appeal is filed to challenge the decision of the learned Single Judge of this Court in Writ Petition No. 2168/2008 with Civil Application No. 602/2009 which was filed against the decision of Debt Recovery Tribunal (D.R.T.) Aurangabad in O.A. No. 31/2007. Both the sides are heard.

2) The petition was filed by present respondents to challenge the order made by D.R.T. and it was under Article 227 of Constitution of India. It appears that the matter was decided on 9.4.2009 and Civil Application No. 7599/2009 was filed for recalling the decision given by the learned Single Judge in the Writ Petition. It was contended that the learned Single Judge was not competent as the High Court Appellate Side Rules, Chapter XVII, Rule 18 (3) provided that these matters need to be placed before the Division Bench. This application was also rejected by the learned Single Judge by order dated 28.7.2009 and so, the decision of the learned Single Judge is challenged in L.P.A.

3) This Court has gone through the aforesaid Rule of procedure on which reliance is placed by the appellant. That Rule is as under :-

"18. Single Judge's powers to finally dispose of applications under Article 226 or 227.-

Notwithstanding anything contained in Rules 1, 4 and 17 of this Chapter, applications under Article 226 or under Article 227 of the Constitution (or applications styled as applications under Article 227 of the Constitution read with Article 226 of the Constitution) arising out of -

(1).....

(2).....

(3) The decrees or the orders passed by any Subordinate Court or by any quasi Judicial Authority in any suit or proceeding (including suits and proceedings under any Special or Local Laws), but excluding those arising out of the Parsi Chief Matrimonial Court and orders passed under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; the Administrative Tribunal Act, 1985; the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000

(4)

may be heard and finally disposed of by a Single Judge appointed in this behalf by the Chief Justice:"

The Rule is clear enough to show that when the matter arises out of the orders made by D.R.T., the matter needs to be placed before the Division Bench. On this point, the learned counsel for appellant placed reliance on the ratio of Apex Court case reported as **AIR 1987 SC 535 (Pandurang Vs. State of Maharashtra)**. The Apex Court has laid down as follows :-

“What can be done only by at least two Judges cannot be done by one Judge. Even if the decision is right on merits, it is by a forum which is lacking in competence with regard to the subject matter. Even a 'right' decision by a 'wrong forum is no decision. It is non-existent in the eye of law. And hence a nullity. Thus where the appeal against the acquittal of accused in respect of offence punishable with a sentence of imprisonment exceeding two years was heard by the Single Judge of the High Court, though under Rules it was required to be heard by a Division bench of the High Court, the order setting aside the acquittal, passed by the single Judge setting aside the acquittal in such appeal would be liable to be set aside. Cr.Appeal No. 90 of 1983, D/-13-6-1986 (Bom), Reversed. AIR 1982 SC 800, Rel. on”

4) In the present matter, in view of the aforesaid Rule, the learned Single Judge was not competent to consider the matter

filed by the present respondents, but the learned Single Judge considered the matter and set aside the order of D.R.T. Further, direction was given to D.R.T. to decide the proceeding. In view of this position of law, this Court holds that the order made by the learned Single Judge needs to be quashed and set aside.

5) The tenability of the present proceeding is challenged by the respondent and submission was made by the learned counsel for respondents that review was sought of the order made by the learned Single Judge and so, the present matter is not tenable as it will be against the order of review in view of provision of Order 47 of Civil Procedure Code. Another submission was made that as the matter was filed under Article 227 of Constitution of India, the order made by the learned Single Judge cannot be challenged in L.P.A. The learned counsel for respondent submitted that there was also acquiescence as such objection was not taken at initial stage while deciding the writ petition itself. The learned counsel for respondents placed reliance on some observations made by the Apex Court in the cases reported as **(2000) 4 SCC 108 [Municipal Commissioner, Calcutta and Anr. Vs. Salil Kumar Banerjee and ors.]**, **2001 AIR SCW 4577 [Roshan Deen Vs. Preeti Lal]** and **AIR 2002 SC 1157 [Inder Sain Mittal Vs.**

Housing Board, Haryana and others]. This Court has carefully gone through the observations made by the Supreme Court in the three cases on which reliance is placed by the learned counsel for respondents. Facts of the present matter are altogether different and there is squarely ratio on the point involved of the case on which reliance is placed by the learned counsel for appellant. In view of these circumstances, this Court holds that the observations made by the Apex Court in aforesaid three cases can be of no help to the respondents. Further, ordinarily when the jurisdiction of the learned Single Judge of the present kind is in question, every order made by the learned Single Judge on the point of jurisdiction can be challenged in L.P.A. It can be said that it was mistake not only of the office of this Court in placing the matter before the learned Single Judge, but it was the mistake of the learned Single Judge of entertaining and considering the matter which pertains to the Division Bench. Such mistake can be corrected only by this Court by using the jurisdiction given to this Court. In view of these circumstances, this Court holds that this Court has the jurisdiction to set aside the order made by the learned Single Judge and make correction. However, the entire proceeding need not be considered and the original proceeding along with C.A. needs to be placed before the Division Bench of this Court as everything happened due

to mistake committed by the office of this Court and also by the learned Single Judge of this Court. In the result, the appeal is allowed. The aforesaid orders of the learned Single Judge of this Court are hereby set aside. The matters are restored to the original numbers and writ petition along with civil application are to be placed before the Division Bench. Civil application in L.P.A. is disposed of.

6) Notice of the proceeding is already waived by the respondents and so, place the writ petition before regular Court for final disposal on 21.1.2019.

[SUNIL K. KOTWAL, J.]

[T.V. NALAWADE, J.]

ssc/