

Sharayu Khot.

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

WRIT PETITION NO. 7384 OF 2014

**International Asset Reconstruction ...Petitioner
Company Pvt. Ltd.**

Versus

**The Official Liquidator, High Court & ...Respondents
Ors.**

Mr. Rohit Gupta, a/w Mr. Nikhil Rajani and Ms. Jyoti Sanap i/by
M/s. V. Deshpande & Co. for the Petitioner.

M.S. Bhardwaj for the Respondent No. 5.

**CORAM : A.A. SAYED &
RIYAZ I. CHAGLA, JJ.**

DATE : 30 January 2019

ORDER :

1. The Writ Petition is filed for a declaration that Rule 7 of Debts Recovery Tribunal (Procedure) Rules, 1993 ("***D.R.T. Rules of 1993***" for short) to the extent that it prescribes a fee

for filing of an Appeal under Section 30(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (“**RDDB Act**” for short) from an order of the Recovery Officer, is ultra vires and is liable to be struck down.

2. The issue raised in the Petition is squarely covered by the judgment of the Division Bench of Delhi High Court in *Shri Bal Kishan Bansal Vs. The Jammu and Kashmir Bank Ltd. and Ors.*¹, wherein in paragraphs 12 and 13, it was held as follows :-

“12. That being the position in law, Rule 7 of the DRT Rules, to the extent that it prescribes a fee for appeals from orders of the Recovery Officer, is beyond the rule making power of the Central Government. No such rules could have been made by the Central Government prescribing any fees or rate of fees, for such appeals, inasmuch as the Central Government was not empowered by the DRT Act to do so.

¹ Writ Petition (C) No. 7205 of 2007

13. *We hold that in respect of an appeal under Section 30 against an order passed by the Recovery Officer, no fees has been stipulated in the DRT Act. Consequently, the rules prescribing the application of such a fee are ultra vires the provisions of the DRT Act and, in particular, Section 30 thereof. Thus, no fees are payable in respect of such appeals.”*

3. The Division Bench of the Gujarat High Court in ***Madhukant Pranlal Shah Vs. Bank of India***², drawing support from aforesaid judgment of the Delhi High Court in ***Shri. Bal Kishan Bansal*** has held that since the Act does not prescribe payment of any fess so far as appeal filed under Section 30(1) of the Act wherein interlocutory orders are challenged, no fees are chargeable since no power has been given to the Central Government to frame a rule prescribing a fee.

4. Learned Counsel for the Petitioner has placed reliance upon the judgment of 3-Judge Bench of the Supreme

² *Letter Patent Appeal No. 78 of 2007*

Court in *Kusum Ingots & Alloys Ltd. Vs. Union of India & Anr.*³. In paragraphs 22 of the judgment it is held as follows :-

“22. The Court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a Parliamentary Act, whether interim or final keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.”

(emphasis supplied)

5. The D.R.T. Rules of 1993 are framed by the Central Government. In the circumstances, once the Division Bench of the Delhi High Court in *Shri. Bal Kishan Bansal* (supra) has held that the Rule 7 of the D.R.T. Rules of 1993 is ultra vires, the same would be applicable throughout the territory of India as held in *Kusum Ingots & Alloys Ltd.* (supra). Even otherwise, we are in respectful agreement with the findings of the Division

³ (2004)6 SCC 254

Bench of the Delhi High Court in *Shri. Bal Kishan Bansal* (supra).

6. In the circumstances, the Petition is allowed. Rule is made absolute in terms of prayer clause (a), which reads as follows:-

“That this Hon'ble Court be pleased to hold and declare that Rule 7 of Debt Recovery Tribunal Rules to the extent that it prescribes a fee for an appeal under Section 30(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 from an order of the Recovery Officer is ultra vires and is liable to be struck down.”

7. We record the statement of the learned Counsel for the Petitioner that the Petitioner is not pressing other prayers in the Petition as the Appeal of the Petitioner is already disposed of by D.R.T.

[RIYAZ I. CHAGLA J.]

[A.A. SAYED, J.]