IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 6131 OF 2019
WITH
CIVIL APPLICATION NO. 1946 OF 2019
IN
WRIT PETITION NO. 6131 OF 2019

Bank of Bahrain and Kuwait B.S.C.,]
A Banking Corporation Incorporated in]
the State of Bahrain by an Amiri Decree]
of March 1971 and having its]
Head Office at 43, Government Avenue,]
P.O. Box No. 597, Manama 306,]
Bahrain and amongst Others a Branch]
Office at Jolly Maker Chamber Ii,]
Ground Floor, 225, Nariman Point,]
Mumbai – 400 021.].. Petitioner

Versus

1. HDFC Bank Limited]
A limited Company Incorporated]
under the Companies Act, 1956]
and is having its office at 2nd Floor,]
Trade World New Building,]
Kamla Mills, Senapati Bapat Marg,]
Lower Parel, Mumbai-400 013.]

2. Ashima Limited]
A Company Incorporated under]
the provisions of the Companies Act,]
1956 and having its registered office]
at Texcellence Complex, Khokara,]
Mehmedabad, Ahmedabad-380 021,]
Gujarat; and an office at 201,]

Tulsiani Chambers, Nariman Point,]
Mumbai-400 021.].. Respondents

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Mr. Rajeev K. Pandey a/w. Mr. Ashish Kanojia i/b PRS Legal for the Petitioner.
Mr. Gaurav Joshi, Senior Advocate a/w. Mr. Sameer Pandit and Ms. Sarrah Khambati i/b Wadia Ghandy for Respondent No.1.
Mr. Rafique Dada, Senior Counsel a/w. Ms. Anaisha Zachariah and Ms. Ragini Jaitha i/b Rajesh J. Ghag for Respondent No.2.

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WITH
ORDINARY ORIGINAL SIDE JURISDICTION
WRIT PETITION (L) NO. 2232 OF 2019

Ashima Limited]
A Company Incorporated under]
the provisions of the Companies Act,]
1956 and having its registered office]
at Texcellence Complex, Khokhara]
Mehmedabad, Ahmedabad-380 021,]
Gujarat; and an office at 201,]
Tulsiani Chambers, Nariman Point,]
Mumbai-400 021.]..Petitioner

Versus

1. HDFC Bank Limited]
   2nd Floor, Trade World, New Building,]
   Kamla Mills, Senapati Bapat Marg,]
   Lower Parel, Mumbai-400 013.]

2. Bank of Bahrain and Kuwait BSC,]
43, Government Avenue, P.O.Box No.]
597, Manama 306, Bahrain]
and having a Branch Office at Jolly]
Maker Chambers II, Ground Floor,]
225, Nariman Point, Mumbai –]
400 021.].. Respondents

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Mr. Rafique A. Dada, Senior Advocate a/w. Ms. Anaisha Zachariah a/w. Ms. Ragini Jaitha i/b Crawford Baylay & Co. for the Petitioner.
Mr. Gaurav Joshi, Senior Advocate a/w. Mr. Sameer Pandit and Ms. Sarrah Khambati i/b Wadia Ghandy for Respondent No.1.

Mr. Rajeev Pandey a/w Ashish Kanojia i/b PRS Legal for Respondent No.2

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WITH
ORDINARY ORIGINAL SIDE JURISDICTION
WRIT PETITION (L) NO. 1176 OF 2019

Bank of Bahrain and Kuwait Bsc,]
A Banking Corporation Incorporated in]
the State of Bahrain by an Amiri Decree]
of March 1971 and having its]
Head Office at 43, Government Avenue,]
P.O. Box No. 597, Manama 306,]
Bahrain and amongst Others a Branch]
Office at Jolly Maker Chamber Ii,]
Ground Floor, 225, Nariman Point,]
Mumbai – 400 021.].. Petitioner

<u>Versus</u>

1. HDFC Bank Limited]
A limited Company Incorporated]
under the Companies Act, 1956]
and is having its office at 2nd Floor,]
Trade World New Building,]
Kamla Mills, Senapati Bapat Marg,]
Lower Parel, Mumbai-400 013.]

2. Ashima Limited]
A Company Incorporated under]
the provisions of the Companies Act,]
1956 and having its registered office]
at Texcellence Complex Khokara,]
Mehmedabad, Ahmedabad-380 021,]
Gujarat; and an office at 201,]
Tulsiani Chambers, Nariman Point,]
Mumbai-400 021.]

3. Reserve Bank of India]
New Central Office Building,]
Shahid Bhagat Singh Road, Fort,]
Mumbai, Maharashtra-400001.]

4. The Debt Recovery Officer,]
The Debt Recovery Tribunal-II,]
Mumbai having address at 3rd Floor,]
MTNL Building, Next to Strand]
Cinema,Colaba, Mumbai].. Respondents

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Mr. Rajeev Pandey a/w. Mr. Ashish Kanojia i/b PRS Legal for the Petitioner.
Mr. G. R. Joshi, Senior Advocate a/w. Mr. Sameer Pandit and Ms. Sarrah Khambati i/b Wadia Ghandy for Respondent No.1.
Mr. Rafique Dada, Senior Advocate i/b R. J. Ghag for Respondent No.2.

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CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.

DATED : NOVEMBER 22, 2019

ORDER : [PER PRADEEP NANDRAJOG, CJ.]:

1. Factual background being common and the three players also being common, above captioned three Writ Petitions are being disposed of by a common order.

2. Bank of Bahrain & Kuwait is the Writ Petitioner of Writ Petition (L) No. 1176 of 2019 as also Writ Petition No. 6131 of 2019. The other two players: HDFC Bank Ltd. and Ashima Ltd. are Respondent Nos. 1 and 2 respectively in the said two Writ Petitions. Ashima Ltd. is the Petitioner of Writ Petition (L) No. 2232 of 2019 and needless to state HDFC

Bank and Bank of Bahrain & Kuwait are Respondent Nos. 1 and 2 in the said Writ Petition.

3. Ashima Ltd., a company registered under the Companies Act in India having its registered office at Ahmedabad in the State of Gujarat had obtained a credit from Bank of Bahrain & Kuwait. As a security it issued to Bank of Bahrain & Kuwait a cheque in sum of ₹ 7.5 crores drawn by it on HDFC Bank Ltd.

4. Ashima Ltd. defaulted with respect to the credit facilities advanced to it by Bank of Bahrain & Kuwait. Fearing that said Bank may present the cheque drawn by it on HDFC Bank Ltd. being for encashment, Ashima Ltd. filed a suit seeking injunction against Bank of Bahrain & Kuwait from presenting the cheque for encashment in which suit, the City Civil Court at Ahmedabad granted injunction on 27th May 2003 restraining Bank of Bahrain & Kuwait from presenting the cheque for payment. The same day i.e. on 27th May 2003 Bank of Bahrain & Kuwait presented the cheque drawn on HDFC Bank Ltd. for clearance and for reasons we need not note the cheque got cleared in terms of Uniform Regulation and Rules for Bankers Clearance House. Sum of ₹ 7.5 crores

came to be credited to the account of Bank of Bahrain & Kuwait but HDFC Bank Ltd. had a problem because the money lying in the account of Ashima Ltd. was insufficient to honour the cheque. The HDFC Bank Ltd. repeatedly wrote to Bank of Bahrain & Kuwait to return the sum of ₹ 7.5 crores.

5. On 7th March 2005 HDFC Bank Ltd. filed Original Application registered as 110/2005 with the Debt Recovery Tribunal, Mumbai seeking a decree in sum of ₹ 9,14,23,232.41 with *pendente lite* and future interest @ 18% per annum and needless to state the sum claimed comprised ₹ 7.5 crores with pre-suit interest. Decree was claimed jointly and severally against Bank of Bahrain & Kuwait as also Ashima Ltd.

6. On 30th June 2017, the DRT decreed the claim of HDFC Bank Ltd. pursuant whereto a Recovery Certificate was issued to HDFC Bank for the sum of ₹ 9,14,23,232.41 with *pendente lite* and future interest @ 12% per annum, being the rate at which the decretal amount had to be paid.

7. On 14th September 2017, Ashima Ltd. filed an appeal before the learned DRAT against the judgment dated 30th June 2017 and on 21st September 2017 Bank of Bahrain &

Kuwait also filed an appeal against the judgment dated 30th June 2017. Mandated by Section 21 of The Recovery of Debts due to Banks & Financial Institutions Act, 1993 the appeals were not entertained pending consideration of an application seeking waiver of the deposit by Bank of Bahrain & Kuwait.

8. There being no stay of the judgment and decree dated 30th June 2017 passed by DRT, the Recovery Officer commenced recovery proceedings and vide order dated 9th April 2019 directed the Reserve Bank of India to debit the account of Bank of Bahrain & Kuwait in sum of ₹ 20.70 crores and remit the same to HDFC Bank Ltd. with a direction that HDFC Bank Ltd. would keep the sum of ₹ 20.70 crores in No Lien Account.

9. On 30th April 2019 the learned DRAT disposed of Misc. Appeal No.1121 of 2017 in Appeal No. 2 of 2018 filed by Bank of Bahrain & Kuwait challenging the judgment and decree dated 30th June 2017 by directing Bank of Bahrain & Kuwait to deposit 50% of the decretal amount as a condition precedent to entertain the appeal with peremptory direction that if by 6th June 2019 the deposit was not made the appeal would be automatically dismissed.

10. But before that on 18th April 2019, the Recovery Officer issued a warrant of attachment of the properties owned by Ashima Ltd. We do not want to comment upon the said order for the reason it could be argued that this was impermissible in view of the fact that by 9th April 2019, ₹ 20.70 crores payable to HDFC Bank Ltd. under the judgment and decree dated 30th June 2017 had already been received from the Reserve Bank of India after deducting the said sum from the account of Bank of Bahrain & Kuwait and perhaps it could be argued that the decree having joint and several liability of Bank of Bahrain & Kuwait as also Ashima Ltd. was satisfied.

11. On 25th July 2019, HDFC Bank Ltd. filed Misc. Application before the Recovery Officer praying that it may be permitted to appropriate ₹ 20.70 crores. Said application is still pending consideration.

12. Bank of Bahrain & Kuwait challenges the order dated 30th April 2019 passed by the learned DRAT in Writ Petition No. 6131 of 2019 requiring it to deposit 50% of the decretal amount. Argument is simple. The decretal amount has already

been recovered by the Reserve Bank of India and remitted to the Recovery Officer and is lying with the Decree Holder: HDFC Bank Ltd., albeit in a No Lien Account. Bank of Bahrain & Kuwait challenges in Writ Petition (L) No. 1176 of 2019 the order passed by the Recovery Officer pursuant whereto Reserve Bank of India has, after deducting from its account remitted the decretal amount which is lying in the No Lien Account with HDFC Bank Ltd.

13. In the Writ Petition filed by Ashima Ltd. it is prayed that in view of money being realized by HDFC Bank Ltd. from the account of Bank of Bahrain & Kuwait it be declared that the Recovery Officer DRT has no jurisdiction to proceed with further recoveries. The warrant of attachment dated 18th April 2019 has also been prayed to be quashed.

14. From a common sense point of view, to a reasonable human being, it would be apparent that the decretal amount as per judgment and decree dated 30th June 2017 in favour of HDFC Bank Ltd. with joint and several liability cast upon Ashima Ltd. and Bank of Bahrain & Kuwait has already been realized and is lying in a No Lien Account with HDFC Bank Ltd. The decree being joint and several having been executed

against one of the two Judgment Debtors, no further recovery need be effected by attaching and thereafter selling the assets of the other Judgment Debtor. How the judgment debtors *inter-se* resolve the dispute is for them to decide.

15. Further, once again from a common sense point of view and sense of justice of an ordinary prudent human being, the purpose of pre-deposit in an appeal is to secure the decree. In its wisdom vide Section 21 the Legislature has mandated that 50% of the decretal amount needs to be deposited before an appeal filed before the DRAT against a decree passed by the DRT can be entertained by DRAT. In the instant case, the decretal amount has been secured. It currently lies in a No Lien Account with the Decree Holder. Thus, the question of Bank of Bahrain & Kuwait making any further deposit in terms of the decree challenged before the learned DRAT in Appeal No. 2 of 2018 does not arise.

16. Thus, we dispose of Writ Petition No. 6131 of 2019 quashing the order dated 30th June 2019 passed by the learned DRAT and declare that the decretal amount has already been obtained and is lying in a No Lien Account with HDFC Bank Ltd. i.e. the Decree Holder and thus would direct learned

DRAT to decide on merits Appeal No. 2/18 filed by Bank of Bahrain & Kuwait.

17. Since the liability under the decree is joint and several upon Bank of Bahrain & Kuwait as also Ashima Ltd. we direct the learned DRAT to decide the appeal filed by Ashima Ltd. against the judgment and decree dated 30th April 2019 without seeking any deposit and the appeal would be decided along with the appeal filed by Bank of Bahrain & Kuwait.

18. Noting that Bank of Bahrain & Kuwait has filed applications before the Recovery Officer DRT concerning the decretal amount remitted by Reserve Bank of India after deducting the same from its account and which amount is in No Lien Account with HDFC Bank Ltd., we dispose of Writ Petition (L) No. 1176 of 2019 directing that the Recovery Officer would pass the necessary orders on the applications filed by Bank of Bahrain & Kuwait. We decline the reliefs prayed for in the said Writ Petition. We also direct the Recovery Officer of the DRT to decide application filed by HDFC Bank Ltd. to let it transfer the money from the 'No Lien Account' to its account.

19. As regards Writ Petition (L) No. 2232 of 2019 filed by Ashima Ltd. we dispose of the same suspending the warrant of attachment dated 18th April 2019 as also the order dated 29th March 2019 passed by the Recovery Officer, clarifying that once the appeals filed by Ashima Ltd. and Bank of Bahrain & Kuwait are decided, depending upon the said appellate order the Recovery Officer shall proceed in accordance with law.

20. Pending Civil Application is also disposed of as infructous.

SMT. BHARATI DANGRE, J. **CHIEF JUSTICE**