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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 11581/2019 & CM Appl.No. 47575/2019 (interim direction)**

L. MADHUSUDHAN RAO

..... Petitioner

Through

Mr. Sandeep Sethi, Sr. Advocate with
Mr. Rajat Malhotra, Mr. Aditya
Malhotra, Mr. Uday Arora and
Mr. Vaibhav Mishra, Advocates

versus

ICICI BANK LIMITED AND ORS.

..... Respondents

Through

Mr. R.P.Agrawal and Mr. Nitish
Kumar, Advocates

+ **W.P.(C) 11583/2019 & CM Appl.No. 47579/2019 (stay)**

L. MADHUSUDHAN RAO

..... Petitioner

Through

Mr. Sandeep Sethi, Sr. Advocate with
Mr. Rajat Malhotra, Mr. Aditya
Malhotra, Mr. Uday Arora and
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versus

ICICI BANK LIMITED AND ORS.

..... Respondents

Through

Mr. R.P.Agrawal and Mr. Nitish
Kumar, Advocates

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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01.11.2019

CM Appl.No. 47576/2019 (Exemption) in WP(C) No. 11581/2019

CM Appl.No. 47580/2019 (Exemption) in WP(C) No. 11583/2019

1. Exemption allowed, subject to all just exceptions.

WP(C) No. 11581/2019 & CM Appl.No. 47575/2019 (interim direction)
WP(C) No. 11583/2019 & CM Appl.No. 47579/2019 (stay)

2. Notice. Mr. R.P. Agrawal, learned counsel for the contesting Respondent No.1 ICICI Bank Limited accepts notice and waives his right to file a reply to this petition. He has insisted that he will argue the petition as it is on merits. Accordingly, he has been heard at length at this stage itself. With his consent, the writ petitions are being finally disposed of.

3. It may be noted that the remaining Respondents are all proforma parties, unaffected by the limited scope of the present petitions.

4. The limited scope of both these writ petitions is the legality of one sentence in the impugned order passed by the Debt Recovery Appellate Tribunal ('DRAT') on 29th October 2019, in which while reserving orders in the main appeals i.e. MA Nos. 396 and 399/2019, preferred by ICICI Bank Limited against the order of the Debt Recovery Tribunal-I, Delhi ('DRT') dated 20th July, 2019 in OA No.904/2018 and OA No. 1463/2018, the DRAT directed that:

“Till the pronouncement of the order, Respondent No.1 shall not leave the country”.

5. The Petitioner before this Court was Respondent No.1 before the DRAT.

6. It must be noted at this stage that the order dated 20th July, 2019 of the DRT in both the above OAs required the Petitioner herein to “now onwards” give intimation to the DRT, “7 days before while travelling abroad with advance copy to the Applicant of OA”. Further, the Petitioner was “directed

to remain available before this Tribunal as and when he is required, for the said purpose is hereby directed to furnish an undertaking.”

7. The said order was passed in the IA filed in each of the OAs by the present Petitioner before the DRT seeking to vacate/modify its earlier orders dated 21st August 2018 and 9th January 2019, restraining him from travelling abroad without obtaining the prior permission of the DRT. Before the DRT in the said IA it was submitted on behalf of the present Petitioner that the power of the DRT under Section 19 (25) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act) (now known as the Recovery of Debts and Bankruptcy Act, 1993) is a limited one. Reliance was placed on the judgment dated 8th March, 2017 passed by this Court in W.P.(C) No.10765/2015 (*ICICI Bank Limited v. Kapil Puri*), where in identical circumstances this Court upheld the order of the DRAT, which had allowed the appeals of the Respondents therein questioning the orders of the DRT that they should inform the DRT and seek its permission prior to travelling abroad.

8. This Court in *ICICI Bank Limited v. Kapil Puri* (*supra*) noted that while the deed of guarantee executed by the Respondents in that case did contain a clause which required them to take prior permission of the ICICI Bank Limited in the event of travelling abroad for employment or business or a long term stay, such a clause did not empower “the DRT to direct, that Respondents No.1 and 2 would seek its permission.” This Court was of the view that in purported invocation of its power under Section 19 (25) of the RDDBFI Act, such an order could not have been passed by the DRT.

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9. In the present case, the DRT in its order dated 20th July, 2019 took note of the above judgment in ***Kapil Puri*** and modified its earlier orders dated 21st August, 2018 and 9th January, 2019 and directed that the Petitioner herein will give a 7 days' advance to the DRT prior to travelling abroad with an advance copy to ICICI Bank Limited and also to furnish an undertaking that he will remain present as and when required by the DRT.

10. It appears that during the pendency of the appeals before the DRAT not order was passed by it staying the aforementioned two orders dated 20th July, 2019 of the DRT.

11. Mr. Sandeep Sethi, learned Senior counsel for the Petitioner drew attention to clause 7 (v) of the deed of guarantee executed by the present Petitioner which is identical in wording to the clause in the deed of guarantee in the ***Kapil Puri*** case. The said clause states that the guarantors shall not:

“Leave India for employment or business or for long term stay abroad so long as any amounts remain outstanding under the Facility together with interest and other dues and charges including prepayment charges as per the rules of the said Banks then in force. Whether the stay is long term or not shall be decided solely by the said Banks.”

12. Mr. Aggarwal, learned counsel for the ICICI Bank Limited on a query by this Court admitted that ICICI Bank Limited had accepted the decision in ***Kapil Puri*** (*supra*) and did not choose to challenge it. The judgment has held the field, as far as this High Court is concerned, since March, 2017. He

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tried to persuade this Court that it should doubt the correctness of the said judgment and refer the matter to a larger Bench.

13. Having examined the said judgment in ***Kapil Puri*** carefully and noting the fact that even the ICICI Bank Limited has not chosen to challenge it till date, this Court is not persuaded to accept the above plea. Indeed, the wording of the above clause in the deed of guarantee is unambiguous. There is no question of the DRT, or for that matter the DRAT, bound as they are in their respective functioning by the provisions of RDDBFI Act to exercise powers in terms of the said clause in the guarantee to restrain the Petitioner from travelling abroad. In the circumstances, the Court fails to understand the DRAT adding the above line to the order by which it reserved judgment in the two appeals filed by ICICI Bank Limited imposing a blanket ban on the Petitioner herein from leaving the country. This appears to be far beyond even the clause in the deed of guarantee executed by the Petitioner.

14. Following the judgment of this Court in ***Kapil Puri (supra)***, this Court has no hesitation in holding that the DRAT could not have issued such a blanket order restraining the Petitioner from leaving the country, particularly when it was called upon to decide the correctness of the order dated 20th July, 2019 of the DRT in the appeals pending before it and without any interim order earlier having been passed by it staying the orders in appeal before it.

15. Accordingly, the portion of the impugned order which reads “till the pronouncement of orders, Respondent No.1 shall not leave the country” is

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hereby set aside.

16. It must be recalled here that the appeals before the DRAT were by the ICICI Bank Limited. On his part, the Petitioner herein appears to have accepted the orders dated 20th July 2019 of the DRT. It is accordingly clarified that as a result of this order, the DRT's orders dated 20th July, 2019 will continue to remain operational till such time the DRAT pronounces its judgment in the appeals pending before it against the said orders.

17. This order will not prevent ICICI Bank Limited from seeking any other remedy that it wishes to avail under any other law for the time being in force.

18. The writ petitions are allowed in the above terms. The pending applications are also disposed of.

19. A copy of this order be given *dasti* under the signatures of Court Master.



S. MURALIDHAR, J.



TALWANT SINGH, J.

NOVEMBER 01, 2019

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