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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8574/2019

RAGHAV SPINTEX AND ORS. ..... Petitioners
Through Mr. Suhail Shah, Adv.

versus

CENTRAL BANK OF INDIA ..... Respondent
Through Mr. S.A. Khan, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

O R D E R

% **09.08.2019**

C.M. No. 35442/2019

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 8574/2019 & CM Nos.35441 & 35445/2019

Issue notice. Counsel for the respondent bank accepts notice.

Since the issue is small, we have heard the learned counsels and proceed to dispose of the writ petition.

The petitioners are aggrieved by the orders dated 15.03.2018 passed by the learned Debt Recovery Tribunal in the petitioner's application to seek refund of what he claims allegedly excess amount deposited by him with the respondent bank as well as the order dated 11.06.2019 passed by the learned Recovery Debt Appellate Tribunal, Delhi, whereby the petitioner's appeal against the order dated 15.03.2018 has been dismissed by the learned DRAT on the ground that the petitioner had failed to deposit 25% of the debt in terms of his own statement made on 27.09.2018.

The learned DRT, vide order dated 15.03.2018, dismissed the Application preferred by the petitioners, being I.A. (M) No.359/2018 in S.A. No.134/2016, holding that the application preferred by the petitioners was not maintainable. While doing so, the Tribunal also took note of the stand of the respondent that the petitioner had issued a letter dated 8.2.2018 admitting their liability and stating that they were ready to deposit Rs.64.50 lacs, which includes interest @ 12% for delayed period plus other charges by 15.2.2018 and also prayed for condonation of delay. The Tribunal took note of the fact that the petitioner had subsequently deposited Rs.15 lacs in the account of M/s Madhav Madhav Vivtex on 10.02.2018 and thereafter, an amount of Rs.49.50 lacs was due as per the admission made by the petitioners/applicants. Instead of making the said payment, the petitioner was claiming that it had made excess payment to the tune of Rs.1,11,85,000/- and was seeking refund.

The petitioner had then preferred Misc. Appeal No 178/2018 arising out of S.A. No.134/2016 before the learned DRAT. On 24.04.2019, counsel for the respondent bank informed the Tribunal that a total sum of Rs.1.35 crores was recoverable in respect of the three accounts of the appellant. He also stated that on the next date he will file a detailed affidavit as to the amounts paid by the appellant after the receipt of the notice under Section 13(2) of the SARFAESI Act and then the Tribunal may pass appropriate orders regarding the amount of pre-deposit to be made. The learned Appellate Tribunal directed that advance copy of the affidavit be served upon the counsel for the appellants so that if they have any objection regarding the calculation of the amount, they can raise their objection. The matter was adjourned to 11.06.2019. On 11.06.2019, the learned Appellate Tribunal passed the following order:

> "Today, counsel for the appellant submits that the appellant has not made the pre-deposit of the minimum amount of 25% of the debt in question as was volunteered to be made on 27.09.2018 within a period of two months. Since, even the minimum amount of pre-deposit has not been deposited as was volunteered to be done. This appeal has become liable to be dismissed as not entertainable. It is dismissed as accordingly."

The submission of the learned counsel for the petitioners is that the respondent never filed the affidavit in terms of the order dated 24.04.2019. Thus, it could not be said that there was non-compliance on behalf of the petitioner in making the pre-deposit.

Counsel for the respondent, who appears on advance notice, states that though the affidavit had not been filed, the respondent had tendered closing statements of account of all the accounts, which showed the liability of Rs.105.532 lacs as on 19.12.2018.

In our view, the learned DRAT was not justified in dismissing the petitioners' appeal since the respondent had itself not complied with the earlier direction issued on 24.04.2019 and had not filed the affidavit, much less served the copy of it on the petitioner. Mere tendering of the closing statements of account on 11.06.2019 itself was of no avail since the requirement of the previous order was that the amount had to be disclosed on affidavit and the petitioner was required to tender the affidavit in advance so that the petitioner could study the same and raise its objections. Learned counsel for the respondent states that the affidavit was not filed thereafter as well since the appeal itself was dismissed on 11.06.2019.

We, therefore, set aside the impugned order dated 11.06.2019 passed by the learned DRAT and remand the appeal back to the learned DRAT. The respondent shall file the affidavit in terms of the order dated 24.04.2019 within the next two weeks with advance copy to the petitioners. The matter shall be listed before the learned DRAT on 02.09.2019.

The petition stands disposed of in the above terms.

VIPIN SANGHI, J

ANUP JAIRAM BHAMBHANI, J

AUGUST 09, 2019

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