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

\+ W.P.(C) 2185/2017

BHUPENDRA ..... Petitioner

Through: Mr.Arunav Patnaik, Adv. with Ms.Anandini Kumar, Adv.

versus

STATE BANK OF HYDERABAD & ORS ..... Respondents

Through: Mr.I.S. Bakshi, Adv. for R-1. Mr.Jaswinder Singh, Adv. for Central Bank of India.

\+ W.P.(C) 2186/2017

BHUPENDRA ..... Petitioner

Through: Mr.Arunav Patnaik, Adv. with Ms.Anandini Kumar, Adv.

versus

STATE BANK OF HYDERABAD & ORS ..... Respondents

Through: Mr.I.S. Bakshi, Adv. for R-1. Mr.Jaswinder Singh, Adv. for Central Bank of India.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **22.04.2019**

1. These two writ petitions have been preferred by the petitioner to assail firstly the order dated 25.10.2016 passed by the learned Debt Recovery

Appellate Tribunal (DRAT) rejecting the prayer made by the petitioner/appellant to seek exemption from pre-deposit before the learned DRAT for hearing of his appeal against the order passed by the DRT dated 18.08.2015 in Original Application No.47/2006. In WP(C) No.2186/2017 the petitioner has assailed the order dated 06.01.2017 passed by the learned DRAT dismissing the petitioner's Appeal No.152 of 2016 on account of pre-deposit not being made in terms of the earlier order dated 25.10.2016, which has been impugned in W.P.(C)No.2185/2017.

2. The State Bank of Hyderabad had instituted the Original Application No.47/2006 impleading the Central Bank of India as defendant no.1 and Shri Sanjib Kumar Saha and Shri Bhupendra as defendant nos.2 & 3. At the instance of the petitioner/defendant no.3 Shri Bhupendra, the Central Bank of India had issued a letter of credit in favour of defendant no.2-Shri Sanjib Kumar Saha. The State Bank of Hyderabad was the negotiating bank of Shri Sanjib Kumar Saha. The letter of credit was invoked by Shri Sanjib Kumar Saha/Defendant no.2 and the State Bank of Hyderabad paid a sum of Rs.42,23,800/- to him in accordance with the terms of the LC. On account of a dispute between defendant nos.2 & 3, the Defendant no.3 instituted proceedings before the learned Civil Judge, Chandrapur to seek a stay of the payment of the amount covered by the LC. Initially a stay was obtained by defendant no.3 on 01.01.2003 which stay continued for about three years and was vacated finally on 16.11.2005. Since the payment was not made to the State Bank of Hyderabad, it preferred the aforesaid Original Application. During the pendency of the original application, payment was made to State Bank of Hyderabad by the Central Bank of India of the LC amount on 28.03.2006. The only issue that, therefore, arose before the Tribunal was

with regard to the payment of interest on delayed release of the LC amount by the Central Bank to the State Bank of Hyderabad. The Tribunal allowed the Original Application vide its order dated 18.08.2005 and directed the Central Bank of India to make payment of simple interest at the rate of 11% per annum, from 06.01.2003 till 28.03.2006 on the LC amount of Rs.42,23,800/- within sixty days. It also held that the Central Bank of India would be at liberty to claim the amount from the defendant nos.2 & 3 as per law.

3. The petitioner as well as the Central Bank of India were both aggrieved by the directions issued by the DRT. So far as the petitioner is concerned, it was aggrieved by the fact that the liability under the LC was found to be that of the Central Bank of India and yet liberty had been granted to the Central Bank of India to claim the amount *inter alia* from the petitioner/defendant no.3. The petitioner then preferred its appeal before the learned DRAT which, as aforesaid, has eventually been dismissed on account of non-deposit of the amount as directed under the order dated 25.10.2016.

4. The submission of learned counsel for the petitioner is that since no recovery was directed by the learned DRT against the petitioner, the learned DRAT was not justified in refusing to grant exemption to the petitioner from making the pre-deposit.

5. On the other hand, learned counsel for the respondents submits that the present petitions have become infructuous inasmuch as while deciding the appeal preferred by the Central Bank of India being Appeal No.162/2016 on 17.09.2018 (which is assailed in WP(C) No.12167/2018), the order dated 18.08.2015 passed by the DRT, which was assailed by the petitioner in

Appeal No.152/2016, has been considered in its entirety.

6. We have heard learned counsels in all the three writ petitions namely in WP(C) No.2185/2017 & 2186/2017 and in WP(C) No.12167/2018. We are of the view that the learned DRAT was not completely justified in refusing to grant exemption from pre-deposit to the petitioner, considering the fact that the DRT had directed recovery in favour of State Bank of Hyderabad from the Central Bank of India, and not from the petitioner, as also the fact that the Central Bank of India's Appeal against the same order was in any event being considered. The learned DRAT should have granted exemption from pre-deposit and, therefore, the order dated 25.10.2016 does not appear to be correct. Consequently, the dismissal of the appeal preferred by the petitioner on account of non-compliance of the order dated 25.10.2016, *per se*, cannot be sustained.

7. However, we find that since the petitioner was heard in the appeal preferred by the Central Bank of India being Appeal No.162/2016, and since we have also heard submissions of learned counsels in these proceedings, no prejudice has been suffered by the petitioner and, therefore, we are not inclined to set aside the impugned orders assailed in these two writ petitions.

8. We, therefore, dispose of these petitions in the aforesaid terms while observing that the present order be read along with the order passed in WP(C) No.12167/2018.

VIPIN SANGHI, J

REKHA PALLI, J

APRIL 22, 2019/aa