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

\+ **W.P.(C) 1391/2020**

COMPETENT DYE STUFF AND ALLIED PRODUCTS PVT. LTD. AND ANR. ..... Petitioners

Through: Mr. Sanjeev Aggarwal and Mr. E Agarwal, Advocates

versus

ICICI BANK LTD. ..... Respondent

Through: Mr. Punit K.Bhalla and Mr. Nilesh Bijlani, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **11.02.2020**

CM APPL. 4855/2020 (exemption)

1. Allowed, subject to all just exceptions.

W.P. (C) 1391/2020 & CM APPL. 4854/2020 (stay)

2. The present petition challenges an order dated 6th January, 2020 passed by the Debt Recovery Appellate Tribunal ('DRAT') allowing Appeal No. 411/2014 filed by the Respondent/ICICI Bank Ltd. The DRAT by the impugned order set aside the order dated 26th September, 2014 passed by the Debt Recovery Tribunal ('DRT') dismissing ICICI Bank's OA No. 312/2012.

3. The background facts are that ICICI Bank had given a loan of Rs. 60 lakhs to the Petitioner for the purchase of a BMW car. The loan was repayable in 59 equated monthly installments ('EMIs') of Rs. 1,28,415/-, each. Interest was payable at 9.75% per annum. The said BMW car was hypothecated with the ICICI Bank. The Petitioner defaulted in repaying the loan. When despite receipt of a demand notice the Petitioner did not clear the outstanding dues, the aforementioned OA came to be filed by the Respondent Bank before the DRT in November, 2012. The BMW car met with an accident on 4th August, 2011, as a result of which it was totally damaged. Even according to the Petitioner, as a result of the accident there was total loss to it. The car had been insured by ICICI Lombard Ltd.

4. The Petitioner lodged a claim with ICICI Lombard, and when that claim was not processed, the Petitioner filed a complaint against ICICI Lombard as well as the Respondent Bank before the Delhi State Consumer Disputes Redressal Commission (hereinafter, 'State Commission'). At one stage, the State Commission restrained the Respondent Bank from recovering the EMIs by an interim order dated 21st January, 2013. ICICI Bank filed an application before the State Commission to point out it was a separate entity and that it did not have anything to do with the insurance on the car. On this plea, the interim order is vacated.

5. Aggrieved by the vacation of the interim order, the Petitioner approached the National Consumer Disputes Redressal Commission ('NCDRC') with a Revision Petition. The said petition was dismissed by the NCDRC, with a

direction to the State Commission to dispose of the complaint within 3 months. The Court is informed that the said complaint is still pending with the State Commission.

6. As far as the DRT was concerned, it dismissed the OA filed by the ICICI Bank seeking recovery of Rs. 54,56,596/- on the ground that the claim for such amount was an exaggerated one. The DRT also noted that although at the instance of the ICICI Bank a receiver had been appointed for taking possession of the vehicle, ICICI Bank did not do so and that, therefore, it was grossly negligent in the primary security being lost/eroded.

7. The aforesaid order dated 26th September, 2014 was challenged by the ICICI Bank by filing Appeal No. 411/2014. In the initial round, the DRAT by an order dated 28th July, 2015 allowed the said appeal, by determining the amount recoverable by ICICI Bank as Rs. 43 lakhs. In arriving at the said sum, the DRAT noted that the outstanding amount as on that date was Rs. 47,10,00/-, as calculated by both the parties. The DRAT decided to give "some allowance for the inaction on the part of the Bank for not selling the vehicle in time" and assessed the loss due to that negligence as Rs. 4 lakhs. It thus arrived at the sum of Rs. 43 lakhs as payable by the Petitioner to the ICICI Bank within 30 days, failing which simple interest at 10 % per annum would be payable by the Petitioner from the date of the order of the DRAT till the date that the complete payment was realized.

8. Against the aforementioned the order of the DRAT dated 28th July, 2015, the Petitioner filed W.P.(C) 9705/2015 in this court. On 13th October, 2015, the said writ petition was dismissed by the following order:

"**CM APPL. 23244/2015 & CM APPL. 23245/2015**
Exemption allowed subject to just exceptions. Applications stand disposed of.

W.P.(C) 9705/2015 & CM APPL. 23246/2015
After some hearing in the matter, learned counsel for the petitioner wishes to withdraw the present petition.

The petition along with pending application are dismissed as withdrawn."

9. The ICICI Bank filed an independent writ petition being W.P.(C) No. 11595/2015 in this Court against the same order of the DRAT dated 28th July, 2015. This writ petition was limited to the aspect of the DRAT having deducted a sum of Rs. 4 lakhs from the amount that was actually found to be due by the Petitioner to ICICI Bank. This is evident from the prayer clause in the writ petition which reads as under: -

> "a. Allow the present petition and modify the order dated 28.07.2015 passed by the learned Debt Recovery Appellate Tribunal in Appeal No. 411/2014 and hold that the petitioner bank is entitled to recover the amount of Rs.54,56,596.00 and interest thereon as per the contract as claimed in Original Application filed by it before the DRT-II. Delhi."

10. ICICI Bank's W.P.(C) 11595/2015 came to be allowed by the Division Bench ('DB') of this Court on 19th April, 2016. Paragraphs 1 and 2 of the said order are required to be noted and read as under:

> "1. Writ petition filed by the respondents against the impugned order dated July 28, 2015 disposing of Appeal No.411/2014 filed by DRAT Delhi has been dismissed. The grievance of the

> petitioner in the instant petition is to the quantification of the value of the written off Motor Vehicle in sum of 4 lakhs, as also not correctly quantifying the amount due to the writ petitioner.
>
> 2. As we proceeded to dictate the judgment, learned counsel for the parties jointly request that after setting aside the impugned order the appeal be restored for adjudication afresh because both counsel concede that the impugned order is perfunctory."

11. Thereafter, the DB proceeded to note that the DRAT had failed to actually determine the number of EMIs that remained outstanding and the interest due thereon. Paragraphs 14 to 16 of the said order read as under:

> "14. It was the duty of DRAT to have determined the number of EMIs which remained outstanding and interest due thereon. It was the duty of DRAT to determine the effect of the claim being laid before all 59 EMIs became due and payable, for the reason, when calculated each EMI had factored in the reducing principle and interest on the balance.
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> 15. We are not rendering any opinion on the quantification of the amounts and what we have written hereinabove is to guide the DRAT as to in what manner the judgment has to be written. A judgment must have a brief overview of the facts to set the scene. A succinct statement of the issues to foreshadow the structure must emerge. If relevant, a succinct statement of the procedural history could be written. An impartial statement of each parties' position on each issue has to find a mention. A clear statement of the flaws in the losing parties' position on each issue has to be recorded. Evidence supporting findings on the issues and reference to the law or a standard upon which the judgment is based has to be written.
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> 16. The petition is accordingly disposed of, with consent, setting aside the impugned order dated July 28, 2015 passed by DRAT. Appeal No.411/2014 is restored for adjudication afresh before DRAT."

12. For some reason, while passing the above order dated 19th April, 2016, the DB did not note that the Petitioner's separate W.P.(C) No. 9705/2015 challenging the same impugned order dated 28th July, 2015 of the DRAT already stood dismissed as withdrawn. The scope of the appeal before the DRAT, in terms of the order dated 19th April, 2016, was, therefore, confined to the DRAT determining the actual amount due from the Petitioner to the Respondent/ICICI Bank after accounting for all the payments made till then.

13. In the impugned order, the DRAT noted that when the financed vehicle had become a total loss, there was no occasion for them to have made efforts to sell the said vehicle. It was further noted that the relationship, if any, between ICICI Bank and ICICI Lombard had nothing to do with ICICI Bank's Claim from the defaulting borrower, "even if the insurance policy in respect of the BMW car in question stands assigned in favour of the appellant bank". With the question of deduction of any amount for the failure by ICICI Bank to sell the vehicle and recover any sum being out of the way, the DRAT proceeded to direct that a Recovery Certificate shall be issued against the Petitioner for the actual claim together with interest at 9.75% per annum from the date of filing of the OA till realization of the decreed amount.

14. At the outset, the Court notes that in the present petition, the Petitioners failed to disclose that it had filed a separate W.P.(C) 9705/2015 against the order dated 28th July, 2015 of the DRAT which stood dismissed as withdrawn by this Court on 13th October, 2015. The Court has not been

furnished with any satisfactory explanation for this suppression of a material fact. This solitary factor by itself should be sufficient for the Court to dismiss the present petition.

15. Nevertheless, the Court has also considered the petition on merits. The submission of learned counsel for the Petitioner is that the order dated 19th April, 2016 of a DB of this Court remanding Appeal No. 411/2014 to the DRAT was a consent order and it was therefore incumbent on the DRAT to consider the entire appeal afresh, irrespective of the earlier order dated 28th July, 2015.

16. As already noted hereinbefore, the above order dated 19th April, 2016 was passed in W.P.(C) 11595/2015 filed by ICICI Bank Ltd. and the scope of that writ petition was confined to determining the correct amount that was due by the Petitioner to the ICICI Bank. In this context, the Court would like to refer to Ground 'F' of the said writ petition of ICICI Bank, which reads as under:

> "F. That the learned Tribunal Below after holding that the DRT was wrong in coming to the conclusion that the bank is not entitled to recover the O.A. amount has wrongly arrived at a Figure of Rs. 47,10,995.00 as the total outstanding payable by the respondent as against the total outstanding as claimed in the suit as Rs.54,56,596.00."

17. It was in this context that the prayer in the said writ petition was, as extracted hereinbefore, for a direction that ICICI Bank was entitled to recover the entire sum claimed by it, i.e. Rs. 54,56,956 /-

18. It was submitted by learned counsel for the Petitioner that since the order dated 28th July, 2015 was set aside by consent of the parties, the DRAT was required to consider the entire matter afresh.

19. The Court is unable to agree with this submission. In the first place, as already noted, the Petitioner's challenge to the order dated 28th July, 2015 failed when its W.P.(C) 9705/2015 stood dismissed as withdrawn by it. In other words, the Petitioner was not questioning the liability owed by it to ICICI Bank Ltd. Therefore, the only question was of the quantification of the exact amount due. As far as that aspect is concerned, the Court is unable to be persuaded that the DRAT committed an error in holding that there could be no amount deducted for the failure to salvage the entirely damaged vehicle.

20. Added to this is the fact that the complaint filed by the Petitioner with the State Commission is pending consideration. It is not in dispute that the vehicle stood completely damaged. There could not, therefore, have been any compulsion on ICICI Bank Ltd. to salvage the completely damaged vehicle and to deduct any sum as a result thereof from the amount due to it. To that extent, the impugned order of the DRAT calls for no interference.

21. As far as quantification is concerned, the case of the Respondent/ICICI Bank is that it arrived at the sum claimed by it after accounting for all the EMIs paid by the Petitioner. Therefore, there was really no contest as to the correctness of the amount claimed by the ICICI Bank Ltd.

22. For the all the aforesaid reasons, the Court finds no merit in the present writ petition and dismisses it, as such. The pending application is also dismissed.

S.MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 11, 2020
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