

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5875/2020 & C.M. No.21236/2020 (Stay)**

Date of decision: 24 December, 2020

IN THE MATTER OF:

COMMERZBANK AKTIENGESELLSCHAFT Petitioner
Through: Mr. Sudhir Makkar, Sr. Advocate with
Ms. Anindita Roy Chowdhury, Mr. Atun Menon,
Ms. Aishwarya Modi, Ms. Saumya Gupta,
Ms. Yogita Rathore, Advocates.

versus

STATE BANK OF INDIA, OVERSEAS BRANCH & ORS
..... Respondents
Through: Mr. S.L. Gupta and Mr. Aditya Vikram
Gupta, Advocates for R-1.
Mr. Shammi Kapoor, Advocate with Mr. Allen
Massey, Advocate for R-2.

AND

+ **W.P.(C) 5878/2020 & C.M. No.21252/2020 (Stay)**

COMMERZBANK AKTIENGESELLSCHAFT Petitioner
Through: Mr. Sudhir Makkar, Sr. Advocate with
Ms. Anindita Roy Chowdhury, Mr. Atun Menon,
Ms. Aishwarya Modi, Ms. Saumya Gupta,
Ms. Yogita Rathore, Advocates.

versus

STATE BANK OF INDIA, OVERSEAS BRANCH & ORS
..... Respondents
Through: Mr. S.L. Gupta and Mr. Aditya Vikram
Gupta, Advocates for R-1.
Mr. Shammi Kapoor, Advocate with Mr. Allen
Massey, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. Since the parties in WP(C) 5875/2020 and WP(C) 5878/2020 are common and both the writ petitions deal with the same facts and raise identical issues, with the consent of the parties, both the petitions have been taken up together for adjudication.

2. The writ petitioner is defendant No.4 in the Original Applications filed by the respondent No.2/Bank. The DRT by the impugned judgments has allowed both the OAs and has directed the respondents in O.A. 274/2015 and O.A. 68/2012 (including the petitioner herein), to pay a sum of Rs.60,72,83,124/- and Rs.47,93,24,016/- respectively to the respondent No.2/Bank. The respondents in the O.A. have been held to be jointly and severally liable to pay the said amounts.

3. The facts of the present case in brief are as under:

(a) Respondent No.3 is a company registered under the Companies Act and is an Indian arm of a multi-national company based in Spain, M/s Cobra Instalaciones Y Servicious SA. Respondent No.4 the Commercial Bank of Ethiopia, is the banker of the respondent No.5/Ethiopian Electric Power Corporation. Respondent No.3 had entered into a contract with the respondent No.5 for supply of electrical goods. Respondent No.4 opened Letters of Credit in favour of the respondent No.3, the beneficiary under the Letters of Credit. Respondent No.4 is the issuing Bank for the letters of credit. The petitioner was appointed as the reimbursing bank by the respondent

No.4 for making payments of the bills duly accepted by it. Respondent No.2 (Applicant in the O.A.) is the negotiating bank for the respondent No.3.

(b) For receiving payment for the goods supplied, Letters of Credit (LC) were advised by the respondent No.4 through the overseas Branch of the respondent No.2/Bank at New Delhi. Respondent No.3 who has been maintaining the account with the respondents No.2/Bank, sought confirmation of the same and the respondent No.2/Bank after taking up the matter with the respondent No.4, confirmed issuance of the said Letters of Credit (LC).

(c) The LCs were governed under the ICC Uniform Customs and Practice for Documentary Credits (UCP 600) according to which the beneficiary, respondent No.3 had to draw/submit the documents strictly as per the terms of the LC for taking benefit and to claim negotiation.

(d) Documents under all the LCs were submitted but the same were discrepant and not as per the terms of the LCs and the respondent No.2 refused to honour the same and accept the same for negotiation.

(e) It is stated that on receipt of the documents, respondent No.4/Commercial Bank of Ethiopia had accepted the same and undertook to honour them. After acceptance of the documents by the respondent No.4 and advising the due dates for payment of the instalments of the Bills, respondent No.3 started approaching the respondent No.2 for finance against the monies receivable from the respondent No.4. Respondent No.3, that was having dealings with NATIXIS Bank Madrid, Spain (for short, Spanish Bank) approached it

for finance against monies receivable under the Bills duly accepted for payment by the respondents No. 4 and 5.

(f) It is stated that respondent No.3 informed the respondent No.2/Bank that it has entered into an agreement with the Spanish Bank for discounting of the export Bills and requested the respondent No.2 to transfer the funds on receipt on the due dates, to the Spanish Bank. Since the arrangement did not work with the respondent No.3 and the Spanish Bank, respondent No.3 approached the respondent No.2/Bank for arranging discounting of the Bills. Conditions of rate of interest and other charges were also settled by the respondent No.3, that was asked to produce the message from the Spanish Bank.

(g) It is further the case of the respondent No.2/Bank in the O.A. that the credits were released to the respondent No.3 in between and the same were received by it. Respondent No.6/SBI, London released finance against the receivable/instalments under the deferred payment. According to the respondent No.2, in the finance against receivables/discounting of Bills, the bank assumes no liability and it is the liability of the beneficiary to ensure the payment on the due dates and in case the payment is not received on the due date, the beneficiary is liable to pay the amount together with interest to the respondent No.2/Bank.

(h) It is said that the respondent No.2/Bank had received the payments of the deferred payments under the Bills. Vide Swift Message dated 15.06.2011, the petitioner advised the respondent No.2/Bank to contact respondent No.4 as its authority to reimburse, was withdrawn. Thereafter, the respondent No.2 took up the matter

with the writ petitioner and the respondent No.4 for making payment of the deferred instalments of the Bills, but they did not make any payment from 15.06.2011.

(i) It is the case of the respondent No.2/Bank that it has paid the amount which became due and payable after April 2012. Initially, the respondent No.2 was maintaining a current account and subsequently, the amount was transferred to Recalled Debts Account on 11.05.2012 and the subsequent payments, charges, etc. were debited in the said account. The rate of interest applicable to the clean overdraft was 18.25% per annum with monthly rests. Respondent No.2 served a legal notice dated 20.06.2015 on the petitioner and the respondents No.3, 4 and 5 for payment of the amount which became due and payable on payments made by it to the respondent No.6/SBI, London.

(j) Respondent No.2/Bank submitted that a sum of Rs.39,48,38,811/- was due and payable on account of payments made by it and the petitioner and the respondents No.3, 4 and 5 are also liable to pay the said amount with up-to-date interest @ 18.25% per annum. Further, a sum of Rs.21,24,44,313/- was claimed on account of interest from the respective dates of debit, till 30.06.2015.

(k) In O.A.274/2015, the respondent No.2/Bank raised a claim of Rs.60,72,83,124/- on the petitioner and the respondents No.3, 4 and 5 along with interest@ 18.25% per annum, jointly and severally.

4. Similarly, in O.A. 68/2012, according to the respondent No.2/Bank, a total of 46 bills were submitted by the respondent No.3 for collection and the same were accepted by the respondents No.4 and 5 despite discrepancies and the total amount payable under the said bills was US \$ 261076232. It is

the case of the respondent No.2 that the instalments deferred and due, amounting to US\$ 8971431.50 became payable in between but the same were not paid by the respondents No.3, 4 and 5 though the Bank had paid the said amount to respondent No.6/SBI, London by purchasing Dollars from the open market. In O.A.No.68/2012, respondent No.2 claims that a sum of Rs.47,93,24,016/- was due and payable on account of payments made by it and the petitioner along with respondents No.3, 4 and 5 are liable to pay the same to it along with interest @ 18.25% per annum.

5. Replies were filed by the petitioner and the respondent No.3 herein (defendant No.1 in the O.A.) and the respondents No.4 and 5 were set *ex parte*. It was contended that the Tribunal has no jurisdiction to entertain any claim against the petitioner as its registered office is situated at Frankfurt, Germany and it does not carry on business within the territorial jurisdiction of the Tribunal. The petitioner denied that it had ever guaranteed payment of the Bills and asserted that it was not liable to make any payment. The petitioner submitted that it had never issued any reimbursement undertaking that would oblige it to honour the alleged claim raised by the respondent No.2/Bank. It was further contended that the petitioner vide its Swift Message dated 15.06.2011, had informed the respondent No.2/Bank that the authority to reimburse was withdrawn as per instructions of the respondent No.4 and furthermore, it is the own case of the respondent No.2/Bank that respondent No.4 had advised it to take up the matter with respondent No.5 herein (defendant no.3 in the O.A.) that had issued instructions to the respondent No.4. The petitioner denied having received any demand notice dated 20.06.2015 from the respondent No.2/Bank.

6. It was further contended that the respondent No.2/Bank had approached the International Chamber of Commerce for adjudication of their disputes under the DOCDCX Rules. By order dated 28.09.2012, the authorities under the DOCDCX Rules found that the respondent No.2/Bank is not entitled to any relief. It was the submission of the respondents in the OA that once the issue stands adjudicated between the parties under the DOCDCX Rules, DRT ought not to have entertained the very same issue and the respondent No.2/Bank cannot be permitted to re-agitate the same issue and such a procedure is an abuse of the process of law.

7. The Tribunal heard arguments in the matter and the case was reserved for pronouncement of judgment on 17.05.2018. It is stated that after the matter was reserved, the petitioner and the respondent No.3 herein filed their written submissions. The case was kept for pronouncement of judgment on 23.06.2018, on which date, the respondent No.2 sought permission to address further arguments and the matter was posted for 04.07.2018. Thereafter, the matter was again reserved for pronouncement of judgment on 18.07.2018.

8. It is stated by the petitioner that between 30.08.2018 to 10.05.2019, the matter was adjourned several times for pronouncement of judgment. On 25.06.2018, the learned Presiding Officer passed an order adjourning the matter for seeking certain clarifications which were required while dictating the judgment and the matter was adjourned to 03.08.2019 and then to 15.10.2019.

9. It is stated that on 12.12.2019, the Presiding Officer posted the matter for clarifications regarding service on the respondents No.4 and 5 herein. It was clarified that respondents No.4 and 5 had never entered appearance and

they had been proceeded against *ex parte*. The matter was once again kept for pronouncement of judgment on 20.12.2019.

10. On 01.02.2020, the matter was again adjourned on the ground that the written submissions of the respondent No.3 herein were not on record even though the same had already been filed. Judgment was finally pronounced on 17.07.2020.

11. DRT-II allowed O.A. 274/2015, directing that the defendants in the said O.A. including the petitioner herein (defendant No.4 in the O.A.) to pay a sum of Rs.60,72,83,124/- to the respondent No.2/Bank along with interest *pendente lite* and future interest @ 12% per annum. O.A. 68/2012, was also allowed and the defendants including petitioner (defendant No.4 therein) were directed to pay a sum of Rs.47,93,24,016/- to the respondent No.2/Bank. These two orders are under challenge in the two writ petitions.

12. We have heard Mr. Sudhir Makkar, learned Senior Advocate for the petitioner, Mr. S.L. Gupta, learned counsel for the respondent No.2/Bank and Mr. Shammi Kapoor, learned counsel for the respondent No.3.

13. On 01.09.2020, when the writ petition came up for adjudication, we had expressed our reservation about the maintainability of the petition, particularly when the Statute provides for a remedy of an appeal before the learned DRAT under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'RDDBFI Act')

14. Mr. Makkar, learned Senior Advocate appearing for the petitioner would submit that availability of a statutory alternative remedy to the petitioner does not preclude this court from exercising its jurisdiction under Article 227 of the Constitution of India. He pointed out that the impugned judgment was reserved on 17.05.2018 and even though at the first instance,

it was kept for pronouncement on 23.06.2018, the judgment was finally pronounced after two years i.e. on 17.07.2020. He submitted that this itself is sufficient for the court to set aside the impugned judgment and remand the matter back to the DRT for a fresh consideration and there is no good reason as to why was the judgment was pronounced two years after it was reserved.

15. Learned Senior Advocate stated that the Supreme Court in a catena of decisions has deprecated delay in pronouncement of judgments and has set aside judgments passed by courts below only on the ground that there has been considerable delay in passing the judgments. He further stated that there is no reason in the judgment as to why has the petitioner been made liable, more so when there was no understanding on the part of the petitioner to honour the LCs. He pointed out that the learned DRT has only recorded the submissions of the petitioner in para 4 of the impugned judgement but there is no discussion on the said submission. The entire reasoning is contained only in para 16 of the impugned judgment and that no reason has been given as to why the petitioner is liable to pay any money to the respondent No.2/Bank.

16. It was argued on behalf of the petitioner that even if the petitioner approaches the Appellate Tribunal and is made to deposit 50% of the amount which it is liable to pay as required under Section 20 of the RDDBFI Act, the Appellate court would also have to remand the matter back to the DRT for the reason that the judgments have been pronounced after two years and even then, the order of the Tribunal does not contain any reasons as to why the petitioner herein has been made liable. Learned counsel canvassed that any judgment without reasoning is opposed to the principles of natural justice and is a good ground for the High Court to interfere under

Article 227 of the Constitution of India, even if an alternative statutory remedy is available. He contended that a substantial sum of money has to be paid as a pre-condition for entertaining the appeal under Section 20 of the RDDBFI Act. which would cause grave prejudice to the petitioner more so when the impugned judgments, which have been passed two years after being reserved, contain no reasoning at all.

17. Mr. S.L. Gupta, learned counsel appearing for the respondent No.2/Bank supports para 16 of the judgment which contains the reasons as to why all the defendants in the O.A. were held liable to pay the amounts to the respondent No.2/Bank. He placed reliance on United Bank of India v. Satyawati Tondon, reported as **(2010) 8 SCC 110**, to state that it is now well settled that High courts will not ordinarily entertain a petition under Article 227 of the Constitution of India if an effective remedy is available to the person and that this rule applies with greater vigour in matters involving recovery of taxes, cess, fees and other types of public money and the dues of banks and financial institutions. He adverted to the observations of the Supreme Court in United Bank of India v. Satyawati Tondon (supra) that High courts must keep in mind that the legislations enacted by the Parliament and State Legislatures for recovery of such dues are a Code unto themselves inasmuch as they not only contain comprehensive procedures for recovery of dues, but also envisage constitution of quasi judicial bodies for redressal of grievances of any aggrieved person. Claiming that the judgment in Satyawati Tondon (supra) squarely covers this case, he submitted that the petitioner herein should only approach the DRAT and the High Court should not entertain the writ petitions.

18. There is no dispute on the facts of the case. In the present case, the DRT had reserved judgment on 17.05.2018 and pronounced judgment on 17.07.2020. No doubt, the DRT kept on posting the matter date after date under one pretext or another, after reserving orders but there is nothing to indicate that there was any substantive hearing between the date on which judgment was reserved and the date on which judgment was ultimately pronounced. There is no reason as to why judgment was not pronounced for a period spanning over two years.

19. The Supreme Court has time and again held that there should not be a delay in pronouncing judgments and excessive delay shakes the confidence of litigants in the decision making process. In R.C Sharma v. Union of India & Ors., reported as (1976) 3 SCC 574, the Supreme Court has observed as under:

"12. Learned Counsel for the appellant said all that could possibly be said on behalf of his client. He pointed out that the High Court had given its judgment eight months after it had heard arguments. He urged that the result was that the High Court did not deal with a number of submissions made because they had, apparently, been forgotten. The Civil Procedure Code does not provide a time limit for the period between the hearing of arguments and the delivery of a judgment. Nevertheless, we think that an unreasonable delay between hearing of arguments and delivery of a judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and

delivery of judgments. Justice, as we have often observed, must not only be done but must manifestly appear to be done." (emphasis added)

20. In Bhagwandas Fatechand Daswani & Ors v. HPA International & Ors, reported as **(2000) 2 SCC 13**, the Supreme Court held thus:-

*"3. Learned Attorney General appearing for the appellants urged that, before the High Court, the hearing of the appeal was concluded on 22-3-1989 but the judgment was delivered on 24-1-1994 — nearly five years after the hearing was concluded, and this long delay in delivery of judgment by itself is sufficient to set aside the judgment under appeal. Learned Attorney General has also relied upon the decision of this Court in the case of **Kunwar Singh v. Sri Thakurji Maharaj [1995 Supp (4) SCC 125]**. At present, we are not disposed to go into this broad question as urged by the learned Attorney General. **However, it is correct to this extent that a long delay in delivery of judgment gives rise to unnecessary speculations in the minds of parties to a case. Moreover, the appellants whose appeals have been dismissed by the High Court may have the apprehension that the arguments raised at the Bar have not been reflected or appreciated while dictating the judgment — nearly after five years. This is fairly not disputed by learned Senior Counsel, Shri K. Parasaran appearing for Respondent 1. We, therefore, on this short question, set aside the judgment under appeal without expressing any opinion on the merits of the case and remit the case to the High Court for deciding the appeal afresh, on merits. In view of the fact, that the matter has been pending for a considerable period of time, we request the High Court to decide the matter expeditiously, if possible, within six months."** (emphasis added)*

The aforesaid paragraph was quoted and reiterated by the Supreme Court in Kanhaiyalal & Ors v. Anupkumar & Ors, reported as **(2003) 1 SCC 430**.

21. In Anil Rai v. State of Bihar reported as (2001) 7 SCC 318, the Supreme Court opined that:-

"8. The intention of the legislature regarding pronouncement of judgments can be inferred from the provisions of the Code of Criminal Procedure. Sub-section (1) of Section 353 of the Code provides that the judgment in every trial in any criminal court of original jurisdiction, shall be pronounced in open court immediately after the conclusion of the trial or on some subsequent time for which due notice shall be given to the parties or their pleaders. The words "some subsequent time" mentioned in Section 353 contemplate the passing of the judgment without undue delay, as delay in the pronouncement of judgment is opposed to the principle of law. Such subsequent time can at the most be stretched to a period of six weeks and not beyond that time in any case. The pronouncement of judgments in the civil case should not be permitted to go beyond two months.

9. It is true, that for the High Courts, no period for pronouncement of judgment is contemplated either under the Civil Procedure Code or the Criminal Procedure Code, but as the pronouncement of the judgment is a part of the justice dispensation system, it has to be without delay. In a country like ours where people consider the Judges only second to God, efforts be made to strengthen that belief of the common man. Delay in disposal of the cases facilitates the people to raise eyebrows, sometimes genuinely which, if not checked, may shake the confidence of the people in the judicial system. A time has come when the judiciary itself has to assert for preserving its stature, respect and regards for the attainment of the rule of law. For the fault of a few, the glorious and glittering name of the judiciary cannot be permitted to be made ugly. It is the policy and purpose of law, to have speedy justice for which efforts are required to be made to come up to the

expectation of the society of ensuring speedy, untainted and unpolluted justice.

10. *Under the prevalent circumstances in some of the High Courts, I feel it appropriate to provide some guidelines regarding the pronouncement of judgments which, I am sure, shall be followed by all concerned, being the mandate of this Court. Such guidelines, as for the present, are as under:*

(i) The Chief Justices of the High Courts may issue appropriate directions to the Registry that in a case where the judgment is reserved and is pronounced later, a column be added in the judgment where, on the first page, after the cause-title, date of reserving the judgment and date of pronouncing it be separately mentioned by the Court Officer concerned.

(ii) That Chief Justices of the High Courts, on their administrative side, should direct the Court Officers/Readers of the various Benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that month.

(iii) On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months, the Chief Justice concerned shall draw the attention of the Bench concerned to the pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the Judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover.

(iv) Where a judgment is not pronounced within three months from the date of reserving it, any of the parties in the case is permitted to file an application in the High Court with a prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.

(v) If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances."
(emphasis added)

22. The powers of the High Court under Article 227 of the Constitution of India has been discussed in several decisions. In Shalini Shyam Shetty & Anr v. Rajendra Sankar Patil, reported as (2010) 8 SCC 329, after discussing various judgments, the Supreme Court held as under:-

"47. The jurisdiction under Article 227 on the other hand is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 are separate and distinct and operate in different fields. Another distinction between these two jurisdictions is that under Article 226, the High Court normally annuls or quashes an order or proceeding but in exercise of its jurisdiction under Article 227, the High Court, apart from annulling the proceeding, can also substitute the impugned order by the order which the inferior tribunal should have made. (See Surya Dev Rai [(2003) 6 SCC 675] , SCC p. 690, para 25 and also the decision of the Constitution Bench of this Court in Hari Vishnu Kamath v. Ahmad Ishaque [AIR 1955 SC 233] , AIR p. 243, para 20.)

48. The jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens

for vindication of their fundamental rights or other statutory rights. The jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed ex debito justitiae or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a letters patent appeal or an intra-court appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227. In almost all the High Courts, rules have been framed for regulating the exercise of jurisdiction under Article 226. No such rule appears to have been framed for exercise of High Court's power under Article 227 possibly to keep such exercise entirely in the domain of the discretion of High Court.

49. *On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:*

a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh [AIR 1954 SC 215] and the principles in Waryam Singh [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh [AIR 1954 SC 215] , followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, “within the bounds of their authority”.

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and

courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in L. Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and therefore abridgment by a constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under

Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality." (emphasis added)

23. It is well settled that Article 141 of the Constitution of India provides that the law declared by the Supreme Court, is binding on all the courts and Tribunals in the country.

24. Section 21 of the RDDBFI Act provides that an appeal should be disposed of within a period of 180 days after it is reserved. In the present case, judgment has been pronounced by the DRT after two years and on this ground alone, the said judgment ought to be set aside and the matter remanded back for a fresh hearing.

25. Section 21 of the RDDBFI Act postulates that when an appeal is preferred by a person against whom the amount of debt is due to a bank or financial institution, then an appeal shall not be entertained by the Appellate Tribunal unless such a person has deposited 75% of the amount so due from him, as determined by the Tribunal. The fact that judgment has been pronounced by the DRT after a period of two years, and the Appellate Tribunal will also in all likelihood remand the matter back to the DRT for a fresh consideration of the case in the light of the judgment of the Supreme Court, existence of an alternative remedy which mandates deposit of 75% of the amount determined, cannot be an impediment on exercising jurisdiction under Article 227 of the Constitution of India by this court. We are of the opinion that if the petitioner is relegated to avail of the alternate remedy, grave prejudice will be caused to it.

26. Mr. Makkar, Senior Advocate has rightly relied on a Division Bench judgment of the Bombay High Court in Infra Dredge Services Pvt. Limited v. Union of India, reported as **Manu/MH/0724/2020**, where in similar circumstances, in a case arising under the CGST, an order passed by the Commissioner, CGST and Central Excise was set aside on the ground that the said order had been passed after substantial delay and the matter was remanded back instead of directing the petitioner therein to avail of an alternative remedy available under the CGST Act.

27. There is yet another reason that has persuaded us to set aside the impugned judgment and remand the matter back. As submitted by Mr. Makkar, learned Senior Advocate the entire reasoning in the impugned judgment has been given only in paragraph 16, which reads as under:-

"16. The case of the applicant is that their New Delhi Branch has received 3 LCs and advise the same to D-1 and the bills were returned and D-1 re submit the documents for collection and branch received the acceptance of D-2& D-3 and the New Delhi branch was designated branch to receive the payment, D-1 approached New Delhi Branch for discounting of bills un USD through its London Branch and arrange the credit of the amount to the account of D-1 and all the communications of the discounting of bills of D-1 was with New Delhi Branch and also initially payments were received by New Delhi Branch and as such D-1 is liable to pay o the applicant bank as D-1 who is the drawer of the bills and SBI made finance on the basis of Ex.AW-1/16 letter dated 27.11 .2009 and as such the contention of D-1 that there is no relationship of debtor and creditor between the applicant and D-1 is untenable and rejected. The applicant bank by evidence of AW-1 & 2 clearly and categorically prove that the bills are drawn and discounted and financed by the applicant bank and D-2 to D-4 failed to pay the amount as per terms of the LCs and as per the provisions of Section 30 & 32 of the NI Act, D-1 is also responsible for the same and decision of the DOCDOX is only an advisory jurisdiction and not binding on the applicant bank. The present OA is filed under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the reliance of Ld. Counsel for the D-1 to avoid the liability of the applicant bank in the facts & circumstances of the present case is not applicable . Accordingly, the OA is allowed for recovery of a sum of Rs. Rs.60,72,83,124/- (Rupees sixty crore seventy two lacs eighty three

thousand one hundred and twenty four only) along with pendente lite and future interest @18.25% per annum from defendants no.1 to 4 jointly and severally."

28. The respondent No.3 has filed an appeal before the DRAT against the impugned judgment, numbered as Appeal No.92/2020. The DRAT in its order dated 23.10.2020, while deciding the application of waiver of pre-deposit, has criticized the impugned judgment observing that it does not deal with the judgments cited by the appellant before the DRAT. The DRAT has observed that whenever the judgment of the superior Courts/Tribunals are cited, it is obliged to refer to the same and deal with those decisions and give reasons as to why those judgments do not help the litigant citing the same. The DRAT has observed that this has not been done in the present case. It has also been observed that the DRT had not given due importance to the plea raised by the appellant before it, in its written statement and further, it has not discussed the evidence adduced by it. Only the evidence tendered by the respondent No.2/Bank has been referred to as if whatever it said, had to be accepted as gospel truth. The DRAT was therefore of the *prima facie* opinion that the DRT has not discharged its duty properly.

29. It is well settled that where an order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice or the decision making process is faulty, then the High Courts can interfere under Article 227 of the Constitution of India and issue appropriate directions instead of directing the petitioner to approach the forum under the Statute that provides for an alternative remedy.

30. Paragraph No.16 of the impugned judgment is very cryptic and does not give any reasons as to why the petitioner herein (respondent No.4 in the

O.A.) is liable to pay the amounts as claimed by the respondent No.2/Bank. We are afraid, in the absence of any reasons given by the DRT, the impugned judgments are not sustainable. As a result, the judgments impugned are set aside and the matters are remanded back to the DRT for fresh consideration. However, it is made clear that we have not expressed any opinion on the merits of the case. The DRT shall decide the matters afresh after hearing the parties and dealing with the submissions made by them.

31. Since pleadings are complete in both the O.A's and evidence has been led, the DRT is requested to decide the cases within three months from the date of receipt of copies of this judgment. Before parting with the case, we make it clear that this judgment has been passed in the peculiar facts of the present case and the inordinate delay in passing the judgment, which runs contrary to a catena of decisions of the Supreme Court.

32. The petitions are disposed of with no order as to costs.

SUBRAMONIUM PRASAD, J

HIMA KOHLI, J

DECEMBER 24, 2020

hsk/rs