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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 30th January, 2020

Pronounced on: 24th February, 2020

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W.P. (C) 10272/2015

CANARA BANK

..... Appellant

Through: Mr.Pradeep Dewan, Senior Advocate
with Ms.Seema Gupta and
Ms.Anupam Dhingra, Advocates.

versus

M/S LEATHEROID PLASTICS PVT. LTD. & ORS. Respondents

Through: Mr.N. K. Mody, Senior Advocate
with Mr. Chirag Sharma, Mr.
Siddhant Gupta, Mr. Vipul Goel and
Ms. Radhika, Advocates.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH**

J U D G M E N T

Mr. Talwant Singh, J.

1. The Petitioner Bank has filed this writ petition for issuing appropriate writ/direction/order for setting aside order dated 21st April, 2015 passed by Debt Recovery Appellate Tribunal (DRAT), New Delhi in appeal No.154/2015 and order dated 16th February, 2015 passed in MA No.72/2014 by DRT- I and to allow the Petitioner Bank to recover the Original Application (OA) amount of Rs.62,78,446/- along with contractual rate of interest.

2. In brief, the case of the Petitioner is that it is a public sector bank and that

Respondent No.1 is the borrowing Company which had availed various credit facilities from the Petitioner Bank since 1986. Respondent Nos.2 to 4 are stated to be Directors of Respondent No.1 Company who stood guarantors along with late Shri M.S. Goel who had since expired and Respondent Nos.2 and 3 are stated to be his surviving legal heirs. The loan facilities granted to Respondent No.1 were renewed and enhanced from time to time.

3. However, Respondent No.1 Company stopped its operations from January, 1998 due to the orders passed by Delhi Pollution Control Committee. After complying with the requirements, it restarted its operation and requested the Petitioner Bank for rehabilitation of the unit and to sanction fresh limits. Accordingly, the Petitioner Bank sanctioned the limits as per sanction letter dated 4th January, 2001 and in pursuance thereto the Respondents had executed relevant loan, security and guarantee documents dated 4th January, 2001. Equitable mortgage was also created on industrial property No. B-II/31, Mohan Cooperative Industrial Area, New Delhi in favour of the Petitioner Bank after obtaining permission from DDA.

4. Respondent No.1 Company availed the rehabilitation credit facilities but failed to deposit the due instalments in the loan accounts and again stopped its operations from August, 2001. The Petitioner Bank called upon Respondents to clear the outstanding liabilities but with no positive result. Hence, the loan accounts of the Respondent No.1 Company were classified as NPA accounts on 31st December, 2001. On the said date, the outstanding amount due and recoverable against the Respondents was Rs.78,97,110/-.

5. An amount of Rs.34,92,970/- was received as insurance claim by the Petitioner Bank on 14th January, 2002 which was set off against the outstanding amount. A demand notice under Section 13(2) of SARFAESI Act dated 25th June, 2003 was served upon the Respondents calling upon them to pay outstanding amount of Rs.44,76,219/- together with interest from 1st January, 2002 within 60 days. No amount was paid so an OA bearing No.90/2003 praying for recovery of Rs.62,78,446/- along with pendentelite and future interest at the rate of 14% per annum with monthly rests along with penal interest at the rate of 2% per annum was filed by the Petitioner Bank before DRT-I, New Delhi. During the pendency of the OA, the Petitioner Bank initiated further action under Section 13(4) of the SARFAESI Act.

6. Feeling aggrieved, Respondent No.1 Company along with its tenant M/s Excel Car Company preferred two separate Securitisation Applications under Section 17 of SARFAESI Act before DRT-I. Both these applications were dismissed on 14th July, 2009 and appeals were filed before DRAT which disposed of both the appeals vide common order dated 5th March, 2014 directing DRT-I to decide the OA of the Petitioner Bank within three months.

7. The OA No.90/2003 filed by the Petitioner Bank was disposed of on 15th May, 2014 wherein DRT-I had held that Petitioner Bank would be entitled to charge interest from the date of NPA, i.e. 31st December, 2001 on reducing balance till realization. DRT-I did not even state what was the amount to be recovered and what was the amount on which interest was awarded.

8. It is stated that feeling aggrieved, the Petitioner Bank filed an appeal bearing No.246/2014 before DRAT, New Delhi which came up for hearing on 4th July, 2014 but DRAT without adjudicating the appeal on merits directed the Petitioner Bank to seek a clarification of the impugned order from DRT-I. Accordingly, Petitioner Bank filed MA No.72/2014 before DRT-I which was disposed of on 16th February, 2015 by holding that interest at the rate of 11% was awarded on the undisputed NPA amount of Rs.44,76,219/- as on 31st December, 2001, which caused further prejudice to the Petitioner Bank. So, Petitioner Bank preferred an appeal before DRAT bearing appeal No.154/2015. However, DRAT dismissed the said appeal of Petitioner vide impugned order dated 21st April, 2015 by holding that Petitioner Bank was debarred from challenging the final order dated 15th May, 2014 passed in OA No.90/2003 and that nothing was required to be clarified regarding order dated 16th February, 2015.

9. The present writ petition has been filed against the impugned order of the DRAT on the grounds that the said order has caused serious prejudice to the recovery rights of the Petitioner Bank as the said order is without jurisdiction; the learned DRAT had dismissed the substantive appeal of the Petitioner Bank as being time-barred and on the ground that the Petitioner Bank on 4th July, 2014 had withdrawn its appeal; both the DRT and the DRAT failed to appreciate that the OA was filed for recovery of the amount outstanding together with pendente lite and future interest and the order passed by the DRT as well as the DRAT are bad in law and there was an error in ascertaining the liability of the Respondents. On this basis, it has been prayed to set aside the order dated 21st April, 2015 of DRAT and order dated 16th February, 2015 of DRT-I.

10. Notice was issued to the Respondents on 3rd November, 2015. The Petitioners were directed to produce a complete statement of account pertaining to the credit facilities granted from the date of inception vide order dated 2nd March, 2016. In the next order, it was noticed by this Court that the earlier order had been complied with. On 23rd May, 2016 it was observed by this Court that whether the statement of account filed by the Petitioner pursuant to order dated 2nd March, 2016 is complete or not, it shall be decided on the next date of hearing.

11. On 21st July, 2016 this Court was informed by Shri Vipul Goel that Respondent Nos.3 and 4 have since expired. An application was filed to bring LR's of Respondent No.3 and 4 on record. However, on 21st August, 2017 Respondent No.2 submitted that he was willing to secure the interest of Petitioner Bank in the event any amount is found due or payable by late Shri M.S. Goel who was predecessor in title of Respondent Nos.2 and 3 and that of deceased Respondent No.4. The Application Order XXII Rule 4 CPC was accordingly disposed of in view of the Affidavit filed on 27th September, 2017 by Shri Vipul Goel.

12. Respondent Nos.1 and 2 have filed a reply to the present petition denying all the allegations. At the outset, it has been submitted that against the demand made by Petitioner Bank by way of statutory demand notice dated 25th June, 2003 under SARFAESI Act demanding a sum of Rs.44,76,219/- together with interest with effect from 1st January, 2002 at the applicable rates, the Respondents and their tenant have already paid a sum of Rs.1,47,64,730/- from time to time. It is contended that the Bank was

making a futile attempt to create a demand of Rs.78,97,110/- as on 31st December, 2001 after a lapse of 13 years.

13. Respondents 1 and 2 have admitted that the Petitioner Bank had restructured the credit facilities under rehabilitation package of the Respondent No.1 Company vide letter dated 4th January, 2001 as under:

Funded Interest Term Loan (FITL)	Rs.10,08,000/-
Working Capital term Loan (WCTL)	Rs.29,99,000/-
Term Loan	Rs.15,00,000/-
OCC Limited	Rs.40,00,000/-
Bill Discounting	Rs.10,00,000/-

14. According to Respondents 1 and 2, due to fire in the factory premises in August, 2001 machinery, stocks and raw material of the Respondent Company got damaged and the Bank had taken insurance policy only on the stocks in process and building, etc. but no insurance policy was taken for machinery and accessories, etc. The account was declared as NPA on 31st December, 2001. Statutory demand notice was issued on 25th June, 2003 demanding Rs.44,76,219/- together with interest at applicable rates.

15. Respondent Nos. 1 and 2 point out that with the OA No.90/2003 filed on 29th December, 2003 there is a separate Affidavit dated 15th January, 2004 and it needs to be enquired how the Registry of DRT had accepted the back dated OA. The Respondents contested the OA by filing written statement. Affidavit by way of evidence was filed by one Mr. Ajit Kumar, the GM of Canara Bank on 17th September, 2010 reiterating the same demand.

16. The final order in the SAs passed by DRT-I on the petitions filed by

Respondent Company and its tenant was challenged. In the appeals filed by the Respondent Company and its tenant M/s Excel Cars before DRAT, the Petitioner Bank failed to file the complete statements of accounts. Based upon the statutory demand notice dated 25th June, 2003, DRT had passed an order dated 15th May, 2014 directing the Respondent Company to pay the NPA amount with interest. The Bank has received Rs.1,47,64,730/- after 31st December, 2001 from the Respondent Company and its tenant against its demand of Rs.44,76,219/- and as such it is the Respondents who have to recover money from the Petitioner Bank.

17. Certain documents have been also filed by both the parties before this Court. On 23rd April, 2016 statement of account of loan accounts was filed by the Petitioner Bank which was disputed by the Respondents as being not complete.

18. We have heard arguments. The paramount dispute is regarding the actual amount due from the Respondent No.1 Company to the Petitioner Bank.

19. The Petitioner Bank has filed the OA for recovery of Rs.62,78,446/- along with contractual rate of interest at the rate of 14% per annum with monthly rests and penal interest of 2% per annum. The DRT-I at the time of deciding the said OA has gone behind the OA amount and the final outcome is that it has allowed recovery of Rs.44,76,219/- with simple interest at the rate of 11% per annum with effect from 1st January, 2002.

20. The Respondents have also relied upon the said amount of Rs.44,76,219/- as was reflected in the demand notice under Section 13(2) of

SARFAESI Act dated 25th June, 2003. The case of the Respondent is that they have made payments of more than Rs.1.47 crores after 31st December, 2001 and if the said amount is adjusted, the Petitioner Bank has to refund the money to the Respondent No.1 Company.

21. One more contention vehemently put forth on behalf of the Respondents is that the Plaintiff Bank has not supplied/filed complete statements of account. This Court had also passed an order for filing the statements of account on record and in response thereto, the Bank has filed statements of account on 23rd April, 2016.

22. It is to be kept in mind that there is no dispute pending in relation to the earlier loans and the only dispute pending is regarding the rehabilitation package sanctioned to the Respondent No.1 Company in terms of the loan/limits sanction letter dated 4th January, 2001. The extent of loan limit sanctioned has been reproduced above in para 10. The statements of account filed by the Petitioner Bank initially with the petition, which are available as **Annexure-F** collectively on Pages 74-81 and the statements of account running into 12 pages filed by the Petitioner Bank on 23rd April, 2016 takes care of the said period.

23. The Respondents have failed to point out as to which statement of account is incomplete or which statement of account has not been filed/supplied to them. In fact, in respect of the over draft cash credit account, the statement from 4th June, 1997 to 19th January, 2002 is on record. Since this account was declared NPA on 31st December, 2001, thereafter, the detailed entries have been reproduced on Page 12 with the aforesaid

Affidavit with applicable interest up 27th February, 2003. There are two corrections in the said statement of Page 12 as the amount of Rs.4,69,108/- has been wrongly shown as deposit whereas Page 11 shows that this was the amount, which was debited to this account as withdrawn and the inspection charges of Rs.600/- have been shown on the deposit side whereas it should have been on the withdrawal side. The balance shown in the last column testifies to the correctness of the said amount as the adjusting credit of Rs.4,76,649.40 was reduced by Rs.4,69,108/- and the remaining credit was Rs.7,541.40 and after further debit of Rs.600/- this credit was reduced to Rs.6,941.40. Therefore, the contention of the Respondents that a complete statement of account has not been filed on record is not a correct submission as the period under question is only from 4th January, 2001 onwards till this loan was declared as NPA on 31st December, 2001, and thereafter, all the debits have to be made in a separate account.

24. The Petitioner Bank has mentioned that the amount due from the Respondents as on 31st December, 2001 was Rs.78,97,110/-, which is the sum total of the following limits/loans/advances enjoyed by the Respondent No.1 Company:

i) TL (DPN NP011)	: Rs.10,54,750/-	—	Pg 245
ii) WCTL 01	: Rs.29,39,000/-	—	Pg 247
iii) FITL 01	: Rs.8,87,040/-	—	Pg 249
iv) GA 5123 (OCC)	: <u>Rs.30,16,320/-</u>	—	Pg 255

Total : Rs.78,97,110/-

25. Above was the liability of Respondent No.1 Company as on 31st December, 2001 without unapplied interest. The Petitioner Bank received

insurance amount of Rs.34,92,970/- on 14th January, 2002. So, the remaining total liability was reduced to Rs.44,04,140/-. There is a difference between this amount and the amount claimed in the notice, i.e. Rs.44,76,219/- which is explained as under with reference to entries totalling to Rs.26,458/- on page 256 (part of Affidavit filed by Petitioner Bank) and part interest:

“Godown Insp. Charges	=	Rs. 600.00
Interest	=	Rs.12907.00
GA5123	=	Rs. 59.00
GA5123	=	Rs. 57.00
Godown Insp. Charges	=	Rs. 600.00
Insurance Premium	=	Rs. 11624.00
NIL EC Charges	=	<u>Rs. 700.00</u>
Total	=	Rs. 26547.00
(-) To CA 443	=	<u>Rs. 89.00</u>
Total	=	<u>Rs. 26458.00”</u>

26. Further, interest up to 27th February, 2003 totalling to Rs.45,613/- reflected as the last two entries on page 245 (part of the Affidavit filed by the Petitioner Bank) was also added to Rs.44,04,148/-. So, the total amount became Rs.44,76,219/-, which contained interest up to 27th February, 2003, although this notice under Section 13(2) of SARFAESI Act was issued on 25th June, 2003 claiming Rs.44,76,219/- together with interest from 1st January, 2002.

27. It is to be noticed that above-mentioned part interest was debited only in two accounts. The OA itself has given the details of the amount claimed, inclusive of interest up to 27th February, 2003 on all accounts totalling to Rs.54,97,704/-. The said details are as under:

“i) FITL Account : Rs. 10,17,060.00

ii) WCTL Account	:	Rs. 35,36,905.00
iii) OCC Account	:	Rs. 9,23,582.00
iv) Supply Bills Account	:	<u>Rs. 20,157.00</u>
Total		Rs. 54,97,704.00
Interest from 27.2.2003 to 28.12.2003:		<u>Rs. 7,80,742.00</u>
14% +2% penal with quarterly rests		
GRAND TOTAL		Rs.62,78,446.00”

28. It is to be noticed that interest from 27th February, 2003 to 28th December, 2003 at the rate of 14% + 2% penal interest with quarterly interest had been applied so as to bring the amount due to Rs.62,78,446/- i.e. the total amount claimed in the OA due as on the date of filing of the OA. The Petitioner Bank had prayed for a recovery certificate for this amount along with future interest at the rate of 14% + 2% per annum compounded quarterly from the date of the filing of the OA till realisation against all the Defendants/Respondents.

29. The difference between the amount mentioned in the recovery notice dated 27th June, 2003 and the amount in the OA is because of the interest applied in the intervening period with effect from 1st January, 2002 and other applicable charges debited to the loan accounts as detailed in his Bank statements filed along with Affidavit by the Petitioner Bank which are available at Page Nos.246, 248, 250 and 256 of this file. The said details of the interest and charges brings the total to Rs.54,97,704/- as on 27th February, 2003 and further interest has been applied on the said amount at the rate of 14% + 2% with quarterly rests from the said date to the date of filing of the OA on 28th December, 2003 totalling to Rs.7,80,742/- and hence the OA amount of Rs.62,78,446/- is the amount due from the Respondents on the date of filing of OA as claimed by the Petitioner Bank.

30. The contention of the Respondent No.1 Company that only a sum of Rs.44,76,219/- is due from it as on 1st January, 2002 from which the insurance claim of Rs.34,92,970/- is to be deducted is not correct. In fact, the amount of Rs.44,76,219/- has been arrived at after giving due credit to the insurance claim of Rs.34,92,970/- received on 14th January, 2002 which is duly reflected in the statements of account filed on record by the Petitioner Bank, more specifically, on running page 255 (internal page 11 of the Affidavit filed by the Petitioner Bank). It has been again shown on running Page 256 (internal Page 12 of the Affidavit) as the first entry on the deposit side.

31. The second entry on Page 256 (internal Page 12) or the last entry on Page 255 (internal Page 11) corresponding to the internal adjustments made by the Bank by crediting Rs.2,67,508/- to the TL account shown on Page 245 (internal Page 1 of the Affidavit) dated 19th January, 2002 on the deposit side and another credit in FITL account of Rs.2,01,600/- duly reflected on Page 249 (internal Page 5 of the Affidavit) dated 19th January, 2002. Both these entries show that these amounts have been transferred from account No.GA5123 and corresponding debit of Rs.4,69,108/- has been shown on running Page 255 (internal Page 11 of the Affidavit) and again reproduced on running Page 256 (internal Page 12 of the Affidavit) dated 19th January, 2002. So, assertion of the Respondent No.1 Company that credit of Rs.34,92,970/- was not given while arriving at the figure of Rs.44,76,219/- in the Section 13 (2) of SARFAESI Act notice is incorrect. The said figure includes the credit of Rs.34,99,270/-.

32. Learned senior counsel for the Petitioner Bank has submitted that DRT-I

could not have reduced the rate of interest to 11% from the date of declaration of the loan as NPA, i.e. 31st December, 2001 and the Petitioner Bank was within its rights to claim the contractual rate of interest, i.e. 14% per annum + 2% penal interest compounded quarterly. On the other hand, learned counsel for the Respondents has submitted that since there was no clarity about the amount due from the Respondents and incomplete statements were filed by the Petitioner Bank, so DRT-I was right in ordering recovery of Rs.44,76,219/- basing the claim of the Petitioner Bank on the notice issued under Section 13 (2) of the SARFAESI Act and all along 11% simple interest on reducing balance from 1st January, 2002 was rightly awarded as certain payments were made in the meantime.

33. Learned senior counsel for the Petitioner Bank has relied upon the following authorities:

- (i) ***Central Bank of India vs. Ravindra and Ors. MANU/SC/0663/2001*** (ii) ***State Bank of India vs. Sarthi Textiles and Ors. (2009) 16 SCC328***
- (iii) ***C. K. Sasankan vs. The Dhanalakshmi Bank Ltd MANU/SC/0300/2009***
- (iv) ***P&S Bank vs. Allied Beverages Co Pvt. Ltd. MANU/SC/0802/2010***

34. It has been argued that under Section 19(20) of the Recovery of Debts and Bankruptcy Act, 1993, the Debt Recovery Tribunal or a Civil Court exercising its power under Section 34 of the Code of Civil Procedure has no right to reduce the rate of interest for the period before the date of filing of the suit/OA provided that the Petitioner Bank has charged the interest within the parameters fixed by the Reserve Bank of India.

35. This Court is in agreement with the submissions so made on behalf of

the Petitioner Bank. Hon'ble Supreme Court has time and again held in the matters of *Central Bank of India vs. Ravindra and Ors.* (*supra*), *State Bank of India v. Sarthi Textiles* (*supra*), *C.K. Sasankan vs. The Dhanalakshmi Bank Ltd.* (*supra*) and other judgments that where the parties have agreed to a particular rate of interest/penal interest, the same shall be applied with periodical rests as agreed and the amount of interest shall be capitalised to reach at the principle sum of which the Petitioner Bank is entitled to recover as mentioned in the OA. We are not in agreement with DRT-I in reducing the rate of interest/penal interest for the period prior to filing of OA.

36. As far as the grant of a pendent lite and future interest is concerned, there is no doubt that the Civil Courts under Section 34 of the Code of Civil Procedure and the Debt Recovery Tribunals under Section 19(20) of Recovery of Debts and Bankruptcy Act, 1993 have absolute discretion and keeping in view the facts and circumstances of the present case, we are of the opinion that the DRT-I has rightly exercised the said jurisdiction to grant interest at the rate of 11% per annum. at reducing balance which is quite a reasonable rate of interest keeping in view the facts and circumstances of the case.

37. As discussed above, the Petitioner Bank has given complete details of the amount due from the Respondents. The OA amount of Rs.62,78,446/- has been duly accounted for and it is not an imaginary picture as sought to be projected by the Respondents. Hence, we hold that Petitioner Bank is entitled to recover the OA amount of Rs.62,78,446/- with interest.

38. It is made clear that the said rate of interest of 11% shall be applied to the original OA amount of Rs.62,78,446/- as the DRT has no right to reduce the contractual rate of interest prior to the date of the filing of the OA. It is pertinent to mention here that learned counsel for Respondent No.1 has raised the issue of the FITL being granted at 0% rate of interest but learned counsel for the Petitioner Bank has clarified that the amount of overdue interest transferred to FITL being Rs.10,08,000/- was to be paid in a particular manner and when the Respondents did not repay the amount as per terms of grant of rehabilitation loan, the interest and penal interest are liable to be charged in the case of default at the same rate as the interest/penal interest is being charged on other loans.

39. Learned counsel for the Respondents has also made a submission that huge sums of money have been deposited in the account of the respondent No.1 Company after 1st January, 2002 and the Petitioner Bank should have given credit for the said amounts which were received from the Respondent No.1 Company and from its tenant. It is ordered that the Petitioner Bank is liable to give credit for the amount so deposited from the dates when the said amounts have been paid, however excluding the amount of insurance claim which has been already adjusted on 14th January, 2002. The Respondent may submit complete details of the up to date amount deposited with the Petitioner Bank including the details given in the Counter Affidavit itself and the Petitioner Bank shall adjust the said amount.

40. As far as the technical objection regarding limitation raised before the DRAT at the time of hearing of appeal No.154/2015 is concerned, it is to be noticed that initially the order was passed by the learned DRT-I on 15th May,

2014 in the following terms:

“(i) Applicant bank is entitled to charge interest @11% p.a. (simple) from the date of NPA i.e. 31.12.2001 on reducing balance till the date of actual realization;

(ii) In case any amount is payable to the applicant bank, defendants shall pay the same to the applicant bank within 90-days;

(iii) In case bank has to give any surplus amount to defendants herein, bank shall pay the same to the defendants within 30-days,

(iv) Bank shall release the title documents of the property within 48-hours of the settlement of the account.

(v) In view of above, the OA No. 90/2003 as well as all the pending IAs stand disposed off.

(vi) File is hereby closed and consigned to records.”

41.. The order does not talk about the principal amount which has been decreed vide the said order. It only talks about the interest and the further adjustments of the payments made by the Defendants/Respondents. In appeal No.246/2014 the following observations were made by the learned Chairman of the DRAT:

“Grievance in this appeal is that the Tribunal below, has allowed interest @11% per annum on the NPA amount. The operative part of the order passed by the Tribunal below reads as under:

“Applicant bank is-entitled to charge interest@ 1.1% p.a. (simple) from the date of NPA i.e. 31.12.2001 on reducing balance till the date of-actual realization.”

In my opinion this order can be read to mean that interest has been allowed on NPA amount. What can be made out from the order is that the bank is entitled to charge interest from the NPA date i.e. December 2001 and not that the interest is allowed on NPA amount. Even then, the appellant would, be at liberty to seek clarification in this regard in case there is any doubt.

At this stage, the counsel seeks permission not to press this appeal with a liberty to approach the Tribunal below in this regard. Accordingly, the present appeal is dismissed as not pressed, with a liberty to the appellant; to approach the Tribunal below to seek clarification, if so advised.”

42. It is clear that even the DRAT was unable to quantify the amount and only a guess was made that interest was allowed on the NPA amount but what was the actual amount for which recovery certificate was to be issued, there was no such finding and under these circumstances, the Appellate Bank had rightly withdrawn the said appeal and had decided to go back to DRT-I to seek clarification.

43. Accordingly, MA No.72/2014 was moved by the Petitioner Bank which contained the following prayer:

“a) clarify the order that in addition to amount OA being Rs.62,78,446, the interest has to be charged @ 11% on the amount of NPA being Rs. 44,76,219 from the date of NPA, i.e. 31.12.2001 so that order of this Tribunal dated 15.5.2014 could be complied with;”

44. This MA No.72/2014 was disposed of by the order dated 16th February, 2015 the operative portion of which reads as under:

“6. I do not find any ambiguity in the order. The order is crystal clear. The applicant in the M.A. has prayed before this Tribunal to clarify the order that in addition to amount OA being for Rs. 62,78,446.00 the interest has to be charged at the rate of 11% on the amount of NPA being Rs.44,76,219.00 from the date of NPA i.e. 31.12.2001..... Whereas the impugned judgment reveals that substantial amount stood paid and without disputing the NPA amount the Ld. Counsel for the defendant expressed willingness to pay the NPA amount alongwith interest and left it to the discretion of the Tribunal to decide the rate of interest. Considering the cumulative effect of all these aspects in Paragraph 11 & 12 of the judgment dated 15.5.2012 passed in OA No.90/2003 my predecessor allowed the interest at the rate of 11% apparently on the undisputed NPA i.e. Rs. 44,76,219.00 as on 31.12.2001. Secondly it has been ordered to charge this rate of interest on the reducing balance. It is further ordered that if any amount is payable, the defendants shall pay the same. I do not find any illegality in the order. M.A. stands disposed off accordingly.”

45. In fact, for the first time, the DRT had clarified that interest at the rate of 11% was allowed on undisputed NPA, i.e. Rs.44,76,219/- as on 31st December, 2001 on reducing balance. In fact, this order dated 16th February, 2015 should be taken as the final order of Debt Recovery Tribunal. Against the said order, the Petitioner Bank has filed appeal No.154/2015 and the said appeal was dismissed in limine by DRAT by observing as follows:

“The appeal against the main order dated 15.5.2014 deciding the O.A. is barred by 281 days, which is explained in the manner that the appellant has resorted to legal remedies to seek clarification of the order as regard this order passed in appeal.

Once the appellant had got the appeal against the final order in the O.A. dismissed as not pressed, they cannot now be heard to complain against the same final order. No action is taken even to seek review of the order whereby earlier appeal filed by the

bank against the order dated 15.5.2014 was got dismissed as not pressed. No case for either condoning the delay or for hearing this appeal against the order dated 15.5.2014 therefore is made out.

The Tribunal now has clarified that part of the order about which the bank had some doubts. In the grounds of appeal, plea primarily is that the Tribunal below could not have allowed reduced rate of interest ignoring the contractual rate of interest. The challenge on merit cannot be entertained and the confusion, if any, in the order is only in the mind of the bank, which ' has now been clarified that the interest chargeable is on the NPA amount of Rs.44,76,219/-. The amount claimed in the O.A. may be any, but the Tribunal has allowed interest on NPA amount from the date of NPA as is now clarified. The only submission made against this part of the order is that the interest ought to have been allowed on the amount claimed in the O.A.

The interest has been allowed w.e.f. from 31.12.2001 whereas the O.A. was filed on 29.12.2003. It is also noticed that the respondents had made some payments in between. The counsel could not otherwise show any error in the view formed by the Tribunal in this regard. Once the Bank got the appeal dismissed as withdrawn, it can be heard to challenge the interest as allowed by the Tribunal as the Bank had given up this challenge.

The appeal against the order dated 16.2.2015 is dismissed in *limine*.”

46. As mentioned herein above, in fact, the order in the MA for the first time on 16th February, 2015 clarifies the principal amount to be recovered so, appeal No.154/2015 filed by the Petitioner Bank was well within time and the DRAT ought to have heard the said appeal on its merit. There is no point in remanding the said appeal because half a decade has already passed from the date when the appeal was filed. Under these circumstances, we have

taken up the writ petition on merits and have decided the contentions issues raised by the parties accordingly.

47. In view of the above, it is hereby ordered that the Petitioner Bank is entitled to recover the OA amount of Rs.62,78,446/- with simple interest at the rate of 11% per annum from the date of the filing of the OA till realisation and the interest is to be charged on reducing balance after making adjustments for the payments made by the Respondent No.1 Company and its tenant M/s Excel Car Company.

48. It is directed that the Respondent No.1 Company shall hand over details of all the payments made by it or by its tenant M/s Excel Car Company within two weeks to the Petitioner Bank, which shall hand over a final calculation of the amount due from Respondent No.1 Company or the amount due to Respondent No.1 Company after making adjustments of the amounts received from the Respondent Company and its tenant within four weeks thereafter.

49. The payment finally due from the Respondent No.1 Company to the Petitioner Bank shall be made within four weeks thereafter. On due completion of requisite formalities and on finalisation of the loan/refund transaction, the mortgaged property shall be released from mortgage by the Petitioner Bank. It is made clear that apart from Respondent No.1, the Respondent No.2, Mr. Vipul Goel shall be jointly and severally liable for any amount which may be found due to the Petitioner Bank after settlement of the accounts in view of the undertaking given by him to this Court, in case the need arises.

50. The writ petition is disposed of in the above terms.

TALWANT SINGH, J.

S. MURALIDHAR, J.

FEBRUARY 24, 2020

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