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

% Reserved on: 23.07.2021
Pronounced on: 07.09.2021

+ **W.P.(C) 6886/2021 & CM APPLs. 21779 - 21780/2021**

ANITA GARG & ORS.Petitioner

Through: Mr. Ashish Batra, Advocate.

versus

STATE BANK OF INDIARespondent

Through: Mr. Ankur Mittal & Mr. Karan
Setiya, Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT OF THE COURT

1) The present petition has been filed seeking a writ in the nature of Certiorari to quash and set aside the orders dated 27.10.2020 and 11.12.2020 passed by the Debt Recovery Appellate Tribunal, New Delhi (DRAT) in Appeal No. 68/2020 and Review Application 05/2020 in Appeal No. 68/2020. The petitioners in the present petition are the following:

- i. *"Smt Anita Garg*
- ii. *Shri. Prem Chand Garg.*
- iii. *Smt. Pushpa Gupta*
- iv. *Smt Radha Gupta*
- v. *Smt. Anju Goel"*

- 2) Briefly stated, the facts giving rise to the filing of the present petition are as under -
- 3) M/s Nutrionex Manufacturers Limited (hereinafter called “NML”/ Borrower company), earlier known as Shri Lal Mahal Ltd., was incorporated as a company in the year 1997 (earlier being a proprietorship firm namely, Shiv Dayal Mal Shivrath Rai).
- 4) NML availed of various loan facilities from State Bank of Travancore and, thereafter, a consortium of banks including State Bank of India.
- 5) On 30.03.2019, the respondent bank filed Original Application under Section 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter the “1993 Act”) which was registered as OA No. 483/2019 before the Ld. Debt Recovery Tribunal – II, Delhi claiming an amount of Rs. 916 crores against the borrower company NML and the petitioners herein.
- 6) On 15.07.2019, DRT-2 issued notice on the Original Application to the petitioners herein.
- 7) On 15.07.2019 one advocate appeared for the borrower company namely NML. On 15.07.2019, the DRT passed interim orders restraining the petitioners from alienating the mortgaged properties mentioned in their OA. Notice of the OA was directed to be issued to the petitioners (remaining unserved defendants) returnable on 27.08.2019 before the Registrar, with a direction to the petitioners to file their written statement within 30 days from the receipt of summons.
- 8) On 27.08.2019, an affidavit of service was filed on behalf of the

respondent bank along with the proof of service of summons on the petitioners, before the Registrar. Petitioner Nos. 1 and 2 were reported to have refused to accept summons. Petitioner No. 3, Smt. Pushpa Gupta and Petitioner No. 5, Smt. Anju Goel were shown to have been served on 14.08.2019, while Petitioner No. 4, Smt. Radha Gupta was shown to be served on 19.08.2019. However, on 27.08.2019 only Counsel for the borrower company appeared. On 27.08.2019, learned Registrar after taking on record the affidavit of service filed on behalf of the respondent bank, directed the bank's counsel to give legible copy of the OA to the Counsel for the borrower company. No fresh order was passed for service of any other Petitioners herein, as all of them stood served as per the affidavit of service filed by the bank. The matter, hence, was adjourned to 16.09.2019 to be listed before the Presiding Officer for directions.

9) On 16.09.2019, the learned Presiding Officer without adverting to the affidavit of service as filed earlier, directed fresh notice to Petitioner Nos. 1 and 2 with the returnable date as 21.09.2019. On 21.09.2019, the same counsel – who had appeared for the borrower company, appeared and informed the DRT that he had already filed an application under Order 7 Rule 11 for rejection of the OA. It will be pertinent to note here that the application for rejection was jointly filed by all the defendants (including the petitioners herein), along with their individual supporting affidavits.

10) In the meanwhile, the company NML and the petitioners also filed their joint written statement cum counter-claim for Rs. 1943.63 crores on 14.10.2019.

11) Upon filing of written statement and counter-claim by the petitioners

along with borrower company, the respondent bank filed 2 applications before the DRT. One of them was under section 19(25) of the 1993 Act being I.A. no. 2690/2019 – seeking striking off of the written statement and counter claim filed by the defendants. The Respondents bank also filed another application under Order 7 Rule 11 r/w 151 of the Civil Procedure Code – being I.A. No. 2691/2019, seeking rejection of counter claim filed by the defendants.

12) The sum and substance of the averments in the application was that as per sub-section 5(i) of section 19 of the 1993 Act, defendants were obliged to file written statement of defence, including claims for set off (under sub-section 6), or a counter-claim (under sub-section 8), if any, within 30 days from the date of service of summons. In case where a defendant fails to file the written statement within the said period of 30 days, the Presiding Officer – only in exceptional cases and in special circumstances – to be recorded in writing, can extend the period by a further period “*not exceeding fifteen days to file the written statement*”. The chart below shows the date of service of summons to the defendants, and date of expiry of the limitation for filing written-statement.:—

DEFENDANT NO.	NAME OF DEFENDANT	DATE OF SERVICE OF SUMMONS	DATE FOR EXPIRY OF 30 DAYS
1.	Shri Lal Mahal Limited	16/08/2019	15/09/2019
2.	Smt. Anita Garg	Refused to accept on 14/08/2019. Therefore, deemed to be	13/09/2019

		served.	
3.	Sh. Prem Chand Garg	Refused to accept on 14/08/2019. Therefore, deemed to be served.	13/09/2019
4.	Smt. Pushpa Gupta	14/08/2019	13/09/2019
5.	Smt. Radha Gupta	19/08/2019	18/09/2019
6.	Smt. Anju Goel	14/08/2019	13/09/2019

13) In this view of the matter, the respondent bank sought striking off of common written statement and counter-claim of the company NML and the petitioners.

14) On 10.02.2020, the DRT disposed of 4 applications, namely:-

- a) IA 1608 of 2019 filed by the defendants under Order 7 Rule 11 read with 151 CPC r/w Section 19(25) of the 1993 Act for rejection of OA No. 483/2019, and under Section 340 CrPC for perjury against the Bank's officials.
- b) IA No. 2689 of 2019 filed by the respondent bank under Section 19(25) of the 1993 Act for an order against the defendants, Counter-Claimants, including their promoters/ Directors/ Managers and Authorized Signatory.
- c) IA No. 2690 of 2019 filed by the respondent bank under Section 19(25) of the 1993 Act, seeking striking off of Written Statement

and Counter Claim filed by defendants 1 to 6 (including the petitioners herein) on the ground of bar of limitation.

- d) IA No. 2691 of 2019 filed by the respondent bank under Order 7 Rule 11 of CPC read with section 151 CPC seeking rejection of Counter Claim filed by defendants 1 to 6 (including the petitioners herein).

15) The DRT, vide order dated 10.02.2020, dismissed the Application No. 1608/2019 under Order 7 Rule 11 filed by the petitioners, and the borrower company.

16) As regards IA No. 2690 of 2019 – seeking striking off of written statement-cum-counter-claim of the defendants, the DRT was of the opinion that since legible copies of documents were furnished to the petitioners only on 12.09.2019, the counter-claim/written statement could be filed within 45 days of 12.09.2019; the same was filed on 14.10.2019 (within 45 days) and, hence, the contention of the bank that counter claim/ written statement was liable to be struck off, on the ground of bar of limitation, was untenable.

17) In IA No. 2689 of 2019, the Tribunal held that *“since the lis is pending and in order to dispose off the lis on merits and to avoid further delay, I am of the considered opinion that it is a fit case to direct D-4 to D-6 to file their Affidavit of Assets on payment of penalty of Rs. 10,000/- to other side within 15 days and file the Affidavit of Assets within one week.”*

18) IA 2691 of 2019, filed by the respondent bank seeking rejection of the counter-claims of the petitioners on the ground that no cause of action has arisen in favour of the respondent to file any counter-claim, was also dismissed.

19) Against the order of 10.02.2020, the respondent bank filed an appeal challenging the dismissal of IA 2690/2019. The Ld. DRAT after hearing arguments of the parties, allowed the appeal by setting aside the order of the DRT 10.02.2020 rejecting bank's the application No. 2690/2019 under Order 7 Rule 11. Consequently, the written statements and counter claim of the defendants was directed to be taken off the record.

20) A Review Appl. No. 5 of 2020, seeking review of the order dated 27.10.2020, was dismissed by the DRAT vide the impugned order dated 11.12.2020.

21) These two orders dated 27.10.2020 and 11.12.2020 have been challenged by the petitioners in the present petition before us. Pertinently, the borrower company NML has not assailed these orders passed by the DRAT.

22) Learned Counsel for the petitioners submits that since legible copies of documents were furnished to the petitioners only on 21.09.2019, the period of 45 days should begin to run from 21.09.2019, and filing of their written statement and counter-claim on 14.10.2019 was within the period stipulated under Section 19(5) of the 1993 Act. In ground number III (page 25) of the petition, the petitioner has averred and stated as under –

“FOR THAT, once it was admitted by the Respondent Bank before the Hon'ble DRT that legible copies of documents were furnished on 12.09.2019 (should have been 21.09.2019-typographical error), the filing of the written statement cum counter claim on 13.10.2019 was within the period stipulated under Section 19(5) of the 1993 Act, and therefore, could not have been struck off by the DRAT.”

23) Learned counsel for the petitioner has further argued that the proof of

service filed by the respondent bank shows service on the petitioners, only on 21.09.2019.

24) Learned counsel submits that the DRT itself ordered fresh service on the petitioners vide order dated 16.09.2019, and on 21.09.2019 the DRT directed the respondent bank to serve complete paper book to all the contesting defendants. Hence, there was no way that the petitioners could have filed their written statement before 21.09.2019, as they were not in receipt of the paper book before the said date.

25) It is further been submitted that the orders dated 16.09.2019 and 21.09.2019 of the DRT – directing issuance of fresh notice and supplying of complete paper book to the petitioners, were never challenged by the respondent bank and, hence, the filing of written statement and counter-claim on 14.10.2019 was within the prescribed period.

26) Learned Counsel for the respondent has entered appearance before us on advance notice, and while disputing the contentions of the petitioners, he has also taken us through the documents filed by the Respondents on 23.07.2021. Ld. Counsel of the Respondent also took us through IA No. 1608 of 2019 (filed under Order 7 Rule 11) seeking the rejection of the Bank's Original Application to submit that a perusal of the same completely belies the petitioner's claim that they had not been served with the documents with the respondents Original Application.

27) We have heard the Counsel for the parties and gone through the impugned order and the record placed before us.

ANALYSIS AND FINDINGS:

28) The Statement of Objects and Reasons and Preamble to the 1993 Act reads as under:

“STATEMENT OF OBJECTS AND REASONS

Banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The Committee on the Financial System headed by Shri M. Narasimham has considered the setting up of the Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realized without delay. In 1981, a Committee under the Chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. The setting up of Special Tribunals will not only fulfill a long-felt need, but also will be an important step in the implementation of the Report of Narasimham Committee. Whereas on 30th September, 1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs.5622 crores in dues of Public Sector Banks and about Rs.391 crores of dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country. The Bill seeks to provide for the establishment of Tribunal and Appellate Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions.” (emphasis supplied)

“Preamble

An Act to provide for the establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions (insolvency resolution and bankruptcy of individuals and

partnerships firms) and for matters connected therewith or incidental thereto.” (emphasis supplied)

Section 19(5)(i) of the Act reads as under.

*“The defendant shall within a period of thirty days from the date of service of summons, present a written statement of his defence **including** claim for set-off under sub-section (6) or a **counter-claim under sub-section (8), if any**, and such written statement shall be accompanied with original documents or true copies thereof with the leave of the Tribunal, relied on by the defendant in his defence:*

*Provided that where the defendant fails to file the written statement within the said period of thirty days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, extend the said period by such further period **not exceeding fifteen days to file the written statement of his defence;**” (emphasis supplied)*

29) The objective of the 1993 Act is expeditious disposal of cases for recovery of debts due to banks and financial institutions. A reading of 19(5) clearly shows that the written statement/ counter-claim is required to be filed mandatorily within 30 days from the ‘*date of service of summons*’. Another period of 15 days maximum can be granted, only in exceptional cases and in special circumstances, which are to be found and recorded in writing by the Presiding Officer while granting extension by upto 15 days. These strict timelines of 30 days, and 15 days thereafter, as mandated in section 19(5) are in consonance with the objective sought to be achieved by the Recovery of Debts and Bankruptcy Act, 1993. The strict timelines for filing written statement and counter claim is account of the fact that DRT is adjudicating on disputes involving huge amounts of public money, and if any delay is permitted in the adjudication of those disputes, the same will result in locking up of huge amounts of public money which further would prevent utilization and recycling of those funds for the development of the country.

The use of the pre-emptory words “*not exceeding fifteen days*” in the proviso of Section 19(5)(i), limits the discretion of the DRT to extend the time for filing the written-statement/ counter claim, not beyond fifteen days and, that too, in strict compliance of the conditions viz. “*in exceptional cases and in special circumstances to be recorded in writing*”. The condition has been laid down, so as to guide the DRT not to condone the delay in a routine manner, liberally or casually only “*in the interest of justice*”. The bar set by the Parliament for exercise of discretion by the Presiding Officer to condone delay in filing the written statement/ counter-claim/ set-off is higher than mere existence of “*sufficient cause*”.

30) We may refer to the decision of the Supreme Court in ***SCG Contracts (India) Private Limited Vs. K.S. Chamankar Infrastructure Private Limited & Others***, (2019) 12 SCC 210, wherein the Supreme Court considered Order 8 Rule 1 CPC and Order 5 Rule (1) as amended for suits relating to commercial disputes by Act 4 of 2016. The Supreme Court observed:

“8. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23-10-2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order 5 Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:

“Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred

twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.”

Equally, in Order 8 Rule 1, a new proviso was substituted as follows:

“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.”

This was re-emphasised by re-inserting yet another proviso in Order 8 Rule 10 CPC, which reads as under:

“10. Procedure when party fails to present written statement called for by court.—Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the court, as the case may be, the court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:

Provided further that no court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement.”

A perusal of these provisions would show that ordinarily a

written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order 8 Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days.

9. In *Bihar Rajya Bhumi Vikas Bank Samiti* [State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti, (2018) 9 SCC 472 : (2018) 4 SCC (Civ) 387] , a question was raised as to whether Section 34(5) of the Arbitration and Conciliation Act, 1996, inserted by Amending Act 3 of 2016 is mandatory or directory. In para 11 of the said judgment, this Court referred to *Kailash v. Nanhku* [Kailash v. Nanhku, (2005) 4 SCC 480] , referring to the text of Order 8 Rule 1 as it stood pre the amendment made by the Commercial Courts Act. It also referred (in para 12) to *Salem Advocate Bar Assn. (2) v. Union of India* [Salem Advocate Bar Assn. (2) v. Union of India, (2005) 6 SCC 344], which, like the *Kailash* [Kailash v. Nanhku, (2005) 4 SCC 480] judgment, held that the mere expression “shall” in Order 8 Rule 1 would not make the provision mandatory. This Court then went on to discuss in para 17 of *State v. N.S. Gnaneswaran* [State v. N.S. Gnaneswaran, (2013) 3 SCC 594 : (2013) 3 SCC (Cri) 235 : (2013) 1 SCC (L&S) 688] , in which Section 154(2) of the Code of Criminal Procedure was held to be directory inasmuch as no consequence was provided if the section was breached. In para 22 by way of contrast to Section 34, Section 29-A of the Arbitration Act was set out. This Court then noted in para 23 as under : (*Bihar Rajya Bhumi Vikas Bank Samiti* case [State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti, (2018) 9 SCC 472 : (2018) 4 SCC (Civ) 387] , SCC p. 489)

“23. It will be seen from this provision that, unlike Sections 34(5) and (6), if an award is made beyond

the stipulated or extended period contained in the section, the consequence of the mandate of the arbitrator being terminated is expressly provided. This provision is in stark contrast to Sections 34(5) and (6) where, as has been stated hereinabove, if the period for deciding the application under Section 34 has elapsed, no consequence is provided. This is one more indicator that the same Amendment Act, when it provided time periods in different situations, did so intending different consequences.”

10. Several High Court judgments on the amended Order 8 Rule 1 have now held that given the consequence of non-filing of written statement, the amended provisions of the CPC will have to be held to be mandatory. See *Oku Tech (P) Ltd. v. Sangeet Agarwal* [*Oku Tech (P) Ltd. v. Sangeet Agarwal*, 2016 SCC OnLine Del 6601] by a learned Single Judge of the Delhi High Court dated 11-8-2016 in CS (OS) No. 3390 of 2015 as followed by several other judgments including a judgment of the Delhi High Court in *Maja Cosmetics v. Oasis Commercial (P) Ltd.* [*Maja Cosmetics v. Oasis Commercial (P) Ltd.*, 2018 SCC OnLine Del 6698]

11. We are of the view that the view taken by the Delhi High Court in these judgments is correct in view of the fact that the consequence of forfeiting a right to file the written statement; non-extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier law on Order 8 Rule 1 on the filing of written statement under Order 8 Rule 1 has now been set at naught.

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16. The learned counsel for the respondents then strongly relied upon the inherent powers of the court to state that, in any case, a procedural provision such as contained in the amendment, which may lead to unjust consequences can always, in the facts of a given case, be ignored where such unjust consequences follow, as in the facts of the present case. We are again of the

view that this argument has also no legs to stand on, given the judgment of this Court in Manohar Lal Chopra v. Seth Hiralal [Manohar Lal Chopra v. Seth Hiralal, 1962 Supp (1) SCR 450 : AIR 1962 SC 527] . In this judgment, the Court held : (SCR p. 470 : AIR p. 536, para 39)

“39. The suit at Indore which had been instituted later, could be stayed in view of Section 10 of the Code. The provisions of that section are clear, definite and mandatory. A court in which a subsequent suit has been filed is prohibited from proceeding with the trial of that suit in certain specified circumstances. When there is a special provision in the Code of Civil Procedure for dealing with the contingencies of two such suits being instituted, recourse to the inherent powers under Section 151 is not justified.”

Clearly, the clear, definite and mandatory provisions of Order 5 read with Order 8 Rules 1 and 10 cannot be circumvented by recourse to the inherent power under Section 151 to do the opposite of what is stated therein.”

31) Though, Section 19(5)(i) does not, in terms, provide for the forfeiture of the right to file the written statement, if it is not filed within the stipulated time, or the extended time that could and may be granted, in our view, the consequence would be the same, as the written statement filed beyond the stipulated time, or extended time which could legally be granted for that purpose, cannot be brought on record. The intention of the Parliament can be gathered not only from the Statement of Objects and Reasons set out hereinabove, but also from the outer limit of time, for which extension may, in a deserving case – by following the guideline laid down in the Section, be granted. The proceedings before the DRT are also proceedings arising out of commercial dealings and the disputes are commercial disputes. It would not stand to reason, that while the Parliament sought to enforce strict timelines for expeditious disposals of commercial disputes by enacting the

Commercial Courts Act, it did not do so in respect of disputes of the same kind, decided by the Debt Recovery Tribunals. The only reason for not incorporating the forfeiture clause in Section 19 is, that the existing provision contained in Section 19 leads to the same conclusion.

32) We may now turn to examine the merit of the petitioner's plea that they had not been served with copies of documents filed along with the O.A. by the respondent Bank.

33) In *Gujarat Electricity Board v. Atmaram Sungomal Poshani*¹, the Hon'ble Supreme Court observed the following:

“8. There is presumption of service of a letter sent under registered cover, if the same is returned back with a postal endorsement that the addressee refused to accept the same. No doubt the presumption is rebuttable and it is open to the party concerned to place evidence before the court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered the registered letter to him or that there was no occasion for him to refuse the same. The burden to rebut the presumption lies on the party, challenging the factum of service. In the instant case the respondent failed to discharge this burden as he failed to place material before the court to show that the endorsement made by the postal authorities was wrong and incorrect. Mere denial made by the respondent in the circumstances of the case was not sufficient to rebut the presumption relating to service of the registered cover”. (emphasis supplied)

34) In *Basant Singh v. Roman Catholic Mission*², the Supreme Court looked into the conduct of defendant when deciding on the matter of condonation of delay. Following is the observation of the Court:

“11. Once it is proved the summons were sent by registered post to a correct and given address, the defendants' own conduct becomes important. Before the Trial Court, the appellants were allowed to lead evidence in support of their contentions. An order to this effect was passed by the Trial Court on 11.1.1991. The premises in question is occupied by

¹ (1989) 2 SCC 602.

² (2002) 7 SCC 531.

two defendants jointly-Hari Singh and Basant Singh. Hari Singh appeared and examined himself stating that he did not receive the registered letter. However, the defendant Basant Singh did not appear and no evidence whatsoever, on his behalf, has been led to rebut the presumption in regard to service of summons sent to him under registered post with acknowledgment due. His own conduct shows that the registered summons had been duly served on him. As already noticed, Hari Singh appeared and save and except the bald statement that registered letter was not tendered to him, no evidence whatsoever was led to rebut the presumption..”

35) The petitioners have not denied the fact that they did receive the summons on the dates mentioned as per the affidavit of service submitted by the respondent bank. They have not established that the summons served were bereft of the documents, or that the service report regarding “refusal” (qua defendant Nos. 2 & 3) was false. This being the position, the defendants are presumed to be served on the above mentioned dates in August 2019, as they did not file any application to deny the service, or to provide a suitable rebuttable to the same. Pertinently, the affidavit of service filed by the respondent bank on 27.08.2019 before the DRT, was never challenged by the petitioners.

36) The act of the DRT, in taking the written statement and counter claim on record was beyond its jurisdiction, as the 1993 Act does not permit the same beyond 30 days, and an additional 15 days at the most – in special circumstances and in exceptional cases. Pertinently, the petitioners and the borrower company did not move an application disclosing an exceptional case, and special circumstances to seek any condonation of delay. The Affidavit of Service of the petitioners was on record, and in the knowledge of the Registrar. The same was ignored.

37) Another aspect which leads us to conclude that service of the

Petitioners was complete, and that they were in possession of the complete legible paperbook, is that on 21.09.2019, same Counsel appeared for the other defendants/ petitioners herein, who had earlier appeared for the borrower company NML before the DRT, and informed the Presiding Officer that he had filed an application under Order 7 Rule 11 on behalf of all the defendants – including the Petitioners herein, which was registered as IA No. 1608 of 2019. Once the same counsel is appearing for all the defendants, we fail to understand how it could even be claimed that some of them were not served with copies of documents, when the other defendants have not raised such a plea. In any event, a perusal of the lengthy application under Order 7 Rule 11 CPC, filed by all the defendants, including the present petitioners, leaves no manner of doubt that they were all aware of, and had access to the complete copies of the Original Application filed by the respondent bank. They went on to make details submissions and comments on the documents filed by the respondent bank in their said application, which was possible only if they had, and they were aware of the contents of the documents filed with the Original Application. They also go onto to state what documents the respondent bank had failed to file with their Original Application. Even this, they could not have stated without having and perusing the entire O.A. and the documents filed with it.

38) We may notice some of the averments made in the said application by the defendants:

39) In paragraph (iii) under the heading Brief Submissions, the defendants stated that the defendant No.1 company, i.e. NML and defendants No.2 to 6 are filing the said application under Order VII Rule 11 CPC read with

Section 19(25) of the RDDB Act, 1993 and Section 340 Cr.P.C.

40) In paragraph (xiv), the defendants averred that the respondent bank had failed to comply with Rule 9 of the RDDB Act “*when they have failed to file complete statement of account and have filed the statement of account only from 2015 onwards... .. The statement of accounts filed starts with the debit balances and the chart below will show that the bank has been given more money by way of credits than debits*”. (emphasis supplied)

41) In paragraph (lvi) the defendants averred that “*the O.A. No. is based on false, fabricated and manufactured documents... .. The documents on which the Applicant Bank is relying upon being fabricated, interpolated and manufactured cannot be allowed to be received as evidence. The contents of the alleged documents are disputed and vehemently denied individually and specifically The alleged balance confirmation letter dated 31.12.2017 is not signed by any authorised person and the person signing as director of the company was also not authorised by the board to give such confirmation.*” (emphasis supplied)

42) In paragraph (lvii) (ii), the defendants stated that “*The signature of B.S. Rawat do not tally with his original signatures and the difference between original signatures and these forged signatures is evident with the naked eyes*”. (emphasis supplied)

43) In paragraph (lvii) (iii) “*The Applicant Bank has not annexed any document or board resolution or authorization wherein Shri B.S. Rawat is authorized by the Board of Directors to sign the balance confirmation with the bank*”. (emphasis supplied)

44) In paragraph (lix), the defendants stated that *“It is submitted to the respect that the **Applicant Bank has not filed the complete statement of account as required as per the rules**”*. (emphasis supplied)

45) In paragraph (lxi), the defendants go on to deal with several statement of accounts filed by the respondent/ applicant bank by stating as follows:

“The statement of account No. 67148887701 (State Bank of Travancore) at page Nos. 2640 to 2645 shows that account is maintained at SAMB (not SAMB-I) at Second Floor, Jeevan Deep Building, 8, Sansad Marg, New Delhi.

The statement of account No.67148256141 (State Bank of Travancore) at page Nos. 2633 to 2639 shows that account is maintained at SAMB (not SAMB-I) at Second Floor, Jeevan Deep Building, 8, Sansad Marg, New Delhi.

The statement of account No.67144653368 (State Bank of Travancore) at page Nos.2623 to 2632 shows that account is maintained at SAMB (not SAMB-I) at Second Floor, Jeevan Deep Building, 8, Sansad Marg, New Delhi.

The statement of account No.38285203210 at page Nos.2139 to 2140 shows that account is maintained at SAMB (not SAMB-I) at Second Floor, Jeevan Deep Building, 8, Sansad Marg, New Delhi. The said account has not been opened by the Defendant No.1 Company.

The statement of account No.38285017166 at page Nos.2137 and 2138 shows that account is maintained at SAMB (not SAMB-I) at Second Floor, Jeevan Deep Building, 8, Sansad Marg, New Delhi. The said account has not been opened by the Defendant No.1 Company.

The statement of account No.62240331935 (State Bank of Hyderabad) at page Nos.2711 to 2712 shows that account is maintained at SAMB (not SAMB-I) at Second Floor, Jeevan Deep Building, 8, Sansad Marg, New Delhi”. (emphasis supplied)

46) In paragraph (lxii), the defendants stated: *“It is respectfully submitted*

that the application needs to be allowed as Page No.2097 shows the alleged devolvement of LCs which are all subsequent to date of NPA and no details or computer print of the documents showing outstanding/ devolved LCs has been filed”. (emphasis supplied)

47) In paragraph (lxiii), the defendants stated: *“The Applicant Bank herein has mentioned SBM/ SBT/SBH i.e. all the banks from which Defendant No.1 company was availing the alleged limits without writing “erstwhile”. However, no separate statement of accounts from such banks has been filed and when today at the time of filing of the Original Application for LCs, they can mention non-existent banks, then they should clearly also mention about the account statements being maintained in different banks”.* (emphasis supplied)

48) In paragraph (lxiv), the defendants stated: *“It is respectfully submitted that the application needs to be allowed as Page No.2098 shows the alleged crystallization of PCFCs which are all subsequent to date of NPA and no details or computer print of the documents showing outstanding/ crystallized PCFCs has been filed. The Applicant Bank has also failed to file any document which shows that after alleged crystallization of the PCFC, payment was demanded from the Defendant No.1 Company”.* (emphasis supplied)

49) In paragraph (lxvi), the defendants stated: *“The rate of interest mentioned in the statement of account at Page – 2633 is 7.90% p.a. which means the bank is not entitled to compound the interest either monthly or quarterly”.* (emphasis supplied)

50) In paragraph (lxix), the defendants stated: *“That the Original*

Application has not been signed, verified and instituted by a duly authorized and competent person. The Original Application and the documents relied upon does not disclose as to how the bank official who had signed the present OA is authorized to sign the present application”. (emphasis supplied)

51) In paragraph (lxxi), the defendants stated: *“It is most respectfully submitted that the application should be allowed as the Statement of Account is not certified as per latest amendment of the Bankers Book of Evidence Act and as such the Original Application is liable to be rejected on this ground alone”*. (emphasis supplied)

52) In paragraph (lxxiii), the defendants stated: *“It is respectfully submitted that the officer of the Applicant Bank is lying on oath because a bare perusal of the alleged guarantee dated 08.04.2014 shows that it is not signed by Shri Harnarain Aggarwal son of Shri Mauji Ram. The signature appearing on the alleged document is not of Shri Harnarain Aggarwal son of Shri Mauji Ram. The applicant deserves to be allowed and the O.A. needs to be rejected”*. (emphasis supplied)

53) In paragraph (lxxvii), the defendants stated: *“It is respectfully submitted that from pages 2038 to 2061 the Bank has annexed Annexure A-31 (Colly) stating that “memorandum of Entry recorded by SBI in this regard subsequently on 22.03.2001, 27.07.2004, 30.06.2009, 30.04.2010, 05.07.2011, 11.01.2013”. It is very respectfully submitted that the Applicant Bank is misguiding this Hon’ble Tribunal and by making false and frivolous statements trying to interfere in discharge of judicial function of this Hon’ble Tribunal, which is to adjudicate upon the debt and security. A*

*perusal of the documents from page 2038 to 2061 shows that no documents were ever deposited with State Bank of India, Overseas Branch, Jawahar Vyapar Bhawan, Tolstoy Marg, New Delhi. All these documents show that these documents have been made up by the officers of the Bank because page 2 of these documents is not signed by anyone. Even otherwise, the allegation of the Bank is of a limit of Rs.1169.38 crores **whereas these documents show the limit of Rs.1223.72 crores and a breakup of page 2 does not tally with the averments made in the Original Application. The documents on page 2054 to 2057 is for Rs.70.88 crores and that too only in favour of State Bank of Travancore. It is respectfully submitted that no mortgage has been created in favour of the Consortium Banks for Rs.1169.38 crores in the year 2014. Thus, there is no mortgage and the said documents from page 2038 to 2061 are forged and fabricated documents of which the officers of the bank including the present authorized officer, Shri Sunil Kumar Duseja @ Sunil Duseja who has filed the Original Application are liable for perjury**". (emphasis supplied)*

54) In paragraph (lxxviii), the defendants stated: *"That the officer Shri Sunil Kumar Duseja @ Sunil Duseja is lying on oath **since the alleged signature of Late Sh. Harnarain Aggarwal are forged and fabricated**".* (emphasis supplied)

55) We may, firstly observe that even though the said application was styled as one filed under Order VII Rule 11 CPC, a perusal of the same shows that the defendants went about narrating their own story, and the foundation of the said application was not on the well-established principles on which Order VII Rule 11 CPC could be invoked, i.e. by accepting the

averments made in the Original Application on a demurer, and then making out a case that the Original Application was not maintainable, or barred by any law. Secondly, nowhere in the said application, the defendants claimed that they had not been served with any of the documents filed by the applicant bank along with the Original Application. Thirdly, a perusal of the extracts of the averments made in the aforesaid application filed by the defendants, shows that they had copies of the complete Original Application with documents, without which they could not have possibly made the averments that they did in their application. They not only denied the documents filed by the applicant bank as false & fabricated, but also denied the signatures on the documents – which obviously means that they had copies of the documents. They also referred to the specific page numbers of the documents and dealt with the documents filed by the respondent bank in the manner they thought fit. They even state what documents have not been filed by the respondent bank with their O.A.

56) We may also observe that in the course of making their averments, at two places, the defendants generally and vaguely stated that the applicant bank had not filed the list of documents, and documents in accordance with the provisions of the RDDB Act. Firstly, it was stated in paragraph (lx) *“It is respectfully submitted that the present application should be allowed because the Applicant Bank has not complied with the rules as no list of documents relied upon has been filed in this regard”*. (emphasis supplied) Secondly, they stated that in paragraph (lxxii) *“The Applicant Bank has not complied with the rules and not filed the documents as per rules. Even as per provisions as envisaged under the Rule 9 of the Debt Recovery Tribunal*

(Procedure) Rules, 1993 it has been stated as below:” (emphasis supplied)

57) The aforesaid statements, apart from being general and vague, do not state as to on what basis it is claimed that the applicant bank had not complied with the rules, and had not filed documents as per rules. In any event, these averments are completely belied by the detailed discussion about the documents filed by the applicant bank, contained in the same application moved by the defendants, including the petitioners herein.

58) Such kind of detailed averments, comparisons and allegations could only have been made if complete legible copy of the paperbook was in the possession of the petitioners/ defendants. The affidavits supporting the application were attested on 20.09.2019, and as per the statement of the counsel, the same was filed prior to hearing on 21.09.2019. As per ground III of the Petition reproduced by us above, the petitioners did not have legible copies till 21.09.2019. It is inexplicable as to how such a detailed application under Order 7 Rule 11 CPC could be made, without the complete and legible copy of the paper book. As observed in ***Basant Singh*** (Supra), the conduct of the Petitioners is important to support their contentions. In the present case, the conduct of the petitioners does not inspire confidence, and it is clear that they were playing hide and seek with the court. Another pertinent aspect brought to our notice by the counsel for the Respondent, is the verification para of the application under Order 7 Rule 11. The verification para of the application shows that the said para was actually drafted for the written statement that the petitioners, along with borrower company, had probably drafted to file. The date of the verification

is mentioned, in the para, as ‘20th day of August, 2019’. The verification para reads –

*“The contents of Brief Submissions and Para 1 to ____ of the preliminary objections/submissions **and the contents of Para 1 to 5 of the written statement** and are true to the best our knowledge and contents of para 6 to 11 of the written statement and are true on the legal advice received and believed to be correct.”* (emphasis supplied)

59) Thus, we are clear that the petitioners were duly served, had the complete set of documents and paper book, and avoided to file their written statement only to delay the proceedings in the Original Application. It is only with a view to delay the DRT proceeding, that a bogey of non-furnishing of documents, incomplete service etc. was set up by the petitioners, without providing any substantial proof for the same. The same does not inspire our confidence. Their conduct makes it clear that they were effectively served as per the affidavit of service filed by the respondent bank. The petitioners cannot be allowed to mislead the court and ridicule the law. They must take the consequences of their misadventure and calculated machination.

60) The 1993 Act is a special enactment, enacted with the purpose of providing expeditious adjudication and recovery of debts due to Banks and Financial Institutions. Time is of the essence in quick disposal of Original Applications, as the value of unproductive assets deteriorates over time, the security assets are likely to be dissipated, and the locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the economic development of the country.

61) It is a known fact that the debts due to banks run into hundreds of

crores of rupees, and in the present case it is more than 900 crores. One of the best defences in DRT proceedings is to delay adjudication, as everyday's delay enures to the benefit of the debtor. It is in this view of the matter, that we have no reason to doubt, that the whole game plan of the petitioners was to defer filing of the written statement in order to prolong the OA proceedings in which the respondent bank was claiming recovery certificate for over Rs. 900 crores of public money and, instead, to file a misconceived application under Order 7 Rule 11 CPC.

62) So far as the contention of the Petitioners, with regard to them not being provided "legible" documents, is concerned, we are not convinced with the same. This is for the same reason that it would not have been possible for the Petitioners to file the Order VII Rule 11 application on 21.09.2019 without legible copies of the complete paper-book. Moreover, they never claimed before the DRT that any of the copies or documents were illegible. They never produced the so-called illegible copies of documents before the DRT/ DRAT which, if produced, would have satisfied the DRT/ DRAT about their being illegible. This leads to the only conclusion that the Petitioners were effectively served in August, and were provided with legible copies to prepare their written statement and applications.

63) In the case *Usha Agarwal v. Union of India*³, the court observed that:

"20. The entire issue of furnishing of illegible copies is with reference to the question whether the detenu's right to make an effective representation against his detention is hampered by non-supply of legible copies. The High Court after an examination of the copies of documents found that the detenu was not so hampered. Having gone through the representations made by the detenu against his detention, we also find that he was in no

³ (2007) 1 SCC 295.

way hampered by the fact that a few of the sheets/copies of documents were partly illegible. We, therefore, find no merit in the second contention, nor any reason to interfere with the finding of the High Court in this behalf.”

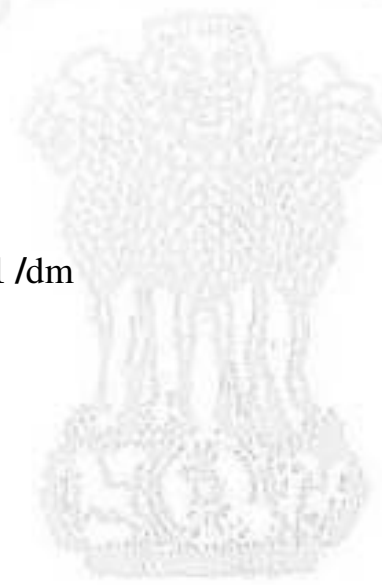
64) In this view of the matter, it is clear to us that the DRAT has correctly recorded and appreciated the contentions of all parties, and we see no infirmity in the orders dated 27.10.2020 and 11.12.2020 passed by the DRAT, calling for our interference.

65) Hence the petition is devoid of merit and is dismissed.

VIPIN SANGHI, J

JASMEET SINGH, J

SEPTEMBER 07, 2021 /dm



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