

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11618 OF 2019

- 1) M/s Kumandas Visanji & Co.
A Partnership firm having its
place of business at 274, Navi
Peth, Jalgaon.
- 2) Shri Hansraj Kumandas Ved
Age 66 years, Occ. Business,
R/o. Visanji Nagar, Navi Peth
Tq. & Dist. Jalgaon.
- 3) Narendra Kumandas Ved (since
deceased).
- 4) Gopaldas Kumandas Ved (since
deceased)
- 5) Haridas Kumandas Ved,
Age 82 years, Occ. Business,
R/o. 274, Navi Peth, Jalgaon.
- 6) Ranjeet Kumandas Ved,
Age 59 years, Occ. Business,
R/o. Visanji Nagar, Navi Peth,
Jalgaon.

... **Petitioners**
(Orig. Certificate Debtors)

VERSUS

- 1) Punjab National Bank,
Corporate established & constituted
Under the Banking Companies
(Acquisition and Transfer of undertakings)
Act, 1970, having its head office at
Bhikaji Kama Place, New Delhi and one
of its branch at Jalgaon, through its
Manager, Shri. Sunil Digambar Sonawane ... (Certificate holder)
- 2) Satyanarayan R. Maniyar,
Age Major, Occ. Business,
R/o. Manisha Colony Ganpati
Nagar, Jalgaon.

- 3) Subhash S. Lodha,
Age Major, Occ. Business,
R/o. Wagh Chamber,
Navi Peth, Jalgaon,
Tq. & Dist. Jalgaon. ... (Purchasers)
Respondents.

...
Advocate for the Petitioners : Mr. A.G. Talhar.
Advocate for the Respondent No. 1 : Mr. S.V. Adwant.
Advocate for Respondent Nos. 2 & 3 : Mr. Rajendrraa Deshmukkh,
Senior Advocate, a/w S.R. Vakil

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WRIT PETITION NO. 11619 OF 2019

- 1) M/s Kumandas Visanji 74,
Navi Peth, Jalgaon,
Through its Proprietor
Shri. Hiren Haridas Ved,
Age 48 years, Occ. Business,
R/o. Visanji Nagar, Navi Peth,
Jalgaon.

- 2) Shri. Hansraj Kumandas Ved,
Age 66 years, Occ. Business,
R/o. 274, Navi Peth, Jalgaon,
Tq. & Dist. Jalgaon.

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(Orig. Certificate Debtors)

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(Purchasers)
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Advocate for the Petitioners : Mr. A.G. Talhar.
Advocate for the Respondent No. 1 : Mr. S.V. Adwant.
Advocate for Respondent Nos. 2 & 3 : Mr. Rajendrraa Deshmukkh,
Senior Advocate, a/w S.R. Vakil

CORAM : **MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : **12.08.2022.**

JUDGMENT : (PER : MANGESH S. PATIL, J.)

Since both these petitions arise out of a common order passed by the Chairperson of the Debts Recovery Appellate Tribunal (hereinafter 'DRAT') but in two separate appeals No. 14/2018 and 15/2018, to avoid rigmarole we are disposing of both these writ petitions by this common judgment.

2. Heard. Rule in both the petitions. Rules are made returnable forthwith. Learned advocate Mr. Adwant waives service for respondent No. 1 and Mr. Deshmukkh, Senior Advocate waives service for respondent Nos. 2 and 3.

3. The questions that call for determination in these petitions are;

(i) Whether compliance with Section 30A of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter 'the RDB Act') is mandatory ? and

(ii) Whether any amount deposited with the recovery officer under RDB Act can be set off against the deposit to be made under Section 30A ?

4. The dispute arises from following set of facts which are common in both the petitions :

(a) The respondent No. 1 Bank instituted recovery proceedings against the

petitioners under the provisions of the Recovery of Debt Due to Banks and Financial Institutions Act, 1993 (hereinafter 'Act of 1993'). The petitioner No. 1 in Writ Petition No. 11618/2019 is a partnership firm of which the rest of the petitioners are partners and guarantors whereas in Writ Petition No. 11619/2019 the petitioner is a propriety concern of which the son of the petitioner No. 5 in the first petition is the proprior and the petitioner No. 2 in the earlier petition is petitioner No. 2. The respondent No. 1 was issued with recovery certificates in both the proceedings.

(b) In execution the property under mortgage was sold by auction to the respondent Nos. 2 and 3 and the sale certificates were issued.

(c) The petitioners raised objections before the recovery officer on various counts like incorrect calculation and that sale notice was not issued in one of the two recovery proceedings. The objections were rejected by the recovery officer and the petitioners in both the petitions sought to challenge those orders by preferring two separate appeals No. 3/2017 and 4/2017 before the Debts Recovery Tribunal (hereinafter 'DRT'), under Section 30 of the Act of 1993.

(d) The petitioners submitted applications in both the appeals requesting that the money deposited by them with the recovery officer in the recovery proceedings be treated as compliance with Section 30A of the Act of 1993. The learned Presiding Officer of the DRT dismissed these applications by a common order. He held that the money deposited with the recovery officer couldnot be treated as compliance with Section 30A.

(e) The order passed by the Presiding Officer of the DRT was challenged before the DRAT. The Chairperson, by the common order under challenge, has dismissed the petitioners' appeals.

5. Learned advocate Mr. Talhar took us through the record and would strenuously submit that the petitioners had deposited total amount of Rs.

64,00,000/- as against the dues of around Rs. 92,00,000/- which is more than 50% and therefore, the DRT was not justified in insisting for any deposit to be made pursuant to Section 30A. He would submit that the whole purpose of introducing Section 30A was to secure at least 50% money. That purpose was already served and in the peculiar facts and circumstances, petitioners' applications seeking exemption in compliance with that provision ought to have been allowed.

6. Mr. Talhar would submit that since the recovery officer, as defined under RDB Act is an employee of the DRT any money deposited with him can be set off against the 50% deposit to be made under Section 30A.

7. Mr. Talhar also tried to demonstrate as to how in one of the two recovery proceedings, no sale notice was even published and in the other proceeding there was a serious error about calculations. He would submit that in view of such *prima facie* material the DRT ought to have exempted the petitioners from depositing money under Section 30A.

8. Mr. Talhar places reliance on the decision in the matter of **M/s. S.R. Forging Limited and another Vs. UCO Bank and others in CWP No. 10957/2012; 2013(1) DRTC, 734 (P & H)** and the decision of the Single Judge of the Allahabad High Court in the matter of **Akash Ganga Airlines Limited Vs. Debt Recovery Appellate Tribunal, Allahabad and others; 2015 DGLS(Alld.) 793.**

9. Learned advocate Mr. Advant for the respondent No. 1 bank would, at the outset, submit that the prayer in the petitions seeking to allow the appeals preferred by the petitioners before the DRT is not maintainable. The scope of the present enquiry is limited in ascertaining if there was a compliance under Section 30A. Recovery officer is merely an employee of the DRT. When the provision mandates that the money is to be deposited with the Tribunal, the petitioners ought to have complied with such a direction. It is a mandatory provision. No discretion vests with the DRT to

grant any exemption. Rather exercising such a discretion in granting exemption would be contrary to the legislative mandate.

10. Mr. Adwant would further submit that the decisions in the matter of **M/s. S.R. Forgery Ltd** and **Akash Ganga Airlines (supra)** are not applicable to the fact situation in the matter in hand. The dispute therein was in respect of Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter 'SARFAESI Act'), wherein, some discretion has been conferred upon the DRT to waive the condition regarding deposit of 50% of amount whereas no such discretion has been conferred on it under Section 30A of the RDB Act. He would submit that the merits of the matter cannot be gone into for the present. It is merely a matter as to the interpretation and scope of Section 30A of the RDB Act which is mandatory in nature. The DRT and DRAT for the sound reasons after considering all the aspects have correctly held that it was mandatory for the petitioners to have complied with Section 30A without which the appeals before the DRT were not maintainable.

11. Mr. Deshmukh, learned Senior Advocate, for the respondent Nos. 2 and 3 would submit that in spite of they having purchased the property *bona fide* and have paid the amount of more than Rs. 1 Crore way back in the year 2016, they have not been able to recover possession and are being deprived of their right.

12. We have considered the rival submissions and perused the papers and the orders passed by the DRT and DRAT. Section 30A of the RDB Act reads as under :

30A. Deposit of amount of debt due for filing appeal against orders of the Recovery Officer. -- Where an appeal is preferred against any order of the Recovery Officer, under section 30, by any person from whom the amount of debt is due to a bank or financial institution or consortium of banks or financial institutions, such appeal shall

not be entertained by the Tribunal unless such person has deposited with the Tribunal fifty per cent. of the amount of debt due as determined by the Tribunal.

A bare look at the provision clearly demonstrates that deposit of 50% of the amount of the debt determined by the Tribunal is a condition precedent for enabling the DRT to entertain an appeal under Section 30.

13. Conspicuously, the proviso to Section 18 of the SARFAESI Act contains a similar provision mandating deposit of 50% of amount as a condition precedent for preferring an appeal under Section 17 of that Act but a discretion has been conferred upon the DRT to reduce such deposit upto 25%. The provision reads as under :

"18. Appeal to Appellate Tribunal.-- (1) Any person aggrieved by any order made by the Debts Recovery Tribunal under Section 17, may prefer an appeal along with such fee, as may be prescribed to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

Provided further that no appeal shall be entertained unless the borrower has deposited with the appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the debts Recovery Tribunal, whichever is less:

Provided also that the appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso."

14. If both these provisions are read in juxtaposition it is amply clear that while inserting Section 30A, the legislature must have been aware about a leeway provided to the DRT under Section 18 but still has omitted to confer any such discretion on it while entertaining an appeal under Section 30 of

the RDB Act.

15. Similarly, the legislature must be presumed to have been alive to the fact that before entertaining any appeal under Section 30 of the RDB Act, like in the present case, there could be some recoveries made interregnum pursuant to the recovery certificates. If, still, it has mandated that there should be 50% of the amount determined by the Tribunal to be deposited, this Court cannot legislate and incorporate something which seems to have been deliberately avoided.

16. It is pertinent to note that a right of appeal is a statutory right and a person does not inhere it. When the legislature in its wisdom has put some fetters on the right of preferring an appeal by putting some conditions, it is imperative that those are fulfilled to the hilt and there is no scope either to exercise any discretion or to modify the condition. In fact, as has been rightly observed by the DRT and DRAT such a condition of depositing 50% of the amount determined by the Tribunal goes to the root of their jurisdiction.

17. The decision of the division bench of Punjab and Haryana High Court in **M/s. S.R. Forging Limited (supra)** and the decision of the Single Judge of the Allahabad in **Akash Ganga Airlines Limited (supra)** were rendered in respect of the provisions of Section 18 of the SARFAESI Act. As is pointed out herein above, that provision contains some discretion to the appellate forum to relax the condition up to 25%. Pertinently, if it comes to the question of deciding whether any discretion vests with the DRT and DRAT under Section 18 of the SARFAESI Act to extend any further concession below 25% it would be equally impossible. The petitioners are, therefore, not entitled to rely upon both these decisions.

18. As far as the second limb of argument of Mr. Talhar is concerned, true it is that the petitioners seem to have deposited some money with the recovery officer in the recovery proceedings in both the matters. However,

he is merely an employee of the DRT and though he is engaged in recovery of moneys due to the banks and financial institutions as certified by the DRT, in our considered view, any deposit made with him cannot be said to be a deposit with the Tribunal as is required by Section 30A of the RDB Act.

19. To sum up, provision of Section 30A of the RDB Act is mandatory and any money deposited with the recovery officer cannot be set off against the 50% of the amount required to be deposited with the Tribunal under that provision.

20. Both the Writ Petitions are dismissed.

21. Rules are discharged.

22. At this juncture, learned advocate Mr. Talhar would submit that the petitioners' tenant is in actual possession of the property sold in the auction to the respondent Nos. 2 and 3. Interim relief has been in operation directing *status quo* to be maintained since inception and the petitioners may be granted reasonable time to approach the Supreme Court.

23. We are afraid, it is a matter of recovery of debts due to respondent No. 1 bank. Admittedly, the property was auctioned way back in the year 2016. The respondent Nos. 2 and 3 had paid more than Rs. 1 Crore. In the circumstances, when the petitioners have already successfully created obstacles in recovery of money and delivery of possession, they cannot be allowed to further prolong it. The request is rejected.

(SANDEEP V. MARNE J.)

(MANGESH S. PATIL, J.)

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