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# IN THE HIGH COURT OF BOMBAY AT GOA

## MISC. CIVIL APPLICATIONS NO.273 OF 2021 & 239 OF 2022
## IN
## WRIT PETITION NO.294 OF 2021

SEVEN OCEAN FOREX TOURS AND TRAVELS PVT. LTD., REP. BY ITS AUT. REP., SHEIKH GAUSE ... APPLICANT

***Versus***

RESERVE BANK OF INDIA, BY ITS CHIEF GENERAL MANAGER BANKING AND OPERATIONS AND 2 ORS. ... RESPONDENTS

**Mr. X.M. Joseph with Mr. Ivan Santimano, Advocates** *for the Applicant.*
**Mr. Gaurang Panandiker, Advocate** *for Respondent No.1.*
**Mr. G. Rege, Advocate** *for Respondent Nos.2 & 3.*

**CORAM: M. S. SONAK &**
**BHARAT P. DESHPANDE, JJ.**

**DATE : 21st SEPTEMBER 2022**

**P.C. :**

***1.*** Heard Mr. X.M. Joseph, who appears along with Mr. Ivan Santimano for the petitioner. Mr. G. Panandiker appears for respondent no.1 and Mr. G. Rege appears for respondent nos.2 & 3.

***2.*** This is an application for recalling our order dated 27.09.2021 by which we had disposed of this petition by relegating the petitioner to avail of the alternate remedy available before the DRT.

***3.*** Mr. Joseph submits that the jurisdiction of the DRT is restricted only to the measures that secured creditors might take under the provisions of the SARFAESI Act. He points out that the petitioner seeks several reliefs including the relief about certain concessions that are required to be extended to the petitioner in terms of the circular issued by the Reserve Bank of India in the context of the COVID pandemic. He submits that if it is clarified that the DRT will look at all these matters in accord with the law, then, the petitioner will have no issues about availing of alternate remedy before the DRT.

***4.*** In paragraph 8(H) of the petition, the petitioner has made the following averments:

> *"8(H). While it is a settled law that an action under SARFAESI Act, 2002 needs to assailed before the Learned Debts Recovery Tribunal, but it does not mean that the SARFAESI Act, 2002 controls the jurisdiction of the Hon'ble High Courts under Article 226 of the Constitution of India. It is also a settled law that when fundamental rights are infracted in the securitisation processes, the Hon'ble High Court could exercise its jurisdiction under Article 226 of the Constitution. In the instant case, the Respondent No.3 - Bank has breached Article 14 of the Constitution. Independent of this, the*

*issues raised in this writ petition are outside the jurisdiction of the Debts Recovery Tribunals. If the Tribunal is required to decide the issues raised in this writ petition, it will be in contempt of the law laid down by the Hon'ble Supreme Court that a determination by a Tribunal of a question other than one which the statute directs it decide, would be a decision not under the provisions of the relevant Act and therefore would be in excess of jurisdiction. Thus this writ petition is the only alternative remedy available to the petitioner."*

***5.*** The Hon'ble Supreme Court and the Division Bench of this Court in several matters have held that when an alternate and efficacious remedy is available before the DRT, this Court should ordinarily not entertain Writ Petitions under Articles 226 and 227 of the Constitution of India. Reference to the following decisions in the above context will not be out of place :

*(i)* ***Kotak Mahindra Bank Ltd. and Ors. Vs. State of Maharashtra***[1]*,*
*(ii)* ***Authorized Officer, State Bank of Travancore & Ors. Vs. Matthew K.C.***[2]*,*
*(iii)* ***Hari Trading Corporation & Ors. Vs. Bank of Baroda and Ors.***[3]*,*
*(iv)* ***Kanaiyalal Lalchand Sachdev & Ors. Vs. State of Maharashtra and Ors.***[4]*,*
*(v)* ***Standard Chartered Bank Vs. Noble Kumar and Ors.***[5]*,*

**1** Manu/MH/0877/2018
**2** Manu/SC/0054/2018
**3** Manu/SC/0863/2005
**4** Manu/SC/0103/2011
**5** Manu/SC/0874/103

*(vi)* ***United Bank of India Vs. Satyawati Tondon and Ors.***[6]*,*
*(vii)* ***Transcore Vs. Union of India***[7]*, and*
*(viii)* ***ICICI Bank Ltd. ETC.ETC. Vs. Umakanta Mohapatra ETC.ETC.***[8]*.*

***6.*** In this case, the respondents have raised a specific plea that the petitioner has an alternate and efficacious remedy available to them before the DRT and, therefore, the petitioner should be relegated to the DRT.

***7.*** The petitioner questions the action of the secured creditors, *inter alia,* on the ground that the petitioner's account could not have been declared as a non-performing account and further the petitioner should have been extended certain COVID-related concessions based on the circular issued by the Reserve Bank of India which bind the respondent – Bank. According to us, these issues can as well be considered by the DRT because ultimately the petitioner is questioning the secured creditors' measures based, *inter alia,* on the above grounds.

***8.*** The learned Counsel for the respondents did not dispute the jurisdiction of the DRT but they submit that on merits the petitioner is not entitled to any reliefs. That is a matter which can as well be looked into by the DRT. Therefore, we decline to recall our earlier

**6** Manu/SC/0541/2010
**7** Manu/SC5319/2006
**8** Civil Appeal Nos. 10243-10250 of 2018.

order by which we had not decided the matter on merits but had merely relegated the petitioner to avail of the alternate remedy before the DRT.

***9.*** All contentions of all parties on merits are, however, left open for determination by the DRT.

***10.*** The DRT, if approached within a reasonable time of four weeks (as requested by Mr. X.M. Joseph), to give due consideration to the circumstance that this petition and the application for recall were pending before this Court.

***11.*** The Misc. Civil Application no.273/2021 is disposed of in the above terms. There shall be no order for costs.

***12.*** Misc. Civil Application no.239/2021 is also disposed of.

**BHARAT P. DESHPANDE, J.** **M. S. SONAK, J.**

NITI K HALDANKAR Digitally signed by NITI K HALDANKAR Date: 2022.09.22 10:11:45 +05'30'