

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7360 OF 2022

M/s. Mithila Polyester Pvt. Ltd.

Through Director Ashwinikumar Mishra & ors. : Petitioners.

versus

Punjab and Sind Bank and ors. : Respondents.

Mr. Yatin R Shah for Applicants/Petitioners.

Mr. Karl Shroff a/w Ms. D B Raghani i/by Haridas & Co for Respondent No.1.

**CORAM : K. R. SHRIRAM &
A.S. DOCTOR, JJ.**

DATED : 20th AUGUST 2022

P.C.

1 Petitioner is impugning order dated 28.05.2003 (wrongly mentioned in prayer clause (A) as 28.05.2008) passed by DRT-II, Mumbai and order dated 22.08.2019 passed by DRAT, Mumbai.

2 Before we proceed further, we must note that Petitioners, aggrieved by the order dated 28.05.2003 passed by DRT had preferred an appeal before the DRAT. That appeal was dismissed by order dated 11.06.2014. Impugning that order of dismissal, Petitioners filed writ petition no.9274 of 2014 in this court. This court by its order dated 26.02.2015 set aside the order of the tribunal and remanded the matter to DRAT for reconsidering the appeal. Thereafter, DRAT decided the appeal and by an order dated 16.04.2015 once

again dismissed the appeal. Impugning that order of dismissal, Petitioners preferred writ petition No.48 of 2017 in this Court. This court by its order dated 23.11.2017 set aside the 2nd order of the tribunal passed on 16.04.2015 and remanded the matter for de-novo consideration by observing that its directions in the order dated 26.02.2015 were not followed. Three months time was granted to dispose the Appeal and that time was subsequently extended. DRAT in its order dated 22.08.2019 has explained why the appeal was disposed only by impugned order on 22.08.2019.

3 With the assistance of Mr.Shah we considered the order dated 28.05.2003 passed by DRT and order dated 22.08.2019 passed by DRAT. In our view, our intervention is not called for at all.

4 The fact that Petitioners had signed the application for opening of L.C. and sanction letter, demand promissory note, memorandum of equitable mortgage and statement of account etc. is not disputed. Mr. Shah's thrust was, in the written statement, Petitioners had raised defense that since Respondent No.1 had issued L.C. as per Petitioners' request, the bills of lading for consignment imported by Petitioner No.1 showed Respondent No.1 as the consignee, and it was only Respondent No.1 who could have cleared the goods. It is also stated in the written statement that Petitioners had also requested Respondent No.1 to bond the imported goods in warehouse so that detention

charges, CWC charges etc could be saved by Petitioner No.1. It is also defense of Petitioners that due to non-co-operation of Respondent No.1, the Port/Custom Authorities disposed those goods and Petitioner No.1 was also compelled to pay substantial amounts as detention charges/storage charges. That resulted in Petitioner No.1 suffering substantial losses. We have to note that Petitioner No.1 had filed counter claim which came to be dismissed for non-payment of court fees. Petitioner No.1 accepted that fate and put quietus to that issue.

5 Mr. Shroff submits that the defense that has been noted above, as submitted by Mr.Shah, found basis of the counter claim of Petitioner No.1 and counter claim having been dismissed, Petitioner No.1 cannot raise those issues today, or could not have raised those issues even before DRT. Mr. Shah responded to that by submitting, even though Petitioners may not have got any counter claim or any damages in their counter claim, still DRT should have considered the defense raised by Petitioners, whether Respondent No.1 was entitled to recover the amount it paid under the L.C. for the import of the goods.

6 It is true that these defenses have been raised in the written statement. But the fact is, thereafter, Petitioners, admittedly, did not participate in the proceedings before DRT. No claim affidavit was filed by Petitioners

before DRT. There was no evidence from Petitioners before DRT to rebut the evidence of Bank officers and documents referred in the affidavits of Respondent No.1. Therefore, we do not accept the submission of Mr. Shah that DRT should have dealt with these defenses of Petitioners in its impugned order. Even though Petitioners never participated in the proceedings before DRT, in our view, if Petitioners wanted DRT to deal with their submissions in written statement, at least Petitions should have filed claim affidavit to justify their stand taken in the defense.

7 In the circumstances, the submission of Mr. Shah that DRT should have remanded the matter to DRAT to consider those points does not impress us.

8 We also note that the conclusion arrived at by DRAT upholding the order of DRT is a well reasoned order.

9 Petition dismissed.

[A.S. DOCTOR, J]

[K. R. SHRIRAM, J]