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

WRIT PETITION NO. 9046 OF 2016

Radheshyam S.Lahoti & Anr. Petitioners

Vs.

Oriental Bank of Commerce & Anr. Respondents

Mr. Harjot Singh i/b Mr.Raval Shah for the Petitioners

Mr.Anup Khaitan i/b M/s.Anup Khaitan and Co. for the Respondents

**CORAM: S.V.GANGAPURWALA &
S.G.DIGE, JJ.**

DATED : NOVEMBER 15, 2022

P.C.

1 Rule. Rule made returnable forthwith. By consent of the parties, matter is heard finally.

2 Heard the learned Counsel for the Petitioners and the learned Counsel for the bank.

3 The Petitioners are challenging the action of the Respondents declaring the Petitioners as a wilful defaulters.

4 The learned Counsel for the Petitioners submits that the Respondents could not have declared the Petitioners as wilful defaulters, as the claims filed against the Petitioners and Lahoti

Exports P.Ltd. has been dismissed by the DRT on merits. The appeal filed by them is also dismissed. No dues certificate is issued to the Petitioners and Lahoti Exports. Even the security documents have been released. In spite of the same, without issuing notice to the Petitioners, the Respondents have declared the Petitioners as wilful defaulters. Same is not permissible.

5 The learned Counsel for the Respondent bank does not dispute the decision given by the DRT and DRAT. The learned counsel, as such, cannot substantiate the action of the Respondent bank in declaring the Petitioners as wilful defaulters. It appears that the original Application bearing No.634 of 2001 was filed before DRT No.III, Mumbai by Respondent Bank against M/s.Lahoti Exports Pvt. Ltd, Sitaram Lahoti and the present Petitioners, the Presiding Officer, DRT dismissed the original Application under its order dated 05.12.2005 holding that no dues exist against the present Petitioners and the other defendants therein.

6 The bank assailed the said order before DRAT by filing Appeal No.135 of 2006. Same is also dismissed on 23.02.2017. It was observed that the original Application filed by the Respondent no.1 Bank has been dismissed. Appeal filed by them is also dismissed. DRT has held that the bank had already issued No Dues Certificate

and security documents are also returned to the defendants therein.
In view of that, no question would arise declaring the account of the
Petitioner as wilful defaulter account in December, 2015.

7 In view of the above, Writ Petition is allowed in terms of prayer
clause (a) and (b). Rule is made absolute accordingly.

(S.G.DIGE,J.)

(S.V.GANGAPURWALA, J.)