

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4907 OF 2021**

Hareshwar Packaging Ltd. and Anr.Petitioners

V/s.

Central Bank of India and Anr.Respondents

Mr. Mikhail Behl i/b. Ms. Sapana Rachure for petitioners.

Ms. Tejasvi D. Dalvi for respondent no.1.

Mr. Rajas Naik a/w. Ms. Pooja Pilankar for respondent no.2.

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

DATED : 19th JULY 2022

PC. :

1 Have perused the petition and with the consent of parties we take up the petition for final disposal at this stage itself.

2 The relief sought in the petition is very narrow. Prayer clauses –
(a) and (b) read as under :

(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ Order or Direction calling for papers and proceeding of Appeal No.40 of 2019 filed before Mumbai DRAT, Mumbai and Appeal No.2 of 2017 filed before the Mumbai Debts Recovery Tribunal-II, Mumbai and after examining the legality and propriety pleased to quash and set aside the order dated 29th May 2019 passed by the Hon'ble Debts Recovery Appellate Tribunal, Mumbai and restore to the file the Appeal No.40 of 2019 for hearing on merits;

(b) that this Hon'ble Court be pleased to declare that petitioner has complied with the pre-condition of deposit for hearing the Appeal on merits and grant an opportunity to contest the Appeal No.40 of 2019 before the Hon'ble DRAT, Mumbai.

3 Mr. Behl states that petitioner has deposited with DRT-II a sum of Rs.17,24,000/-. Mr. Behl states that petitioner before the DRAT filed an

application seeking waiver of deposit to be made under Section 21 of the RDDB and FI Act 1993. Mr. Behl further states that petitioner has filed a petition before the Recovery Officer challenging the sale which was dismissed against which they preferred an appeal before DRT and filed an application seeking stay which was dismissed. Thereafter, petitioner approached the DRAT. Petitioner had deposited 50% of the amount before the DRT and requested DRAT to treat the same as deposit under Section 21 of RDDB and FI Act. The DRAT rejected that request and directed petitioner to deposit the amount before DRAT but if at all petitioner wishes, it could ask for reducing the amount to be deposited by reduction of the amount already deposited. DRAT also said if petitioner wishes, they could withdraw the amount from DRT and deposit the amount before DRAT. Application was rejected and consequently, the appeal also was rejected. Paragraphs 6, 7, 8 and 9 of the impugned order dated 29th May 2019 reads as under :

6. I have perused the material papers and impugned order dated 25/04/2019. As rightly pointed out by advocate for respondent bank, as per section 21 of RDDB & FI Act, for entertaining appeal pre-condition is to deposit 50% of the amount, which can be reduced to 25% provided some grounds are made out. Admittedly no money is deposited here and request of the appellants is to treat money deposited before the lower Tribunal as deposit under section 21 of the Act. But their request cannot be accepted in view of the specific language used in the section making it a condition to deposit money before this Tribunal for entertaining the appeal. At best appellants can request to deduct the amount deposited before Lower Tribunal from out of the amount while determining 50%. Otherwise they have to withdraw the deposited amount from Lower Tribunal and deposit here to comply mandatory requirement of section 21 of the Act. As rightly pointed out by advocate for Bank decision relied on by advocate for appellants has no relevance to the facts of this case.

7. As per prayer in the petition request of the applicant is to waive pre-condition deposit. As per section 21 after amendment in 2016 Tribunal has no power to grant total waiver and it can only reduce it to 25% provided Tribunal is satisfied with the grounds urged. As already referred to above no valid grounds are made out for reducing the statutory deposit.

8. As already observed above, no money is deposited here, in compliance of section 21 of the Act, therefore, question of entertaining appeal does not arise.

9. For the above reasons application is dismissed as devoid of merits. Consequently appeal is rejected.

4 In our view, it will not be fair to make petitioner deposit the same amount twice and apply for refund before DRT-II. Therefore, we dispose the petition with the following order :

(a) DRT-II shall transfer the amount deposited with it to DRAT to the credit of Appeal No.40 of 2019;

(b) DRT-II is directed to transfer the amount deposited together with accumulated interest, if any, within two weeks from today to DRAT under advise to advocates for petitioner and respondent no.1;

(c) petitioner's undertaking to deposit any shortfall out of the 25% to be deposited within two weeks of receiving a communication to that effect from DRAT is accepted;

(d) upon the shortfall, if any, being deposited, the appeal will get revived;

(e) if there is no shortfall and no further amount has to be deposited, then the appeal will get revived automatically and will be disposed in accordance with law;

(f) all rights and contentions of the parties are kept open.

5 Petition accordingly disposed.

6 Ad-interim order, if any, shall continue for four weeks from
today.

(A.S. DOCTOR, J.)

(K.R. SHRIRAM, J.)