

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 7609 OF 2023**

ANJALI  
TUSHAR  
ASWALE

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Indian Overseas Bank ..Petitioner

***Versus***

Abhay R. Bhatawade & Ors ..Respondents

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***Mr.Vishal Navale***, with *Mr.Tejesh Dande i/b Tejesh Dande & Associates, Advocates for the Petitioner*

***Mr.Aayush Kothari*** i/b *Sanjana Ghogare, Advocates for the Respondent.*

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**CORAM : B. P. COLABAWALLA, J &  
M. M. SATHAYE, JJ.**  
**DATE : JUNE 27, 2023**

**P.C.**

The above Writ Petition is filed inter alia challenging the order passed by the DRT dated 16<sup>th</sup> December, 2013 passed in Original Application No. 11 of 2011 and the judgment and order dated 11<sup>th</sup> December, 2019 passed by the DRAT, Mumbai in Appeal No.45 of 2014. The Presiding Officer of DRT-I dismissed the Original Application filed by the Petitioner bank by a detailed order passed on 16<sup>th</sup> December, 2013. In the said order, the Presiding Officer came to the conclusion that the Applicant bank

has not produced any evidence to substantiate its claim. This was on the basis that the documents produced by the Petitioner Bank were all copies of the original documents and the Tribunal could not act on the basis of the copies. Before the Tribunal, it was sought to be argued that the originals were seized by the Police for the purposes of investigation. Despite this, no application was made before the DRT-I for summoning the Police to produce the original documents which were in their custody and even for supplying either the originals or the true certified copies thereof. Taking an over all view of the matter, the Original Application was dismissed by order dated 16<sup>th</sup> December, 2013.

2           Being aggrieved by this order, the Petitioner Bank filed an Appeal before the DRAT-Mumbai. The DRAT heard the Petitioner Bank as well as the Respondents. It noted the arguments of the Petitioner Bank that the Tribunal below totally ignored the facts that the original documents were in the Police custody and that no opportunity was given to the Bank to lead secondary evidence. While dealing with the aforesaid argument, the Tribunal noted the provisions of Section 65 of the Indian Evidence Act, 1872 as well as the provisions of the Code of Civil Procedure, 1908 and Section 22 of the Recovery of Debts Due to

Banks and Financial Institutions Act, 1993 and found that despite several opportunities, the Applicant Bank had not even filed an application for summoning the Police for the purposes of producing either originals or true certified copies of the documents on which the Petitioner Bank sought to rely upon. In fact, in the impugned order of the DRAT, the DRAT, in our view, has correctly stated that as per the CPC the party intending to examine a witness on summons, has to apply for it and then only orders can be passed on that application and the witness would then be summoned. Admittedly, no such steps were taken by the Bank. In fact, the DRAT has also taken note of the fact that if the documents are in custody of another agency, there is a procedure to summon those documents, and thereafter they can be returned after substituting them with certified copies.

3           The DRAT noted that there is no answer from the Petitioner Bank as to why such steps were not taken. In fact, the DRAT noted that before it also ample opportunity was given to the Petitioner Bank, at least to secure the certified copies of the documents relied upon by them, so that the matter can be remitted back along with those documents to enable the DRT to decide the claim of the Petitioner Bank. Even that opportunity

was not availed of by the Petitioner Bank. Faced with this situation, the DRAT found that the Tribunal below had not committed any error and there were no grounds to interfere with the order passed by the DRT. Accordingly the Appeal was dismissed.

4           We have heard the learned counsel for the parties at some length. We have also perused the papers and proceedings in the above Writ Petition. We find from the impugned orders that the Petitioner Bank has made absolutely no efforts to summon the Police authorities for producing the original documents which were in their custody. Instead, the application for certified copy was made by the Petitioner Bank to the learned JMFC, Pune on 24<sup>th</sup> July, 2015 (i.e. after the order passed by the Tribunal dismissing the Original Application filed by the Petitioner Bank). This application was dismissed on 29<sup>th</sup> July, 2015. After dismissal of this application, the Petitioner Bank challenged the order dated 29<sup>th</sup> July, 2015 in Writ Petition No.4399 of 2015. The learned counsel appearing on behalf of the Petitioner Bank submits that the said Writ Petition is still pending. Be that as it may, the learned counsel appearing for the Petitioner Bank filed another Writ Petition being Criminal Writ Petition No.2768 of 2022. In

that Writ Petition, the Petitioner sought a direction against the Police station to return the original documents of the Petitioner in respect of the required 58 loan accounts sealed and stored in Trunk No.1 to 11 vide Seizure Panchanama dated 11<sup>th</sup> December, 2008. This Writ Petition was disposed of as withdrawn with liberty to file an appropriate application before the concerned Court by invoking the provisions of Section 457 of the Code of Criminal Procedure, 1973.

5           We have only narrated this because it was brought to our attention by the learned counsel for the Petitioner Bank. All this was never placed even before the DRAT. In any event, really speaking all this is wholly irrelevant because the orders passed by the Tribunal is as far back as on 16<sup>th</sup> December, 2013. Considering the facts narrated earlier, we do not find that the orders passed by the DRT-I or the DRAT suffer from any perversity and/or an error apparent on the face of record requiring our interference under our extra ordinary equitable jurisdiction. We find that on the basis of the material on the record, the orders passed by the DRT-I as well as the DRAT are fully justified.

6            In these circumstances, the above Writ Petition is dismissed. However, there shall be no order as to costs.

7            This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

**[M. M. SATHAYE, J.]**

**[ B. P. COLABAWALLA, J ].**