**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.2741 OF 2006**

**Industrial Development Bank of India Ltd. ...Petitioner**

**Vs.**

**The Maharashtra State Co-operative Bank Limited and Anr. ...Respondents**

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Mr.Chetan Akerkar for Petitioner
Mr. Aditya Gajbhiye, DGM, NPA Pune – IDBI Bank
Mr. Bhushan Mahadik a/w. Mr. Sandeep Magre i/b. Mahadik & Associates for Respondent-1 - Maharashtra State Co-operative Bank.

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**CORAM:- G. S. KULKARNI, J.**
**RAJESH S. PATIL, J.**

**DATE :- JUNE 09, 2023.**

**Oral Judgment (Per G.S. Kulkarni, J.):**

**1.** This Petition challenges the judgment and order dated 24th March, 2006 passed by the Debt Recovery Appellate Tribunal, Pune (for short 'DRAT') in Appeal No.123 of 2004 passed by Respondent No.1. By the impugned order, the Learned Member of the DRAT has allowed the said appeal filed by respondent No.1, who was a third party to the proceedings of Application No. 145 of 2003. The operative order of the impugned order is required to be noted, which reads thus :

> " In the result, this appeal is allowed with costs. The impugned order as regards creation of charge on the sugar bags worth Rs.86 lacs pledged by the sakhar karkhana with the appellant bank, with a liberty to put those bags for sale in favour of the respondent No.1 bank, is hereby quashed and set aside.
>
> Since the impugned order is set aside, the amount which has been deposited by the appellant bank, shall be refunded to the appellants along with interest that may have accrued as the amount is invested in FDR.
>
> At the request of the advocate for the respondent bank, the amount which is deposited by the appellant bank shall not be withdrawn by the appellant bank for a period of three weeks from today."

**2.** Briefly the facts are: The Petitioner, formerly known as 'the United Western Bank Ltd.', had advanced loans to sugarcane cutters (borrowers), for which the Respondent No.2 M/s. Jarandeshwar Sahakari Sakhar Karkhana Ltd. had stood as a guarantor. The borrowers had defaulted in repayment of the loans as availed by them. It is in these circumstances, the Petitioner had moved the DRT, Pune by filing Original Application No.145 of 2003 for recovery of the loans against Respondent No.2, being the guarantor of the loans in question. The total amounts sought to be recovered as prayed for in Original Application was an amount of Rs.86,17,152/- together with interest.

**3.** It appears that Respondent No.2 had availed certain loans from Respondent No.1 - MSC Bank (for short, "MSC Bank") and in regard to such loans, which were independent loan transactions, to the loans disbursed by the Petitioner to the sugarcane cutters. In relation to such loan availed by respondent no.2 from the MSC Bank, there was some security as created by Respondent No.2 in favour of the MSC Bank, by pledging sugarcane bags. It appears that the Petitioner having received knowledge and information in regard to such security as created by respondent No.2 with the MSC Bank, moved the application in question being application below Exhibit '10', wherein the Petitioner prayed for a direction against the MSC Bank to deposit Rs.100/- per sugar bag with the said Tribunal or such amount be deposited by the MSC Bank with the Petitioner. The said application against the MSC Bank was in the nature of garnishee proceedings, which was filed by the Petitioner prior to the adjudication of the Original Application. On such application, the Learned Presiding Officer, DRT, Pune passed an order on 17th November, 2003 whereby the MSC Bank was directed to deduct Rs.100/- per bag which was payable to Respondent No.2 and remit the same to the Applicant until the said order. The operative part of the interim order passed by the Presiding Officer, DRT required to be noted, which reads thus:

> "Maharashtra State Co-operative Bank is directed to deduct Rs.100/- per bag payable to the defendant and remit the same to the applicant until further orders."

**4.** It appears that in pursuance of such order passed by the learned Presiding Officer, DRT, the MSC Bank deposited certain amounts with the DRT, which is noted in an order dated 17th July, 2006 passed by this Court. The said order reads thus:

> "1. *Since the money involved is deposited before DRT and is fetching interest, we see no reason to interfere with the earlier order made. It shall last till the decision of the petition. Hearing of the petition expedited."*

**5.** Thereafter, the Original Application itself was taken up for hearing by the DRT and by its judgment and order dated 16th February, 2004, the Original Application of the Petitioner came to be allowed by ordering issuance of a recovery certificate. The operative order passed by the learned Presiding Officer of the DRT is required to be noted, which reads thus:

> "*Issue Recovery Certificate in favour of the applicant for recovery of Rs.82,57,946/- (Rupees Eighty-two Lakh Fifty-seven Thousand Nine Hundred Forty-six only), together with the future interest at the rate of 14% per annum with quarterly rests from the date of the application i.e. 18th June 2003 till realisation and cost of the application from the defendants.*
>
> *<u>Charge of the said amount is kept on the sugar bags worth Rs.86,00,000/- (Rupees Eighty-six Lakh only), which are with Maharashtra State Co-operative Bank, with a liberty to put those bags for sale, in favour of the applicant.</u>"*
>
> *(emphasis supplied)*

**6.** The MSC Bank was aggrieved by the directions of the DRT as contained in paragraph 2 of the operative order, namely the DRT ordering charge on the amount to be kept, on the sugar bags worth Rs.86,00,000/- which were with the MSC Bank with liberty, to put these bags for sale in favour of the Petitioner.

**7.** In such circumstances, the MSC Bank approached the DRAT, by filing the appeal in question (Appeal No.123 of 2004). As noted above, by the impugned order, the MSC Bank's appeal is allowed primarily on the ground that the DRT had passed an order adverse to the interest of the MSC Bank without giving the MSC Bank an opportunity of being heard. Admittedly, the MSC Bank was not a party to the Original Application and therefore, it is contended that, there was no question, that while allowing the Original Application, such orders could not have been passed against the MSC Bank. It was the contention of the MSC Bank that if at all such order could have been passed in the execution of the 'recovery certificate' and the same could not have been passed in decreeing the original application. The operative order as passed by the DRAT is required to be noted, which reads thus:

> "8. In my view, no order adverse to the interest of the appellant bank could have been passed by the DRT without giving them an opportunity of being heard . One can understand, if the appellants are directed, after haring them, to pay or deposit or charge is created on the amount payable by the appellant bank to the sakhar karkhana, but the DRT could not have in grave violation of the principles of

natural justice passed an adverse order without hearing the appellants. The final order creating charge so also interim order was passed without hearing the appellant bank on the point as to how much amount was payable by the appellant bank to the sakhar karkhana. The appellant bank had taken safeguard of creating pledge in their favour of the goods inn respect of the loan which was advanced to the sakhar Karkhana. Surely that pledge was not created in favour of the appellant bank for the benefit of the third party or unsecured creditor like the respondent bank. In any event, the impugned order should not have been passed against the appellant bank without impleading them as party defendants and without giving them an opportunity of being heard. On this ground alone, the impugned order will have to be set aside.

Moreover, vis-a-vis the pledged goods the respondent bank has no rights until the appellants recover their debts or dues. It is different thing if the appellant bank is directed not to pay any amount due and payable to the sakhar Karkhana and instead it is directed to be paid to the respondent bank. Such direction can be given even during recovery proceedings. The appellants being the pawnee of sakhar karkhana's sugar bags undoubtedly had right to recover their debts first out of the sale proceeds of the sugar bags and the respondent bank could claim out of the balance amount payable to the sakhar karkhana.

The learned advocate apeparing for the respondent no.2 sakhar karkhana states that as the appeal filed by respondent no.2 against the decree passed in favour of the respondent bank had been previously rejected by this Tribunal, he has got no objection to the payment of amount of Rs.86 Lacs, out of the amount deposited by the appellants, to the respondent bank.

In the result, this appeal is allowed with costs. The impugned order as regards creation of charge on the sugar bags worth Rs.86 lacs pledged by the sakhar karkhana with the appellant bank, with a liberty to put those bags for sale in favour of the respondent no.1 bank, is hereby quashed and set aside.

Since the impugned order is set aside, the amount which has been deposited by the appellant bank, shall be refunded to the appellants along with interest that may have accrued as the amount is invested in FDR.

At the request of the advocate for the respondent bank, the amount which is deposited by the appellant bank shall not be withdrawn by the appellant bank for a period of three weeks from today."

**8.** It is on the above backdrop, assailing the impugned order passed by the DRAT, the present petition is filed by the Petitioner. By an order dated 24th April, 2006, this Court admitted the writ petition and passed an order granting status quo. The said order passed by the Division Bench reads thus:-

> "PC:
> Rule.
> Rule on interim relief returnable early. Status-quo as of today be maintained. Liberty to mention the matter after affidavit is filed."

**9.** Mr. Akerkar, learned counsel for the Petitioner in support of the challenge to the impugned order passed by the DRAT, would submit that there is an apparent error on the part of the DRAT to pass the impugned order. This inasmuch as the order dated 17th November, 2003 passed by the learned Presiding Officer, DRT on the application filed by the Petitioner in appeal –Exhibit '10', directing the MSC Bank to deduct Rs.100/- per bag which was payable to Respondent No.2 and remit the same to the Applicant until further orders, was itself partly acted upon. It is submitted that it was appropriate for the learned Presiding Officer, DRT, to pass such interim order and grant protection in favour of the Petitioner by incorporating the operative part in adjudicating the original application. It is submitted that the charge on the said amount was kept on the sugar bags worth Rs.86 lacs, which were with the MSC Bank with liberty to put the bags for sale in favour of the Petitioner. It is submitted that once the order dated 17th November, 2003 itself was acted upon, there was no prejudice whatsoever for the MSC Bank to move the DRAT, being aggrieved by the order passed by the DRT allowing the original application, and to the direction in regard to the security to the extent of the charge as created, by putting the sugar bags for sale in favour of the Petitioner. It is submitted that the observations of the DRAT in the impugned order were contrary to the record and thus the impugned orders are required to be quashed and set aside.

**10.** Respondent No.1 is represented by Mr. Mahadik, who appears in person. He states that he is an advocate and he has no instructions. Respondent No.2 is also not represented. However, considering the nature of the proceedings and order, we intend to pass on the present proceeding, in our opinion, no prejudice would be caused to Respondent Nos. 1 and 2.

**11.** At the outset, it may be observed that there is no dispute in regard to the original application filed by the Petitioner to be allowed by the DRT in terms of what has been ordered in paragraph 1 of the operative order viz. for issuance of the recovery certificate in favour of the Petitioner for recovery amount of Rs.86,17,152/- together with interest, as ordered. The question is, as to whether the second part of the operative order passed against the MSC Bank could at all have been passed, that is, an order against a third party and admittedly not a party to the proceeding of the original application as filed by the Petitioner. The plea of the Petitioner is to the effect that an interim order was passed pending the final adjudication of the original application viz. order dated 17th November, 2003 against the MSC Bank directing to deduct Rs.100/- per bag payable to the Respondent No.2 and remit such amount to the Petitioner until further orders. However, certainly in the course of adjudication of the original application, such order which is an order in the nature of garnishee order against a third party could not have been passed in decreeing the original application in the absence of such garnishee itself being not a party to the proceedings of the original application. Such orders could be passed only in the execution proceedings and/or in the execution of the recovery certificate which was ordered to be issued in favour of the Petitioner by the

Learned Presiding Officer.

**12.** We find that MSC Bank was correct in its approach when it filed an appeal before the DRAT assailing such part of the order passed by the DRT which was adversely affecting the MSC Bank and too without according to the MSC Bank an opportunity of being heard when the order was passed.

**13.** We have perused the observations made by the learned Chairperson of DRAT in the impugned order. We do not find any legality or perversity in the DRAT making any such observations against a third party, namely the MSC which was not a party before the DRT. We are of the clear opinion that there was certainly a serious error in law on the part of the DRT in issuing directions against the MSC Bank in the operative order of its judgment and the order which amounted to an apparent illegality and/or perversity, which could not have been sustained, and accordingly, it was rightly interfered by the DRAT in passing the impugned orders.

**14.** In the above circumstances, we are of the clear opinion that there is no merit in the petition. Accordingly, the writ petition stands dismissed. Rule is discharged. No costs.

**15.** At this stage, learned counsel for the Petitioner would submit that there is a status quo order in operation and consequently the amount which has been deposited by the MSC Bank with the DRT remains with the DRT. It is submitted that such amount is required to be considered to be now to the credit of the recovery / execution proceeding as adopted by the Petitioner. It is also submitted that Respondent No.2 is no more a running concern. Considering such submission as advanced by the learned counsel for the Petitioner, we are of the opinion that the interim reliefs as granted by this Court in the present proceedings shall be permitted to operate for period of ten weeks from today, which shall be without prejudice to the rights and contentions of the MSC Bank as also the Petitioner to obtain appropriate order in the recovery proceeding. Ordered accordingly.

**16.** In the event any application is filed either by the Petitioner or by the MSC Bank, the same shall be decided on its own merits in the recovery proceedings.

**(RAJESH S. PATIL, J.)** **(G.S. KULKARNI, J. )**

**corrected as per speaking to minutes order dated 04.08.2023.**