

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 5229 OF 2022

Yes Bank Limited

Company registered under the
provision of Companies Act 1956
having its registered officer at
Yes Bank House, Company Off
Western Express Highway,
Santacruz East, Mumbai, 400055
Rep by its POA Holder

...Petitioner

Versus

1) Union Of India
Through Ministry of Finance,

2) Union of India
Through Ministry of Law and Justice
Department of Legal Affairs

3) Registrar, Debt Recovery Tribunal-II
Mumbai

...Respondents

Mr. Vishal Tambat for the Petitioner.

Mrs. Savita S. Ganoo i/b. Mrs. Smita Thakur for the Respondents.

CORAM: G. S. KULKARNI &
RAJESH S. PATIL, JJ

RESERVED ON : 6th JUNE, 2023

PRONOUNCED ON : 9th JUNE, 2023

JUDGMENT : (PER RAJESH S. PATIL, J.)

1. Rule. Rule made returnable forthwith. Respondents waive service. By consent of the parties heard finally.
2. This Writ Petition is filed under Article 226 and 227 of the Constitution of India by the Petitioner bank, praying for a writ of mandamus for quashing the words “and Defendant shall file joint Application” from Rule 5 of the Debts and Recovery Tribunal (Refund of Court fees) Rules, 2013, (*Refund Rules*) and also seeking a direction to Respondent No.3 (Registrar, DRT-II) Mumbai, to immediately release the amount quantified in impugned order without insisting for joint Application.
3. The Petitioner is *inter alia* engaged in the business of banking and is governed by the Banking Regulation Act, 1949 and the rules and regulations framed thereunder. The Petitioner had advanced a loan to one of its borrowers, who had defaulted in its repayment. The Petitioner hence had filed recovery proceedings before the Debt Recovery Tribunal-II, Mumbai, numbered as O.A. No. 410 of 2018. However, after filing of the said proceedings a settlement was arrived between the parties. The Petitioner thereafter filed Interlocutory Application No. 272 of 2019 in the said Original Application No.410 of 2018, seeking permission to withdraw the Original Application as the Petitioner had

received the settlement amount.

4. On 7th March 2019 the said Interlocutory Application NO. 272 of 2019, was heard by DRT-II, Mumbai, when the Advocate for the Petitioner was present, however, none appeared for the Defendant (Borrower). On the submission made by the Advocate for the Petitioner the Original Application was permitted to be withdrawn and was disposed of, as the dispute stood settled out of Court. The Petitioner was directed to follow the procedure for refund of court fees as per the refund of court fees rules.

5. The Petitioner thereafter filed an Application for refund of Court Fees. The DRT-II, Mumbai on 18th June 2022 passed an order on the said application observing that the Applicant and the Defendant should file a joint Application for refund of court fees as per rules. It was observed that as the Petitioner/Applicant had not submitted a joint Application, hence, the application would not be processed further.

6. Being aggrieved by the said order passed by the DRT-II, Mumbai, in not awarding refund/return of Court Fees in the absence of a joint application, the Petitioner has filed the present Writ Petition praying for the following reliefs :-

“(A) Rule be issued;

(B) That this Honourable Court be pleased to issue Writ of Mandamus or any other appropriate Writ, Order or direction quashing word “and the Defendants (s) shall file joint” in Rule 5 of Debts Recovery Tribunal (Refund of Court of fees) Rules, 2013 as the same being unjust.

(C) That this Honourable Court be pleased to issue Writ of Certiorari or any other appropriate Writ, Order or direction quashing of insistence by the Respondent No.3 of “joint application” in the Impugned Order be quashed and set-aside to that extent and the Respondent No.3 be directed to process and refund the court fees as stated and quantified in the said Impugned Order.”

7. Mr. Vishal Tambat learned counsel for the Petitioner would submit that the Petitioner while filing the recovery proceedings paid the maximum Court Fees of Rs.1,50,000/- and the said amount is paid from the Bank’s funds. He further submitted that on several occasions when the Petitioner initiated recovery proceedings, the borrowers come forward and pay the outstanding amounts and/or the disputes stand settled outside the Court and after settlement the borrowers do not again approach the Petitioner. It is also submitted that therefore, in such situations it becomes difficult for the bank to obtain consent/signatures of the Borrower/Defendant on the refund of Court fees application. It is submitted that in these circumstances it becomes impossible for the Petitioners to file a joint Application for refund of Court fees, in presenting the refund applications. This is despite the fact that the Petitioners in law had become entitled to refund of Court fees however, the same cannot materialize as

the Defendant is not available to give consent on the refund application. Also once the borrower has settled the matter with the bank, he does not intend to again engage an Advocate to appear in the proceedings for refund of Court fees.

It is thus submitted that the requirement of filing a joint Application, causes immense prejudice to the Petitioner. It is therefore, his submission that the prayers as made in the Petition be granted by this Court with a direction to the DRT to issue refund of court fees to the Petitioner without insisting for a joint refund application.

8. The Respondents have opposed this Petition by filing their reply. The case of the Respondents is that the present Writ Petition is not maintainable and be dismissed as the Petitioner is not able to show any injustice being done to it. In Paragraph No.7 of its reply it is stated that in the event of settlement between the Borrower and the Bank, all the dues including the costs incurred by the Applicant towards legal expenses, court fees, etc may be the subject matter of settlement between the parties. Therefore, in order to avoid the bank/financial institutions from seeking dual benefit, both from the borrower and the Tribunal, Rule 5(1) of the said Rules provides for filing a joint application by the applicant and the Defendant. It is contended that for such reason the provision in Rule 5 protects the interest of both, the bank/financial institution as well as the

borrower. Hence, refund of court fees to the Petitioner bank may amount to unjust enrichment. Accordingly, the Writ Petition needs to be dismissed.

9. We have considered the submissions of the parties, we have also considered the provisions of the Refund of Court Fees Rules as framed by the Debts and Recovery Tribunal (Refund of Court fees) Rules, 2013.

10. The recovery proceedings are filed under section 19 (1) of the Debts Recovery Tribunal (Procedure) Rules, 1993 and such recovery proceedings are filed as an Original Application (OA) before the Debts Recovery Tribunal as per the Debt Recovery Tribunal (Procedure) Rules 1993. It is not in dispute that while filing the recovery proceeding before the DRT, it is the applicant in the Original Application, who pays the Court fees. Rule 7 of the Debts Recovery Tribunal (procedure) 1993, provides for payment of fees on the original application for recovery of debts. Rule 7 under Section 19(1) or 19(2) of the Act reads as under:-

7. Application Fee. – (1) Every Application under section 19(1), or section 19(2), or section 19(8), or section 30(1) of the Act, or interlocutory application or application for review of decision of the Tribunal shall be accompanied by a fee provided in the sub-rule (2) and such fee may be remitted through, a crossed Bank Demand Draft drawn on a bank or Indian Postal Order in favour of the Registrar of the Tribunal and payable at the place where the Tribunal is situated.

(2) The amount of fee payable shall be as follows: –

Nature of Application	Amount of Fee Payable
Application for recovery of debts due under section 19(1) or section 19(2) of the Act:	
(a) Where amount of debt due is Rs.10 lakhs	Rs. 12000/-
(b) Where the amount of debt due is above Rs.10 lakhs	Rs.12000/- plus Rs. 1000/- for every one lakh rupees of debt due or part thereof in excess of Rs.10/- lakhs, subject to a maximum of Rs.1,50,000/-.

11. The application fee is remitted through a crossed Bank Demand Draft or Indian postal order in favour of the Registrar of the DRT. Therefore, in the event of refund of Court fees, necessarily the refund as permitted would be entitled to the Applicant in the Original Application, who deposited the Court fees, at the time of filing of the Original Application.

12. In the context of refund of Court fees, Rule Nos. 4 and 5 of the Debts Recovery Tribunals (Refund of Court Fee) Rules, 2013 are required to be noted which read as under :-

“4. Amount of refund. – The Presiding Officer of the Tribunal before which any case is filed for settlement of the dues of the Banks and Financial Institutions may order refund of fees remitted at the time of filing the case at the following rates:

- (a) 50 percent of the fees remitted in the cases which are settled prior to the commencement of the hearing before the Tribunal;
- (b) 25 percent of the fees remitted in the cases which are settled at any stage of the proceedings before the final order by the Presiding Officer is passed.

5. Procedure for refund. – (1) The applicant(s) and the Defendant(s) shall file a joint application before the Registrar of the Tribunal for refund of court fees indicating the details of the settlement.

(2) On receipt of such application, the Registrar shall certify the amount of court fees remitted in the case and the amount to be refunded and place the application before the Presiding Officer.

(3) The Presiding Officer shall pass orders for refund of the court fees indicating the amount of refund in the order.

(4) The Registrar shall accordingly take further action for issue of financial sanction and presentation of bill in Pay and Accounts Office and refund of the due amount to the applicant.”

13. As provided for in Rule 4, the maximum refund the Applicant can receive is 50% of the Court fees if the matter is settled prior to the commencement of the hearing before the Tribunal and only 25% can be received in cases which are settled at any stage of the proceedings before final order is passed.

14. It is also known fact that in many of the matters the bank/financial institution settle the outstanding dues at much lesser amount, than the outstanding dues. Also in many cases immediately after filing of the recovery proceedings before the DRT, the borrower settle the disputes and thereafter is not in contact with the bank/ financial institution, which may be for number of reasons. Illustratively the borrower may not be ready to come back to the Court and cooperate with the bank/financial institution for refund of court fees once the dispute is settled. Even in suits which are filed before the Civil Court, on settlement or withdrawal, the court fees are refunded as per the rules only to the

plaintiff.

15. Having given our anxious consideration to these issues, we are of the clear opinion that Rule 5(1) providing for refund of Court fees cannot be read so as to defeat and/or frustrate any entitlement of the applicant for refund of Court fees as may be permissible under the provisions of Rule 4 as noted above. Merely because the Defendant is not coming forward or is not available or he does not intend or is not agreeable for giving his consent for a joint application to be presented for refund of Court fees, cannot defeat the legal rights of the applicant like the Petitioner to receive the Court fees. This more particularly, as it is the applicant being the *dominus litis* who has initiated the proceedings, is the person who would go before the tribunal to contend that the original application does not require further adjudication as the dispute between the parties and subject matter of adjudication itself is settled outside the Court. Once such a position is taken by the applicant itself, in a given case may be even in the absence of the Defendant making an appearance in the proceedings. Even if the Defendant makes an appearance, on a clear position being taken by the applicant certainly it is fully and completely within the domain of the applicant, whether to pursue the proceedings of original application and to withdraw the same, in view of any settlement reached with the Defendant. Even, the tribunal would not have a

second thought if the applicant who is in a position of a plaintiff withdraws the proceedings. If this is a clear consequence of any judicial order passed by the tribunal permitting to withdraw the proceedings by the Petitioner, certainly as a natural consequence thereof the applicant would become entitled for refund of Court fees. Thus, in a clear situation where there is no necessity of the Defendant to consent of refund of Court fees, Rule 5 cannot be construed to mean that even in such cases, a consent needs to be obtained from the Defendant and/or a joint application be presented. In our opinion, in such cases insistence for a joint application, in fact, would go contrary to the very judicial order passed by the DRT permitting withdrawal of the original application and granting order of refund of Court fees. The judicial order cannot be defeated by the insistence for a joint application for refund of Court fees.

16. For the above reasons, we would read down the Rule to mean that once the DRT itself on application of mind has permitted the applicant in an Original Application refund of Court fees, and when the entitlement for refund of Court fees itself has been fixed by a judicial order, it would not be permissible for the Registrar of the DRT to nonetheless insist that a joint application ought to be presented for refund of Court fees. However, this would not mean that where in case if the Registrar has any doubt on materials that the applicant in the Original

Application does not himself/itself become entitled for refund of Court fees and/or if the judicial order does not grant a clear refund of Court fees to the plaintiff alone, in such cases, certainly requirement of joint application can be insisted, as in such cases the complexion of the refund application itself would be completely different. However, to blanketly read Rule 5(1) to mean that in every case a joint application is necessary for grant of refund of court fees, would not only defeat the entitlement to the refund of Court fees, but is also likely to be contrary to the judicial order passed by the DRT/DRAT granting refund of Court fees.

17. In view of above deliberations, we are inclined to allow the petition in terms of our above observations. The above observations be taken into consideration by the Registrar of the DRT in processing applications for refund of Court fees including the petitioner's case.

18. Petition stands disposed of in the above terms. No costs.

19. The Registrar, DRT, Mumbai, to forward a copy of this order to the other DRTs in the State.

(RAJESH S. PATIL, J.)

(G. S. KULKARNI, J.)