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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 1st August, 2023

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W.P.(C) 5105/2023, CM Nos.19981/2023 & 34906/2023

RAJDHANI COLD STORAGE PVT. LTD..... Petitioner

Through: Mr. M. Sufian Siddiqui, Mr.
Rakesh Bhugra, Mr. Kumar Satish
Shah & Ms. Alya Veronica, Advs.

versus

PUNJAB AND SIND BANK & ANR. Respondents

Through: Ms. Seema Gupta, Adv. for R-1.
Mr. Tushar Sannu & Mr. Devvrat
Tiwari, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia*, praying as under:

- a. *Quash all the proceedings apropos the property in question of the petitioner company viz. C-51, Lawrence Road Industrial Area, Delhi-110035, pending before the Ld. DRT-II, New Delhi in and emanating from O.A No. 677/2000 and O.A No. 88/2004 titled 'Punjab & Sind Bank vs M/s Delhi Automobiles Limited & Ors.; and*
- b. *Consequently, direct the respondent Bank to forthwith release and hand over the original title deed documents apropos the property in question viz. C-51, Lawrence Road Industrial Area, Delhi-110035 to the petitioner*



*company, illegally and unjustifiably withheld by the respondent Bank, since the Year 1998; **OR Alternately***

- c. *Set aside the impugned orders dated: 07.02.2023 passed by the Ld. DRAT, New Delhi in Appeal No. 29/2022 and Appeal No. 36/2022 titled 'M/s Rajdhani Cold Storage Pvt. Ltd. vs Punjab & Sind Bank & Ors.' and consequently, direct the Recovery Officer in recovery proceedings in R.C. No. 378/2012 titled 'Punjab & Sind Bank vs M/s Delhi Automobiles Limited & Ors.' to examine the petitioner company's application afresh on merits, filed vide Diary No.4191/2020 & 1649/2020; and"*

2. The petitioner essentially prays that the proceedings initiated by respondent no.1, Punjab and Sind Bank (hereafter '**PSB**') against the petitioner being Original Application (O.A.) No.677/2000 and O.A. No.88/2004 captioned *Punjab & Sind Bank v. M/s Delhi Automobiles Ltd. & Ors.*, filed under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (hereafter '**RDB Act**') before the Debts Recovery Tribunal (hereafter '**DRT**') be set aside.

3. The petitioner company has been arrayed as respondent no.5 in the aforesaid action (Original Applications) instituted by PSB.

4. The petitioner states that it had also taken a loan against the property located at C-51, Lawrence Road Industrial Area, Delhi-110035 (hereafter '**the mortgaged property**'). The same was the subject matter of another action¹ instituted by PSB under Section 19 of the RDB Act for recovery of the amounts advanced.

5. It is the petitioner's case that PSB has been illegally

¹ O.A. No. 24/2004



withholding the title documents of the mortgaged property against loans advanced to M/s Delhi Automobiles Ltd., which are a subject matter of the proceedings in O.A. No.677/2000 and O.A. No.88/2004. The petitioner claims that it has neither stood as a guarantor for the financial facilities advanced to M/s Delhi Automobiles Ltd. nor has it furnished any collateral security for the same. The petitioner thus claims that it has been wrongly arrayed as a party to those proceedings.

6. The petitioner states that prior to the institution of the action by the PSB before the learned DRT, it filed a suit² in this Court, *inter alia*, praying for a declaration that PSB is liable to return the title deed and the documents in respect of the mortgaged property. In addition, the petitioner also prayed that the Board Resolution, and other security documents be declared as forged and fabricated; consequently, the charge created on the mortgaged property on the basis of the aforesaid documents be declared as null and void.

7. PSB filed an application³ seeking transfer of the said suit² to the learned DRT, which was rejected by a judgment of this Court delivered on 08.08.2007. In view of the above, the suit preferred by the petitioner is continuing. This Court is informed that the same is at the stage of recording of evidence.

8. In the meanwhile, at the instance of the petitioner, the learned

² CS(OS) No. 2443/2000 captioned Rajdhani Cold Storage Pvt. Ltd & Anr. v. Punjab & Sind Bank & Anr.

³ I.A No. 4439/2001 in CS (OS) No. 2443/2000



DRT, by an order dated 01.11.2010 stayed the proceedings in O.A. No. 677/2000, O.A. No. 88/2004 and O.A 24/2004, on the ground of, pendency of the said suit.

9. Thereafter, the petitioner entered into a compromise with PSB in respect of the loan against the mortgaged property extended to the petitioner company, which was the subject matter of O.A. No. 24/2004. Admittedly, PSB has received the amount in discharge of its claim in O.A. No. 24/2004 and the said proceedings stand closed.

10. The proceedings before the learned DRT in respect of the petitioner, continued to remain stayed for a period exceeding eleven years. However, the learned DRT revived the proceedings against the petitioner in O.A. No. 88/2004 by an order dated 04.01.2022. The learned DRT observed that the RDB Act is a special act and any matter that fell within the jurisdiction of the learned DRT, cannot be determined by a Civil Court in view of the specific bar. Accordingly, the learned DRT revived the action⁴ instituted by PSB against the petitioner, which was kept in abeyance pursuant to the order dated 01.11.2010. However, no such order was passed reviving O.A 677/2000

11. Aggrieved by the said decision⁵, the petitioner preferred an appeal⁶ before the learned DRAT, which was disposed of by an order dated 07.02.2023. A plain reading of the said order indicates that it is a

⁴ OA 88/2004

⁵ Order dated 04.01.2022

⁶ Misc Appeal no. 36/2022



consent order. The order records that the petitioner had prayed for directions to be issued to the learned DRT to consider the petitioner's defence of fraud while deciding the O.A. No. 88/2004 and that the learned counsel for PSB had submitted that it had no objection to the same.

12. The petitioner has filed an application seeking review of the order⁷ asserting that its counsel had not made the submissions as recorded in the order, and had not consented to the appeal being disposed of by directing the learned DRT to decide the issues raised by the petitioner.

13. The said application has not been decided by the learned Debts Recovery Appellate Tribunal (hereafter '**DRAT**') as yet, and is pending consideration.

14. The petitioner also seeks to agitate its grievance against the proceedings that emanate from an order passed by the Recovery Officer. The petitioner had filed an application before the Recovery Officer, in proceedings relating to the Recovery Certificate No. 14/2005, that was issued against other debtors who are parties in the O.A No. 677/2000. The petitioner alleged that there was collusion between the staff of PSB and the Certificate Debtor (M/s Delhi Automobiles Ltd.); therefore, effective steps were not taken to realise the dues from the sale of their assets. The said application was dismissed by the Recovery Officer by an order dated 27.10.2021, by

⁷ Order dated 07.02.2023 in Misc Appeal No. 36/2022 arising from order dt 04.01.2022 in OA



holding that the petitioner did not have any *locus* to object to the recovery proceedings as it was neither a party to the Recovery Certificate, nor did it have any claim in respect of the properties against which steps were being taken for realisation of PSB's dues. Thus, the petitioner had no interest in the subject matter of the proceedings conducted by the Recovery Officer.

15. Aggrieved by the same, the petitioner filed an appeal⁸ before the learned DRT under Section 30 of the RDB Act. The said appeal⁸ was dismissed by an order dated 24.02.2022 passed by the learned DRT, noting that the proceedings before the Recovery Officer were not against the petitioner.

16. Whilst the petitioner had secured an order⁹ in its favour staying the proceedings against it and sought to intervene in the recovery proceedings to ensure that the assets of the Certificate Debtor are proceeded against. Obviously, for the reason that if PSB realised its debts, the petitioner would be absolved of any liability even if it was found that equitable mortgage was created in respect of the mortgaged property.

17. Aggrieved by the said order¹⁰, the petitioner preferred an appeal¹¹ before the learned DRAT, which was also disposed of by the learned DRAT by a separate order dated 07.02.2023. The learned

88/2004

⁸ Appeal No. 19/2021

⁹ 01.11.2010 in OAs 677/2000,24/2004 and 88/2004

¹⁰ Order dated 24.02.2022 in Appeal no.19/2021

¹¹ Appeal no. 29/2022



DRAT found no flaw with the orders passed by the Recovery Officer and the learned DRT, as it was admitted that the Recovery Certificate had been enforced against the Certificate Debtor, and not against the petitioner.

18. The petitioner seeks to assail the said orders¹² dated 07.2.2023 in this petition.

Submissions

19. Mr Siddiqui, learned counsel appearing for the petitioner submitted that the entire proceedings instituted by PSB against the petitioner are liable to be set aside as those proceedings are premised on a fraud. As noted above, it is the petitioner's case that it had not handed over the title documents to create any equitable mortgage in respect of financial facilities extended to M/s Delhi Automobiles Limited. This is also the subject matter of the petitioner's suit which was instituted in this Court but stands transferred to the District Court on account of enhancement of pecuniary jurisdiction.

20. It is contended by Mr Siddiqui that the learned DRT had *suo moto* recommenced proceedings against the petitioner after a period of twelve years without there being any change in the circumstances. He further contended that the learned DRT does not have any inherent powers of review and therefore, it is not open for the learned DRT to

¹² Order dated 07.02.2023 in Appeal No. 29/2022 arising from DRT's order dated 24.02.2022 in Appeal No. 19/2021, which was filed against the order dated 27.10.2021; and Order dated 07.02.2023 in Order dated 07.02.2023 in Misc Appeal No. 36/2022 arising from order dated 04.01.2022 in OA 88/2004



take a contrary view.

21. He also contended that the learned DRAT had taken contrary stands, inasmuch as, in one of the impugned orders dated 07.02.2023¹³, the learned DRAT had remanded the matter to the learned DRT for deciding the same on merits, as expeditiously as possible and by another order dated 07.02.2023¹⁴, the learned DRT, however, had taken a view that the petitioner has no *locus*.

22. According to the learned counsel, the two orders are contradictory and, therefore, cannot be sustained.

23. Ms Gupta, learned counsel appearing for the respondents submitted that the petitioner has not approached this Court with clean hands and has suppressed a letter dated 10.12.2018, pursuant to which, the petitioner had settled its dues with PSB in respect of financial assistance that was rendered by PSB to the petitioner, and was the subject matter of OA No.24/2004.

24. She points out that in the said letter, the petitioner had specifically stated that the security documents relating to the mortgaged property would not be released till the account of M/s Delhi Automobiles Ltd. was settled / adjusted / closed, and is decided by the court of law.

25. Mr Siddiqui countered the aforesaid submission and submitted

¹³ in Misc. Appeal No. 36/2022 arising out of O.A. No.88/2004

¹⁴ in Appeal No. 29/2022 arising out of Appeal No. 19/2021 and RC No. 378/2012 in connected O.A. No. 677/2000



that the said letter was issued while the settlement related to the facility provided to the petitioner was under negotiation and the said letter did not preclude the petitioner from agitating its case.

Reasons and conclusion

26. We have heard the learned counsel for the parties.

27. The first and foremost contention to be addressed is whether there is any contradiction in the impugned orders dated 07.02.2023 passed by the learned DRAT⁷.

28. The said question is required to be answered in the negative. The said order stems from two separate proceedings and cannot be conflated. Insofar as the recovery proceedings pursuant to the Recovery Certificate issued in O.A No. 677/2000 is concerned, the said proceedings are only against the Certificate Debtors (M/s Delhi Automobiles Ltd. and the Guarantors) and their properties. The petitioner is not a Certificate Debtor and is not being proceeded against in those proceedings. This is because PSB's claim against the petitioner has not been adjudicated by the learned DRT as it had stayed the proceedings in O.A No. 677/2000 in respect of the petitioner.

29. The question, whether the petitioner is liable to pay any amount or the mortgaged property can be proceeded against, for recovery of the financial facilities extended by PSB to M/s Delhi Automobiles Ltd. (which is subject matter of O.A No. 677/2000) has not been adjudicated as yet. Admittedly, the petitioner has been insisting that its



suit precedes, and PSB's actions in the proceedings in OA 677/2000 and OA 88/2004 be deferred *qua* the petitioner, as the petitioner's defence before the learned DRT is similar to its claim in the suit. At the same time, the petitioner is also insisting that it participates in the recovery proceedings against the Certificate Debtor (M/s Delhi Automobiles Ltd.).

30. The Recovery Officer had found that the petitioner had no *locus* to interfere in those proceedings, and determine the course, or the manner in which the Recovery Certificate is executed against the Certificate Debtor or its properties. As noted above, neither the learned DRT nor the learned DRAT found any infirmity with the said view.

31. The order dated 07.02.2023, whereby the learned DRAT had remanded the matter to the learned DRT related to O.A. No. 88/2004⁷. The petitioner is aggrieved against the revival of the proceedings before the learned DRT.

32. Clearly, there is no contradiction in the two orders as one relates to revival of the proceedings before the learned DRT and the other pertains to recovery proceedings before the Recovery Officer, which are neither against the petitioner nor in respect of any of its properties.

33. The next question to be examined is whether the proceedings before the learned DRT are required to be stayed on account of the suit instituted by the petitioner.

34. The said issue is no longer *res integra*. The Supreme Court, in



the case of *Bank of Rajasthan Limited v. VCK Shares and Stock Broking Services Limited : (2023) 1 SCC 1*, has held that there is no provision in the RDB Act whereby the remedy of a Civil Suit by a defendant in a claim is ousted, and the same would be a matter of choice of that defendant. It would be open for the defendant to file a counter claim, or avail the procedure established under the Code of Civil Procedure, 1908. However, in no circumstances would the proceedings under the RDB Act be stayed. The Supreme Court had also, in unambiguous terms, held that the Civil Court would have no power to transfer the civil suit to the learned DRT.

35. The relevant extract of the said decision are set out below:

“45. We are thus of the view that there is no provision in the RDB Act by which the remedy of a civil suit by a defendant in a claim by the Bank is ousted, but it is the matter of choice of that defendant. Such a defendant may file a counterclaim, or may be desirous of availing of the more strenuous procedure established under the Code, and that is a choice which he takes with the consequences thereof.

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51. Now coming to the question whether consent is required for the transfer of a suit. We do believe that once we have opined that there is no power of transfer in the civil court, the consent or absence of it is not something which would lend such power to the civil court. The option before the defendant, who has instituted the suit, is clear — either he could file a counterclaim before DRT or he could institute separate civil proceedings.

*52. We however have a word of caution keeping in mind the nature of powers exercised by DRT and the objective of its creation. The interpretations in *Abhijit Tea Co. [United Bank of India v. Abhijit Tea Co. (P) Ltd., (2000) 7 SCC 357]* and *Ranjan Chemicals [SBI v. Ranjan Chemicals Ltd., (2007) 1**



SCC 97] , seeking to give power of transfer to the civil court, whether by consent or otherwise, were apparently predicated on an apprehension that a defendant may launch a suit before the civil court in order to delay the proceedings before DRT.

53. We certainly would not like that the process envisaged under the RDB Act be impeded in any manner by filing of a separate suit if a defendant chooses to do so. A claim petition before DRT has to proceed in a particular manner and would so proceed. There can be no question of stay of those proceedings by way of a civil proceeding instituted by a defendant before the civil court. The suit would take its own course while a petition before DRT would take its own course. We appreciate that this may be in the nature of parallel proceedings but then it is the defendant's own option. We see no problem with the same as long as the objective of having expeditious disposal of the claim before DRT under the RDB Act is not impeded by filing a civil suit. Thus, it is not open to a defendant, who may have taken recourse to the civil court, to seek a stay on the decision of DRT awaiting the verdict of his suit before the civil court as it is a matter of his choice.

54. We thus make it abundantly clear that in case of such an option exercised by the defendant who filed an independent suit, whatever be the nature of reliefs, the claim petition under the RDB Act would continue to proceed expeditiously in terms of the procedure established therein to come to a conclusion whether a debt is due to a bank and/or financial institution and whether a recovery certificate ought to be issued in that behalf.

(emphasis supplied)

36. In view of the above, the petitioner's contention that the learned DRT is required to stay the proceedings against the petitioner is misconceived. The Original Applications instituted by PSB (O.A No. 677/2000 and O.A. No. 88/2004) under Section 19 of the RDB Act are required to be proceeded with and concluded as expeditiously as possible by the learned DRT.



37. In the event the Recovery Certificate is issued against the petitioner and the same is sought to be enforced by the Recovery Officer, there is no cavil that the petitioner would have a full right to participate in the said proceedings.

38. We are of the view that it would not be apposite for this Court to examine the petitioner's contention that there has been a fraud perpetrated by PSB as that is a matter to be adjudicated in the suit preferred by the petitioner.

39. We find merit in PSB's contention, that the petitioner has concealed a vital document and has been less than candid. The letter dated 10.12.2018 clearly records that the title deeds of the mortgaged property will not be released with the settlement of the loan advanced by PSB to the petitioner. Paragraph 3 of the said letter¹⁵, which was handed over to us during the proceedings, reads as under:

"3) We further understand that the security documents i.e title deeds of immovable property bearing no C-51, Lawrence Road Industrial Area, Delhi – 110035 which were kept as collateral security in aforesaid LAP Account and claimed by bank as an extended mortgage in account of M/s Delhi Automobiles Limited shall not be released upon receipt of above said INR 30 lakhs and shall be released only when the account of Delhi Automobiles Limited gets settled/adjusted/closed or gets decided by any court of law."

40. In view of the above, the learned DRT is directed to proceed with the action instituted by PSB (O.A No. 677/2000 and O.A. No. 88/2004) and conclude the same as expeditiously as possible.

41. It is clarified that all rights and contentions of the parties in the

¹⁵ Letter dated 10.12.2018



said proceedings are reserved.

42. In view of our order, the petitioner's application seeking review the order dated 07.02.2023⁷ is academic because notwithstanding, the merits of the petitioner's claim that the said order incorrectly records its counsel's submissions, the learned DRT is required to conclude the proceedings against the petitioner in OA 677/2000 and OA 88/2004. The petitioner's application for review would survive only to the extent of the issue, whether the petitioner had given its consent to the said order or not.

43. The petition is disposed of in the aforesaid terms. All the pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 1, 2023

'gsr' / KDK