

13.05.2024
Ct. No. 19
Sl. No.9
Cp/Gb

C.O. No. 3742 of 2023

M/s EMTA Coal Limited & Anr.
Vs.
HDFC Bank Limited & Anr.

Mr. Saptangshu Basu, Sr. Advocate
Mr. Souritra Ganguly
Mr. Tanay Agarwal
Ms. Shristi Sharma

... for the petitioners.

Mr. Jishnu Chowdhury
Mr. Deepan Kr. Sarkar
Mr. Anunoy Basu

.....for the opposite party no. 1.

1. The revisional application arises out of an order dated October 5, 2023 passed by the learned Debts Recovery Appellate Tribunal at Kolkata (hereinafter referred to as "DRAT") in Misc. Appeal No. 24 of 2023 arising out of O.A. No. 1194 of 2016.
2. The opposite party no. 1 filed an application under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as the "said Act"). The said application was registered as O.A. No. 1194 of 2016. The petitioners filed their written statement. The bank filed its evidence on February 14, 2020. The matter was ready for final disposal when the learned advocate for the defendants/petitioners, sought for time to file counter evidence. By order dated December 8, 2021, the Presiding Officer, Debts Recovery

Tribunal-III, Kolkata (hereinafter referred to as “DRT”), observed that more than one and half years had passed, but the defendants had not filed any counter evidence. Such right to file counter evidence was closed. The learned DRT went on to add that if the defendants wanted to file their counter evidence, they may do so by paying cost of Rs.50,000/- to the applicant/bank. The applicant/bank filed the case on December 24, 2016 for recovery of public money of Rs.35,23,90, 143.50/-. The DRT recorded that it was an unfortunate case that more than 3 years and 9 months had elapsed, but the defendant did not find time to file the counter evidence. The next date was fixed on December 16, 2021 for final arguments. Thereafter, by an order dated August 7, 2023, the further prayer of the petitioners to allow them to file their counter evidence was rejected. The learned DRT recorded that neither had the counter evidence been filed nor had the cost been paid to the bank.

3. This order was challenged before the learned DRAT in Misc. Appeal No.24 of 2023. The learned DRAT was of the view that the DRT did not commit any error. The original application was filed on November 24, 2016. The DRAT held that the written statement was filed on March 15, 2017. The bank filed the evidence on February 14, 2020 and directions were issued on April 5, 2020 by the learned DRT to serve the copy of the

evidence upon the petitioners. On December 8, 2021, the petitioners prayed for time to file the counter evidence and the same was allowed, subject to payment of cost of Rs.50,000/-. The matter was posted for hearing on December 16, 2021. The learned DRAT was of the opinion that on that day when the matter had been fixed, the counter affidavit should have been filed by the petitioners. Instead, the petitioners approached the DRT for further extension of time to file the counter evidence and by order dated August 7, 2023, such opportunity was rightly refused. However, the learned DRAT recorded that the decision of Kewal Krishna Vs. Harnek Singh, reported in AIR 2001 SC 1440, could be made applicable and one further opportunity should be given to the petitioners to file the counter affidavit in the interest of justice. Apart from the cost of Rs.50,000/- to be paid to the bank, further cost of Rs.2,00,000/- should be paid by the petitioners to the account of the State Legal Service Authority. Such cost should be deposited within October 9, 2023 and the counter evidence should be filed by October 12, 2023 before the learned DRT-III. The learned DRT-III was directed to dispose of the O.A. within November 30, 2023 and there was a specific direction that unnecessary adjournments should not be granted to the parties except under exceptional circumstances. Failure to comply with the order would

entail loss of opportunity to file their counter evidence. Such order has been challenged in this revisional application.

4. Mr. Basu, learned senior advocate appears on behalf of the petitioners and submits that the DRT-III had not fixed any particular time limit within which the cost had to be deposited and no date was also fixed as to when the counter affidavit was to be filed. He further contends that if an opportunity is not granted to file the counter evidence, the petitioners would be non-suited. It is urged that when the learned DRAT was of the view that the DRT-III had not fixed any time limit within which the cost was to be paid, in that event there was no reason why further cost should have been imposed by the DRAT all together amounting to Rs.2,50,000/-. It is also contended that the conduct of the bank has also been questionable. After 5 years from filing the original application, the bank filed their evidence. The bank did not show any inclination to proceed expeditiously with the recovery proceeding. The delay could not be attributed only to the petitioners. For the ends of justice, cost should be reduced. Learned Advocate further contends that as soon as the order was passed by the learned DRAT, the revisional application was moved challenging the entirety of the order including the default clause and,

as such, this court should permit the petitioners to file their counter evidence within a reasonable time.

5. Mr. Chowdhury, learned advocate appearing on behalf of the bank, submits that no mercy should be shown to the petitioners. Any protective order would amount to a premium given by the court to a recalcitrant litigant. The order of the DRT-III is placed in detail. It is urged that the revisional application has been filed after the default clause had taken effect. The cost was directed to be deposited within October 9, 2023. Such direction was violated. Thus, further scope for filing the counter evidence was lost to the petitioners by operation of the order of the learned DRAT. It is also contended that once the default clause had set in, no further chance could be given to the petitioners to file their counter evidence.
6. Having heard the learned Advocate for the respective parties, this court finds that the learned DRT-III had recorded that after one and half years from filing of the evidence of the bank, the petitioners had failed to file their counter evidence, which actually resulted in closure of such opportunity. However, a last chance was given to the petitioners to file their counter evidence upon payment of cost of Rs.50,000/- to the bank. December 16, 2021 was fixed for final arguments. An order of court cannot be read as a statute. A meaningful reading of the said order

indicates that the DRT-III was of the view that the evidence should be closed in view of the inordinate delay caused by the petitioners. Yet, a last chance was given to file the counter evidence upon payment of cost of Rs.50,000/- and the matter was fixed for final arguments on December 16, 2021, meaning thereby, all steps to be taken by the petitioners towards preparation, filing and service of the counter affidavit should be completed within the interregnum, of course upon payment of cost of Rs.50,000/- to the bank. Such order was not complied with. In August 2023, again the petitioners asked for further time to file the counter evidence. The learned DRT-III recorded non-compliance of the order dated December 8, 2021 and rejected such prayer. Such order, was challenged before the learned DRAT. The learned DRAT was also of the view that when opportunity was given to file the counter evidence by order dated December 8, 2021 and the final arguments were fixed on December 16, 2021, the interpretation of the order would be that the cost should have been paid and the counter evidence should have filed within the interim period. Taking note of the conduct of the petitioners, further cost of Rs.2,00,000/- was imposed by the DRAT over and above Rs.50,000/-, but last opportunity was granted to file the counter affidavit. The cost was directed to be paid within October 9, 2023, which was not done. On

the following day, the revisional application was filed before this court, i.e., after the default clause had taken effect. Thereafter, the matter was mentioned before this court and an interim stay was granted of the order of the DRAT. The default clause had already taken effect by then.

7. The conduct of the petitioners is beyond condonation. Repeated attempts were made to obstruct the course of justice. Apart from the inordinate delay, abuse of the process of court is apparent from the facts which have been enumerated hereinabove. The question before this Court is whether the default clause which had already set in and the right to file the counter-evidence had automatically been closed by operation of the order of the learned DRAT, the High Court should show further indulgence at this stage or not.
8. In my considered opinion, the delay can be compensated with cost but, if one last opportunity is not granted to the petitioners to file their counter-evidence, they would suffer irreparable loss and injury. The learned DRT-III and the learned DRAT were also of the same view and had permitted filing of the counter-evidence upon payment of cost. Before this Court decides to set the clock back to the stage of filing of the evidence by the petitioners, the conduct has to be taken into account. The order impugned is modified.

9. Thus, a total cost of Rs. 3,50,000/- shall be paid to the bank within May 22, 2024, for the inordinate delay and continuous disobedience of the orders of the Tribunals. The petitioners shall also file their counter-evidence on May 22, 2024. The learned DRT-III shall accept the said counter-evidence upon being satisfied that the cost of Rs.3,50,000/-has been paid to the HDFC bank, as directed. The HDFC bank shall accept the cheque drawn in the name of the bank and the same shall be produced before the learned DRT-III.
10. Needless to mention, in case of non-compliance, the counter-evidence shall not be accepted. The learned DRT-III shall proceed in accordance with law, and make an endeavour to complete the proceedings within July 31, 2024.
11. Accordingly, the revisional application is disposed of.
12. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)