

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9344 OF 2024

HDFC BANK LIMITED a]
banking company having its]
registered office at HDFC Bank]
House, Senapati Bapat Marg,]
Lower Parel (West), Mumbai – 400013]
and branch office at Peninsula]
Business Park, B-Wing, 4th Floor,]
Dawn Mills Compound, Ganpat]
Rao Kadam Marg, Lower Parel,]
Mumbai – 400013]..... Petitioner.

Versus

1. BANK OF BAHRAIN &]
KUWAIT BSC, a Banking]
Corporation incorporated in the]
State of Bahrain by an Amiri]
Decree of March, 1971 and]
having its Head office at 43,]
Government Avenue, P. O. Box]
No.597, Manama, 306, Bahrain]
and branch office at Joly Maker]
Chamber II, Ground Floor, 225,]
Nariman Point, Mumbai – 400 021]
]
2. ASHIMA LIMITED , a]
Company incorporated under the]
Companies Act, 1956 and]
having its registered office at]
310, Ashima House, Kavi]
Nanalal Marg, Ahmedabad -]
380 006 and branch at 201]
Tulsiani Chambers, 212,]
Nariman Point, Mumbai – 400021]..... Respondents

**ALONG WITH
WRIT PETITION NO.12708 OF 2024**

Bank of Bahrain & Kuwait B.S.C., A	]
Banking Corporation Incorporated in	]
The State of Bahrain by an Amiri	]
Decree of March 1971 and having	]
Its Head, Office At 43 government	]
Avenue, P O. Box No.597 manama	]
306, Bahrain and Amongst Others	]
A Branch Office at Jolly Maker	]
Chamber II, Ground Floor, 225,	]
Nariman Point, Mumbai – 400 021	]
through Mr. Guru Prasad Pantula	]
the Power of Attorney Holder	]..... Petitioner.

Versus

1]	HDFC Bank Limited	]
	A Limited Company Incorporated	]
	Under the Companies Act, 1956	]
	And having its Office at 2nd Floor,	]
	Trade World New Building, Kamla	]
	Mills, Senapati Bapat Marg, Lower	]
	Parel, Mumbai – 400 013	]
		]
2]	Ashima Limited	]
	A Company Incorporated under	]
	the Provisions of the Companies	]
	Act, 1956, and having its	]
	Registered Office at Texcellence	]
	Complex Khokara Mehmedabad,	]
	Ahmedabad – 380 021 Gujarat;	]
	And an Office at 201, Tulsiani	]
	Chambers, Nariman Point,	]
	Mumbai – 400 021	]..... Respondents.

Mr Virag Tulzapurkar, Senior Advocate a/w Mr. Sameer Pandit, Ms. Sarrah Khambati i/by Wadia Ghandy & Co. for the Petitioner in Writ Petition No.9344 of 2024.

Dr. Birendra Saraf, Senior Advocate a/w Mr. Rajeev Pandey a/w Mr. Madhur Rai and Mr. Sachin Kanse i/by PRS Legal for the Petitioner in Writ Petition No.12708 of 2024 and for Respondent No.1 in Writ Petition No.9344 of 2024

Mr. Sameer Pandit a/w Ms. Sarrah Khambati i/by Wadia Ghandy & Co. for Respondent No.1 in Writ Petition No.12708 of 2024.

Mr. Veerendra Tulzapurkar, Senior Advocate a/w Mr. Shivam Bhagwati and Mr. Mufaddal Peparwala i/by Crawford Bayley & Co. for Respondent No.2 in Writ Petition No.9344 of 2024.

Mr. Shivam Bhagwati a/w Mr. Mufaddal Peparwala i/by Crawford Bayley & Co. for Respondent No.2 in Writ Petition No.12708 of 2024.

**CORAM M.S. Sonak &
Jitendra Jain, JJ.**

**Reserved on : 17 February 2025
Pronounced on : 20 February 2025**

JUDGMENT : (Per M. S. Sonak, J.)

1. Heard learned counsel for the parties.
2. The learned counsel for the parties agree that both these Petitions can be disposed of by a common order.
3. Accordingly, we issue Rule in both these Petitions. The rule is made returnable immediately at the request of and with the consent of learned counsel for the parties.
4. In Writ Petition No.9344 of 2024, the Petitioner – HDFC Bank Limited (HDFC), vide prayer clause (a) challenges Debt Recovery Appellate Tribunal's common order dated 26 April 2024 (Impugned Order) disposing of Appeal Nos. 2 of 2018 and 32 of 2018. In alternative to prayer (a), the Petitioner, vide prayer clause

(b) seeks a declaration that the amount the Petitioner claims from the Respondents constitutes, a “debt” under Section 2(g) of the Recovery of Debts And Bankruptcy Act, 1993 (‘the said Act’) and for quashing of the Impugned Order. Further, in alternative to prayer clauses (a) and (b), the Petitioner, vide prayer clause (c), in addition to quashing the Impugned Order, seeks a direction to the Debts Recovery Appellate Tribunal to decide whether the Petitioner’s claim constitutes a debt within meaning of Section 2(g) of the said Act.

5. In Writ Petition No. 12708 of 2024, the Petitioner -Bank of Bahrain & Kuwait, B.S.C. (“BBK”) seeks a modification of the Impugned Order to the extent of directing the HDFC to release the amount of Rs.20,70,44,806.75/- along with accrued interest, lying in the No-Lien account with the HDFC to the BBK.

6. Since both the Petitions concerned with the Debts Recovery Appellate Tribunal’s (“DRAT”) Impugned Order, it is only appropriate that they are disposed of by a common judgment and order.

7. Mr. Virag Tulzapurkar, learned Senior Advocate for the HDFC, submitted that the Respondents’ Appeals against Debts Recovery Tribunal’s (“DRT”) order dated 26 October 2005 (Exhibit K) were withdrawn by the Respondents. Therefore, the finding in DRT’s order dated 26 October 2005 that the HDFC’s claim constituted a “debt” under Section 2(g) of the said Act attained finality. He submitted that even the DRAT directed adjudication of the HDFC’s original application “on merits”, which means whether the debt was indeed payable based on the evidence on record. He submitted that there is no justification for the DRAT not to rule on this specific issue in its Impugned Order. He submitted that this

was a case of failure to exercise jurisdiction warranting interference with the impugned order.

8. Mr Viraag Tulzapurkar, without prejudice, submitted that this matter did not involve any seriously disputed questions of fact. The entire material was before the DRAT. No case was made out for a remand. The settled principles regarding remand of matters were not followed by the DRAT. Accordingly, the Impugned Order be set aside and the DRAT be directed to decide all the issues in the Appeals instituted by the Respondents against the DRT's order. Mr Viraag Tulzapurkar relied upon **Arvind Kumar Jaiswal (D) THR. LR Vs. Devendra Prasad Jaiswal Varun¹, Ashwinkumar K Patel Vs. Upendra J. Patel and others², Municipal Corporation, Hyderabad Vs. Sunder Singh³ and S. P Builders & Ors. Vs Chairperson, Debts Recovery Appellate Tribunal & ors⁴** in support of his contentions.

9. Dr Birendra Saraf, learned Senior Advocate for BBK, tendered a copy of the purshis in Miscellaneous Appeal No. 89 of 2006 and submitted that leave was sought to withdraw the Appeal with liberty to raise all contentions, including the contention of jurisdiction as to whether the HDFC's claim constituted a debt before the DRT. He submitted that the DRAT by order dated 11 July 2014 disposing of Respondents' Appeals allowed the Respondents to withdraw their Appeals by keeping open all contentions, including contentions going to the jurisdiction of the DRT to entertain HDFC's original application. He submitted that the orders even directed the DRT to consider the matter on merits, uninfluenced by the earlier orders of the DRT. He therefore

¹ 2023 SCC OnLine SC 146

² (1999) 3 SCC 161

³ (2008) 8 SCC 485

⁴ 2006 SCC OnLine All 908

submitted that there was no finality attached to the DRT's order dated 26 October 2005 holding that HDFC's claim constituted a debt under Section 2(g) of the said Act.

10. Mr Virendra Tulzapurkar and Dr Birendra Saraf learned Senior Advocates for the Respondents submitted that the issue of jurisdiction had to be decided by some forum. Therefore, if the DRAT felt that this issue along with all other issues are decided in the first instance by the DRT, there was nothing wrong in the exercise of such discretion and remand to the DRT. They submitted that without remand, the Respondents could be deprived of the opportunity of the Appeal to the DRAT. They submitted that the Impugned Order was within the jurisdiction of the DRAT and there was no perversity involved in ordering the remand. Therefore, the learned Senior Advocates submitted that this Court should not interfere with the Impugned Order.

11. Dr Birendra Saraf, appearing for BBK in Writ Petition No. 12708 of 2024, submitted that the HDFC secured an amount of Rs.20.70 crores in execution of the DRT's order dated 30 June 2017 disposing of the original application filed by the HDFC Bank. Now that the DRT's order dated 30 June 2017 was set aside by the DRAT, the DRAT was duty bound to direct the HDFC to restore this amount to BBK. To the extent the Impugned Order does not so order the restoration of this amount, the same should be modified by allowing BBK's Writ Petition No. 12708 of 2024.

12. The rival contentions now fall for our determination.

13. The second Respondent - Ashima Limited ("Ashima") held a current account with HDFC at its branch office at Nariman Point, Mumbai. To secure certain facilities granted by BBK, Ashima, on 29

November 2002 issued a cheque of Rs.7.5 crores drawn on HDFC Bank favour BBK. On 27 May 2003, Ashima filed a Civil Suit No. 1360 of 2003 before the City Civil Court at Ahmedabad seeking an injunction to restrain BBK from depositing this cheque. Despite notice of the injunction, BBK deposited this cheque for clearance with the RBI Clearing Housing System.

14. The HDFC contends that through the Clearing House System BBK wrongly obtained credit of Rs.7.5 Crores from the HDFC. Mr Virag Tulzapurkar submitted that there were no sufficient funds in Ashima's HDFC account and there was an injunction restraining BBK from depositing the cheque. At least on these two grounds, he submitted that BBK obtaining credit of Rs.7.5 Crores from HDFC Bank was illegal and improper. He submitted that in any event, the monies could be said to have been paid under a mistake and therefore, given under the provisions of Section 72 of Indian Contract Act such monies had to be returned by BBK to HDFC.

15. On 07 March 2005, HDFC filed an original application before DRT Mumbai against BBK and Ashima for recovery of Rs. 7.5 Crores. BBK and Ashima filed applications for rejection of these original application on the ground that the HDFC's claim did not constitute a "debt" under Section 2(g) of the said Act and therefore, that the DRT lacked jurisdiction to entertain the original application.

16. By order dated 26 October 2005 (Exh-K) the DRT rejected Ashima's and BBK's applications and held that the amount claimed by HDFC Bank constituted a debt under Section 2(g) of the said Act and therefore, the DRT had jurisdiction to entertain HDFC's original application. Ashima and BBK instituted Appeal Nos. 89 of 2006 and 224 of 2007 challenging DRT's order dated 26 October

2005 holding that it had jurisdiction to entertain and proceed with HDFC's original application. On 11 July 2014, the DRAT in response to the Purshis filed by Ashima permitted Ashima to withdraw Miscellaneous Appeal No.89 of 2006

17. This order dated 11 July 2014 at Exhibit-L (Page 138) reads as follows :-

“The counsel for the appellant has filed a purshis for permission to withdraw the appeal with liberty to the appellant to keep all the issues open on merits of the case. Hence the appeal is dismissed as withdrawn.”

18. Dr. Saraf handed in the purshis filed by Ashima. This purshis seeks permission of the DRAT to withdraw Miscellaneous Appeal No.89 of 2006 without prejudice to the rights and contentions of the Appellants raised in their written statement and memo of appeal “keeping all issues open, including issue “whether claim made by the HDFC Bank amounts to a “debt” under Section 2(g) of the said Act.”

19. Similarly, on 11 July 2014, the counsel for BBK submitted that he was not pressing the BBK's appeal. Accordingly by a separate order dated 11 July 2014 in Appeal No.224 of 2007, the DRAT dismissed the Appeal as not pressed and all issues were kept open to the DRT to dispose of the same on merits without influence of both the court's order.

20. The crucial paragraphs 4 to 7 of the order dated 11 July 2014 disposing of Appeal No.224 of 2007 at Exhibit-M (pages 139 – 140) are transcribed below for the convenience of reference :-

“4. During the pendency of the appeal, the counsel appearing for the appellant submits that he has not pressed the appeal therefore the appeal may be dismissed as not pressed by setting aside the order of the learned Presiding Officer.

5. Considered the submissions advanced by the learned counsel for the parties.

6. The appeal is dismissed as not pressed and all the issues are kept open to the DRT to dispose the same on merits without influence of both the court's order.

7. The appearance of the parties before the DRT on 12/08/2014 and the DRT is directed to dispose of the O.A. expeditiously preferably within a period of three months."

21. After the dismissal of Ashima's and BBK's appeals by orders dated 11 July 2014 capable of more than one interpretations, Ashima and BBK filed applications urging framing of preliminary issue on the jurisdiction and maintainability of the HDFC's original application. The preliminary issue concerned whether the HDFC's claim constituted a "debt" under Section 2(g) of the said Act.

22. By a common order dated 29 July 2016, the DRT rejected such applications observing that this issue would have to be taken up together with other issues at the final hearing stage. By order dated 30 June 2017 the DRT allowed the HDFC's original application and directed Ashima and BBK to jointly and severally pay a sum of Rs.9,14,23,232.41 along with at the rate of 12% p.a. on the principal amount of Rs.7.5 crores to the HDFC.

23. The BBK and Ashima instituted Appeal Nos.2 of 2018 and 32 of 2018 respectively to challenge the DRT's order dated 30 June 2017. By Impugned Order, the DRAT has allowed the appeals, set aside DRT's order dated 30 June 2017 and remanded the matters to DRT to consider the issue of jurisdiction raised by BBK and Ashima together with other issues afresh.

24. The operative portion of the DRAT's Impugned Order (Exhibit – A at pages 30 to 39) reads as follows :-

"21. When there is no finding on jurisdiction by the D.R.T., it would not be appropriate to assume that the question of

jurisdiction has already been determined and therefore, the dispute concerning the other issues could be gone into. Remand is indeed a last resort in appeal. When the D.R.T. itself had in the order dated 29.07.2016 decided to defer consideration of the question of jurisdiction along with the other issues at the time of the final hearing, it ought to have been specifically considered. If there is no such consideration, the only option left in appeal is to remand the matter for fresh consideration.

Hence, the appals are allowed and the impugned order is set aside with direction to the D.R.T. to consider the question of jurisdiction raised by the defendants in the O.A. together with the other issues afresh.

It is submitted that certain amounts have been realised and deposited in a no-lien account with the Respondent bank. The deposit shall be retained and the appropriation made only following the decision taken in the O.A. at the time of final disposal of the O.A.”

25. These Petitions challenge the DRAT’s Impugned Order on the grounds urged by the respective Senior Advocates as noted above. On evaluating the rival contentions and the material on record, we clarify that we do not wish to go into the issue as to whether the DRT in this case has decided the issue of jurisdiction or in any event, decided the issue of jurisdiction correctly in the context of HDFC’s claim constituting a “debt” under Section 2(g) of the said Act. That is an issue which should have been addressed and decided by the DRAT itself. The factual material sufficient for deciding *inter-alia* the issue of jurisdiction or for that matter all other issues relating to the entitlement or otherwise of the HDFC was very much on record. The questions like whether the issue of jurisdiction stood concluded either by earlier orders of DRAT or by the order of Gujarat High Court dated 28 February 2014, were legal issues that the DRAT was duty bound to address and decide upon. Similarly, even the issue whether HDFC’s claim constituted a “debt” under Section 2(g) of the said Act, was a legal issue squarely raised before the DRAT and which, the DRAT should have

itself decided. The DRAT also had sufficient factual material before it to decide the issue of entitlement of HDFC to claim against Ashima and BBK.

26. Given the above position, we are satisfied that the DRAT was not at all justified in simply remanding the matter to DRT for deciding the issue of jurisdiction and all other issues in the original application “afresh”. The DRAT, without discharging its duty as an first appellate authority, has simply chosen to remand the matter to DRT without recording any cogent reasons for adopting this easy course of action.

27. Mr. Virag Tulzapurkar was justified in submitting that DRAT’s impugned order must be set aside and the DRAT must be directed to decide all issues one way or the other in Appeal Nos. 2 of 2018 and 32 of 2018 instituted by the Respondents. He submitted that the remand was not a justified and was contrary to settled legal position that remands must not be ordered routinely or lightly.

28. The contentions of the learned Senior Advocates for the Respondents about the Respondents being entitled to right of an appeal cannot be a good ground to sustain the remand order. By setting aside the remand order and restoring the Respondents’ appeals, the Respondents would get an effective opportunity of prosecuting their appeals as all contentions of all parties are proposed to be kept open for consideration by the DRAT in accordance with law.

29. This was admittedly not a case where the DRT had decided on a preliminary point without recording findings on other issues. In such a case if the appellate court reverses the decree on a preliminary point, the appellate court may remand the matter to

the trial court to decide other issues and determine the suit. This is what is provided under Order 41 Rule 23 of the Code of Civil Procedure. Under Order 41 Rule 23-A the appellate court can order a remand even in other cases not covered by Order 41 Rule 23. However, by a catena of decisions, the Hon'ble Supreme Court has clarified that the remand cannot be ordered lightly. In a case where the provisions of Order 41 Rule 23 do not apply, the remand can be ordered if considered necessary by the Appellate Court in the interest of justice. The Hon'ble Supreme Court has held that as far as possible the Appeal Court should dispose of the appeal finally unless remand is imperative.

30. In **Arvind Kumar Jaiswal (D)** (supra), the Hon'ble Supreme Court made the following observations which apply to the facts and circumstances of the present matter:-

“An order of remand prolongs and delays the litigation and hence, should not be passed unless the appellate court finds that a re-trial is required, or the evidence on record is not sufficient to dispose of the matter for reasons like lack of adequate opportunity of leading evidence to a party, where there had been no real trial of the dispute or there is no complete or effectual adjudication of the proceedings, and the party complaining has suffered material prejudice on that account. Where evidence has already been adduced and a decision can be rendered on appreciation of such evidence, an order of remand should not be passed remitting the matter to the lower court, even if the lower court has omitted to frame issue(s) and/or has failed to determine any question of fact, which, in the opinion of the appellate court, is essential. The first appellate court, if required, can also direct the trial court to record evidence and finding on a particular aspect/issue in terms of Rule 25 to Order XLI, which then can be taken on record for deciding the case by the appellate court.

In the present case, the High Court, as the first appellate court, which is also a court of fact and law, has passed an order of remand observing that the judgment of the trial court was, in its opinion, not written as per the mandate of Section 33 and Rule 4(2) and 5 of Order XX of the Code, as

the discussion and reasoning on certain aspects was not detailed and elaborate.

This is not a case where the evidence is not adduced and on record. In fact, the first portion of the judgment of the High Court elaborately records the contention of the parties and the facts and evidence relied by the parties.

In view of the aforesaid, we allow the present appeal, and set aside the impugned judgment and restore the first appeal to its original number before the High Court, to be decided on merits and in accordance with law, as per the provision of order XLI of the Code. As the appeal has been pending for a considerable time, the High Court would decide the appeal expeditiously as possible.”

31. In **Ashwinkumar K Patel** (supra), the Hon’ble Supreme Court held that the High Court should not ordinarily remand a case under Order 41 Rule 23 CPC to the lower court merely because it considered that the reasoning of the lower court in some respects was wrong. Such remand orders lead to unnecessary delays and cause prejudice to the parties to the case. When the material was available before the High Court, it should have itself decided the appeal one way or the other. It could have considered the various aspects of the case mentioned in the order of the trial court and considered whether the order of the trial court ought to be confirmed reversed or modified.

32. In **Municipal Corporation, Hyderabad** (supra), the Hon’ble Supreme Court reiterated that the Court should loathe to exercise its powers of remand routinely. It is not to be exercised by the appellate court only because it finds it difficult to deal with the entire matter. If it does not agree with the decision of the trial court, it has to come with a proper finding of its own. The appellate court cannot shirk its duties.

33. In **S. P. Builders** (supra), the learned Single Judge of Allahabad High Court, in the context of powers of DRAT ordering a

remand, made relevant observation at paragraphs 10 to 14. The learned Single Judge held that the DRAT is not a body of limited jurisdiction. It exercises power coextensive with the DRT. If there was no want of any relevant material, if the DRT had not discussed some issues properly, it was open to the DRAT to consider itself all such issues and to decide the matter. That itself cannot be a reason to remand the matter to the DRT. Quoting the observations of Hon'ble M. Katju, J, as His Lordship then was, in **Nehru Steel Rolling Mills Vs Commissioner of Sales Tax**⁵ it was held that a remand order should not be readily made and it should only be made when for very strong reasons the authority cannot itself dispose of the matter on merits. It seems that these remand orders were made by the authorities merely to get rid of the case so that the authority could avoid going into the matter deeply and deciding the issue once and for all. This kind of attitude is to be deprecated.

34. The learned Single Judge also referred to **Abid Hasan Watch Company, Varanasi Vs. Commissioner of Sales Tax**⁶, in which it was held that in exceptional cases remand may be ordered, like when there has been no real trial. Mere insufficiency of evidence is no ground for allowing a party to adduce further evidence on remand. Remand with a view to enable a party to fill up lacuna in evidence is not permissible. In protracted litigation the remand should not be resorted to on the ground that a final curtain should be drawn.

35. The Allahabad High Court also considered the Hon'ble Supreme Court's decisions including the decision in **Pushpa Devi Vs. Binod Kumar Gupta**⁷ where it was held that if the entire

⁵ 1993 UPTC 407

⁶ 1995 UPTC 1035

⁷ AIR 2004 SC 1239

material is available and the parties have raised all issues before the Appellate Court, it should not remand the matter but decide it on its own merits.

36. In the present matter, the approach of the DRAT in lightly remanding the matter to the DRT is contrary to law and precedents on the subject. No valid grounds have been assigned to resort to such remand. No difficulties have been cited for the DRAT to itself decide the legal and factual issues. The entire material was before the DRAT. The DRAT was in the best position to interpret its earlier orders. The remand has been ordered lightly and without taking cognizance of a law and the precedence on the subject.

37. The DRAT also failed to appreciate that the original application was filed by HDFC in 2005. The DRT rejected the Respondents' objection to maintainability on 26 October 2005. The Respondents's appeals instituted in 2006 and 2007 were disposed of only on 11 July 2014. The DRT allowed HDFC's original application on 30 June 2017. The Impugned Order has been made on 26 April 2024. Thus, the matter is lingering for last almost 20 years. Still, the DRAT has remanded the matter to DRT without recording any cogent reasons to justify such remand.

38. For all the above reasons, we set aside the DRAT's Impugned Order in Appeal Nos. 2 of 2018 and 32 of 2018 instituted by the Respondents and restore these two Appeals to the file of DRAT. The DRAT must now decide these appeals in accordance with law without once again remanding them to DRT. All parties contentions are left open and should be considered by the DRAT in accordance with law.

39. Since the Impugned Order is now set aside, the reliefs in BBK's Writ Petition No.12708 of 2024 are rendered infructuous or in any event, cannot be granted. BBK's Writ Petition No.12708 of 2024 is liable to be dismissed and is hereby dismissed without costs order.

40. The rule is accordingly made absolute in the above terms in Writ Petition No.9344 of 2024 and discharged in Writ Petition No.12708 of 2024. There shall no order for costs.

41. The parties are directed to now appear before the DRAT on 05 March 2025 at 10.30 am and file an authenticated copy of this judgment and order.

42. Having regard to the pendency of this matter since 2005, we request the DRAT to dispose of the Respondents' Appeal Nos. 2 of 2018 and 32 and 2018 as expeditiously as possible. Even the parties must cooperate with the DRAT in expeditious disposal of these appeals.

(Jitendra Jain, J)

(M.S. Sonak, J)