IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12846 OF 2024

1. Smt. Urmiladevi Mahavirprasad Jain
2. Shri. Pannalal Moolchand Jain ... Petitioners

Vs.

1. Punjab National Bank
2. Vardhaman Enterprise,
3. Smt. Renudevi Arunkumar Jain ... Respondents

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Mr. Rohit Agarwal a/w. Mr. Kunal Kanungo, Mr. Aakash Jain i/b. Mr. Atishay Jain, Advocates for the Petitioners.
Ms. Asha Bhuta, Advocate i/b. Bhuta & Associates, for the Respondent No. 1 -Bank

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CORAM : A. S. CHANDURKAR &
M. M. SATHAYE, JJ.

RESERVED ON : 11th FEBRUARY 2025

PRONOUNCED ON : 09th APRIL 2025

JUDGMENT (Per M. M. Sathaye J):

1. Rule. Learned counsel for contesting Respondent No.1-Bank waives service. Rule made returnable fortwith. Heard finally by consent.

2. In this order, Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is referred to as 'SARFAESI Act' and Recovery of Debts and Bankruptcy Act, 1993 is referred to a 'RDB Act' for convenience.

CASE AND SUBMISSIONS

3. Few facts necessary for passing this order, are as under.

3.1 The Petitioners (Urmiladevi and Pannalal together) are 40% partners in Respondent No. 2-Vardhaman Enterprise ('the said Firm' for short) alongwith Respondent No. 3 (Renudevi) who is remaining 60% partner. Petitioner No. 1 is 62 years old lady and Petitioner No. 2 is 97 year old man.

3.2 Loan was sanctioned to the said Firm in 2015 by Respondent No. 1 Bank. The Petitioners and Respondent No. 3 executed deeds of guarantee and mortgage in favour of Respondent No. 1 Bank. In October 2019, the account of the Firm was declared as non-performing asset (NPA) and notice under Section 13(2) of the SARFAESI Act was issued, thereby initiating measures for recovery. The Respondent No. 1-Bank filed Original Application No. 7 of 2020 for recovery of Rs.3,99,91,884/-. The Petitioners filed S.A.No.36 of 2020 and Respondent No.3 filed separate S.A.No.52 of 2020 before the Debt Recovery Tribunal-I at Ahmedabad. Since, the Petitioners and Respondent No. 3 were having certain internal disputes, Respondent No. 3 refused to join the Petitioners in seeking to discharge the dues of the Bank. In the meantime, Respondent No. 1 Bank initiated action for sale of the mortgaged property, however the same failed and thereafter Covid-19 pandemic hit.

3.3 By a letter dated 07.07.2020, the Petitioners offered to settle the dispute *inter-alia* making an offer of Rs.1,60,00,000/- as full and final settlement for Petitioners. The said offer specifically mentioned that the Petitioners are arranging funds from their near and dear once and release of the properties against such payments would be peremptory. The offer further mentioned that on receipt of Rs.1,60,00,000/- from the Petitioners, the Bank shall issue no due certificate to the Petitioners (both partners) as also release

them from personal guarantee both in the sense as personal guarantee as partners of the firm as also the personal guarantee secured by the Bank and also release charge from the mortgage and also execute release deed of the two properties. It is further mentioned that Bank shall withdraw the cases filed against the Petitioners including Original Application No. 7 of 2020.

3.4 The Respondent No. 1-Bank accepted the said proposal and issued 1st sanction letter dated 18/07/2020, thereby clearly agreeing as under :

> "9. Bank shall continue recovery action against remaining obligants for recovery of Bank's dues"
>
> (Emphasis supplied)

3.5 Thereafter under 2nd sanction letter dated 20/07/2020, Respondent No. 1 Bank again clearly agreed as under:

> "2. On entire payment of Rs.160 Lacs Bank will withdraw the DRT suit filed against the guarantors and partners of M/s. Vardhman Enterprises namely Shri Pannalal M. Jain, Smt. Urmila M. Jain only. However, the remaining obligants i.e. the Firm M/s Vardhaman Enterprises and Smt. Renu A. Jain shall continue to be liable for the outstanding amount payable to the bank along with interest and charges till repayment in full and bank will proceed with DRT suit against M/s Vardhman Enterprises and Smt. Renu A. Jain."
>
> [Emphasis supplied]

3.6 The Petitioners accordingly paid full amount of Rs. 1,60,00,000/-, as promised, and after completion of said payment, Respondent No. 1-Bank issued No Dues Certificates dated 29/07/2020 and 04/08/2020, mentioning as under:-

> "Now Any due in bank on behalf of both partners of Shri Pannalal M. Jain And Urmila Jain of Account of M/S. Vardhaman Enterprises, N-15 Madhupura market Ahmedabad (Gujarat) A/c. 0033008700602029

does not remain"

(Emphasis supplied)

3.7 Consequently, registered Release Deeds were executed by the Bank on 29/07/2020 and 05/08/2020. The Petitioners then sold one of the properties on 10/08/2020. Petitioners' S.A. No. 36 of 2020 was also disposed of by order dated 14/09/2022. After all this, despite its promise made under the sanction letters, the Respondent No. 1-Bank did not withdraw its O.A. No. 7 of 2020 against the Petitioners or delete their names. In September 2022 the Petitioners filed a counter affidavit bringing the fact of their settlement to the attention of the Tribunal.

3.8 The Tribunal, however allowed the said O.A. No. 7 of 2020 on 30/08/2023 and held all the Defendants therein (including the Petitioners and Respondent No. 3) liable for payment of Rs. 2,39,91,884/- and the properties were also held liable for such recovery.

3.9 Being aggrieved by the said order, the Petitioners filed Special Civil Application No. 18776 of 2023 in Gujarat High Court, which was dismissed on 04/01/2024 as alternative remedy of approaching Debt Recovery Appellate Tribunal ('DRAT' for short) was available. The petitioners then filed L.P.A. No. 134 2024 which was disposed of on 09/02/2024 by Division Bench of Gujarat High Court directing that the Appellate Tribunal can decide all issues independently without being influenced by any observation made in order dated 09/02/2024.

3.10 The Petitioners thereafter filed Appeal Diary No. 679 of 2024 with I.A. No. 272 of 2024 before DRAT, Mumbai for waiver of the pre-deposit under section 21 of the RDB Act.

3.11 Under impugned order dated 09/07/2024, DRAT, Mumbai directed the Petitioners to deposit a sum of Rs.60 lakhs in 2 installments and placed the matter for compliance on 24/07/2024, on which date the Appeal was dismissed, since the Petitioners did not deposit the amount as directed.

3.12 Being aggrieved and dissatisfied by the said impugned orders dated 09/07/2024 and 24/07/2024, the Petitioners have approached this Court under Article 226 of the Constitution of India.

4. Learned Counsel for the Petitioners, Mr. Agarwal submitted that the Appellate Tribunal has not considered that already the Petitioners have paid Rs.1,60,00,000/- under the sanction granted by the Respondent No.1-Bank and thereafter no due certificates were issued. He submitted that since the matter was completely settled with the Respondent No. 1-Bank, the Petitioners (who were Defendant Nos. 3 and 4 in OA No. 7 of 2020) did not appear before the Debt Recovery Tribunal (DRT) – 1 at Ahmadabad and ex-parte order has been passed. He submitted that after payment of amount as agreed, Petitioners expected the Bank to not press any prayers against the Petitioners. He further submitted that the payment of Rs.1,60,00,000/- be treated as a pre-deposit under section 21 of the RDB Act and necessary waiver be granted. He further submitted that in this case, the Respondent No. 1-Bank has not acted as promised and did not withdraw its original application as against the Petitioners and therefore it has resulted in violation of principles of natural justice. He urged that this is a fit case to exercise writ jurisdiction.

5. *Per contra,* leanred Counsel Ms. Bhuta for the Respondent No. 1 Bank has justified the impugned order contending *inter alia* that pre-deposit is

mandatory under section 21 of the RDB Act and therefore it has been rightly ordered. We note that the Respondent No. 1-Bank has filed the affidavit-in-reply dated 25/09/2024. The stand taken by the Bank is that this Court has no jurisdiction to entertain this Petition because the Petitioners are from Ahmadabad, the branch of the Bank involved is at Ahmadabad, the said Firm to which the loan was advance is also located at Ahmadabad. It is therefore submitted that the Petition should have been filed in Gujarat High Court. The Bank has taken a stand that a sum of Rs.1,60,00,000/- was accepted only against personal guarantee given by the Petitioners in favour of the Bank and the settlement was not arrived at in their capacity as partners of the Respondent No. 2 firm. It is further contended that the Petitioners in their capacity as partners of the said firm will be still liable jointly and severally with other partner. Sections 25, 45 and 49 of the Partnership Act 1932 is pressed into service.

6. Learned Counsel for the Petitioners has relied upon the judgment of the co-ordinate Bench of this Court in case of **Volvo Group India Pvt. Ltd vs Union of India [2024 SCC OnLine Bom 2897]** to contend that since the impugned order is passed by DRAT, Mumbai, this Court has jurisdiction to entertain the present Petition. He also relied upon the judgments of the co-ordinate Bench of this Court in case of **Bank of Bahrain and Kuwait B.S.C vs. HDFC Bank Limited and Anr [2019 SCC OnLine Bom 9445]** and **Biba Sawhney vs Edlweiss Asset Reconstruction Company Ltd.[2022 SCC OnLine Del 4972]** in support of his case.

REASONS AND CONCLUSIONS

7. It is undisputed that the impugned order is passed by an appellate

tribunal (DRAT, Mumbai) which falls under the jurisdiction of this Court. We note that it can not be seen from the impugned order that the Respondent Bank has objected to jurisdiction of DRAT, Mumbai during hearing on pre-deposit. Therefore the Respondent No. 1 Bank has participated in the appeal before DRAT, Mumbai and has taken a chance. Now the Bank is objecting to jurisdiction of this Court. We do not take kindly to such chance-taking. Considering that the impugned Order is passed by an authority / tribunal within the jurisdiction of this Court, part of cause of action is arising within this Court's jurisdiction. Therefore the Petitioner, being *dominus litus* can maintain this writ petition under the principle of 'forum conveniens'. This case is squarely covered by the ratio of the judgment in **Volvo Group India (supra)** of the co-ordinate Bench of this Court, which has relied upon the Judgments of Hon'ble Supreme Court in **Kusum Ingots & Alloys Vs. Union of India [(2004) 6 SCC 254]** and **Nasiruddin Vs. State Transport Appellate Tribunal [(1975) 2 SCC 671].** We therefore hold that this Court has jurisdiction to entertain this petition.

8. It is undisputed that the Petitioners have paid Rs. 1.60 crores under the settlement sanctioned by Respondent No.1 Bank. It is also undisputed that no-due certificate and release deeds are executed pursuant to said settlement with the Petitioners. Record shows that in the proceedings filed by Respondent No. 3 (remaining partner) before DRAT, Mumbai under section 18 of the SARFAESI Act, the Bank took a stand that Respondent No. 3 did not co-operate with the settlement offered by other partners (i.e. the Petitioners). So it is also seen that conveniently, the Bank has pitched Respondent No. 3 against the Petitioners. It is further seen from the record that Respondent No. 3 was directed to deposit Rs. 1.20 Crores which

appears to have been deposited by the Respondent No. 3. This means that at least Rs. 1.20 Crores from Respondent No. 3 and Rs. 1.60 Crores from Petitioners have been already secured.

9. The DRAT, Mumbai has already held in paragraph 8 of the impugned order as follows :

> "8. There are certainly important issues which will have to be determined in this appeal. Given the registered release of the mortgage, was it proper on the part of the D.R.T. to have granted a mortgage decree in favour of the bank? The question of discharging the appellants as guarantors to the debt of the firm under Sec. 135 of the Contract Act would also arise for determination. xxxx"

10. We note that the Respondent No. 1-Bank has not explained anything about the specific promise made to the Petitioners under the sanction letters dated 18/07/2020 and 20/07/2020 (relevant portions already reproduced above) that the Bank shall continue recovery against 'the remaining obligants' and 'will withdraw the DRT Suit against the Petitioners'. The Respondent No. 1-Bank, for reasons best known to it (or perhaps known to the Bank's signing managers) did not withdraw its O.A. No. 7 of 2020 against the Petitioners or delete their names. No explanation is offered about it.

11. Whether settlement as accepted by the Respondent No. 1 Bank with the Petitioners can be accepted under law, as now sought to be argued by the Bank, based on the provisions of the Partnership Act, is another aspect of the matter, that will be considered on merits by the DRAT. We note here that the DRT, Ahmedabad has already held that enquiry should be conducted in this matter about conduct of the concerned Bank Officers, which is also referred in the order passed by the Division Bench of Gujarat High Court in

LPA No. 134/2024.

12. We find that not only it must be seen whether such settlement could have been entered by the Bank with the Petitioners, but it must also be seen what are the implications of such settlement on the rights of the borrowers/guarantors such as petitioners, who raise money from other sources in the hope of getting complete discharge from the pending liabilities. One of the elementary principles behind any settlement, be it One Time Settlement (OTS) or any other settlement scheme is to give a quietus to the dispute. We find the action of the Bank such as the present one, where a borrower/guarantor is made to believe that he has been given full discharge, to the extent of executing sanction letters, no-due certificare, release deeds and promising that DRT suit/case will be withdrawn against him, and then to turn around and say that he is still liable, is gross and shocking.

13. Two more considerations are relevant in the peculiar facts of the present case. Considering that on the Bank's promise as borne out from the sanction letters and no-dues-certificates issued by the Bank, the Petitioners have parted with huge sum of Rs. 1.60 Crore, they had a legitimate expectation that the Bank would keep its end of the promise after payment of said amount. This requires consideration on merits. The documents of sanction letters and no-due-certificates would also have material effect on the aspect of promissory estoppel against the Bank, which needs consideration on merits, in as much as these are commercial transactions based on the contracts.

14. In similar circumstances, Division Bench of Delhi High Court in the

judgment of **Biba Sawhney (supra)** as well as co-ordinate bench of this Court in the judgment of **Bank of Bahrain and Kuwait B.S.C (supra)** had also interfered.

15. Therefore, in the aforesaid peculiar facts and circumstances and for the reasons stated above, we find that this is a fit case to interfere and hold that the Petitioners can not be compelled to make pre-deposit as a condition precedent for hearing their appeal on merits.

16. Hence the petition succeeds. The impugned orders dated 09.07.2024 and 24.07.2024 are quashed and set aside. Petitioners' Appeal (Diary) No. 679 of 2024 is restored on the file of DRAT, Mumbai, who is directed to hear the said appeal on merits, in accordance with law. Rival contentions on merits are kept open.

17. Rule is made absolute in above terms with no order as to costs.

18. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.) **(A. S. CHANDURKAR, J)**