

Dr. Rajul Vishnubhai Mesvani v. Central Bank of India

Dr. Rajul Vishnubhai Mesvani

...Appellant

Central Bank of India

...Respondent

Case No: Appeal on Diary No. 1639/2023

Date of Judgement: 13/09/2023

Judges:

Mr. Justice Ashok Menon, Chairperson

**For Appellant: Mr. Harjot Singh Alang, i/b M/s. Raval-Shah & Co.,
Advocate.**

For Respondent: Ms. M.R. Patel, Advocate.

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Facts

Dr. Rajul Vishnubhai Mesvani (Appellant) has filed an appeal challenging the impugned order dated 18.08.2023 of the Presiding Officer in Appeal No. 13/2023 on the files of the Debt Recovery Tribunal-I, Mumbai (DRT), dismissing the appeal. The appeal before the DRT was filed under Section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB&FI Act), challenging the Recovery Officer's order dated 02.05.2023 in Recovery Proceeding No. 124/2016 and the appointment of a court receiver vide order dated 04.07.2023. The Recovery Proceeding No. 124/2016 was initially dismissed for non-prosecution on 10.02.2020 by the Recovery Officer. Subsequently, the certificate holder bank (Central Bank of India) filed an application for re-opening the recovery proceedings, which

was also dismissed for non-representation. The Recovery Officer issued orders of attachment and appointment of a receiver, all without restoring the Recovery Proceedings dismissed for default. The Appellant filed an application for vacating the attachment, which was dismissed on 02.05.2023 by the Recovery Officer, observing that the Recovery Proceeding was reopened, and the application for disclosure of assets was allowed. The Appellant challenged the orders of attachment and appointment of a receiver before the DRT under Section 30 of the RDDB&FI Act. The Appellant deposited ₹30,64,000/- as a pre-deposit under Section 30A before the DRT on 17.08.2023. The Appellant made an undertaking to pay the balance of ₹30,60,530/- within a month (by 19.09.2023) and agreed to hand over the possession of Flat No. 1208 (the subject matter) in case of default. Despite the Recovery Proceeding being dismissed for default, the certificate holder bank dispossessed the Appellant from the subject property and took physical possession on 17.08.2023, allegedly under the Recovery Officer's direction. The Presiding Officer directed the restoration of physical possession to the Appellant since 50% of the amount was deposited, and the bank had undertaken not to take possession.

Arguments by the Appellant

The Appellant argues that there appears to be a total lack of discipline and due judicial process in the entire proceedings challenged before the DRT. The Appellant contends that orders of attachment, appointment of a receiver, and dispossession were passed without the Recovery Proceeding being restored to file after its dismissal for default. The Appellant has produced income tax returns for the years 2022-2023 and 2023-2024, indicating negligible income as a medical doctor by profession. The Appellant states that although he is a director of several institutions, he is not deriving any income from those companies, as reflected in his income tax returns.

Arguments by the Respondent (Central Bank of India)

The Respondent's counsel argues that the Appellant's income tax returns may not reflect his true financial capacity, as he is a

director of other companies from which he is deriving income but has not disclosed it. The Respondent's counsel contends that the Appellant has three flats in his name, indicating his financial capacity. The Respondent's counsel submits that if the Appellant is not disclosing his income from the companies he is a director of, the bank is at liberty to initiate appropriate steps to prosecute him for violation of the Income Tax Act provisions.

Court's Elaborate Opinions

The Debts Recovery Appellate Tribunal (DRAT) expressed its inability to understand how orders of attachment, appointment of a receiver, and dispossession could be passed when the Recovery Proceeding itself was dismissed for default and there is no order showing its restoration to file, except for the order dated 02.05.2023, which stands challenged in the appeal before the DRT. The DRAT observed a total lack of discipline and due judicial process in the entire proceedings challenged before the DRT. Considering the disarray in the orders passed by the Recovery Officer, which were not interfered with by the Presiding Officer, and the Appellant's financial strain demonstrated by the income tax returns, the DRAT found a strong prima facie case in favor of the Appellant.

Order by the Tribunal

The DRAT directed the Appellant to deposit a sum of ₹10 lakhs as a pre-deposit, payable in two equal installments of ₹5 lakhs each. The first installment of ₹5 lakhs shall be payable within two weeks (by 27.09.2023), and the second installment of ₹5 lakhs shall be payable within two weeks thereafter (by 11.10.2023). Upon payment of the first installment, the Appellant's undertaking to hand over possession on 19.09.2023 shall stand deferred. Default in paying the installments shall entail the dismissal of the appeal without any further reference to the DRAT. The amount shall be deposited in the form of a Demand Draft with the Registrar of the DRAT. The deposited amounts shall be invested in term deposits in the name of the Registrar, DRAT, Mumbai, with any nationalized bank, initially for 13 months, and thereafter to

be renewed periodically. The Respondent is at liberty to file a reply in the Appeal with an advance copy to the other side. The matter is posted for 29.09.2023 for reporting compliance regarding the payment of the first installment.

Sections and Laws Referred

Recovery of Debts Due to Banks and Financial Institutions Act, 1993
(RDDB&FI Act)

- Section 30: Appeal to the Appellate Tribunal
- Section 30A: Deposit of debt due for filing appeal

Income Tax Act (provisions related to non-disclosure of income)