

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 394/2023(RoM)

In

(Misc. Appeal No. 39/2023-Disposed of)

Between

Shree Pharma Engineering Works & Ors. ... Appellant/s

V/s.

Indian Bank & Ors. ... Respondent/s

Mr. Alok D. Mishra, i/b Mr. Rajan Patel, Advocate for Appellants.

Mr Ajikumar, i/b M/s VNA Legal, Advocate for Respondent No.1.

:- Order dated: 15/06/2023:-

I.A. No. 394/2023 is an application filed by the Appellant for a refund of ₹ 46,00,000/- which was deposited by the Appellant towards pre-deposit for entertaining the appeal. The appeal was disposed of on 09.06.2023 and the present application is filed for withdrawal of that amount.

2. The Respondent Bank has vehemently opposed this application for a refund of the amount stating that there is an outstanding amount of ₹ 52,00,000/- due to be paid to the Bank and that O.A. No. 323/2021 is pending consideration before the Debts Recovery Tribunal (D.R.T)- I, Ahmadabad for recovery of that amount, and that an application at Diary No. 894/2023 has been filed for attachment of the amount which is lying in deposit in this

Tribunal.

3. The question as to whether the pre-deposit amount has to be returned to the Appellant is no longer res-integra. The Hon'ble Apex Court has in *Axis Bank Vs SBS Organics Pvt Ltd & Anr (2016) 12 SCC 18* held that the only exception for rejecting the application for withdrawal of the amount by the borrower is when there is an attachment of the pre-deposit in any proceedings either u/s. 13 (10) of the SARFAESI Act or u/s 11 of the Security Interest (Enforcement) Rule, 2002 or in any other proceedings known to law.

4. In the instant case the Appellant has filed an application for attachment before the Debts Recovery Tribunal but no order has been passed yet and therefore, there is no attachment of the pre-deposit amount at present. The Ld. Counsel appearing for the Counsel for the Bank requested this Tribunal to wait for the order of attachment to be made by the Recovery Officer/ D.R.T. This Court is not expected to facilitate the Respondent Bank to get an attachment of the property.

5. Sufficient time was available to the Bank to get the amount attached. And therefore, I find no merits whatsoever in the reply opposing this application for a refund of the amount. The Ld. Counsel appearing for the Respondent has also relied on the decision of *Central Bank of India Vs State of Gujarat & Ors. LAWS(SC- 1987-9-31)*. In support of this argument that the amount which has been deposited by the judgment debtor can be directed by the court to be paid to the decree-holder. The facts of the above-

cited decision indicate that it is a civil suit which was filed before the Civil Court and the decree was obtained and while executing the decree, the amount in deposit was directed to be released to the decree-holder instead of the judgment debtor. The facts are in no way analogous to the facts of the present case and therefore, I am not in agreement with the submissions of the Ld. Counsel appearing for the Respondent.

6. The application is allowed and the amount in deposit together with the accrued interest shall be refunded to the Appellant/Applicant on proper acknowledgement.

7. The Ld. Counsel appearing for the Respondent submits that the order may be stayed till appropriate action is taken for challenging this order. I do not find any merits in that submission as well.

Sd/-

Chairperson

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