

**BEFORE THE DEBTS RECOVERY**  
**APPELLATE TRIBUNAL, AT: MUMBAI**  
**Present: Mr Justice Ashok Menon, Chairperson**

**M.A. No.771/2010 (WoD)**

**In**

**Appeal No. 137/2012**

**Between**

M/s Prag Computer Services, ... Appellant/s  
Through proprietor Mr Vivek M Prani & Anr.  
V/s.

The Federal Bank Ltd. ... Respondent/s  
Mr Vivek M Prani, Proprietor of Appellant No.1, appeared in person.  
Mr. O.A. Das along with Ms Pallavi Chari, i/b M/s O.A. Das & Co.,  
Advocate for Respondent Bank.

**:- Order dated: 30/03/2023:-**

This is an application for waiver of mandatory pre-deposit contemplated under Section 21 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 ('RDDB & FI Act', for short).

2. Appellant No.1 and his deceased wife are Defendants Nos. 1 and 2 in Original Application (O.A.) No. 153 of 2005 on the files of the Debts Recovery Tribunal, Pune (DRT) and are aggrieved by the judgment dated 01.08.2008, issuing a Recovery Certificate in favour of the Respondent Bank which is applicant therein, for recovery of ₹25,01,590/-together with interest at the rate of 18.36% per annum with effect from the date of application till realisation from Defendants Nos. 1 and 2 and from out of the mortgaged property belonging to the second Defendant. The claim against the

third Defendant was dismissed.

3. The facts can be summarised thus:

4. The Original Application was filed by the Ganesh Bank of Kurundwad Ltd. During the pendency of the O.A., the aforesaid bank merged with the Federal Bank Ltd. and was, therefore, substituted. The first Defendant, M/s. Prag Computer Services is a proprietary concern represented by its sole proprietor, namely, Vivek Madhav Prani, and the second Defendant is his wife. The proprietary concern was engaged in the business of data processing, data entries and software development. The first Defendant had plenty of work and was doing well. The first Defendant was in need of money to expand his business, and therefore, approached the original applicant bank for financial assistance. A term loan of ₹4 lakhs and a cash credit of ₹10 lakhs were sanctioned to the first Defendant with his wife the second Defendant and the deceased Vasant D Khare, the predecessor of the third Defendant as sureties/guarantors. The debt was also secured by a mortgage created by the second Defendant, with regard to flat No. 6, Swasthi Apartment situated in block No. 1/6, Erandawana, Pune. The first Appellant defaulted payment of the loan, and hence the loan was recalled by the issuance of a notice. The Defendants Nos. 1 and 2 did not respond to the notice for repayment and hence the O.A. was filed for recovery of money due. It is alleged that Defendants Nos. 1 and 2 did not appear and were set ex parte. The third Defendant, who is a legal representative of the guarantor, appeared and filed a written statement contending that he was an unnecessary

party to the proceedings. He states that he did not succeed or inherit any property belonging to the late guarantor. It is stated that the late Vasant D Khare died on 24.02.2004. The signatures of the deceased on the guarantee deed and other documents are also denied.

5. The Ld. Presiding Officer after considering the materials on record and hearing the counsel appearing for the applicant and the third Defendant, accepted the contentions raised by the third Defendant and concluded that there was no sufficient evidence to prove that the predecessor of the third Defendant had executed any documents in favour of the applicant bank. The claim against the third Defendant was, therefore, dismissed. The application against Defendants Nos. 1 and 2 was allowed on 01.08.2008 as prayed for. A charge was created over the mortgaged property and a Recovery Certificate was issued.

6. It is submitted for the Appellant that the second Defendant had died on 19.12.2005, long before the O.A. was allowed. The decree against a dead person is, therefore, ab initio void. There was yet another O.A. filed against the very same Defendants as O.A. No. 178 of 2005. In that O.A. the third Defendant had informed the DRT that the second Defendant had expired. But the applicant did not take any action to implead legal representatives of the deceased second defendant in that O.A. In fact, the applicant had filed an application before the DRT seeking time to obtain the details regarding the demise of the second Defendant. Those applications were filed on 23.05.2006 and 13.06.2006. Later on

26.07.2006, the applicant filed an application stating that the bank could not serve the summons at the address of the first and second Defendant for the reasons that the summons was returned with an endorsement that the addressee had left and the recent address was not known. An adjournment was sought again. The Appellant also points out to a letter dated 02.06.2006, written by the branch manager of the original applicant bank to the general manager of the bank stating that the second Defendant had expired and that summons could not be served on Defendants Nos.1 and 2 for want of sufficient address and placed a request for service of notice by publication. It is pertinent to note that Defendants Nos. 1 and 2 had on 15.02.2005, written a letter to the branch manager of the original applicant bank intimating him that they have moved out of their residence temporarily since January 2005 and that the second Defendant had fallen and fractured her hand, it was also informed that she has been detected of breast cancer since June 2003 and therefore, they moved to Mumbai for her treatment and hence, requested for cooperation on the part of the bank. Even thereafter, there were several communications between the Appellants and the bank about the transaction. The Appellant would, therefore, contend that the applicant bank was aware of the fact that Defendants Nos. 1 and 2 were not residing at their Pune address and had moved to Mumbai for purpose of facilitating the treatment of the second Defendant who was suffering from cancer. The Appellant has, therefore, appealed against the impugned judgment.

7. The application for waiver of deposit came up for

consideration before this Tribunal. The appeal was filed in 2010 with a delay of 636 days. The first Appellant who is also the legal representative of the second Defendant appears in person and submits that he is in an impecunious condition without any means of livelihood. He has produced the Income Tax Return to indicate that he has little income. Moreover, it is also submitted that huge amounts are due to him from the Government for the work done by him. Under the circumstances, he pleads that he may be granted exemption from payment of pre-deposit as contemplated under Sec. 21 of the RDDB & FI Act.

8. Mr O.A. Das, the Ld. Counsel appearing for the Respondent bank vehemently opposed the application for waiver and insisted on deposit of the entire amount of pre-deposit before entertaining the appeal.

9. Since the appeal was filed prior to the amendment of the RDDB & FI Act which came into effect from 01.09.2016, the provisions of the pre-amended Act would apply. Section 21 of the RDDB & FI Act reads thus-

**“21. Deposit of an amount of debt due, on filing appeal-** Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy five percent of the amount of debt so due from him as determined by the Tribunal under Sec. 19:

PROVIDED THAT the Appellate Tribunal may, for reasons to be recorded in writing, waive or

reduce the amount to be deposited under this section.”

10. A reading of the section as it stood before the amendment would indicate that it provided for discretion in this Tribunal to waive the whole of the pre-deposit amount for reasons to be recorded in writing.

11. Consequent to the amendment which came into effect from 01.09.2016, the words seventy five percent has been substituted with fifty percent and the word waiver has been substituted with reducing the amount to not less than twenty five percent. Since the application was filed prior to the amendment, the pre-amended provisions would apply. This legal position has been settled by the Apex Court in *Motiram vs. Suraj Bhan & Ors AIR 1960 SC 655* where it was held that it is well settled that where an amendment affects vested rights the amendment would be operated prospectively unless it is specifically made retrospective or its retrospective operation follows as a matter of necessary implication.

The Appellants have prima facie established that there was no proper service of summons. The bank officials knew that the Defendants were residing in Mumbai and despite that, they did not take any steps to get the Defendants served in their Mumbai address. The summons issued in their Pune address was returned with an endorsement that the addressee has left. Substituted service was affected not in Mumbai but in Pune. The death of the second Defendant was also known to the bank officials. Despite that, they did not take steps to implead the legal representatives of the

deceased second Defendant. The financial strain undergone by the first Appellant also stands established. Under the circumstances, this Tribunal finds that the Appellant is entitled to a total waiver of the mandatory pre-deposit under Sec. 21 of the RDDB & FI Act.

M.A. No. 771 of 2010 stands allowed.

The Appeal shall be posted for hearing on 22.05.2023

Sd/-  
Chairperson

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DRAFT MUMBAI