

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr. Justice Ashok Menon, Chairperson

I.A. No. 623/2023 (WoD)

In

Appeal on Diary No. 1639/2023

Between

Dr. Rajul Vishnubhai Mesvani

... Appellant/s

V/s.

Central Bank of India

... Respondent/s

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

Ms. M.R. Patel, Advocate for Respondent.

:- Order dated: 13/09/2023:-

The matter is taken up for hearing by way of a praecipe filed by the Appellant for seeking urgent relief.

The Appellant has come in appeal challenging the impugned order dated 18.08.2023 of the Ld. Presiding Officer in Appeal No. 13/2023 on the files of the Debts Recovery Tribunal-I, Mumbai (D.R.T.), dismissing the appeal. It is submitted that the order has not yet been uploaded, and hence, the copy of the order is not produced. The copy of the appeal memorandum filed u/s 30 of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993 ("RDDB & FI Act", for short) is placed before this Tribunal. The order of the Recovery Officer dated 02.05.2023 in Recovery Proceeding No. 124/2016 as well as the appointment of a court receiver vide order dated 04.07.2023 are challenged in the appeal u/s 30. The copy of the entire Roznama pertaining to Recovery Proceeding No.

124/2016 has been placed before this Tribunal and proceedings are undisputed. It seems from the proceedings that on 10.02.2020 the Ld. Recovery Officer dismissed the RP for non-prosecution. Subsequently, more than a year later, on 17.12.2021 the Ld. Counsel appearing for the certificate holder bank filed a praecipe to take the matter on board along with the application for re-opening the recovery proceedings which too was dismissed for non-representation.

2. It seems that an affidavit in support of the application and an application for disclosure of assets by the defendant was also filed by the certificate holder bank. Thereafter, the matter was taken for hearing on 18.03.2021 and again there was no representation for the Bank and application for restoration at Ex. No.9 was dismissed with the cost of ₹10,000/- to be deposited in the Army Central Welfare Fund. Soon thereafter, the Ld. Counsel appearing for the certificate holder bank appeared and informed that she was engaged in another court and therefore, could not appear. She was directed to serve the copy of the roznama upon the defendant. Thereafter, the matter came up for consideration on several occasions, and in between it seems that an order of attachment was issued on 16.06.2022 and also an order of appointment of a receiver, all without restoration of the Recovery Proceedings dismissed for default.

3. In consequence of the order of attachment dated 16.02.2022, the Appellant had filed an application for vacating the attachment which was pasted on his door and that application was dismissed on 02.05.2023. The attachment was challenged vide Ex. No.17, and vide order dated 02.05.2023, the Ld. Recovery Officer observed thus:

“Since the Recovery Proceeding was reopene and the application for disclosure of assets was allowed. Prayed for recall of the order dated 10.02.2020 is not warranted. I find no merit in the present application and dismissed accordingly.”(sic)

It is this order along with the order of appointment of a receiver dated, 04.07.2023 were challenged u/s 30 of the RDB Act before the D.R.T. It appears that there was a mandatory pre-deposit u/s 30A to be made before the D.R.T. and the Appellant had deposited ₹30,64,000/- vide RTGS on 17.08.2023.

4. Thereafter, the Appellant seems to have made an undertaking to the effect that the balance of ₹30,60,530/- would be paid within a month, i.e. on or before 19.09.2023 and in case of default of the balance amount, the Appellant agreed to hand over the possession of Flat No. 1208 which the subject matter. On 18.08.2023, the appeal was disposed of recording the undertaking made by the Appellant. The Appellant, therefore, faces the threat of being forced to hand over the possession of secured assets voluntarily by 19.09.2023.

5. There is another interesting story to be told. Despite RP being dismissed for default, the certificate holder bank dispossessed the Appellant from the subject property and took physical possession of the property on 17.08.2023 purportedly under direction from the Ld. Recovery Officer. In view of the fact that 50% of the amount was deposited, there was an undertaking by the bank that the possession would not be taken. Despite that, the possession was taken in violation of the undertaking, and hence, the Ld. Presiding Officer directed that the Appellant be restored the physical possession of the flat, and accordingly, the physical possession had been restored to

the Appellant.

6. It seems that even without RP No. 124/2016 being brought back to the file, an order of appointment of a receiver, an order of attaching the property and even an order of dispossessing the certified debtor had taken place. I am really at a loss to know how all this is possible when the RP itself was dismissed for default and there is no order made available to show that the RP was restored to file at any point in time apart from the order dated 02.05.2023 which stands challenged in the appeal before the D.R.T. There appears to be a total lack of discipline and due judicial process in the entire proceedings which stands challenged.

7. Be that as it may, preferring an appeal u/s 21 of the Recovery of RDDDB&FI Act the Appellant will have to first cross the hurdle of making a pre-deposit. The Appellant is a medical doctor by profession and he has produced two IT Returns for the years 2022-2023 and 2023-2024 which indicate that his income is negligible. The Ld. Counsel appearing for Respondent submits that the income tax return would not show the true picture of his financial capacity because he is a director of other companies from which he is deriving income and has not been disclosed. The Ld. Counsel for the Respondent also submits that there are three flats in his name. In answer to that, the Ld. Counsel appearing for the Appellant would state that even though he is the director of several institutions, he is not deriving any income out of that and it is not reflected in his income tax return. Against that the Ld. Counsel for the Respondent has not produced any document to show that he is deriving income from those companies. The income tax return, however, does not

show that he is deriving any income as a director of any companies or concerned. If it is otherwise, the Respondent Bank is at liberty to initiate appropriate steps to prosecute the Appellant for violation of the provisions of the Income Tax Act. As it stands today there is an outstanding liability of ₹30,60,530/- due and payable from the Appellant.

8. Considering the fact that there is a total disarray in the order passed by the Ld. R.O., which has not been interfered with by the Ld. Presiding Officer, there is a very strong prima facie case in favour of the Appellant. The Appellant has also produced documents to show by means of an income tax return that he is under financial strain. Under these circumstances, the Appellant is directed to deposit a sum of ₹10 lakhs as pre-deposit, which shall be payable in two equal instalments of ₹5 lakh each. The 1st instalment of ₹5 lakhs shall be payable within the period of two weeks and the 2nd instalment of ₹5 lakhs shall be payable within the period of two weeks therefrom, as stated hereunder.

<u>Numbers of Instalments</u>	<u>Payment on or before</u>
1 st Instalment	27.09.2023
2 nd Instalment	11.10.2023

9. On the payment of the 1st instalment, the undertaking given by the Appellant to hand over the possession on 19.09.2023 shall stand deferred. Default in paying the instalment shall entail dismissal of the appeal without any further reference to this Tribunal.

10. The amount shall be deposited in the form of a Demand Draft with the Registrar of this Tribunal.

11. As and when the said amounts are deposited, they shall be invested in term deposits in the name of Registrar, DRAT, Mumbai, with any nationalised bank, initially for 13 months, and thereafter to be renewed periodically.

12. With these observations, the I.A. is disposed of. The Respondents is at liberty to file a reply in the Appeal with an advance copy to the other side.

Post on 29.09.2023 for reporting compliance regarding the payment of the 1st instalment.

Sd/-
Chairperson

psa-05

DRAFT MUMBAI