

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 24293 OF 2021

Bank of Bahrain and Kuwait	}	
B.S C.	}	Petitioner
versus		
Union of India and Ors.	}	Respondents

Mr. Madhur Rai i/b. PRS Legal for the petitioner.

Mr. Anil C. Singh, Additional Solicitor General with Mr. Mohamedali M. Chunawala, Mr. P. S. Gujar, Mr. Pranav Thackur and Mr. D. P. Singh for Union of India.

Mr. Gaurav Joshi-Senior Advocate with Ms. Sarrah Khambati and Mr. Anuj Jain i/b. M/s. Wadia Ghandy and Co., for respondent no. 2.

Mr. Rajesh J. Ghag, for respondent no. 3.

Mr. Ram Jaluka, authorised officer of petitioner present.

**WITH
WRIT PETITION (L) NO. 24630 OF 2021**

MSTC Ltd.	}	Petitioner
	}	
versus		
Standard Chartered Bank	}	Respondent

Dr. Birendra Saraf, Senior Advocate with Mr. Rohit Gupta, Ms. Anamika and Mr. Darpan Bhatia i/b. Indus Law for the petitioner.

Mr. Tusahd Cooper, Senior Advocate with Mr. Kingshuk Banerjee, Ms. Radhika Gupta, Mr. Taha

Mirza and Ms. Devangna Khatau i/b. Khaitan and Co. for the respondent.

Mr. Anil C. Singh, Additional Solicitor General with Mr. D. P. Singh and Mr. Pranav Thackur for Union of India.

**CORAM :- DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE :- DECEMBER 2, 2021

PC :-

1. By instituting Writ Petition (L) No. 24293 of 2021 dated October 19, 2021 under Article 226 of the Constitution of India, the petitioner seeks an order on the respondents to forthwith appoint the Chairperson of the Debts Recovery Appellate Tribunal, Mumbai [hereafter "the DRAT(M)", for short]; in the alternative, the petitioner prays for a direction to any other Debts Recovery Appellate Tribunal (hereafter "the DRAT", for short) to decide Appeal No. 2 of 2018 filed by it as well as connected interim applications.

2. Writ Petition (L) No. 24630 of 2021 dated October 22, 2021 is at the instance of MSTC Limited, a Government of India Enterprise under the administrative control of the Ministry of Steel, New Delhi. By this petition filed under Articles 226 and 227 of the Constitution of India, MSTC Limited seeks stay of Recovery Proceedings No. 214 of 2017 before the Recovery Officer until hearing and final disposal of Interim Application No. 43 of 2021, Interim Application

(Diary) No. 220 of 2021 and Interim Application No. 49 of 2021, pending before the DRAT(M). In the alternative, it has been prayed that this Court may call for the records of Misc. Appeal (Diary) No. 146 of 2021 pending before the DRAT(M) and decide Interim Application No. 43 of 2021, Interim Application (Diary) No. 220 of 2021 and Interim Application No. 49 of 2021.

3. The reason triggering institution of these two writ petitions is common : the office of the Chairperson of the DRAT(M) has been lying vacant since September 15, 2021.

4. Writ Petition (L) No. 24293 of 2021 and Writ Petition (L) No. 24630 of 2021 were incidentally moved before us on the same day, i.e., November 18, 2021. We had recorded our concern having regard to an important office being vacant, which had resulted in institution of writ petitions in numbers challenging orders passed by the Debts Recovery Tribunals (hereafter, "the DRTs" for short) and thereby increasing the burden of this Court. We had requested Mr. Singh, learned Additional Solicitor General to obtain instructions in regard to progress made, if any, for appointment of the Chairperson of the DRAT(M). Hearing was, accordingly, adjourned for a week. On the adjourned date, Mr. Singh informed us of the Search-cum-Selection Committee for selecting a suitable candidate for appointment as Chairperson of the DRAT(M) having met twice and that the respondents were awaiting its recommendation. Having so heard, by our order dated November 25, 2021, we posted the writ petitions for further consideration on November 30, 2021 and requested Mr. Singh to obtain instructions as to whether any other DRAT could be

given additional charge of the DRAT(M) for the time being to hear urgent pleas of aggrieved parties having regard to the number of writ petitions that are being instituted in this Court from orders passed by the DRTs all over Maharashtra.

5. Instructions from the Department of Financial Services, Ministry of Finance, Government of India dated November 29, 2021, since received by Mr. Singh, have been placed before us today. We have read such instructions. The situation is distressing, to say the least. There are 5 (five) DRATs all over India and as on date the instructions were issued, i.e., November 29, 2021, not a single DRAT is functional. The only functional DRAT, of late, became non-functional from November 28, 2021, the incumbent Chairperson of the DRAT at Allahabad having demitted office. The net result of such vacancies is that the rights of parties to have access to justice by approaching the DRATs have been abrogated, in the sense that instead of exploring the appellate remedy provided by the Recovery of Debts and Bankruptcy Act, 1993 (hereafter "the RDB Act", for short) and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter "the SARFAESI Act", for short), parties aggrieved by orders passed by the DRTs thereunder are left with no other option but to approach this Court for judicial review which, of course, is not as wide as an appellate remedy.

6. We find from the instructions of the Department of Financial Services that the process for filling up the offices of Chairpersons of various DRATs was initiated only on July 14, 2021 and that the Department of Financial Services is

awaiting the recommendations to be made by the Search-cum-Selection-Committee headed by a Supreme Court Judge. Such instructions also reveal that the relevant department is in the process of exploring the option provided by the proviso to sub-section (1) of section 8 of the RDB Act, whereunder, the Central Government is empowered to authorize the Chairperson of any other Appellate Tribunal established under any other law, for the time being in force, to discharge the functions of the Chairperson of the DRAT in addition to his being a Chairperson of that Appellate Tribunal. We are appalled to note that action under the proviso to sub-section (1) of section 8 of the RDB Act has been initiated only after we had, by our order dated 25th November 2021, nudged Mr. Singh to request the relevant department to explore the option of vesting the jurisdiction of the DRAT(M) with the other DRATs, not knowing that out of the remaining 4 (four) DRATs, only one was functional then and that the tenure of the last Chairperson was to expire in the next 3 (three) days.

7. Provisions of a statute are regarded as the will of the legislature. Once the statute provides an appellate remedy, the will of the legislature has to be respected by the executive Government. Access to justice of parties aggrieved by the orders passed by the DRTs by approaching the DRATs cannot be nullified by the failure and/or neglect of the relevant department to carry out the will of the legislature. It is no answer that the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India can be invoked against orders passed by the DRTs. Given the limited nature of jurisdiction that this Court under Articles 226 and 227 of the

Constitution of India exercises while examining challenges to orders passed by the DRTs seeking to facilitate recovery of public money by the banks and financial institutions, we cannot allow a situation to continue for long where the parties would stand to lose their remedy of appeal.

8. There is one other aspect, sight of which cannot be lost. The Statement of Objects and Reasons for introducing amendments in the RDB Act and the SARFAESI Act by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (hereafter "the Amending Act", for short) records in paragraph 1 that although the RDB Act provides for a period of 180 days for disposal of recovery applications, *"the cases are pending for many years due to various adjournments and prolonged hearings"*. Paragraph 3 records that one of the objectives of the amendments proposed is to secure *"expeditious adjudication of recovery applications"*. While on the one hand amendments to bring about expeditious disposal of recovery applications are no doubt welcome, which are obviously intended to expedite recovery of public money ill-spent by the borrowers, practically closing the remedy of appeal by not appointing Chairpersons of DRATs on the other has to be frowned upon by the Courts. Moreover, we the people of India would expect a little more fairness from the relevant department of the executive Government entrusted with the task of drafting the Statement of Objects and Reasons for introduction of the Amending Act. It is beyond comprehension as to why only *"various adjournments and prolonged hearings"* are cited as reasons for non-disposal of recovery

applications within the statutory time limit. Vacancies in the offices of the DRTs and the DRATs contribute equally, if not more, to delayed disposal of recovery applications as well as appeals from orders of such disposal. The attempt on the part of whoever is responsible for citing "*various adjournments and prolonged hearings*" as reasons for delay in disposal of recovery applications, thereby necessitating introduction of amendments, cannot but be deprecated.

9. Be that as it may, in circumstances such as these, we are constrained to invoke our *suo motu* powers to protect and secure the interest of litigants who, despite being ready to approach the DRAT(M) for consideration of their grievances, are left either without the appellate remedy or are forced to take the risk of approaching this Court under Articles 226 and 227 of the Constitution of India for a judicial review of the orders passed by the DRTs, which would indeed entail limited scrutiny on settled parameters.

10. We record that the fervent appeal of Mr. Singh that any order of restraint, if passed, would adversely affect the recovery processes, has not impressed us. We are conscious that stalling of recovery processes would affect the economy of the nation, but at the same time, we cannot overlook that the dates of demitting offices by the respective Chairpersons of the DRATs having been known to the relevant department from the respective dates they took charge, the process to appoint Chairpersons ought to have commenced much prior to July 4, 2021. Allowing recovery processes to continue without providing an effective remedy of appeal, particularly when the SARFAESI Act empowers secured creditors to take possession

of secured assets without orders of Court, would result in desecration of the legal system.

11. We, accordingly, direct that if any party is desirous of challenging an order passed by any DRT situated in the State of Maharashtra before the DRAT(M), he/she/it shall be at liberty to present an appeal before the DRAT(M) together with the requisite fees irrespective of whether the period of limitation has expired or not; however, after the appeal is preferred (together with application for condonation of delay, if any, or any other application including an application for stay), the order under challenge would remain stayed from the time the appellant makes a pre-deposit of at least 25% of the debt due from him/her/it, as claimed by the secured creditors or determined by the DRT, whichever is less. Once such pre-deposit is made, any secured creditor or party in whose favour an order has been passed by the DRT for effecting recovery shall remain enjoined from taking any action adverse to the interest of the appellant. Such pre-deposit shall be without prejudice to the rights and contentions of the parties in the appeal before the DRAT(M). This arrangement shall continue till January 4, 2022 for the present.

12. If appointment of the Chairperson of the DRAT(M) is made or if any other Appellate Tribunal constituted under any other Central legislation is conferred with the jurisdiction of the DRAT(M) prior to the returnable date, the Union of India shall be at liberty to approach this Court for variation/modification/vacation of this order.

13. We make it abundantly clear that if borrowers/guarantors/other parties, aggrieved by orders of the DRTs, do not choose to prefer any appeal before the DRAT(M) with the requisite pre-deposit, they shall not be entitled to reap the benefit of this order and the secured creditors shall not be under any disability to proceed in accordance with law.

14. Adverting to the facts of Writ Petition (L) No. 24630 of 2021, we find that MSTC Limited is aggrieved because the recovery officer has been proceeding in a manner adverse to its interest despite the fact that several interim applications, filed in connection with Misc. Appeal (Diary) No. 146 of 2021, are pending consideration before the DRAT(M). Since our endeavour has been to ensure that appointment of the Chairperson of the DRAT(M) is expedited by the appropriate department in the executive Government at the Centre without wasting any time, presently, we are not inclined to hear MSTC Limited on the merits of this writ petition. However, only as an ad-interim measure, we are inclined to protect the rights of both parties and we do so by directing that the proceedings before the recovery officer shall remain stayed unconditionally till Tuesday next (December 7, 2021); if by that date, MSTC Limited deposits 25% of the debt due from it to the respondent in the office of the Prothonotary and Senior Master, High Court (Original Side) Bombay, the aforesaid order of stay of proceedings before the recovery officer shall also continue to be operative till January 4, 2022. In default of such payment, the interim order shall automatically stand vacated and the proceedings before the

recovery officer may be taken to its logical conclusion in accordance with law.

15. Insofar as Writ Petition (L) No. 24293 of 2021 is concerned, we are informed that the Presiding Officer of the DRT has fixed January 7, 2022 as the next date for hearing of the application filed by the respondent no. 2 to appropriate the amount deposited by the petitioner, which is kept in a no-lien account. In view of the fact that prior to January 7, 2022 the petitioner would not stand to lose anything, there is no immediate necessity to grant interim relief to it.

16. List both the writ petitions on **January 4, 2022**, for further consideration.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

PRAVIN
DASHARATH
PANDIT

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by PRAVIN
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