

(2018) 01 DEL CK 0370

In the Delhi High Court

Case No : Civil Writ Petition No. 379 Of 2018, Civil Miscellaneous No. 1596,
1598 Of 2018

Harpreet Kaur And Anr.

APPELLANT

Vs

M/S Fullerton India Credit Company Ltd

RESPONDENT

Date of Decision : 16-01-2018

Acts Referred:

Indian Contract Act, 1872 — Section 138
Code Of Civil Procedure, 1908 — Order 23 Rule 1

Citation : (2018) 01 DEL CK 0370

Hon'ble Judges : Siddharth Mridul, J; Prathiba M. Singh, J

Bench : Division Bench

Advocate : Rajeev Mehra, Rajesh Anand, Niti A. Sachai, Sanjeev Sagar, Meetu Singh

Final Decision : Disposed Of

Judgement

Siddharth Mridul, J

1. The present writ petition assails an order dated 06.12.2017, passed by the learned DRAT in Misc. Appeal No.286/2017 titled as 'Fullerton India Credit Co. Ltd. vs. Smt. Harpreet Kaur & Anr.', arising out of S.A. No.119/2017; whereby, the settlement arrived at between the parties to the proceedings on 05.12.2017 was rejected.

2. It is observed that the said Misc. Appeal No.286/2017 came to be disposed off by the learned DRAT by way of its order dated 26.10. 2017, which order came to be impugned by the appellant before a Division Bench of this Court by way of W.P. (C) 10153/2017 titled as 'Smt. Harpreet Kaur and Anr. vs. M/s. Fullerton India Credit Company Ltd.'. The Division Bench vide order dated 17.11.2017 granted the appellant leave to withdraw the said petition with liberty to approach the learned DRT before whom the said S.A. No.119/2017 titled as 'Mrs. Harpreet Kaur & Anr. vs. Fullerton India Credit Co. Ltd.' was pending adjudication; with a proposal to settle the overdue amount/outstanding liability owed by them to the

respondent company.

3. In terms thereof, as aforesaid, the parties have arrived at an amicable settlement vide settlement agreement dated 05.12. 2017. The terms and conditions of the said settlement agreement dated 5.12.2017 are as follows:

"5. I state that the appellant company based on facts of this case had conditionally agreed to settle the loan of the respondents for an amount of Rs.1,10,00,000/- (Rupees One Crore Ten Lakhs Only) subject to the borrowers making consolidated payments in the following manner:

(i) Rs.27,00,000/- have been paid on 05.12.2017;

(ii) Rs.25,00,000/- is to be on or before 25.01.2018;

(iii) Rs.25,00,000/- is to be paid on or before 23.02.2018;

(iv) Rs.33,00,000/- is to be paid on or before 22.03.2018,

failing which the action for enforcement of security will be taken."

4. It seems that the said Misc. Appeal No.286/2017 continued to be listed before the learned DRAT for compliance, in accordance with paragraph 10 of the said order dated 26.10.2017.

5. When the appeal came to be listed before the learned DRAT on 6.12. 2017, instead of recording the settlement arrived at between the parties, the learned DRAT vide the impugned order dated 6.12.2017 came to a conclusion that the officials of the respondent Bank are trying to avoid implementation of the directions of the learned DRAT by entering into a settlement with the defaulting borrowers/appellants and without taking full settlement amount.

6. It was further found by the learned DRAT that by the aforesaid course of action money undisputedly belonging to the public has been sacrificed and the secured asset has not been taken over.

7. Learned counsel appearing on behalf of the parties are aggrieved by the said findings arrived at by the learned DRAT in the impugned order dated 6.12.2017. In this behalf, our attention has been invited to an order dated 19.4. 2010, passed by a Division Bench of this Court, whilst disposing off W.P. (C) 2588/2010 titled as 'Satish Chander Gupta vs. SBI and Ors'. The relevant paragraphs of the said order dated 19.4.2010, read as follows:

"A perusal of the order of the DRT shows that the same is practically devoid of any reason. All it states is that some of the defendants in the OA would be discharged as a consequence of the settlement. If it be so, the DRT can have no objection to the same as the bank which is the claimant has agreed to the same. The bank is a dominus litis and it is for the bank to decide as to against which party it desires the litigation to continue. It is purely a contractual matter and the bank in its wisdom decided to settle the claim against the petitioners on payment of one time settlement.

The matter does not rest at this since the DRAT, in our considered view, has gone completely on a tangent. It has noticed various judgements cited by learned counsel for the petitioners but it has not really dealt with them. It is surprising that the petitioners were required to even cite judgements to establish a proposition that two parties to a suit could settle between themselves in respect of recovery of dues. The DRAT noticed Section 138 of the Indian Contract Act and thereafter proceeded to deal with Order 23 Rule 1 of the Code of Civil Procedure, 1908. It has rightly noticed the observations of the Supreme Court as cited by learned counsel for the petitioners in *M/s. Hulas Raj Baij nath vs. Firm K. B. Bass and Co.* AIR 1968 SC 111 to the effect that no defendant in a suit can insist that a plaintiff must be compelled to proceed with a suit at any stage when a party seeks withdrawal of the suit. Here the matter is one step ahead with two parties having agreed and for some peculiar notion the DRT had not agreed to accept the settlement of the dues qua the petitioners. The DRAT appears to think that it is some kind of Ombudsman/Auditor of the bank to scrutinise the settlement arrived at between the bank and the borrower. This is not the function of the DRAT. The observations of the DRAT and its reasoning is really contained only in two paragraphs, which are as under:

15. In this case, it must be kept in mind that the proceedings were already commenced. The appellants were not released by the creditor at the very start. It must be borne in mind that the total liability against the borrowers was to the extent of Rs.8,00,48,755.48 along with pendente lite and future interest at the contractual rate. With addition of future interest, the liability of the debtors must have increased by leaps and bounds. The acceptance of a sum of Rs.30 lakhs with interest paid by the appellants to the Bank is against the public policy. The entire money belongs to the public. Consequently, the policy of pick and choose adopted by the appellants is not to be permitted.

16. It must be borne in mind that respondent No.2 Mr. Satish C. Gupta is the Managing Director of the Company. He has twin capacities. One is of borrower and the second is that of a guarantor. In the circumstances, it is not understood as to how Section 138 of the Indian Contract Act is applicable in his case. Rs.30 lakhs were given by the appellants jointly. Consequently, Section 138 cannot be made applicable in this case.

The DRAT is no one to decide as to at what value the bank should settle its dues with the borrower especially when the bank has Managers who have acted in pursuance to authorization in their favour and after due consideration of the proposal of the petitioners.

We have no hesitation in stating that both orders of the DRT dated 1.6.2009 and of the DRAT dated 22.12.2009 are completely erroneous in law and suffer from a fallacious approach on the part of the concerned authorities/tribunals and are consequently quashed."

8. It has been urged on behalf of the parties that a settlement arrived at

between the parties, which inures to the benefit of the parties is not subject to the approval or scrutiny of the learned DRAT and the latter fell into error in refusing to accept the same on the evident misapprehension that it related to public money. In this regard, it has been pointed out that the respondent company is a private equity fund and the money involved therein cannot be, by any stretch of expression, said to be applying public money.

9. Even otherwise, as observed by a Division Bench of this Court in the said order dated 19.4.2010, extracted hereinabove, the parties to a proceedings are at a liberty; at any stage thereof, to arrive at an amicable settlement in relation to the subject matter of the dispute, and it does not lie in the mouth of the judicial authority to obstruct or impede the amicable settlement on a ground which is not sustainable in law. The learned DRAT, as observed in the said order dated 19.4. 2010, is not some kind of Ombudsman/Auditor of the Bank; to scrutinise the settlement arrived at between the bank and the borrower, as it is not within the scope and ambit of its jurisdiction or function. It is reiterated that the learned DRAT cannot arrogate to itself the power to determine the value at which the Bank should settle its dues with the borrower, especially when it does not any involve public money.

10. In view of the foregoing, we have no hesitation in setting aside the impugned order and accepting the said settlement dated 5.12.2017 arrived at between the parties.

11. Directed accordingly.

12. The petition is disposed off with a direction to the learned DRAT not to proceed any further in the Misc. Appeal No.286/2017; and to leave the parties to abide by the settlement arrived at between them, without demur.

13. Pending applications also stand disposed of.