

(2012) 08 BOM CK 0212
In the Bombay High Court
Case No : Writ Petition No. 3652 of 2012

Manilal Govindji Khona

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 29-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 10, 151

Constitution of India, 1950 — Article 226

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19, 2(g), 31

Citation : (2013) 2 BC 444

Hon'ble Judges : V.K. Tahilramani, J;D.D. Sinha, J

Bench : Division Bench

Advocate : R.A. Kapadia, with Mr. Satish Shetye and Ms. M. Shah instructed by Pandya Gandhi and Co., V.V. Tulzapurkar, with Mr. Rafeeqe Peermoideen, Mr. T.N.Tripathi and Ms. Sapana Rachure instructed by T.N. Tripathi and Co, for the Appellant;

Judgement

D.D. Sinha, J.—Heard the learned counsel for the petitioner and the learned counsel for the respondent. Rule returnable forthwith. Heard finally by consent of the parties. The petitioner is questioning validity and propriety of the order dated 10.4.2012 (impugned order) passed by Debt Recovery Appellate Tribunal (DRAT) whereby the petitioner's appeal against the order dated 22.2.2012 passed by Debt Recovery Tribunal (DRT) in Misc. Application No. 7 of 2012 dismissing the application for condonation of delay came to be upheld.

FACTS STATED BY THE PETITIONER :

2. On 7.9.1987 High Court Suit No. 2636 of 1987 was filed by the respondent for recovery of Rs.69,50,213.59 paise with interest against the petitioner and for enforcement of mortgage. On 9.12.1996 decree was passed by the Bombay High Court. On 31.5.1997 petitioner tendered the amount in terms of decree dated 9.12.1996 which was refused by the respondent. On 8.7.1997 petitioner took out Chamber Summons No. 1066 of 1997 for recording tender of payment by the

petitioner in terms of the decree. (Chamber Summons now stands transferred to DRT and is still pending).

3. On 8.9.1998 and 7.12.1998 Court Receiver, High Court, Bombay, issued notices for auctioning the mortgaged property. On 16.7.1999 DRT was constituted, as a result of which, the pending execution proceedings stood automatically transferred to the DRT and the High Court ceased to have any jurisdiction to proceed with the execution. On 6.5.2000 Court Receiver held auction in which respondent purchased the subject property for Rs.2,00,00,000/-. High Court approved the sale. On 3.2.2004 respondent made application before DRT for Recovery Certificate on the basis of the decree passed by the High Court. On 29.11.2004 Recovery Certificate was issued by DRT and the property was ordered to be sold by the Recovery Officer. In 2010 petitioner filed Original Suit No. 682 of 2010 before the Principal Sub District Court, Coimbatore claiming declaration in respect of suit property. The plaint was rejected on 22.12.2011 for want of jurisdiction. The petitioner filed Writ Petition No. 12943 of 2011 in the Madras High Court seeking enforcement of One Time Settlement (O.T.S.). On 29.4.2011 the petitioner filed Suit being Suit (L) No. 1236 of 2011 in this Court which was rejected on 19.10.2011.

4. In the second week of November 2011 respondent commenced levelling and digging work on the suit property, hence on 28.11.2011 petitioner filed application (Exhibit "11") before the Recovery Officer contending that the sale was bad in law. On 2.12.2011 Recovery Officer rejected the application of the petitioner as not maintainable. On 15.12.2011 petitioner filed an Appeal against the order of rejection dated 2.12.2011. At the time of hearing of the Appeal on 27.12.2012 it was transpired that the petitioner's remedy is to file an application for rectification of the Recovery Certificate. Petitioner therefore withdrew the Appeal.

5. On 26.1.2012 petitioner filed Misc. Application (L) No. 34 of 2012 for avoiding the sale and seeking rectification of Recovery Certificate. On 25.1.2012 petitioner filed Misc. Application No. 7 of 2012 for condonation of delay in filing the Misc. Application (L) No. 34 of 2012. Vide order dated 22.2.2012 petitioner's application for condonation of delay was dismissed by DRT, Mumbai. On 27.2.2012 petitioner filed an Appeal being Misc. Appeal No. 35 of 2012 before DRAT. On 10.4.2012 DRAT dismissed the Appeal filed by the petitioner as barred by limitation, hence the petitioner filed the present petition by impugning the order dated 10.4.2012 passed by the DRAT.

FACTS STATED BY THE RESPONDENT :

6. It is not in dispute that on 7.9.1987 the respondent filed the High Court Suit No. 2636 of 1987 for recovery of the amount as mentioned above. Passing of the decree by the High Court on 9.12.1996 is also not disputed. However, as per the respondent the said decree provided stipulation that if the decretal amount was paid on or before 31.5.1997, the rate of interest would be 12% per annum.

However, petitioner failed to pay the amount. In terms of decree, on failure of the petitioner making payment of the amounts and interest of costs mentioned therein on or before 31.5.1997, the immovable properties at Coimbatore were to be sold by the Court Receiver by and under the decree and directions of this Court in public auction or private treaty and the net sale proceeds be applied in or towards the satisfaction of the respondent's decretal claim herein. The decree on admission was also provided that on failure to make the payment, the decree will be passed in terms of prayer clauses (b), (c), (d) and C.

7. Respondent bank purchased the subject property and the Court Receiver duly issued a Sale Certificate dated 29.8.2000 in favour of the respondent bank and since August 2000 the respondent bank is in possession of the suit property and for last 11 years the respondent bank is paying the property tax. The petitioner has no right, title and interest in the subject property.

8. The petitioner has been harassing the respondent bank by filing several suits and writ petitions. The suit filed by the petitioner in Coimbatore bearing No. 682 of 2010 was rejected by the Court in Coimbatore. The petitioner is seeking the same relief which was sought by the petitioner in the said suit. The petitioner filed another suit in this Court bearing No. 1236 of 2011 which was rejected by this Court. The petitioner then filed Writ Petition in the High Court of Madras being Writ Petition No. 12943 of 2011. The said petition was also dismissed.

9. It is not in dispute that in 2004 the respondent bank applied for issuance of Recovery Certificate which was directed to be ordered. This became necessary because even after giving credit for the amount recovered by sale i.e. Rs.2,00,00,000/-the amount of Rs.42,24,98,000/-as on 30.7.2012 still remained due and payable by the petitioner to the respondent bank. It is not in dispute that the Recovery Certificate was issued by DRT on 29.11.2004.

CONSIDERATION AND CONCLUSIONS :

10. In view of the above referred facts and circumstances placed before us by the petitioner as well as the respondent, the question which fell for consideration of DRAT in Appeal was:

Whether the delay in preferring the Interim / Misc. Application (L) No. 34 of 2012 should be condoned or not?

In the present petition the petitioner is questioning the validity and propriety of the order passed by the DRAT and therefore the question that arises for consideration by this Court is:

Whether the order impugned whereby the Appeal of the petitioner came to be dismissed as barred by limitation is sustainable in law?

However, this Court cannot ignore the other contentions canvassed by the learned counsel for the petitioner as well as the respondent which have a positive bearing in respect of opinion expressed by the DRAT, Mumbai, in the impugned

order whereby the Appeal filed by the petitioner came to be dismissed as barred by limitation.

11. At the outset, we would like to express that there is a long chequered history pertaining to the dispute between the parties to the petition. The parties have initiated various proceedings in the Civil Courts, High Court, DRT and DRAT seeking different reliefs. In the present petition this Court is not called upon to consider whether the reliefs claimed by the petitioner in various proceedings are overlapping rendering subsequent proceedings not maintainable either on the ground of resjudicata or otherwise. Similarly this Court is also not called upon to consider and decide whether on establishment of DRT all suits and/or execution proceedings initiated by the banks or financial institutions stood automatically transferred to DRT, Mumbai, by operation of law, including "execution proceedings" in view of Section 31 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 (hereinafter referred to as the "RDDB & F.I. Act" for the sake of brevity) and therefore the action of the Court Receiver, High Court, Bombay, auctioning the suit property on 6.5.2000 was unsustainable in law for want of jurisdiction.

12. However, we want to express that it is well settled that a decree passed by the Court without jurisdiction is a nullity and that its invalidity can be questioned whenever and wherever it is sought to be enforced or relied upon even at the stage of execution and even in collateral proceedings. Law declared by the Apex Court in case of Kiran Singh and Others Vs. Chaman Paswan and Others, clearly demonstrates that defect of jurisdiction whether it is pecuniary or territorial or in respect of subject matter of the action, strikes at the very authority of the court to pass any decree and such a defect cannot be cured even by consent of the parties. The relevant observations made by the Apex Court are in paragraph 6 of the decision, which reads thus :

6. The answer to these contentions must depend on what the position in law is when a Court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, & that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was "coram non judice", and that its judgment and decree would be nullities. The question is what is the effect of section 11 of the Suits Valuation Act on this position.

13. The learned counsel for the petitioner has submitted that the petitioner in his

Misc. Application (L) No. 34 of 2012 raised a specific ground i.e. ground Nos. 5.13 and 5.14, which reads thus :

5.13 On establishment of Debts Recovery Tribunal (23rd July, 1999 in Mumbai) all Suits and/or execution proceedings initiated by the Banks or Financial Institutions stood automatically transferred to the Debts Recovery Tribunal, Mumbai by operation of law. After 23rd July, 1999 the jurisdiction of the Civil Court in the matter of recovery of Banks "debt" and/or "execution" of decree above Rs.10 lacs was expressly barred by statutory provision contained in Sections 17 and 18 of the RDDBI Act, 1993. From 23rd July, 1999 the Learned Recovery Officer alone has "exclusive" jurisdiction to execute the said decree, if permissible in law passed by the Hon'ble High Court. The Apex Court in the case of Allahabad Bank v/s. Canara Bank reported in (2004) 4 SCC 406 has clearly held that the expression "proceedings" in Section 31 of the RDDBI Act shall include the "execution proceedings" pending before civil court to the commencement of the said Act.

5.14 Despite the clear statutory mandate contained in Section 31 of the said Act, Respondents illegally and wrongfully persuaded the Court Receiver, High Court Bombay to put the said property for auction on 6th May, 2000. Neither Hon'ble High Court nor Court Receiver, High Court, Bombay had jurisdiction to entertain the "execution proceeding" in respect of the said decree dated 9th December, 1996 which stood transferred to this Hon'ble Tribunal by statutory force of law contained in Section 31 of the said Act.

14. The Apex Court in case of Punjab National Bank, Dasuya Vs. Chajju Ram and Others, has observed thus :

5. The point in issue is no longer res integra. After analysing the provisions of the Act, this Court, in Allahabad Bank Vs. Canara Bank and Another, held that the word "proceeding" in Section 31 of the Act would include an execution proceeding pending before a civil Court before the commencement of the Act. It was further held that the suits and proceedings so pending would stand transferred to the Tribunal. This conclusion emanated from the fact that the definition of the word "debt" contained in Section 2(g) of the Act, inter alia, meant any liability which was due to a bank and was payable under a decree or order of a civil court. The decretal amount being a debt as envisaged by Section 2(g) would clearly attract the provisions of Sections 17 and 18 of the Act. which give exclusive jurisdiction to the Tribunals constituted thereunder to decide the questions regarding recovery of debts due to the banks and financial institutions. Section 31 which deals with transfer of cases reads as under :

31. Transfer of pending cases. -(1) Every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that, date to such

Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before any court.

(2) Where any suit, or other proceeding stands transferred from any court to a Tribunal under sub-section(1), -

(a) the court shall, as soon as may be after such transfer, forward the records of such suit or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit or other proceeding, so far as may be, in the same manner as in the case of an application made u/s 19 from the stage which was reached before such transfer or from any earlier stage or denovo as the Tribunal may deem fit.

6. A bare reading of the aforesaid Section shows that execution application being a proceeding pending in a civil court when the Act came into force was liable to be transferred to the Tribunal because the amount for which the execution application had been filed as per the decree which had been passed, was over Rs. 10 lakhs.

Similarly, the relevant observations in paragraph 9 of the said judgment reads thus :

9. The aforesaid Section 31A is clearly applicable in the present case. The decree was passed by Court before the commencement of the Amendment Act and the same has not yet been executed. At least after the amendment, it is only the Tribunal which would have the jurisdiction of entertaining the application for execution of the decree inasmuch as the amount due for which the decree was sought to be executed is over Rs. 10 lakhs. We are also unable to agree with the High Court that because the original decree which was passed was for principal sum of Rs.6,19,250/-the Tribunal would get no jurisdiction. It is to be seen that decree was for a sum of Rs.6,19,250/-plus interest at the rate of 16-1/2 per cent per annum from the date of filing of the suit till the recovery of money. As and when the amount due to the bank under the decree became more than Rs.10 lakhs and an application for execution was filed, it could only be entertained by the Tribunal and not by the Civil Court. It is clear that in view of the provisions of Section 34 of the Act, the provisions of Order 21 Rule 10 C.P.C. Would have no application.

15. The decision of the Apex Court in case of Allahabad Bank Vs. Canara Bank and Another, expressed the similar view which has been relied by the Apex Court in case of Punjab National Bank.

16. The decision of the Division Bench of this Court in case of The Bank of Tokyo-Mitsubishi Ltd. Vs. M/s. Chembra Estates and Others, , in paragraph 13 of the judgment has observed thus :

13. After carefully considering the judgments of the two learned Single Judges

(Kapadia, J. and Kochar, J.), we are inclined to agree with the view taken by R. J. Kochar, J., namely, that after the coming into force of the RDB Act, 1993, this Court would have no jurisdiction to give directions to the Receiver, whether appointed pending a suit or in execution. In fact, even Kapadia, J. also took the same view, but recognising the practical difficulties that would arise on account of the Debts Recovery Tribunal not being equipped with a separate office of Court Receiver, and the exceedingly high value of the properties already put in custody of the Court Receiver of the High Court, the learned Single Judge (Kapadia, J.) was inclined to direct that the Court Receiver should take directions from this Court for a specified period. We are not inclined to say that this direction was erroneous in law for, apart from being Civil Court, this Court is also a Court of Record. In exercise of the powers of this Court, both as Court of Record and u/s 151 of the Civil Procedure Code, the learned Single Judge was justified in continuing the Receiver and directing her/him to obtain directions from this Court, *ex debito justitiae*.

17. The learned counsel for the petitioner has contended that since the petitioner has raised the specific issue of jurisdiction of the Receiver High Court to conduct auction after the RDDB & FI Act came into force in the light of the judgment of the Supreme Court and High Court, the DRAT could not have rejected the application of the petitioner for condonation of delay and DRAT should not have dismissed the Appeal of the petitioner as barred by limitation.

18. The learned counsel for the respondent has argued that the auction conducted by the Receiver, High Court in view of the directions issued by the High Court in execution proceedings after the RDDB & FI Act came into force does not fall for our consideration in the present petition nor this Court is called upon to decide the said issue. This is for the DRT to consider and decide the said issue in the light of the decisions of the Supreme Court and this Court cited by the parties to the proceedings.

19. Similarly, the learned counsel for the respondent has argued that this Court in case of *I.C.I.C.I. Limited Vs. Patheja Brothers Forgings and Stampings Limited and others*, considered the issue i.e....

If not, whether this Court is empowered to give directions to its Court Receiver regarding properties which are in the custody of the said Receiver till such time as the DRT / Central Government sets up alternate office / machinery with a proper infrastructure?

It is contended that relevant observations in paragraph 10 of the decision of the learned Single Judge in case of *I.C.I.C.I. Ltd.* reads thus:

Although I have come to the conclusion that all suits and proceedings stood transferred on 16th July, 1999 an important point which arises on the facts of these cases is that the DRT has no infrastructure to take possession of the properties worth Rs. 2000 crores. Although, DRT is now given the power to appoint receivers, there is no adequate infrastructure provided to DRT to take

possession and charge of the properties which are in the custody of the Court Receiver, High Court, Bombay. The working of the receiver's office as detailed hereinabove, the question that arises is what steps this Court should take to protect and manage the said properties during the transitional period? On one hand, the Court's jurisdiction has been transferred to DRT and on the other hand DRT is not in a position to take possession and manage the said properties. These assets constitute securities created in favour of the banks and financial institutions. They cannot be permitted to be dissipated. It has been urged on behalf of the banks and financial institutions that till adequate/alternate machinery is set up by the Central Government, this Court should manage the properties which are already custodia legis. On the other hand it has been urged that once the suits/proceedings stand automatically transferred to DRT, this Court cannot issue directions regarding preservation and management of the properties after 16th July, 1999 and such directions can be given only by DRT. However, DRT can only appoint its receiver. The question is whether the said receiver would be in a position to take charge of the above properties from the Court Receiver, High Court, Bombay. The matter involves large number of administrative problems. At the outset, it may be mentioned that the Central Government carries a wrong impression that the Court Receiver, High Court, Bombay in the past has lent its services to other Courts. That is not so. As stated above, the Court Receiver, High Court, Bombay is an establishment of the High Court. As stated above, it is required not only to protect the properties, but it is also required to maintain accounts of the royalty received and the expenses debited. The remission of the revenue goes to the State Government. It is not clear as to whether the Central Government and the State Government had entered into any agreement to share the revenue. Moreover, the Court Receiver, High Court, Bombay is required to attend a large number of non-banking suits, which are pending in this Court and if the services of the Court Receiver, High Court, Bombay are required to be lent to other Courts, additional staff would be required. The fact therefore, remain that the Central Government should take immediate steps to set up an independent machinery to assist the DRT and during the concessional period this Court is of the view that notwithstanding transfer of suits and proceedings to DRT this Court can continue to give appropriate directions to the Court Receiver, High Court, Bombay regarding management of the assets and properties in the hands of the Court Receiver till the receiver appointed by the DRT takes charge of the said assets and properties.

The other relevant observations in paragraph 10 of the judgment reads thus :

In the present matter, the suits are pending. The rights to possession of the funds/properties held by the receiver have not been decided. In the circumstances, it cannot be said that the Court Receiver appointed by this Court stands automatically discharged after 16th July, 1999. Till such rights are determined by DRT, the property remains custodia legis. Even after coming into force of the DRT Act and the DRT the said rights to the possession of the funds/properties, held by the receiver remain undecided and, therefore, till DRT

appoints its receiver under the DRT Act, 1993 this Court can certainly issue directions on the reports of the Court Receiver regarding management and protection of the assets which are custodia legis. The Court Receiver, High Court, Bombay is hereby directed to act in all matters pending before her regarding fixation and recovery of royalties, regarding fixation of sale price, regarding implementation of agency agreements already executed, etc. In other words in all cases where the Court Receiver is seized of the properties and assets she is empowered to take all necessary steps to preserve and manage such properties. I am informed that there are some cases in which the Court Receiver was appointed prior to 16th July, 1999. However, before the Court Receiver could take possession, the notification came to be issued. Such marginal cases are kept for hearing on 10th March 2000.

20. The learned counsel for the respondent therefore contended that the directions given to the Receiver, High Court, Bombay by the learned Single Judge in view of the above referred observations cannot said to be without jurisdiction and therefore the auction conducted by the Receiver, High Court, Bombay in view of said directions cannot be unsustainable in law. It is contended by the respondent that the Division Bench of this Court in case of Bank of Tokyo-Mitsubishi Ltd. (cited supra) concurred with the view expressed by Kapadia, J. which is evident from the observations made by the Division Bench in paragraph 13 of the said judgment.

21. In the instant case we have already observed hereinabove that this Court is not called upon to decide whether the direction issued by Kapadia, J. in case of I.C.I.C.I. Ltd. to the Receiver, High Court after the suits and proceedings stood transferred on 16th July, 1999 are without jurisdiction and nullity and therefore the auction sale conducted by the Court Receiver is unsustainable in law. It is for the DRT to consider this aspect in the light of the facts and circumstances involved in the proceedings before it and decide the same in view of the decisions of the Apex Court and this Court cited and relied upon by the petitioner as well as the respondent and therefore we do not propose to express any opinion on the said issue at all, though, in this judgment we have incorporated the relevant observations made by the Apex Court and this Court in the decisions cited by the parties to the present petition. However, we would to express that decree passed by Court without jurisdiction is nullity and that its validity can be questioned whenever and wherever it is sought to be enforced or relied upon even at the stage of execution and also in the collateral proceedings. We are therefore of the view that order dated 22.2.2012 passed by DRT dismissing the application of the petitioner for condonation of delay without deciding the issue i.e. whether the auction conducted by the Receiver, after the suits and proceedings stood transferred to DRT on 16th July, 1999 in view of the directions issued by this Court was sustainable in law is not proper and has resulted in denying the opportunity to the petitioner to contest the issue on merits, which goes to the root of the matter and amounts to miscarriage of justice.

22. The learned counsel for the respondent has contended that the petitioner has suppressed the material facts as well as taken shelter of falsehood and misrepresentation and therefore this Court should not show any indulgence in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India and writ petition should be dismissed on ground of falsehood and suppression of material facts. It is no doubt true that the petitioner has not mentioned in the pleadings of the petition the facts in a proper chronology and in an orderly manner, however that by itself, in our view, is not adequate enough to dismiss the petition on the ground of suppression of material facts. We cannot ignore the fact that Tribunal by impugned order rejected the application for condonation of delay without deciding the vital issue of jurisdiction raised by the petitioner which strikes at the very authority of the Court and such defect cannot be cured even by consent of the parties and its invalidity can be questioned whenever it is sought to be enforced. It is in these circumstance, we are of the view that the contentions canvassed by the learned counsel for the respondent that the petition deserves to be dismissed on the ground of suppression of material facts suffer from lack of merits and is rejected.

23. It is made clear that merely because we have condoned the delay does not mean that this Court has either held or expressed that the directions issued by this Court to the Receiver, High Court, after the suits and proceedings stood transferred to the DRT on 16th July, 1999 are without jurisdiction and nullity. We want to reiterate that this issue is required to be decided by the DRT and not by this Court in present writ petition and hence this Court has not expressed any opinion in this regard whatsoever in the present case.

24. It is well settled that the Legislature has conferred power to condone the delay to enable the Courts and Tribunals to do substantial justice to parties by disposing of matters on merits. Similarly, if the delay is not inordinate and unexplained when is condoned the maximum that can happen is that a cause would be decided on merits after hearing parties. At the same time the guiding principle for a Court to exercise discretion while condoning delay should normally be as to whether the appellant acted with reasonable diligence in prosecuting the proceedings. The Tribunal and Court cannot ignore that refusal to condone the delay if results in grave miscarriage of justice, Court would be justified in such situation to condone the delay. It is well settled that when the substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. At the same time if the delay is inordinate, unreasonable and totally unexplained Court is entitled to pass an appropriate order in the facts and circumstances of such case, since, condoning the delay is not empty formality. However judicial discretion needs to be exercised based upon principles which will advance concept of substantial justice when no negligence nor inaction nor want of bonafide is imputed to the appellant. In the instant case the petitioner has raised the substantial issue that the High Court had no jurisdiction to issue direction to the Receiver, High Court,

Bombay after 16th July, 1999 since all suits and proceedings stood transferred to DRT with effect therefrom and therefore directions issued by the High Court to the Receiver, High Court, Bombay were without jurisdiction and nullity. The issue raised strikes at the very authority of the Court and therefore the impugned order passed by the Tribunal dismissing the application for condonation of delay without deciding a vital issue in the facts and circumstances of the present case, in our view, undoubtedly has resulted in miscarriage of justice and therefore the impugned order 22.2.2012 passed by the DRT is liable to be quashed and set aside.

25. For the reasons stated hereinabove, we quash and set aside the order dated 10.4.2012 passed by DRAT as well as order dated 22.2.2012 passed by DRT and condone the delay in filing Misc. Application (L) No. 34 of 2012 filed by the petitioner which is restored to the file of DRT, Mumbai. DRT, Mumbai is directed to decide the Misc. Application (L) No. 34 of 2012 on its own merits in accordance with law and in the light of the law declared by the Apex Court and High Court on the subject. Rule made absolute accordingly. No order as to costs.

D.D. Sinha and SMT. V.K. Tahilramani, JJ.

After the Order was pronounced, the learned counsel for the petitioner requested that interim order passed by the DRAT vide Order dated 10.4.2012 may be continued till Misc. Application (L) No. 34 of 2012 is decided by the DRT.

Since the interim order is in existence for a long time, same is continued for a period of six weeks from today. It will be open for a party to seek appropriate order thereafter from the DRT.