

Court No. - 7

Case :- MATTERS UNDER ARTICLE 227 No. - 5381 of 2024

Petitioner :- Bank Of Baroda,A Body Corporate,Barabanki Thru. Its Authorized Officer,Mr. Vinay Agrawal

Respondent :- Debt Recovery Tribunal,Lucknow Thru. Its Registrar And 3 Others

Counsel for Petitioner :- Prashant Kumar Srivastava

Counsel for Respondent :- Apoorv Dev,C.S.C.

Hon'ble Pankaj Bhatia,J.

1. Vakalatnama filed by Sri Ashish Chaturvedi, Advocate representing the respondent No.3 is taken on record.
2. Heard learned counsel for the parties.
3. Perused the report sent by the Registrar, D.R.T., Lucknow on 20.11.2024 in terms of order passed by this court on 18.11.2024 and perused the record sent along with the said report.
4. The controversy involved in the present petition under Article 227 of the Constitution of India is the conduct of the Presiding Officer of the D.R.T., Lucknow has conducted the proceedings with material irregularities just prior to his retirement. A shadow is cast upon the orders dated 18.09.2024 and 22.04.2024 passed by the Tribunal.
5. The submission of learned counsel for the petitioner on the one hand is that the Presiding Officer of the D.R.T. did not sit on 18.09.2024, the date on which order was passed on 18.09.2024, as is indicated in the order, which is on record and subsequently to hide the irregularities a corrigendum order dated 27.09.2024 was passed by the Presiding Officer indicating that the order dated 18.09.2024 be read as order dated 24.09.2024.
6. It is further argued by the petitioner that the order dated 27.09.2024 was never on record and was subsequently introduced, which is established as per them based upon the certified copy of the entire records obtained by the petitioner and was made available to them on 23.10.2024, which does not contain the order dated 27.09.2024. It is further pleaded that in the cause list on 24.09.2024, the present case was never listed for pronouncement of orders. In the light of these discrepancies, it is proposed to be argued that the order dated

18.09.2024 was not passed in a bona fide manner and mala fides have been alleged against the Presiding Officer of the D.R.T. Lucknow. It has also been pleaded before this Court that the conduct of the Presiding Officer was noted by this Court on two occasions. A detailed order was passed by this Court on 03.09.2024 in Matter under Article 227 No. 4127 of 2024: Bank of Baroda, Branch Office, Lucknow Vs. D.R.T. Lucknow and my attention is also drawn to the order dated 08.07.2024 passed in Writ C No. 7725 of 2022: D.R.T. Vs. Union of India at the instance of D.R.T. Bar Association through its Secretary Arvind Kumar Srivastava Vs. Union of India, wherein this Court noticing the irregularities being committed by the Presiding Officer of the D.R.T. had requested that an investigation be carried out by the Central Government and directions were issued to the Chairman, D.R.T. to submit his preliminary report under Section 9(1) of the Condition of Service Rule 2021 within four weeks. Details of order dated 03.09.2024 are extracted herein-below:

Order dated 03.09.2024

"1. Heard Shri Prashant Kumar Srivastava, learned counsel for the applicant.

2. Instant petition filed under Article 227 of the Constitution of India, the petitioner has challenged the validity of orders dated 18.07.2023, 25.09.2023 and 16.10.2023 passed by the Debts Recovery Tribunal in Securitisation Application No.752 of 2022.

3. The submission of the learned counsel for the petitioner is that the opposite parties no.2 to 6 have filed a Securitisation Application before the Debts Recovery Tribunal and they had filed an application for interim relief therein. The application for interim relief was disposed of by means of an order dated 20.04.2023 passed by the Debts Recovery Tribunal providing that the CMM will issue at least 15 days prior notice before taking the physical possession of the property in question. After the interim relief application disposed of by the order dated 20.04.2023, the Debts Recovery Tribunal passed an order dated 18.07.2023, fixing the matter for 10.08.2023 for further hearing on interim relief application regarding possession. On 25.9.2023, the Debts Recovery Tribunal passed an order directing

the parties to maintain status quo in respect of the property in question till the next date of listing.

4. Submission of the learned counsel for the petitioner is that when the temporary injunction application has already been disposed of by the order dated 20.04.2023, the Tribunal had no jurisdiction to pass any further order regarding interim relief on the same application. Further, from the typed order passed on 16.10.2023, which is available on the ordersheet, it appears that the time bound interim relief order dated 25.09.2023 was not extended on 16.10.2023 and the matter was simply adjourned to 07.05.2024. This is further fortified from the fact that on 18.10.2023, the learned counsel for the opposite parties no.2 to 6 had filed an application for extension of the interim order stating that the matter could not be taken up on 16.10.2023 due to paucity of time, and the interim order was not extended. However, a copy of the order date 16.10.2023 annexed with the petition indicates that after the typed order "Due to paucity of time, the case could not be taken hence, no progress in the case. The case is adjourned to 07.05.2024 for same proceedings." it has been written in hand that "IR is extended till the date fixed."

5. The interpolation made in hand writing in the typed order has not been authenticated by any signature initials.

6. The learned counsel for the petitioner submits that it prima facie indicates that the interpolation in the order dated 16.10.2023 has been made after passing and signing of the order dated 16.10.2023.

7. The matter requires consideration.

8. Issue notice to the opposite parties no.2 to 6 returnable at an early date.

9. The learned counsel for the petitioner shall take requisite steps in this regard within three days.

10. The opposite parties may file counter affidavit within three weeks. Rejoinder affidavit, if any, may be filed within one week thereafter.

11. List this case in the week commencing 04.11.2024.

12. Keeping in view the aforesaid fact, as an interim measure, it is provided that all the orders passed regarding interim relief in favour of the opposite parties no.2 to 6 after disposal of the interim relief application by the order dated 20.04.2023, shall remain in abeyance."

Order dated 08.07.2024

"(1) Heard Shri Asit Chaturvedi, learned Senior Advocate assisted by Shri Anuj Kudesia, and Shri Prashant Kumar Srivastava, for the petitioners in Writ-C No.7725 of 2022 and the learned Deputy Solicitor General of India, Shri S.B. Pandey, Senior Advocate assisted by Shri Anand Dwivedi, for the Opposite party nos.1 and 2, the Union of India and Shri Gaurav Mehrotra, and Ms. Ritika Singh, appearing for the Opposite party no.3 and Shri A. H. Khan, Presiding Officer, DRT, Lucknow, who appears in person.

(2) This writ petition has been filed by the petitioners for the following main prayer:-

"1) issue a writ, order or direction in the nature of Mandamus, directing Respondent no.1 and 2 to initiate appropriate action after conducting a detailed enquiry under Section 15 (2) of the Recovery of Debts and Bankruptcy Act, 1993, read with Rule 4 & 4 of DRT (Procedure for Investigation of Misbehaviour or Incapacity of Presiding Officer) Rules, 2010 into the working, behaviour, temperamental issues, act and conduct of Respondent no.4 in view of his consistent misbehaviour with the Advocates and in-competency to act as Presiding Officer of DRT Lucknow as also highlighted in the Complaint, Dated 12.10.2022 (Annexure 8 to this writ petition) submitted by the petitioner.

(ii) Alternatively, it is prayed that this Hon'ble Court may be pleased to direct Respondent no.1 to consider and transfer Respondent no.4 from DRT Lucknow to any other Tribunal on account of his vindictive approach which has further aggravated after Representation dated 12.10.2022 (Annexure P-8) compelled to be submitted by the petitioner after growing resentment amongst the

members of the Bar on account of his repeated act of insulting, threatening and misbehaviour with Advocates."

(3) It is the case of the petitioners as argued by their counsel that the private Respondent no.4, the Presiding Officer, arrayed in person Shri A.H. Khan, has been passing whimsical and arbitrary orders and a reference has been made to some such orders passed by him in some matters in Paragraph-55 of the writ petition.

(4) The allegations relate to nepotism and corruption and also of not following procedure as prescribed under the Rules. Such writ petition was filed by the Bar Association on 01.11.2022 and before such writ petition was filed two writ petitions were filed by two private parties namely Writ-C No.7240 of 2022 [Shri Chandan Rastogi Vs. District Magistrate/ Collector, Sitapur, and others] and Writ-C No.7362 of 2022 [Mrs. Roli Singh Vs. Debt Recovery Tribunal and another]. In these two writ petitions the prayer made by the petitioners was for quashing of the orders passed under the SARFAESI Act for ensuring recovery of loan dues and it was alleged that the petitioners have approached the D.R.T., Lucknow, by filing Securitization Application but the Bar Association has abstained from judicial work and copies of Resolutions dated 06.10.2022 and 10.10.2022 and 21.10.2022 were annexed to the writ petitions and it was alleged that the Bank while taking advantage of non-functioning of the Court due to the reasons of strike and non-performing the judicial work by the Advocates, will take physical possession of the Premises/ Secured Assets of the petitioners even during the pendency of the proceedings before the DRT because no orders had been passed granting interim relief and their applications remained pending. When the said writ petitions were filed, this Court took notice in its order dated 18.10.2022 in Writ-C No.7362 of 2022 and observed that the interim relief application alongwith Securitization Application of the petitioners could not be decided because of strike of Bar Association and that such strike was unlawful and that the interest of litigants cannot be allowed to suffer is reiterated time and again. The Court expected the DRT Bar Association, Lucknow to cooperate with the proceedings of the Tribunal and corrective measures be

taken by the office bearers as well as by the members of the DRT Bar Association to resume the normal functioning of judicial work. The Bar Association being an essential pillar is under a duty to cooperate with the administration of justice. In case there is any issue to be resolved, the same may be taken up with the Chairman of the DRAT. The Court observed that preventing lawyers from discharging their duties towards litigants cannot be permitted at any cost and necessary measures shall be adopted to eschew such a practice and also directed the Advocates representing the petitioners to appear before the DRT and Presiding Officer, DRT should decide the applications which were listed and pending before it within two weeks from the date of the order and he would also have to submit a report regarding resumption on work of the members of the DRT Bar Association.

(5) The Court thereafter passed an order on 19.10.2022 in Writ Petition No.7240 of 2022 wherein it quoted the order passed by it on 18.10.2022 in the Writ-C No.7362 of 2022 [Mrs. Roli Singh Vs. Debt Recovery Tribunal and another] and directed the petitioner to implead the President and the Vice Chairman, Secretary of the DRT Bar Association as Opposite parties and also directed the Presiding Officer to remain present alongwith necessary report as called for in Writ-C No.7362 of 2022 and also directed the Chairman of the DRAT to look into the complaints made by the DRT Bar Association and forward the report to the Court before the next date of listing. The two writ petitions were connected and directed to be listed on 07.11.2022. On 07.11.2022, the matter could not be taken up and it was eventually taken up on 09.11.2022 where the Court recorded the presence of the Presiding Officer of the DRT and a fresh report was directed to be submitted regarding listing and disposal of the cases as well as working of lawyers. The matter was again taken up on 15.12.2022 when the Presiding Officer, DRT submitted a report that with the cooperation of the Bar several matters had been disposed of and on an average more than 13 cases per day in 22 days of working of the Tribunal had been taken up and disposed of.

(6) The Court appreciated the role of the members of the Bar and cooperation extended by them and in its order also expressed that it hoped and trusted that the members of the Bar would maintain due cooperation in the functioning of the Tribunal.

(7) When the case was taken up by this Court again on 16.01.2023, the Court noted the disposal of nearly 196 matters and on an average more than 19 matters per day were decided by the Tribunal with the cooperation of the Advocates. The Court kept on record the fresh report submitted by the Presiding Officer of the Tribunal and also perused the report submitted by the Chairman DRAT sent in a sealed cover wherein certain observations were made regarding merits of the order passed by the Presiding Officer being appealable orders on the judicial side. Regarding personal conduct of the Presiding Officer of the DRT, Lucknow, the Court noted that the Chairman DRAT had given necessary advice to him to treat all lawyers uniformly and to conduct himself amicably in Court. The Chairman, DRAT having found no infirmity in the procedure being followed by the Presiding Officer, DRT, Lucknow, the Court found it inappropriate to issue any further directions in the matter and the Writ-C No.7240 of 2022 and Writ-C No.7362 of 2022 were dismissed as having become infructuous.

(8) It is evident from a perusal of the record of both these writ petitions that have been placed before us that they related to Borrowers / Guarantors coming before this Court asking this Court to interfere in SARFAESI proceedings initiated by the Banks for recovery of secured assets on the ground that there was a strike and abstention from judicial work by the Advocates of DRT Bar Association which Prevented DRT Lucknow from deciding their pending applications for interim relief. The Court prima facie was of the opinion that the strike is unlawful and therefore, directed the Advocates to start working and to cooperate in the disposal of matters. It asked for a report regarding pendency of cases and disposal of matters and referred to the same in its orders passed thereafter as mentioned hereinabove.

(9) Both the writ petitions were dismissed on 16.01.2023 as having become infructuous as working in DRT had resumed. However, on the same day in another connected matter i.e. the instant Writ Petition, bearing Writ-C No.7725 of 2022, the Court took notice of allegations made in Paragraph-55 of the writ petition regarding the conduct of the opposite party no. 4 arrayed in person and passed an order, which is quoted herein below:-

"Heard Sri Asit Chaturvedi, learned Senior Advocate assisted by Sri Anuj Kudesia, learned counsel for the petitioner.

Learned counsel for the petitioner says that the writ petition has been filed by the Bar Association of Debt Recovery Tribunal, Lucknow, aggrieved by the misbehaviour including nepotism and favoritism of the Presiding Officer that he shows to certain persons. Let a counter affidavit be filed by the Respondent No.1 and also by Respondents No.2 and 3 separately to the allegations made in the writ petition more specifically with regard to paragraph no.55 within a period of six weeks.

Two weeks time, thereafter is given to the petitioner to file rejoinder affidavit.

List this case on 14.03.2023"

(10) In Writ No. 7725 of 2022, a short counter affidavit has been filed by the opposite party no. 1 and detailed counter affidavits have been filed by the Opposite parties nos. 2 & 3. Thereafter, rejoinder affidavits have been filed by the petitioners to all such affidavits and a supplementary counter affidavit has also been filed by the opposite party no.3 indicating action taken with respect to certain grievances raised by the petitioners. In the short counter affidavit that has been filed by the opposite party no.1, a reference has been made of certain representations having been received from DRT, Bar Association by the Central Government dated 12.10.2022 and 18.10.2022 and their Resolution dated 21.10.2022. The Central Government through its Under Secretary had sent information to the Registrar, DRAT, Allahabad on 15.12.2022 that a decision has been taken by the Government and the Chairperson, DRAT should

examine such grievances of the DRT, Bar Association as per the Provisions of Rule 9 (1) of the Tribunal (Conditions of Service) Rules, 2021 and Specific comments be furnished to the Department at the earliest regarding contents of Para 55 of the Writ Petition no.7725 of 2022.

(11) It has been submitted in the short counter affidavit that taking notice of order passed by this Court in Writ-C No. 7725 of 2022, the Ministry had asked for a copy of Writ-C No. 7725 of 2022 and specific comments regarding allegations made in Paragraph-55 of the said writ petition. While forwarding a copy of the Writ-C No.7725 of 2022 to the Government i.e. the Under Secretary, DRT, Department of Financial Services, Ministry of Finance, a letter was sent by the Registrar, DRAT on 08.02.2023 saying that similar allegations had been made by the DRT Bar Association in its representation dated 12.10.2022 against the Presiding Officer, Shri A. H. Khan, DRT, Lucknow which were examined by the Chairman, DRAT and a report was submitted to the Court in Writ-C No.7240 of 2022 and a Court had taken notice of such report disposed of Writ-C No. 7240 of 2022. However, it was pointed out that Writ-C No.7725 of 2022, a counter affidavit has to be filed separately by the DRAT, Allahabad, in pursuance of an order passed on 16.01.2023.

(12) It has been argued on the basis of such short counter affidavit that the Central Government is treating the matter closed insofar as alleged misbehaviour of the opposite party no. 4 is concerned.

(13) We deem it appropriate to clarify that although the Court had summoned reports from the Presiding Officer, DRT, Lucknow and the Chairperson, DRAT, Allahabad in Writ-C No.7240 of 2022 and Writ-C No.7362 of 2022 as aforesaid; such reports were called for only with regard to functioning of the DRT and with regard to certain grievances raised by the DRT Bar Association, before the Chairperson DRAT regarding working of the Presiding Officer which had led to abstention from judicial work by them.

(14) The order passed by the Central Government

communicated to the Registrar of the DRAT, Allahabad by a letter sent by the Government of India dated 15.12.2022 has not yet been complied with. The Chairperson, DRAT, Allahabad, has not examined the specific grievances of the DRT, Bar Association as raised by them in their several Resolutions and Representations under the Provisions of Rule 9(1) of the Tribunal (Condition of Services) Rules, 2021.

(15) We are of the considered opinion that this writ petition can be disposed of with a direction to the Central Government to insist upon a Preliminary Scrutiny to be conducted with regard to various allegations made against the Presiding Officer, DRT, Lucknow, and for a detailed report to be submitted to it. The grievance of the petitioners would be sufficiently redressed as argued by their counsel, if the Central Government takes cognizance of any such preliminary scrutiny report to be submitted to it and to pass appropriate orders thereon in terms of the Rules of 2010 as amended from time to time and the Conditions of Service Rules, 2021.

(16) We therefore dispose of this petition with a direction to Chairperson DRAT to submit his preliminary report under Section 9 (1) of the Condition of Service Rule 2021 within four weeks from today. We also direct the Opposite party no.1 to take an appropriate reasoned decision on the report within a period of four weeks thereafter.

(17) We clarify that we have not expressed any opinion on the alleged Mis-behaviour/ Incapacity of the Opposite party no.4 in the judicial work he is performing. "

7. Learned counsel on behalf of the respondent on the other hand insists that the order dated 18.09.2024, which is the bone of contention, on its merits, does not require any interference and is consonance with the mandate of provisions of *SARFAESI Act*. It is further argued that merely if there were some irregularities in pronouncement of the order, the said order would not ipso facto be treated as an illegality, which can be checked by this Court in exercise of power under Article 227 of the Constitution of India.

8. In the light of the conflicting submissions made with regard to the manner of passing of the order dated 18.09.2024, this Court vide order dated 18.11.2024 had directed to summon the original record in a sealed cover to be submitted by the Registrar, D.R.T. Lucknow and a report of the Registrar was also called with regard to the fact that whether the order dated 18.09.2024 was dictated to the Private Secretary/Stenographer by the Presiding Officer.

9. A report has been submitted today indicating that the order dated 18.09.2024 passed by the Presiding Officer/Tribunal was to be read as 24.09.2024 in terms of the corrigendum order dated 27.09.2024 passed by the then Presiding Officer, as per the record in S.A.No.202 of 2022. It further records that as per the information given by the NIC team of the Tribunal the order dated 18.09.2024 was uploaded on 27.09.2024 on the e-portal. It was also mentioned in the said report that on account of inadvertence the order dated 27.09.2024 could not be uploaded on the e-DRT portal, and the said order remains part of the record of the file. The order dated 27.09.2024, on perusal of the record the S.A.No.202 of 2022 is found on record in the order sheets.

10. The second part of the report submitted by the Registrar, D.R.T. Lucknow is that on enquiry from the Stenographer diary, regarding dictation of the order dated 18.09.2024 in S.A.No.202 of 2022, comments were sought from the Private Secretary and from the comments received from him, it is informed that no dictation was taken by the Private Secretary/Stenographer in respect of final order dated 18.09.2024 from the then Presiding Officer. It further records that the corrigendum order dated 27.09.2024 was taken under dictation by the Stenographer working on the outsource basis. It further record that the Presiding Officer superannuated on 27.09.2024 on completion of his tenure.

11. The said report produced under sealed cover is retained by this Court and is directed to be placed under sealed cover again along with the record.

12. The DRT Act was enacted in the year 1993 for setting up special mechanism for recovery of the financial dues and in terms of the difficulties faced by the Banks and Financial Institutions, the Tribunals were set up with an aim to enhance and fulfill the need for expeditious recovery of the banking dues. A huge burden was cast by the Tribunals by virtue of the said Act. In furtherance of the Act, for which the Act was enacted, the Tribunal set up by virtue of the Act were vested with substantial powers. The procedure prescribed under

the Act was to ensure a balance in between the object of expeditious recovery of the Banking dues, on one hand and the safeguard of the rights, particularly enshrined under Article 300-A in respect of the borrowers and the guarantors. It is expected that the Tribunals are to act in fair and reasonable manner while exercising the vast powers conferred upon them under the Act read with SARFAESI Act. Any dent/ shadow cast upon the manner of working of the Tribunal has the effect of subverting the object with which the Act was enacted and thus it is expected, that the Presiding Officer of the Tribunal would act fairly and reasonably while discharging their functions.

13. In the present case clearly prior to the date of superannuation, the Presiding Officer acted in a manner so as to create a cloud on the working of the entire Tribunal as has also been observed by this court in respect of the specific instances in the detailed order dated 08.07.2024 extracted above particularly in para 11 of the said order. In terms of the mandate of Sections 32 and 33 of the DRT Act, the Presiding Officers are deemed to be government servants within the meaning of Section 21 of IPC and protection is also accorded to them for actions taken for good faith, however, the series of the incidents as highlighted and indicated above, prima facie, demonstrates that the actions were not in good faith.

14. Considering the serious allegations (verified in the Registrar's report) with regard to the passing of the order dated 18.09.2024 and the corrigendum order dated 27.09.2024 levelled against the Presiding Officer and series of such complaints, as highlighted in the two orders passed by this Court on the earlier occasions, extracted above, I deem it appropriate to direct the C.B.I. Inquiry into the matter.

15. The Investigating Officer of the C.B.I. will be duly authorized to verify the record of the D.R.T. Lucknow specifically the records as are mentioned in the Division Bench Order, whereby an inquiry was ordered and if anything wrong is found, the C.B.I. shall take steps for filing charge sheet against the persons concerned for prosecution in accordance with law.

16. The C.B.I. shall submit a report to this Court within 15 days with regard to the action taken in pursuance to this order.

17. The Senior Registrar of this Court shall retain the records as submitted by the Registrar D.R.T., Lucknow and shall provide the same to the Investigating Officer of the C.B.I., if so required.

18. List this case **on 10.12.2024 in top ten cases.**

19. The interim order passed by this Court shall continue till the next date of listing.

20. Dr. L.P. Mishra, learned counsel on behalf of the respondent seeks that a copy of this report called by this Court and submitted by the Registrar, D.R.T, Lucknow may be provided to him, the said request is negated and the same shall not be provided, as it was a confidential report submitted by the Registrar, D.R.T., Lucknow to the Senior Registrar of this Court and has been placed before this Court for its perusal.

21. Let a copy of this order be sent to the Head of Branch, Central Bureau of Investigation, Anti Corruption Branch, 7 Nawal Kishore Road, Hazratganj, Lucknow through the Senior Registrar of this Court for compliance.

Order Date :- 21.11.2024

Arvind/akverma

[Pankaj Bhatia, J]