IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4553-4556 OF 2008

[Arising out of SLP(C) Nos. 15432-15435/2008]

CENTRAL BANK OF INDIA ... APPELLANT(S)

:VERSUS:

M/S. MARUTI ACETYLENE CO. PVT. LTD. ... RESPONDENT(S)

O R D E R

Leave granted.

These appeals are directed against the judgment and order dated 13.6.2008 passed by the Madras High Court in C.R.P. No.1137/2008 and CRP No. 1471/2008.

The basic fact of the matter is not in dispute.

The respondent herein took advance from the appellant-Bank. On its failure to pay back the amount, a proceeding was initiated before the Debt Recovery Tribunal at Chennai. It was later on transferred to Coimbatore. A proposal was mooted between the parties as to whether they should enter into a One Time Settlement in terms of the guidelines issued by the Reserve Bank of India; wherefor an application was filed before the Debt Recovery Tribunal, praying inter alia:

> **"It is therefore prayed that this Hon'ble Tribunal may be pleased to direct that respondent bank to comply with the RBI guidelines and**

> **accept the sum of Rs. 70,00,000/- in full and final satisfaction of all their claims and settle the account and on failure of the respondent bank to comply with the said direction, dispose the main application T.A. 937 of 2002 by passing a decree for only the agreed sum of Rs. 70,00,000/- and thus render justice."**

The said application was dismissed by the Debt Recovery Tribunal opining that the offer made by the respondent was on the lower side. An appeal was preferred thereagainst before the Debt Recovery Appellate Tribunal. The Appellate Tribunal by reason of its order dated 9th October, 2007 directed:

> **"Interim stay on condition of deposit of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) with the respondent bank on or before 12.11.2007. On such deposit, the respondent Bank is directed to keep the said amount in interest earning 'no-lien account' until further orders."**

Pursuant thereto and in furtherance thereof the said sum of Rs. 25 lakh was deposited. The matter came up before the Debt Recovery Appellate Tribunal again on 29.11.2007 on which date the following order was passed:

> **"The amount of Rs. 25 lakhs deposited as per the conditional order dated 9.10.2007 is ordered to be adjusted towards the loan account due by the**
>
> **appellant to the respondent bank.**
> **Adjourned to 19.12.2007 for reporting settlement or arguments.**
> **Interim stay extended till then."**

A civil revision application was filed thereagainst by the respondent was disposed of with the following direction:

> **"Admittedly, certain amount is payable by the petitioner-Company to the respondent-Bank, which is more than Rs. 25 lakhs. In this**

background, the Debt Recovery Appellate Tribunal's order adjusting the amount of Rs. 25 lakhs towards the loan amount due by the petitioner-Company to the respondent-Bank, requires no interference.

However, we make it clear that the amount of Rs. 25 lakhs so deposited by the petitioner-Company shall be subject to the decision in the appeals preferred by the petitioner-Company and that will not stand in the way of the respondent-Bank to make one-time settlement with the petitioner-Company, taking into account the adjustment of Rs. 25 lakhs as made pursuant to the Debt Recovery Appellate Tribunal's order."

When the matter went back to the Appellate Tribunal, the appeal preferred by the respondent was dismissed opining:

"On a careful consideration of the entire factual aspects of the matter, in the light of the above principles of law laid in the decisions referred to above, this Tribunal has no other option except to conclude that since the OTS offer made by the Appellate had not been accepted by the Respondent-Bank, it is no longer necessary to call either the Branch Manager of the Bank as a witness for the cross-examination. In any view of the matter, I am unable to find any irregularity or illegality in the impugned orders so as to interfere with the same and it follows that the Appeals have to be dismissed by confirming the orders passed by the DRT."

Respondent preferred a civil revision application before the High Court once again. The High Court passed an interim order on or about 30th April, 2008, wherein referring to an earlier order dated 16th April, 2008 it directed as under:

"From the earlier order it will be evident that this Court, with a view to put an end to the dispute, wanted the bank to reach one time settlement for Rs. 1 crore, inclusive of Rs. 25 lakhs already deposited by the petitioner pursuant to the Court's order. The bank was allowed time to inform the Court in this matter vide order dated 16th April, 2008 and it was observed that the rest of the amount of Rs. 75 lakhs may be ordered to be paid by the Court in favour of the bank.

> **Learned counsel appearing on behalf of the bank submitted that for one or other reason the Board of Directors of the bank could not deliberate on the issue and will take a decision.**
>
> **In the circumstances, while we grant further time to the respondent-Bank, allow the petitioner to deposit the rest of the amount of Rs. 75 lakhs by 30th May, 2008 with the bank with further direction to the bank to accept the same and keep it in an interest bearing no-lien account subject to the decision of this case. It is also made clear that if the bank do not accept the offer of the one time settlement, then this Court may direct the Bank to refund the entire amount, i.e. the amount of (Rs. 25 lakhs and Rs. 75 lakhs) paid by the petitioner in view of court's order along with the accrued interest and, therefore, may remit the matter back to the Tribunal/Appellate Tribunal to decide the case on merits."**

It is now accepted at the Bar that the respondent did not agree to the aforementioned proposal of the High Court that the One Time Settlement should be confined to Rs.1 crore. When the matter came up before the High Court again on 13.6.2008, by reason of the impugned judgment the appellant-Bank was directed to refund the entire amount of Rs.1 crore with interest at the same rate to which the respondent was liable to pay i.e. the contractual rate of interest, in favour of the respondent within 7 days. The appellant is, thus, before us.

Mr. Jaideep Gupta, learned senior counsel appearing on behalf of the appellants would raise two contentions in support of these appeals. Firstly, that the sum of Rs. 25 lakhs having been adjusted against the amount of loan payable by the respondent, no direction could have been issued for refund in relation thereto. Secondly, it was contended that having regard to the fact that the amount of Rs. 75 lakhs was deposited on no-lien account which carries a low rate of interest, the direction by the High Court to refund the said sum with contractual rate of interest

must be held to be illegal.

Mr. Gurukrishna Kumar, learned counsel appearing on behalf of the respondent, on the other hand, contended that the impugned judgment has been passed in continuation of the High Court's order dated 30th April, 2008 and in view of the fact that the correctness of the said order has not been questioned, the appellant should not be permitted to raise the aforementioned contentions before us.

It is accepted at the Bar that the matter is likely to be taken up by the High Court on 21.7.2008. Indisputably, when the High Court enters into the merit of the revision application, it shall take into consideration all aspects involved therein, including the offer of the respondent vis-a-vis the orders passed by the Debt Recovery Tribunal and the Appellate Tribunal.

Be that as it may, having regard to the fact that the Appellate Tribunal in its order directed adjustment of the aforementioned amount of Rs. 25 lakhs, which in view of the dismissal of the civil revision application has attained finality, in our opinion, at this interlocutory stage the High Court was not correct in issuing a direction in that behalf.

So far as the rest of the amount of Rs. 75 lakhs is concerned, it stands accepted that the amount was deposited in a no-lien account.

The High Court, therefore, should have directed refund of the said amount with interest only accruing thereupon having regard to the fact that the same was deposited in a no-lien account. The High Court, therefore, in our opinion, was not correct in directing that the interest payable on the sum of Rs. 75 lakhs would be the contractual rate.

We, therefore, set aside only that part of the impugned order by which the Bank was directed to refund the entire amount with the contractual rate of interest. The High Court while hearing the matter shall consider the same on its own merit.

The appeals are allowed accordingly. There shall be no order as to costs.

.....J
(S.B. SINHA)

.....J
(CYRIAC JOSEPH)

NEW DELHI,
JULY 17, 2008.