

*** THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE GADI PRAVEEN KUMAR**

+WRIT PETITION No.12395 of 2025

ORDER:

% Dated 28.08.2025

Between:

Gade Sreenivas Reddy

Petitioner

AND

The State Bank of India and Others

Respondents

! Counsel for the appellant: Sri V.Murali Manohar.

^ Counsel for the respondent No.1: Ms.V.L.V.Devi, learned counsel
representing Sri G.Prabhakar Sarma.

< GIST :

> HEAD NOTE :

? Cases referred :

¹ MANU/DK/0001/2006

² (2021) 3 SCC 549

³ 2025 SCC OnLine SC 1234

⁴ 2023: DHC : 9308 - DB

⁵ 2019 (4) ALJ 10

⁶ 2013 (2) Cal L.T. 272

MB,J & GPK,J
W.P.No.12395 of 2025

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE GADI PRAVEEN KUMAR
WRIT PETITION No.12395 of 2025

Sri V.Murali Manohar, learned counsel appearing for the petitioner.

Ms.V.L.V.Devi, learned counsel representing Sri G.Prabhakar Sarma, learned counsel for the respondent No.1- Bank.

ORDER: *(Per Hon'ble Justice Moushumi Bhattacharya)*

1. The petitioner prays for quashing of an order dated 06.03.2025 passed by the Debts Recovery Appellate Tribunal at Kolkata ('DRAT') in I.A.No.567 of 2024 in Miscellaneous Appeal Diary No.972 of 2024.

2. The impugned order was passed in an Interlocutory Application (I.A.No.567 of 2024) filed by the petitioner (the appellant in the I.A.) for exemption from making any deposit for the purpose of hearing the petitioner's Appeal on merits under section 21 of The Recovery of Debts and Bankruptcy Act, 1993 ('RDB Act'). By the impugned order dated 06.03.2025, the DRAT disposed of the petitioner's I.A. by directing the petitioner to make a pre-deposit of 25% of Rs.66,86,20,751/- within four weeks.

3. For understanding of the factual context, the brief facts leading to the impugned order are stated below.

4. The respondent No.1/State Bank of India (SBI) filed an Original Application (O.A.No.625 of 2019) in the Debts Recovery Tribunal-I at Hyderabad, against the respondent Nos.2 to 5 and the petitioner herein for recovery of a sum of Rs.47,13,93,098.80 ps. By an order dated 31.01.2020, the DRT-I held that the defendant Nos.1 to 4 were jointly and severally liable to pay the said amount and that the applicant/Bank is entitled to proceed against the person and properties of the defendant Nos.1 to 4 towards realization of the debt due. The order dated 31.01.2020 records that the defendant Nos.1 to 5 were set *ex parte* on 08.11.2019.

5. The petitioner (defendant No.4 in the O.A) filed an application (MAIR No.171 of 2024) in O.A.No.625 of 2019, under section 22(h) of the RDB Act, for setting aside the *ex parte* order dated 31.01.2020. The petitioner filed I.A.No.736 of 2024 under section 5 of The Limitation Act, 1963, for condoning the delay since there was a delay of 1484 days in filing the application for setting aside the *ex parte* order. By the docket order dated 01.10.2024, the DRT-I dismissed the petitioner's I.A. holding, *inter alia*, that the petitioner had failed to establish sufficient cause for condoning the delay of 1484 days in filing the petition to set aside the *ex parte* order dated 31.01.2020.

6. The petitioner challenged the said order before the DRAT which was numbered as Miscellaneous Appeal Diary No.972 of 2024. The petitioner filed I.A.No.567 of 2024 for exempting the petitioner from making any deposit for the purpose of hearing the Appeal on merits under section 21 of the RDB Act. By the impugned order dated 06.03.2025, the DRAT disposed of the said I.A. by directing the petitioner to pre-deposit 25% of Rs.66,86,20,751/- within a period of four weeks.

7. The petitioner has challenged the impugned order on the ground that the requirement of making a pre-deposit of 25% would not apply to the facts of the case since the Appeal before the DRAT was directed against an order refusing to condone the delay in recalling the *ex parte* order of the DRT.

Submissions made on behalf of the Parties.

8. The primary submission of learned counsel appearing for the petitioner is that the Appeal filed before the DRAT arose out of an order passed in an Interlocutory Application, by which the DRT had rejected the petitioner's application for condonation of delay in filing a petition for setting aside an *ex parte* order. Counsel submits that the

petitioner's challenge to the order dated 01.10.2024 but was confined only to the rejection of the petitioner's application for condonation of delay in filing the setting aside petition. Counsel urges that the Appeal before the DRAT was not against a determination of disputes on merits but was only for giving an opportunity to the petitioner to contest O.A.No.625 of 2019 filed by the respondent No.1/SBI. Counsel seeks to draw a distinction between an Appeal against a judgment and decree passed on merits and an Appeal against an order refusing to recall an *ex parte* decree.

9. Learned counsel appearing for the respondent No.1/Bank submits that the petitioner cannot circumvent the statutory mandate of section 21 of The Recovery of Debts and Bankruptcy Act, 1993, in terms of payment of deposit of 50%/25%. Counsel further submits that the impugned order of the DRAT dated 06.03.2025 is adjudication of a substantive appeal which would be evident from the reference made by the DRAT to the amount of debt. According to counsel, no differentiation can be made between a substantive appeal and a procedural appeal, as sought to be argued on behalf of the petitioner.

Decision

10. We have considered the statutory framework under the RDBI Act against the guiding template of The Code of Civil Procedure, 1908 ('CPC'). We give our decision under different heads along with our interpretation of the relevant provisions.

Section 21 of the RDB Act – The requirement of a Deposit on filing an Appeal in the Appellate Tribunal.

11. Section 21 of the RDB Act is set out below:

“21. Deposit of amount of debt due, on filing appeal.— Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal fifty per cent of the amount of debt so due from him as determined by the Tribunal under section 19:

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent. of the amount of such debt so due to be deposited under this section.”

12. A purposive reading of section 21 of the RDB Act makes it clear that the bar on filing an appeal by a person aggrieved by the order of the DRT is conditional on two factors:

- a. A determination of debt;
- b. The Appeal is directed against the determination of debt.

13. The above would be clear from the language in section 21 uses the specific phrase '*as determined by the Tribunal under section 19.*' Section 19 of the RDB Act relates to an Application to the Tribunal (DRT) where a Bank/Financial Institution has to recover any debt from any person, subject to the jurisdiction requirements under section 19(1)(a), (aa), (b) and (c). A conjoint reading of sections 19 and 21 would indicate that the nature of the Appeal contemplated under section 21 is a substantive Appeal arising from a determination of debt due from the appellant to a Bank, Financial Institution or a consortium thereof.

14. Therefore, the question that falls for consideration is whether the Appeal preferred by the writ petitioner before the DRAT against the order dated 01.10.2024 can be brought within the contemplation

of section 21 i.e., a substantive appeal arising out of the determination of a debt by the DRT.

15. In our considered view, the Appeal filed by the petitioner before the DRAT is not a substantive appeal, but is rather a 'procedural appeal'. The reasons for this view are stated below. The reasons for this view are stated below.

16. The relevant facts may be reiterated at this stage. The petitioner had challenged the docket order of the DRT-I dated 01.10.2024 before the DRAT. The basis of the challenge before the DRAT was the dismissal of the petitioner's Interlocutory Application for condoning the delay of 1484 days in filing the application for setting aside the *ex parte* order passed by the DRT-I on 31.01.2020 (in the O.A. filed by the SBI). The petitioner's application was filed under section 22(h) of the RDB Act read with section 5 of The Limitation Act, 1963.

17. Section 22 of the RDB Act provides for the "Procedure and Powers of the Tribunal and the Appellate Tribunal". Section 22(1) provides for the procedural parameters of the DRT and the DRAT with

reference to The Code of Civil Procedure, 1908. Section 22(1) is set out below.

“Section 22(1) :- The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.”

18. The relevant part of section 22(2) is set out below.

“Section 22(2):- The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:”

19. Clause (g) of section 22(2) which is relevant for the dispute is set out below.

“Section 22(2)(g):- setting aside any order of dismissal of any application for default or any order passed by it ex parte;”

20. It is clear from the extracted part of section 22(2) that the power to set aside any order passed by the DRT *ex parte* can hence be equated with the power of a Civil Court under Order IX Rule 13 of the CPC, that is, for setting aside a decree passed *ex parte* against a defendant. The relevant part of Order IX Rule 13 is set out below.

“Order IX Rule 13: Setting aside decree ex parte against defendant.—

In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.”

21. As stated above, the subject matter of the appeal was procedural and interlocutory since the appeal filed by the petitioner was against the refusal of the DRT to condone the delay for setting aside the *ex parte* order passed against the petitioner. The prayer in I.A.No.736 of 2024, which was filed by the petitioner under section 5

of the Limitation Act read with section 22 (2)(h) of the RDB Act before the DRT, was for condoning the delay of 1484 days in filing the application for setting aside the *ex parte* decree dated 31.01.2020 passed in O.A.No.625 of 2019 against the petitioner in the respondent/Bank's O.A.

22. The DRT-I dismissed the petitioner's I.A. by the docket order dated 01.10.2024. The petitioner's appeal before the DRAT arises out of the said docket order dated 01.10.2024. Hence, the prayers in the petitioner's I.A. read with the docket order dated 01.10.2024 would show that the appeal filed by the petitioner before the DRAT had nothing to do with the substantive adjudication of debt as understood in section 19 of the RDB Act, under which the Bank/Financial Institution can make an application to the Tribunal to recover any debt from any person subject to the satisfaction of the jurisdictional conditions under section 19(1).

Section 21 of the RDB Act underlines the mandate of a Deposit on filing of a substantive Appeal against an adjudication of Debt.

23. The language of section 21 clarifies the nature of the appeal, i.e., an appeal preferred from adjudication of '*...the amount of*

debt...due to a bank or a financial institution...'. The appeal under section 21 involving an adjudication of debt/liability is again reinforced in section 21 by '...unless such person has deposited with the Appellate Tribunal fifty per cent of the amount of debt so due from him as determined by the Tribunal under section 19'. Section 21 contains a bar on the Appellate Tribunal from entertaining any such appeal unless the person (appellant) has deposited fifty percent of the amount of debt due to the Bank/Financial Institution under section 19 of the RDB Act.

24. The proviso to section 21 of the RDB Act confers discretion on the Appellate Tribunal for reducing the amount of deposit for reasons to be recorded in writing, within a ceiling of twenty-five per cent. The proviso once again reinforces the nature of the appeal under section 21 in the words '*...shall not be less than twenty-five per cent of the amount of such debt so due to be deposited under this section.*'.

25. The proviso clarifies the import of section 21 in respect of the limit of the deposit which is to be made by the person/appellant. It is of relevance that the entirety of section 21, including the proviso thereto, unequivocally defines the core of an appeal under section 21 –

which is a substantive appeal arising out of an adjudication of liability under section 19 of the RDB Act.

Section 22(2) of the RDB Act – Common Ground between the RDB Act and the CPC.

26. Section 22(2) confers equal powers to the DRT and the DRAT as vested in the Civil Court under the CPC while trying a Suit. Section 22(2) delineates the matters where the DRT/DRAT can exercise the powers of a Civil Court, namely, under Clauses (a) – (h).

27. Section 22(2) of the RDB Act recognises equal application of the powers vested in a Civil Court under the CPC to the Tribunal/Appellate Tribunal for the purpose of discharging their functions in debt recovery proceedings. Section 22(2) provides for such equal application of powers, notwithstanding section 22(1), which states that the Tribunal/Appellate Tribunal shall not be bound by the procedure laid down by the CPC.

28. In this context, the distinction between an appeal from a judgment/decreed under section 96 read with Order XLI of the CPC and a civil miscellaneous appeal under Order XLIII Rule 1 of the CPC

assumes relevance. Section 96 read with Order XLI (*'Appeals from Original Decrees'*) deal with substantive appeals from an original decree. Order XLIII Rule 1 of the CPC, on the other hand, deals with *'Appeals from Orders'* under section 104 of the CPC.

29. Order XLIII Rule 1(d) makes an order under Order IX Rule 13 (order rejecting an application seeking to set aside an *ex parte* decree against defendant) appealable under Order XLIII Rule 1. Thus, a distinction must be made between appeals under the aforesaid categories i.e., under section 96 read with Order XLI as opposed to appeals under Order XLIII Rule 1(d) of the CPC. If this distinction is applied to the RDB Act, it must logically follow that appeals from final determinations of debt are subject to section 21 of the RDB Act (akin to appeals under section 96 of the CPC) as opposed to appeals from interlocutory/procedural orders. The latter category, falling outside substantive appeals which should therefore not be subject to the condition of deposit under section 21 of the RDB Act or the proviso thereto.

Distinction between Substantive and Procedural Appeals.

30. The condition of stay of proceedings in an appeal is a further point of statutory differentiation made between section 96 and Order XLIII Rule 1 of the CPC.

31. Order XLI Rules 3 and 5 provides for an appeal making a deposit or furnishing security as a condition for stay of the execution of the decree. However, no such condition is present for stay/suspension of an order in respect to an Appeal under Order XLIII rule 1 of the CPC. Importing this analogy to section 21 of the RDB Act would serve as a further case in point for the petitioner. The petitioner has gone before the DRAT not from a final adjudication of debt but from an order rejecting the petitioner's application for setting aside the *ex parte* order of the DRT dated 31.01.2020.

32. Moreover, such differentiation is not unknown to the DRAT. In *New India Assurance Co. Ltd. Vs. Union Bank of India*¹, the DRAT drew a distinction between an appeal on the merits of the final order and an appeal questioning an *ex parte* decree passed without service on the defendants in the context of section 21 of the RDB Act.

¹ MANU/DK/0001/2006

33. *Kotak Mahindra Bank (P) Ltd. Vs. Ambuj A. Kasliwal*², relied on behalf of the respondent Bank, involved a different facts where an adjudication was made on the total amount due to the appellant Bank along with interest and other charges. The DRAT in that case also gave credit for the amount of Rs.152.81 crores received by the appellant Bank and had directed fifty per cent of the balance amount to be deposited by the respondent. The facts in *Kotak Mahindra* also did not involve any Interlocutory Application being made by the respondent.

34. Therefore, considering the nature of the appeal filed by the petitioner from the docket order dated 01.10.2024, we have no doubt that the appeal did not fall within the contours of section 21 of the RDB Act. The appeal was for procedural fairness i.e., to give the petitioner an opportunity to contest the O.A. filed by the Bank on merits. The absence of opportunity arose out of the *ex parte* order of the DRT dated 31.01.2020 whereby the applicant Bank was held entitled to proceed against the defendant Nos.1 to 4 including the petitioner/defendant No.4. The order records that the defendant Nos.1 to 5 were set *ex parte* on 08.11.2019.

² (2021) 3 SCC 549

The Inherent Infirmities of an *Ex Parte* Adjudication.

35. In the facts of the present case, the determination of debt by the DRT on 31.01.2020 in the O.A. filed by the respondent/SBI was admittedly an *ex parte* adjudication. As stated above, the order records that the defendants were set *ex parte* on 08.11.2019. The petitioner herein is the defendant No.4 before the DRT.

36. The order dated 31.01.2020 is self-evident in that the *ex parte* order was not a contested adjudication. The said order was passed in the absence of the petitioner who was one of the affected parties. The law provides for a remedy to seek setting aside of an *ex parte* decree in Order IX Rule 13 of the CPC. The opportunity of the aggrieved party is mirrored in section 22(2)(g) of the RDB Act. In essence, section 22(2)(g) preserve the power of the Tribunal and the Appellate Tribunal to recall an *ex parte* order.

37. Even otherwise, *ex parte* orders are an exception and not the rule. Courts have held that such orders lack the flavour of finality in the absence of the contesting party. In other words, Courts have looked askance at orders passed on a one-sided presentation of a dispute. Thus, denial of the right to correct the procedural infirmity in the specific context of refusal to condoning the delay in seeking to

recall an *ex parte* order must be put in its proper place in the scheme of the RDB Act.

38. The proper place would be section 22(2)(g) which facilitates access to justice by enabling recall of *ex parte* orders. Placing undue burden of a pre-deposit for such procedural access would certainly be onerous on the appellant and discordant to the legislative intention behind section 22(2)(g) of the RDB Act. To put it simply, imposing a mandatory condition for a non-substantive appeal to be entertained by the Appellate Tribunal would render the statutory right under section 22(2)(g) illusory, harsh and burdensome.

39. In a recent order passed by the Supreme Court on 17.04.2025 in *Sunshine Builders and Developers Vs. HDFC Bank Limited*³, it was observed that a distinction should be made between a final order passed by the DRT, determining the liability of the borrower or any other liability of any person and an appeal preferred under section 18 of the SARFAESI Act to the Appellate Tribunal. Section 18 of the SARFAESI Act is substantially similar to section 21 of the RDB Act by way of requiring the appellant to make a pre-deposit of fifty percent of amount of debt for the appeal to be entertained by the Appellate

³ 2025 SCC OnLine SC 1234

Tribunal. A similar question fell before a Division Bench of the Delhi High Court, the Allahabad High Court and the Calcutta High Court in *State Bank of India Vs. Doon Valley Rice Mills Ltd.*⁴, *Jai Gopal Kansal Vs. Indian Bank*⁵, and *Sutapa Chatterjee Vs. UCO Bank*⁶; respectively. The Courts made a distinction between an appeal arising out of determination of debt and a miscellaneous appeal where the latter would not come within the condition of section 21 of the RDB Act.

Conclusion

40. The above discussion and the reasons given therein persuades us to hold in favour of the petitioner. The appeal filed by the petitioner before the DRAT is not a substantive appeal from an adjudication of debt but an appeal for restoration of the principles of natural justice from an *ex parte* order excluding the petitioner from presenting his case. The significance of preserving the principles of natural justice has specifically been recognised by section 22(1) of the RDB Act. The petitioner's appeal cannot be brought within the stranglehold of the deposit requirement under section 21 of the RDB Act or the proviso contained therein.

⁴ 2023: DHC : 9308 - DB

⁵ 2019 (4) ALJ 10

⁶ 2013 (2) Cal L.T. 272

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41. The impugned order of the DRAT dated 06.03.2025, directing the petitioner (appellant) to make a pre-deposit thus calls for interference. The impugned order dated 06.03.2025 is accordingly set aside.

42. W.P.No.12395 of 2025 is allowed in terms of the above. Miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

GADI PRAVEEN KUMAR, J

28th August, 2025.

Note: L.R. Copy to be marked.
(B/o.) BMS/VA