



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 2521/2000

Bank of India, a Body Corporate, constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act No.5 of 1970 having its Head Office at Express Towers, Nariman Point, Bombay-400021 and one of its Branches at Delhi Gate, Karajali Bhawan, 3, Nyaya Marg, Udaipur, Rajasthan

----Petitioners

Versus

1. Paras Talkies, Hiran Magri, Sector No. 11, Udaipur, Rajasthan.
2. Mrs. Jashoda Parashuram Khatik, Occupation-Business, residing at House No.4, Kha, Hiran Magri, Sector No.11, Udaipur, Rajasthan (Deceased)
 - 2.1. Shri Parshu Ram Suyal, Resident of House No. 4-Kha-19, Hiran Magri, Sector No. 11, Udaipur, Rajasthan.
 - 2.2. Shri Hemendra Prakash Suyal, Son of Parshu Ram Suyal Resident of House No. 4-Kha-19, Hiran Magri, Sector No. 11, Udaipur, Rajasthan
 - 2.3. Shri Gajendra Prakash Suyal, Son of Parshu Ram Suyal Resident of House No. 4-Kha-19, Hiran Magri, Sector No. 11, Udaipur, Rajasthan
 - 2.4. Shri Rajendra Prakash Suyal, Son of Parshu Ram Suyal Resident of House No. 4-Kha-19, Hiran Magri, Sector No. 11, Udaipur, Rajasthan
 - 2.5. Smt. Kiran Bakliya w/o Suresh Bakliya, Daughter of Parshu Ram Suyal Resident of House No. 4-Kha-19, Hiran Magri, Sector No. 11, Udaipur, Rajasthan
3. Parashuram Nandram Khatik, Occupation Business, residing at House No.4 Kha-9, Hiran Magri, Sector No.11, Udaipur, Rajasthan
4. Shri Ramsingh Lal Singh Rathore, Adult, Occupation-Business, residing at Badi Sadri, District Chittorgarh, Rajasthan



5. Arvind Roshan Lal Sharma, Adult, Occupation-Business, residing at Aravali Filling Station, Udiyapool, Udaipur, Rajasthan

6. Debts Recovery Tribunal, Nehru Place, Tonk Road, Jaipur

7. Debts Recovery Appellate Tribunal, Ist Floor, Manzil-E-Mohammadiya, above Bank of India, Near Daulat Complex, Patthe Bapurao Marg, Mumbai-400008

-----Respondents

For Petitioner(s) : Mr. Ajay Shukla with
Mr. Raghav Sharma
For Respondent(s) : Mr. Arvind Gupta with
Mr. Sohan Sharma

JUSTICE ANOOP KUMAR DHAND

Order

02/07/2025

1. By way of filing this writ petition, a challenge has been led to the impugned order dated 30.03.2000 passed by the Debt Recovery Appellate Tribunal, Mumbai (for short 'the DRAT') by which the order dated 16.10.1998 passed by the Debt Recovery Tribunal, Jaipur (for short 'the DRT') has been modified and the rate of interest awarded by the DRT i.e. 15% per annum with quarterly interest has been reduced to the interest @12% per annum simple from the date of suit till the payment.

2. Learned counsel for the petitioner submits that huge amount was borrowed by the respondents and the same was not returned by them, hence, as per the terms and conditions of the loan agreement, a suit was filed for recovery of the



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borrowed amount with interest before the DRT. The said application was allowed and a direction was issued to the respondents to pay a sum of Rs.44,64,029.14/- with interest @15% per annum with quarterly interest. Counsel submits that aggrieved by the aforesaid order, the respondents preferred an appeal before the DRAT and the order passed by the DRT was confirmed, but rest of interest, awarded by the DRT, was modified/reduced to the rate of interest @12% per annum with simple interest from the date of filing of the suit till its actual payment, within a period of eight weeks. Counsel submits that the DRAT was not having any jurisdiction to exercise such discretion in favour of the respondents as the same is contrary to the terms and conditions of the loan agreement and against the provisions of Section 19(20) of the Recovery of Debts and Bankruptcy Act, 1993 (for short 'the Act of 1993'), hence, under these circumstances, interference of this Court is warranted and the order passed by the DRAT is liable to be quashed and set aside.

3. Per contra, learned counsel for the respondents opposed the arguments raised by the counsel for the petitioner and submitted that under Section 19(20) of the Act, 1993, the DRAT was having discretion to reduce the rate of interest, that is why, the said discretion was exercised and accordingly, the order impugned was passed. Counsel submits that this issue was referred to the Constitutional Bench of the Apex Court in the cases of **State Bank of India vs. M/s Sarathi Textiles and Others** and **State Bank of India vs. M/s Material**



Marketing Company & Others reported in **2009 (16) SCC**

328. Counsel submits that the Apex Court has held that Section 19 (20) of the Act of 1993 confers a discretion on the Tribunal to award interest on the application filed, as the Tribunal deems fit in the ends of justice. Counsel submits that various circumstances were narrated before the DRAT and the same are reproduced at page No.10 of the order impugned and considering those mitigating circumstances, the discretion was exercised by the DRAT and accordingly, the rate of interest was reduced, hence, under these circumstances, interference of this Court is not warranted and the petition is liable to be rejected.

4. Heard and considered the submissions made at the Bar and perused the material available on the record as well as the orders passed by the DRT and DRAT.

5. Perusal of the order passed by the DRAT reveals that the respondents narrated following six circumstances:

- (1) delayed disbursement.
- (2) lesser disbursement of Rs.1 lac.
- (3) Part payment of the loan even after completion of building, when it was not necessary.
- (4) Competition in the business of Cinema Theatre due to Video Cassettes films being shown.
- (5) deposit of Rs.60 lacs by the appellants uptil now.
- (6) Penal interest charged by the bank disallowed by the Presiding Officer.





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6. Considering the above six circumstances, the DRAT has used its discretion contained under Section 19(20) of the Act of 1993. The judgment passed by the DRAT finds support by the judgment passed by the Constitutional Bench of five Judges of Hon'ble Apex Court in the case of **M/s Sarathi Textiles (supra)**. This Court finds no error in the order passed by the DRAT as the discretion has been exercised by the DRAT as per Section 19(20) of the Act of 1993 and as per the judgment passed by the Apex Court in the case of **M/s Sarathi Textiles (supra)**.

7. This Court finds no merit and substance in this writ petition and accordingly, the same is hereby rejected. Pending applications, if any, also stand rejected.

8. The petitioners are directed to release the mortgaged documents to the respondents forthwith, without any further delay.

(ANOOP KUMAR DHAND),J

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