

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

MISCELLANEOUS APPLICATION NO.460 OF 2023

IN

SPECIAL LEAVE PETITION (C)NO.16537 OF 2021

ROCKLINE CONSTRUCTION COMPANY

...APPELLANT

VERSUS

DOHA BANK QSC & ORS.

..RESPONDENTS

J U D G M E N T

SANJAY KAROL J.

1. The present Miscellaneous Application is filed seeking clarification of the order dated 12.05.2022 passed by this Court in Special Leave Petition No.16537/2021 titled Rockline Construction Company v. Doha Bank QSC & Ors., whereby a

Judgement and Order of the High Court of Bombay upholding the setting aside sale of a property by the Debt Recovery Appellate Tribunal, Mumbai was not interfered with. The applicant has prayed for the following relief:

“a. Clarify the Order dated 12.05.2022 passed by this Hon’ble Court to the extent of fixing the rate of interest at which the amount deposited by the applicant in 2007 is to be refunded, and also mesne profit, if any to be deducted from the said amount to be refunded to the applicant.”

2. The auction sale confirmed in favour of the applicant M/s. Rockline Construction Company on 16th May 2007 was set aside with the applicant entitled to a refund of the entire sale amount along with the accrued interest, if any, after deducting the mesne profits and/or losses. There has been long-standing litigation *inter se* the parties regarding this transaction. At this juncture, it is observed that the present case has a chequered history, but for brevity, only relevant orders are being referred to.
3. The order dated 07.07.2014 passed by the Debt Recovery Appellate Tribunal, Mumbai, in Miscellaneous Appeal bearing No. 303/2010 titled as “*Oman International Bank S.A.O.G. v.*

M/s Rockline Construction Co. & Anr.”, holding the applicant entitled to a refund of the amount, is extracted as under:

“(1) The appeal is allowed with no orders as to costs. The order of the DRT is set aside and order of the Recovery Officer has been restored so far the Original Application is concerned.

(2) The Recovery Officer is directed to return Rs.1 Crore deposited by 2nd Respondent Mahendra Kumar Kawad with accrued interest within 7 days from the copy or receipt of the order.

(3) The Original Applicant/1st respondent is also entitled to withdraw the entire sale amount with accrued interest, if any, (after deducting mesne profits or loss) for his wrongful purpose on surrendering the entire possession of the property to the Bank.

(4) The mesne profits can be ascertained by appointing the Advocate/Counsel before the DRT on the application filed by the respective parties.

(5) The Bank is directed to take appropriate steps to recover the amount as per the procedure known to law.”

(Emphasis supplied)

4. It is not in dispute that the said order attained finality with the passing of the order dated 12.05.2022 by this Court in a Special Leave Petition filed by Rockline Construction Company (supra). It is a matter of record that much prior thereto, the

applicant had already moved an application seeking a refund of the amount in terms of the order dated 07.07.2014 passed by the Debt Recovery Appellate Tribunal, Mumbai, in which vide order dated 13.07.2021, the subject matter of the present application, passed by the Recovery Officer-I, Mumbai Debt Recovery Tribunal No.1, the applicant was held entitled to simple interest @ 9% per annum. This is against the applicant's claim for interest on such rate and terms as normally govern business transactions. The relevant portion of the order reads as under:

“7. Observations :

7.1

From the records it is observed that CH Bank has taken/charged interest @15% in the said loan account. It appears that similarly bank earns interest on the money by lending and it may have also used that money Rs.9.56 crore in further lending that would have been fetched interest over and above 6 percent ranging between 9% to 15% or above. Hence, it would be in the interest of the equity and justice to allow 9% simple interest on the sale consideration given/deposit made by the erstwhile auction purchaser.

7.2

From 2007 the Amount Rs.9.56 core @ 9% for 14 years would become 216056000.00 (Twenty-One Crores Sixty Lacs Fifty Six Thousand only).

7.3

In view of the above Rs.58580859.00 (Rs.216056000.00 – Rs.157475141.00) (Rupees Five Crore Eighty Five Lacs Eighty Thousand Eight Hundred Fifty Nine only) is quantified as amount of which erstwhile auction purchaser/ M/s. Rockline Constructions is entitled to withdraw on surrendering the entire possession of the property to the Bank.

XXXXXX

XXXXXX

XXXXXX

XXXX

1. xxx

2. xxx

3. Erstwhile auction purchaser M/s Rockline is entitled for Rs.58580859.00 (Rupees Five Crore Eighty Five Lacs Eighty Thousand Eight Hundred Fifty Nine only) after deducting the mesne profit/loss as per order of the Hon'ble DRAT and Hon'ble Bombay High Court."

(Emphasis supplied)

5. It is also borne from the record that assailing the same, the appellant preferred an appeal that is clear from the bare reading of the instant application.
6. In support of its claim, the applicant has placed contemporaneous material indicating the market practice at which the rate of interest is charged about commercial transactions; it is @14.5% with monthly rests, subject to change from time to time.
7. There is no dispute that the applicant deposited huge amounts as part of the auction bid in the year 2007.

8. In the backdrop above, it cannot be disputed that the applicant is entitled to interest. The only two contentious issues that survive, requiring adjudication, are (i) the rate and terms of interest to which the applicant would be entitled and (ii) the determination of mesne profits. In normal course, we would have ourselves decided the same; however, considering the fact that the appeal in relation to it is pending before the adjudicatory authority, being Appeal No.8 of 2022, Debt Recovery Appellate Tribunal, Mumbai, we refrain from doing so, enabling the said fact-finding authority to do so, expeditiously and in accordance with the law.
9. Before us, it is argued that the appeal is perhaps barred with the efflux of time. We find this objection, in the attending facts and circumstances, to be untenable given the long-standing pending litigation *inter se* the parties to the *lis*. As such, the plea of limitation cannot be allowed to stand in the way of the determination of the applicant's right and entitlement of monetary claims on merits.
10. Hence, having considered the arguments put forth in the application as also the written submissions filed on behalf of

the respondent, we dispose of the instant application in the following terms:

A) The parties shall appear before the appellate authority on 1st May 2023 and place on record a copy of the order;

B) The appellate authority shall decide the appeal preferred by the applicant strictly on merits, in accordance with the law, expeditiously and because each day's delay would only entail loss by way of the addition of amount payable as interest, shall decide the same within a period of two months. All parties shall fully cooperate. The issue of limitation shall be deemed to have been closed.

C) Liberty reserved to the applicant to approach this Court should the need so arise specifically.

11. The miscellaneous application stands disposed of.

.....**J.**
(KRISHNA MURARI)

.....**J.**
(SANJAY KAROL)

Dated : 24th April, 2023;
Place : New Delhi.