



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7008 OF 2024

M/s Ashwini Trading Co.,
Having its Office at 5/105,
Nityanand Marg, Opp. Andheri,
Railway Station, Andheri, Mumbai,
Through its proprietor
Mrs. Sushiladevi Rameshkumar Bagariya,
Age : 66 years, Occ : Business,
R/o C/o Bagaria Vegetables Ltd.,
Jafargate, Near Abhinay Talkies,
Aurangabad.

..PETITIONER

VERSUS

1. Housing Bank Limited,
Registered under the Companies Act, 1956
and having its registered office at
Ramon House, 169, Backbay Reclamation,
H.T. Parekh Marg, Mumbai – 400 020
and having one of its branches at
Jalna Road, Aurangabad,
Through its Manager and Power of Attorney Holder
Shri Manda Madhavah
2. Krishna Constructions
A registered partnership firm
having its office at Shop Nos.56,
57 and 58, Jai Towers, Padampura,
Station Road, Aurangabad
Through its Partners
3. Shri Sanjay Manoharrao Dashetwar
Age : Major, Occ : Business,
R/o C/o Waghehoure, D-2,
Sahyadri Garden, Vedantnagar,
Aurangabad
And plot No.54, Khivsara Park,
Ulkanagari, Aurangabad.

4. Shri Venkatesh Manoharrao Dashetwar
Age : Major, Occ : Business,
R/o Flat No.7, Rukhmini Apartments,
Chetnanagar, Aurangabad.
5. Shri Ravindra Rangnathrao Dikshit
Age : Major, Occ : Business,
32, Sahakarnagar, Aurangabad
and Flat No.4, Krishna Apartments,
Plot No.122, Jyotinagar,
Aurangabad.
6. Mrs. Anupama Ravindra Dashetwar
Age : Major, Occ : Business,
R/o 31, Rajnagar, Aurangabad.
7. Mrs. Gayatri Sanjay Dashetwar
Age : Major, Occ : Business,
R/o C/o Waghchoure, D-2,
Sahyadri Garden, Vedantnagar,
Aurangabad
And
Plot No.54, Khivsara Park,
Ulkanagari, Aurangabad.
8. Mrs. Nilima Venkatesh Dashetwar
Age : Major, Occ : Business,
R/o Flat No.7, Rukhmini Apartments,
Chetna Nagar, Aurangabad
And
Plot No.84, Khivsara Park,
Ulkanagari, Aurangabad.
9. Shri Batiah Manoharrao Dashetwar
(name in petition)/
Shri Satish Manoharrao Dashetwar
(name in Special Civil Suit)
Age : Major, Occ : Business,
R/o Flat No.2, Shivneri Apartment,
Ulkanagari, Aurangabad
And
Plot No.54, Khivsara Park,
Ulkanagari, Aurangabad.

10. Mrs. Renu Ravindra Dikshit
Age : Major, Occ : Business,
32, Sahakarnagar, Aurangabad
And
Flat No.4, Krishna Apartments,
Plot No.122, Jyotinagar,
Aurangabad.
11. Ms. Bhargavi Rangnathrao Dikshit
Age : Major, Occ : Business,
32, Sahakarnagar, Aurangabad
And
Flat No.4, Krishna Apartments,
Plot No.122, Jyotinagar,
Aurangabad.
12. Shri Ravindra Manoharrao Dashetwar
Age : Major, Occ : Business,
R/o 31, Rajnagar, Aurangabad.

..RESPONDENTS

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Mr. S.P. Shah, Advocate for the petitioner
Mr.S.V. Adwant a/w Mr. H.S. Adwant and Mr. Aarya
Deshpande, Advocates for respondent No.1.

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CORAM : ROHIT W. JOSHI, J.
RESERVED ON : 25th JULY, 2025
PRONOUNCED ON: 11th AUGUST, 2025

JUDGMENT :

The present petition takes exception to order dated 4th April, 2024 passed by the learned District Judge-2, Aurangabad, on an Application Exhibit-230 in Commercial Suit No.12/2019, thereby ordering transfer of the said suit to Debts Recovery Tribunal, Aurangabad (hereinafter referred to as "DRT, Aurangabad").

2. A Company, named HDFC Limited had filed a suit, being Special Civil Suit No.46/2007 for recovery of amount of Rs.3,14,85,223/- against the petitioner and respondent nos.2 to 12. The suit is pertaining to recovery of amount advanced in two separate loan accounts. The outstanding amount in two loan accounts as per respondent no.1/plaintiff was Rs.2,32,28,013/- and Rs.82,62,210/- as on the date of filing of suit. After commencement of Commercial Courts Act, 2015, the said suit was transferred to Commercial Court and was registered as Commercial Suit No.12/2019. Pending the said suit, HDFC Limited came to be amalgamated with HDFC Bank Limited, vide order dated 17th March, 2023 passed by the National Company Law Tribunal, Mumbai (NCLT, Mumbai) in Company Scheme Petition No.240/2022, granting approval to the scheme of amalgamation. HDFC Bank Limited is a Banking Company under the Banking Regulation Act, 1949. In view of amalgamation of HDFC Limited with HDFC Bank Limited, all the assets and liabilities of HDFC Limited stood vested with HDFC Bank Limited. Under the scheme, HDFC Bank Limited is also entitled to continue to prosecute all litigations initiated by HDFC Limited prior to its amalgamation with HDFC Bank Limited. Accordingly, name of

HDFC Bank Limited is impleaded as plaintiff in the suit and the suit is being prosecuted by HDFC Bank Limited.

3. In this backdrop, HDFC Bank Limited filed an Application, vide Exhibit – 230 in Commercial Suit No.12/2019 praying for transfer of the said suit to DRT, Aurangabad in view of Sections 17 and 18 of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as “RDB Act”).

4. The petitioner, who is defendant no.11 in the said suit opposed the application by filing detailed reply on 20th February, 2024. After hearing rival submissions, the learned Trial Court has allowed the Application filed vide Exhibit-230 vide order dated 4th April, 2024 holding that the suit was required to be transferred to DRT, Aurangabad in view of amalgamation of HDFC Limited with HDFC Bank Limited. Accordingly, the learned Trial Court ordered the matter to be placed before the learned Principal District Judge, Aurangabad for appropriate administrative action. The said order dated 4th April, 2024 is challenged by defendant

no.11/petitioner by filing the present petition.

5. Mr. Subodh Shah, learned Advocate for the petitioner contends that DRT will not have jurisdiction to try the suit, which is ordered to be transferred to it by the impugned order. The learned Advocate has referred to Section 19 of the RDB Act, to contend that an Application under Section 19 of the said Act can be filed by a Bank or a Financial Institution to recover debt from any person. He contends that a proceeding for recovery of any amount other than debt cannot lie before Tribunal. He refers to definition of term “Debt” as defined under Section 2(g) of the Act to contend that the term “Debt” means only such amount, which a bank claims to be due to it from any person during the course of any business activity undertaken by the Bank. The contention is that in the present case, the loan was advanced by HDFC Limited, which was not a bank, and therefore, DRT will not have the jurisdiction to entertain the controversy forming subject matter of the suit. Mr. Shah contends that the date on which the suit was filed by HDFC Limited, the Civil Court was having jurisdiction to try and decide the suit on merits. He contends that the suit is filed in the year 2007, after

establishment of DRT. Referring to the aforesaid undisputed facts, Mr. Shah draws attention to Section 31 of the RDB Act and contends that in view of the said provision only such suits or proceedings pending before the Court can be ordered to be transferred to DRT, which would have otherwise been within the jurisdiction of DRT, if DRT was established on the date on which the suit or proceeding was filed. In other words, the contention of Mr. Shah is that in case where the cause of action in a suit is such that if DRT had been in existence on the date of filing of suit, it would have the jurisdiction over the subject matter of the suit, only then such suits can be ordered to be transferred to DRT after establishment of DRT. Mr. Shah contends that a suit which as on the date of filing would not lie before the DRT, cannot be ordered to be transferred to DRT only because it falls within the jurisdiction of DRT because of certain subsequent development. Mr. Shah contends that since the original plaintiff/HDFC Limited was not a Bank or a Financial Institution, the Civil Suit filed by it was maintainable before the Civil Court and DRT did not have jurisdiction to entertain the said suit. He, therefore, contends that such a suit cannot be ordered to be transferred to DRT in view of Section 31 of the RDB Act. This contention is raised

without prejudice to the first contention that DRT does not have the jurisdiction over the subject matter of the suit even today since the money advanced by HDFC Limited, which was neither a Bank nor Financial Institution, cannot be termed to be debt within the meaning of Section 2(g) of the RDB Act. Mr. Shah contends that merely because the original plaintiff stood amalgamated with another company resulting in assignment of loans, the Commercial Court will not lose jurisdiction over the suit. He contends that when subject matter of suit is assigned and devolves upon another person, the person in whose favour assignment is made or interest is devolved steps into the shoes of assigner and that even after assignment the suit has to continue in the same manner as if there was no assignment.

6. Mr. Shah, learned Advocate for the petitioner places reliance on the following judgments :-

(a) **Definition of Debt** :-

- (i) ***SBI Vs. Raman Kapur and others, 2009 SCC OnLine Del. 88***
- (ii) ***State Bank of Bikaner & Jaipur Vs. Ballabh Das and Co., (1999) 7 SCC 539***

(iii) *Oriental Bank of Commerce Vs. Shri Mohan Gupta, 1996 SCC OnLine Del 202*

(iv) *Bank of India Vs. Ramniklal Kapadia, AIR 1997 Guj 75*

(b) Effect of Assignment :-

(i) *Dhurandhar Prasad Singh Vs. Jai Prakash University and others, (2001) 6 SCC 534.*

7. Per contra, Mr. S.V. Adwant, learned Advocate for respondent no.1/plaintiff contends that since the plaintiff is a Banking Company registered under the Banking Regulation Act, 1949, suit is rightly transferred by the learned Trial Court to DRT. He contends that suit for recovery by a Banking Company against any borrower would essentially lie before DRT. Mr. Adwant contends that the term debt means any amount that is claimed as due by the Bank or the Financial Institution and since the amount is now being claimed by a Banking Company, which is a Bank within the meaning of Section 2(d) of the Act, proceeding will lie only before the DRT. Mr. Adwant refers to Sections 17, 18 and 19 of the Act to contend that jurisdiction of Civil Court and Commercial Court is now barred. With respect to contention of Mr. Shah as

regards interpretation of the term debt, Mr. Adwant counters that the term debt does not mean any amount advanced by a Bank and claimed by it as due but any amount, which is claimed by the Bank as due. He further contends that it is express intention of the Legislature that suits for recovery of debt by Banks should be decided by DRT alone, and therefore, Sections 17 and 18 will override Section 31 of the RDB Act. He contends that Section 31 is included in the Act only to ensure that even suits for recovery filed by the Banks before the appointed day should be transferred to DRT. He contends that Section 31 reinforces the mandate of Section 18 that no Court shall have jurisdiction to try and decide proceeding for recovery of debts by a Bank.

8. Mr. Adwant, learned Advocate for respondent no.1 has placed reliance on the following judgments :-

- (i) ***Kotak Mahindra Bank Limited Vs. Stiefel Und Schuh India Ltd., and others, 2009 SCC OnLine Del 32.***
- (ii) ***Vivek Narayan Sharma Vs. Union of India, 2023(3)SCC 1***
- (iii) ***Harshad Chiman Lal Modi Vs. DLF Universal Ltd., and another, (2005) 7 SCC 791***

- (iv) *Saraswati Industrial Syndicate Ltd., Vs. Commissioner of Income Tax, 1990 (Supp) SCC 675*
- (v) *Allahabad Bank Vs. Canara Bank and another, (2000) 4 SCC 406*
- (vi) *United Bank of India, Calcutta Vs. Abhijit Tea Co. Pvt. Ltd., and others, (2000) 7 SCC 357*
- (vii) *Indiabulls Housing Finance Limited Vs. Deccan Chronicle Holdings Limited and others, (2018) 14 SCC 783.*

9. As regards judgments referred by Mr. Shah at Sr. Nos.1, 3 and 4, in the said cases the Bank had filed a suit for recovery of amount, which was siphoned off by its employees by resorting to unlawful means, such as forgery, falsification of accounts and other acts of fraud. In this context, the learned Single Judges of Delhi and Gujarat High Courts have held that the amount claimed to be due by the Bank cannot be recovered by initiating the proceeding under the RDB Act since the amount due and payable does not fall within the definition of term debt, as defined under the Act. In this context, it is held that the scheme of the RDB Act is to provide for recovery of loan advanced by Banks to borrower during the course of banking business. These judgments have to be read and interpreted in the context of the peculiar facts of the

said cases. The said judgments will not be applicable to the facts of the present case. The said judgments do not deal with situation, which arises for consideration in the case at hand where the original lender/plaintiff which was not a bank has merged/amalgamated with a Bank after advancing the loan while suit for recovery was pending. The ratio of the judgments is not that on amalgamation of original lender with a Bank, the Bank cannot prosecute the proceeding for recovery before DRT and/or that DRT will not have the jurisdiction to entertain the proceeding for recovery of amount due to a Bank which was initially advanced by a non-banking entity, which has subsequently merged with the Bank on amalgamation.

10. As against this, the Division Bench judgment of Delhi High Court in the matter of *Kotak Mahindra Bank Ltd., (supra)* relied upon by Mr. Adwant is squarely applicable to the facts of the present case. In the said matter also, loan was advanced by a non-banking entity to the defendant/borrower and while suit for recovery filed by the original lender was pending, the debt was assigned to a Bank. In the backdrop of such facts, Delhi High Court has held that once the debt was

assigned by a non-banking company in favour of a Bank, jurisdiction to entertain the suit was vested exclusively with DRT and that in such circumstances, the suit was rightly transferred to the DRT. The Division Bench has also dealt with Section 31 of the Act to hold that although, the situation was not squarely covered by Section 31 yet having regard to the overall scheme of the Act, the suit was required to be transferred to DRT after assignment of the suit claim to a Bank. It was held that after the assignment, the suit filed before Delhi High Court on its Original Side was not maintainable since the High Court lost jurisdiction to try the same in view of the assignment. The present case stands on a better footing, in as much as, here the debt is not assigned in favour of a Bank but the original plaintiff stands amalgamated with the Bank.

11. At this juncture, it will be appropriate to refer to the judgment of the Hon'ble Supreme Court in **United Bank of India, Calcutta (supra)**. In the said case, the plaintiff bank had filed a suit for recovery of amount before commencement of RDB Act, 1993. The matter went in Appeal and was remanded back for fresh adjudication. The remand was after the RDB

Act, 1993 came into force. In this backdrop of facts when the question of transferring the suit to DRT arose, the defendant filed an application that suit should be retained on the file of High Court exercising its Original Jurisdiction and should not be transferred to DRT. The High Court allowed the application filed by the defendant. The Bank challenged the said order before the Apex Court. In this context, the Apex Court has considered the provisions of RDB Act and particularly, Section 18 thereof. The Hon'ble Apex Court was pleased to allow appeal preferred by the Bank. The relevant observations of the Hon'ble Apex Court are extracted hereinbelow for ready reference :-

"26. That principle has been applied to this very Act by this Court recently in Allahabad Bank V. Canara Bank. If the said principle is applied, it is clear that the provision in Section 31 must be construed in such a manner that, after the Act, no suit by the Bank is decided by the civil court and all such suits are decided by the Tribunal."

12. The Hon'ble Supreme Court in the matter of ***Allahabad Bank Vs. Canara Bank and another, (2000)4 SCC 406*** has observed as under :-

"21. In our opinion, the jurisdiction of the Tribunal in regard to adjudication is exclusive. The RDB Act requires the Tribunal alone to decide applications for recovery of debts due to banks or financial institutions."

13. Mr. Shah contends that ***Kotak Mahindra Bank Ltd., (supra)*** proceeds on an assumption that upon assignment of debt by a non-banking entity to a Bank, DRT will have the jurisdiction. He submits that the contention raised in the present petition that DRT will not have jurisdiction over a case in which loan was initially advanced by a non-banking entity and the suit was filed for recovery of the same and subsequently, when loan assigned to a Bank, DRT will not have jurisdiction since the said loan, which is advanced by a non-banking entity will not fall within the definition of the term "debt" under Section 2(g) of the Act. It is true that the judgment proceeds on the assumption that upon assignment of debt as aforesaid, DRT will have jurisdiction since the amount is claimed as due by the Bank.

14. The contention of Mr. Shah that DRT will not have jurisdiction to decide the suit since the amount allegedly

payable by the defendants to respondent no.1 Bank does not fall within the definition of the term debt, as defined under Section 2(g) of the RDB Act, though it is attractive at the first blush does not withstand a deeper scrutiny. The definition of term "debt" in RDB Act reads as under :-

"2(g) 'debt' means any liability which is claimed as due from any person by a bank during the course of any business activity undertaken by the bank whether secured or unsecured or assigned....."

15. The contention of Mr. Shah is that unless the amount is advanced by a Bank as a loan, the amount due will not partake the character of debt, as defined under Section 2(g) of the Act. In this regard, it needs to be seen that the provision contemplates that the amount must be claimed as due by a Bank and this amount must be claimed as due during the course of any business activity undertaken by the Bank. The provision does not contemplate that the Bank must claim amount due which is advanced by it during the course of any business. Recovery of amount claimed as due during the course of banking business will also meet the parameters of definition of the term debt, as defined under Section 2(g). If the contention of Mr. Shah is to be accepted, the word

“advanced” as will have to be added in the provision and the words, "claimed as due" shall have to be read as "advanced and claimed as due". A plain grammatical meaning of the definition indicates that what is contemplated is that the amount should be claimed as due during the course of business activity and not that the amount must be advanced and then claimed as due during the course of business activity. When loan advanced by any entity is assigned to a Bank or in the present case an entity which has advanced loan is amalgamated with the Bank, the Bank is entitled to claim the outstanding amount as due during the course of its business activity. To recover such amount also will be a part of business activity of the Bank, although the amount may not have been advanced by the Bank itself as a loan. On a plain reading of the provision, interpretation as offered by Mr. Shah cannot be accepted.

16. Mr. Shah contends that the impugned order of transfer of suit cannot be sustained in view of Section 31 of RDB Act, which provides for transfer of suits to DRT. Section 31 of the Act provides that every suit and other proceeding filed before any Court immediately before establishment of

DRT shall be transferred to DRT, if the cause of action on the basis of which suit is filed would fall within the jurisdiction of DRT and the matter would have been filed before DRT. The contention of Mr. Shah is that in the present case, date on which suit was filed DRT was already in existence and that the cause of action in the suit did not fall within the jurisdiction of DRT. His contention is that both contingencies contemplated under Section 31 are not satisfied, and therefore, the suit cannot be transferred to DRT.

17. Literal meaning of Section 31 will imply that a suit can be transferred to DRT only when a suit is filed in a Court before establishment of DRT and the cause of action in suit is such that had DRT been in existence on the date of institution of suit, DRT would have had jurisdiction over subject matter of the suit. In the present case, the suit was admittedly filed after DRT had come into existence and as on the date of filing of the suit, the subject matter of the suit was not amenable to jurisdiction of DRT since the plaintiff (HDFC Limited) did not fall within the definition of the term "bank" as defined under the RDB Act.

18. However, Section 31 cannot be interpreted in a vacuum. It has to be read with other provisions of the Act, particularly, Sections 17 and 18, which confer jurisdiction upon DRT and bar jurisdiction of all Courts with respect to matters which fall within jurisdiction of DRT.

19. Section 17 provides that on and from the appointed day, DRT shall have jurisdiction, power and authority to entertain and decide applications from Banks and Financial Institutions for recovery of debt. As per Section 2(c), the term "appointed day" means the date on which DRT is established. As per Section 2(b), the term "application" means an application made for recovery of debt by a Bank before the Tribunal. What is relevant to be noted is that the jurisdiction is conferred by using two words, "entertain and decide". Section 18 creates an express bar on authority of any Court to exercise jurisdiction, power or authority in relation to any matter specified under Section 17. It needs to be mentioned that Section 18 is a substantive provision, which bars jurisdiction of all the Courts to deal with matters which can be adjudicated by DRT. On merger of original plaintiff(HDFC Limited) with respondent no.1 (HDFC Bank Limited),

respondent no.1 - Bank is entitled to claim the outstanding amount as due and proceed with the matter for recovery of the said amount. This act of recovery will be in the course of business activity of the Bank. The proceeding, therefore, satisfies the ingredients of an application within the meaning of Section 2(b) and Section 19 of RDB Act. In view Section 18, the jurisdiction of Commercial Court will be barred to decide the, "application". In view of the scheme of Sections 17, 18 and 19 of RDB Act, the matter must lie before DRT. Section 31 needs to be interpreted in the light of these provisions. Section 17 speaks about subject matter jurisdiction of DRT. Section 18 provides bar on jurisdiction of all Courts to decide matters which fall within jurisdiction of DRT under Section 17 of the RDB Act. Section 31 is a procedural provision for transfer of matters, which fall within the jurisdiction of DRT from a Court where the suit is pending to DRT for adjudication of the same on merits. In the considered opinion of this Court, Section 31 further emphasizes that the bar under Section 18 is absolute and on and from the appointed day, no Court other than DRT shall have jurisdiction to deal with any matter, which falls under the jurisdiction of DRT. The provision is incorporated in the statute with an object to ensure that even pending suits

are transferred to DRT if the subject matter of the suit is amenable to jurisdiction of DRT. The provision reinforces mandatory nature of Section 18. It needs to be mentioned that Section 18 is couched in negative terms, which implies that it is absolutely mandatory.

20. It is a well settled legal principle that attempt shall be made to harmonise two different provisions which appear to be in conflict with each other. However, when they cannot be reconciled attempt should be made to identify the dominant purpose of the Statute and find out which provision should override the other.

21. While dealing with the said legal principle, Justice G.P. Singh in his book, "**Principles of Statutory Interpretation**", has referred to *Institute of Patent Agents V. Lockwood, (1894) AC 347 (HL)*, which reads as under :-

"You have to try and reconcile them as best as you may. If you cannot, you have to determine which is the leading provision, and which the subordinate provision and which must give way to the other."

22. Provisions of Sections 17, 18 and 31 of the RDB Act are required to be interpreted in the light of aforesaid legal principle. In this context, when Section 17 of the Act is perused, it is found that jurisdiction upon DRT is conferred to entertain and decide the applications by the banks for recovery of debt due to them. As stated above, Section 18 bars jurisdiction of any Court or Authority to deal with a matter, which falls within the jurisdiction of DRT under Section 17. Bar under Section 18 as can be seen from reading of the provision operates against exercising any jurisdiction. The bar does not operate only at the stage of institution of the suit. Section 18 clearly implies that the bar is applicable to pending suits as well. This interpretation is further reaffirmed by Section 31 of the Act.

23. Section 31 is included to ensure that even pending suits should go before DRT. Contingency of amalgamation of a non-banking entity with a bank though is not considered while enacting the said provision. However, having regard to the mandate of Section 18, in the considered opinion of this Court, it will be appropriate to resort to

purposive interpretation while dealing with Section 31. Sections 17 and 18 are substantive provisions and Section 31 is a provision dealing with procedure. In view of the above, in the considered opinion of this Court, rather than literal interpretation purposive interpretation should be adopted while interpreting Section 31. Section 31 must submit to a mandate of Section 18 read with Sections 17, 2(d) and 19 of the Act. It will be appropriate to honour the scheme of the Act, which clearly bars jurisdiction of all Courts to exercise jurisdiction with respect to matters which fall within jurisdiction of DRT by directing that the suit must be transferred to DRT, although strictly speaking present case is not squarely covered by Section 31 of the RDB Act.

24. After filing of the suit the original plaintiff (HDFC Limited) has been amalgamated with the present petitioner (HDFC Bank Limited), which is undisputedly a banking company and as such, a bank within the meaning of the Act. After amalgamation, the suit answers description of the term "application" as defined under Section 2(b) of the Act and is of the nature of a proceeding referred under Section 19 of the Act. Therefore, DRT will have jurisdiction to entertain and

decide the suit and jurisdiction of other Courts will be barred in view of Section 18 of RDB Act.

25. As regards the contention of Mr. Shah pertaining to the assignment of right in favour of respondent no.1, Mr.Adwant contends that the said argument will not hold good in the present case since this is not a case of assignment of right to continue to prosecute the suit by one person in favour of another but a case of complete amalgamation of the original plaintiff with another Company. Mr. Adwant contends that after the amalgamation, the original plaintiff/HDFC Limited ceases to exist, and therefore, the principles relating to assignment will not be applicable to the case at hand. He contends that amalgamation should not be confused with assignment.

26. The learned Advocate for the petitioner has placed reliance on judgment of the Hon'ble Supreme Court in the matter of *Dhurandhar Prasad Singh (supra)*, wherein it is held that when a person acquires interest by obtaining a leave to proceed with the suit, the suit in his hands is not a new suit but the old suit is carried at the instance of such person and

he is bound by all the proceeding upto the stage when he obtains a leave to prosecute the proceeding. Referring to the said judgment, Mr. Shah contends that nature of suit will continue to be a suit filed by a non-banking company and as such the Commercial Court shall continue to have jurisdiction over the subject matter. In this regard, it must be stated that the present case is not one of assignment but of amalgamation. The erstwhile plaintiff has not assigned the rights in the suit in favour of the present plaintiff/petitioner. The present case is a case of amalgamation where the erstwhile plaintiff has completely merged with the present plaintiff (HDFC Bank Limited). In this regard, it will be profitable to refer to the judgment of the Hon'ble Supreme Court in the matter of ***Saraswati Industrial Syndicate Ltd.*** (*supra*), wherein it is held as under:-

"5. Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation. When two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity."

6. The true effect and character of the

amalgamation largely depends on the terms of the scheme of merger. But there can be any doubt that when two companies amalgamate and merge into one the transferor Company loses its entity as it ceases to have its business. However, their respective rights or liabilities are determined under the scheme of amalgamation but the corporate entity of the transferor Company ceases to exist with effect from the date the amalgamation is made effective.

27. As against this, the term "assignment" implies transfer or making over of property by one entity to another. It involves transfer of property. The judgment in the matter of ***Dhurandhar Prasad Singh*** (supra), which deals with assignment will therefore not apply to the present case, which is not a case of assignment of subject matter of the suit. The present plaintiff (HDFC Bank Limited) is not continuing with the suit as assignee but because the original plaintiff (HDFC Limited) has lost its existence upon amalgamation with the present plaintiff (HDFC Bank Limited).

28. It must also be stated that the definition of the term "debt", as defined under Section 2(g) also means liability, which is claimed as due from any person by the Bank on assignment of the same. Section 2(g) specifically refers to a

claim, which is secured or unsecured or assigned. A monetary claim, which is assigned to a Bank will also be a debt within the meaning of Section 2(g) of RDB Act.

29. In view of the above, it needs to be held that after amalgamation of original plaintiff (HDFC Limited) with the present plaintiff (HDFC Bank Limited), the DRT has jurisdiction over the subject matter of the suit and the suit is rightly transferred by the learned Commercial Court to DRT. The petition is, therefore, dismissed with no orders as to costs.

30. Civil Applications, if any, stand disposed of.

[ROHIT W. JOSHI, J.]

At this stage, learned Advocate for the petitioner makes a motion to continue the *interim order* granted by this Court for a period of eight weeks. Learned Advocate for respondent No.1 has strong objection. However, the impugned order is operating since 09.07.2024, the same is continued for six weeks from today.

[ROHIT W. JOSHI, J.]