

I. Case Reference

Case Citation	:	(2020) ibclaw.in 78 DRAT
Case Name	:	M/s Gyana Jena & Partners a partnership Firm Vs. The Federal Bank Limited
Appeal No.	:	Diary No.138 of 2020
Judgment Date	:	13-Feb-20
Court/Bench	:	DRAT Kolkata Bench
Act	:	Recovery of Debts & Bankruptcy Act 1993
Present for Appellant(s)	:	Mr. Ranjan Kumar Rout Learned counsel for Appellants
Present for Respondent(s)	:	Ms. Aparajita Rao Learned counsel for Respondent Bank
Chairperson	:	Mr. Justice R. S. Kulhari

II. Full text of the judgment

THE APPELLATE TRIBUNAL:

Learned counsel appearing for the bank raised preliminary objection that the Appellants have challenged the distinct orders of the Tribunal below by filing the present Appeal therefore, the Appeal is not entertainable. With regard to this objection, the learned counsel for the appellants submits that since both the orders were almost similar therefore, they filed single Appeal. However, one of the issues may be decided in the present Appeal and Appellants may be granted liberty to challenge the another issue by filing a separate Appeal at the earliest.

Considered the objection and perused the record.

It appears that, by way of one application the Appellants requested to grant sometime to file written statement with a direction to the bank to furnish some details and another application was filed for impleadment of necessary parties. Both the applications were rejected on 03.02.2020 by separate orders indicating separate I.A. numbers. Thus, the issues involved in both the applications were distinct and separate and therefore, the appellants were required to challenge the same by filing separate Appeals and both the orders cannot be challenged in one Appeal. In these circumstances, the liberty is being granted to the Appellants to challenge the order passed with regard to impleadment of parties by filing separate Appeal and the issue with regard to filing of written statement is being considered in this Appeal. Therefore, this Appeal is confined qua the order passed with regard to closure of written statement.

Heard the counsels for the parties on this issue.

Learned counsel for the Appellants submits that the bank has not pleaded the case in proper perspective nor it was properly paragraphed and paginated and some documents were not supplied therefore, the Appellants could not file the written statement within stipulated period. The Tribunal below has erred in not allowing further time to file written statement. Therefore, the impugned order dated 03.02.2020 be set aside and Appellants be allowed to file written statement.

On the contrary, learned counsel for the bank submits that the summons were served to the defendants/Appellants way back in April, 2018 and the Appellants have not filed written statement

within 30 days extendable for a further period of 15 days as mandatory in nature as laid down by Hon'ble Madhya Pradesh High Court in Misc. Petition No.2271 of 2018 in **M/s Crest Steel and Power Private Limited & Others v. Punjab National Bank & Others** decided on 10.05.2018. The SLP filed against that order before the Hon'ble Supreme Court has also been dismissed on 20.07.2018. Therefore, there is no infirmity in the impugned order.

Considered the arguments and perused the record.

Admittedly, the summons were served to the Appellants way back in April, 2018. As per Sec.19(5)(i) of RDB Act, the defendants are required to file written statement along with counter claim if any, within 30 days from the date of service of summons. However, the same may be extended for a further period of 15 days in exceptional case and in special circumstances to be recorded in writing. The Hon'ble Madhya Pradesh High Court in the above referred case while interpreting this provision, has held it to be mandatory which has been affirmed by the Hon'ble Supreme Court. Therefore, there was no discretion with the learned Presiding Officer to extend the time beyond 45 days. The Appellants/defendants may raise every objection in the written statement and even if there is any requirement, the written statement may be amended later on but after service of summons, the written statement is mandatorily to be filed within 30 days, in any case within 45 days. The principle laid down in the above referred judgment is squarely applicable in the present case. Therefore, I find no reason to interfere with the impugned order and the Tribunal below has rightly closed the right to file written statement. However, the Appellants may participate in the further proceedings of the matter in accordance with law.

With these observations, the Appeal is dismissed with no order as to costs.

The Appellants are granted liberty to file a separate Appeal with regard to the order passed for implementation of necessary parties and if necessary, they may file urgency petition.

Copy of the judgment be sent to the parties and DRT concerned and be also uploaded in the website of this Tribunal.

File be consigned to Record Room.

(R. S. Kulhari)
Chairperson

Click on below button to search similar judgments:

[Case Laws Portal](#)

[Join WhatsApp Channel](#)

[Subscribe Now](#)

[Corporate Plan](#)

[Dashboard/OnePage](#)

[Case Laws Portal](#)

[Bare Acts/Legal Contents](#)

[IBC Commentary](#)

[Arbitration Portal](#)

[Case Citation](#)

[Weekly Bulletins](#)

[Articles](#)

[e-Journals](#)

[Annual Case Digest](#)

[Testimonials](#)

Follow for daily updates:

-  [Facebook](#)
-  [LinkedIn](#)
-  [Telegram](#)
-  [X](#)
-  [WhatsApp](#)
-  [YouTube](#)

[Download Mobile App](#)

[Subscribe Daily Email Newsletter](#)

- - -

Disclaimer: While every effort is made to avoid any mistake or omission, this document including case-summary/brief about the decision/ add. info/headnote/ judgment/order/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this document. The authenticity of this text must be verified from the original source. Read more [here](#).