



2023 INSC 321

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Reportable

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

Writ Petition (Civil) No 155 of 2023

M P High Court Bar Association

... Petitioner

Versus

Union of India & Ors

... Respondent

J U D G M E N T

Dr Dhananjaya Y Chandrachud, CJI

1 Thirty-nine Debt Recovery Tribunals¹ and five Debt Recovery Appellate Tribunals² have been constituted under the Recovery of Debts and Bankruptcy Act 1993³.

2 The Department of Financial Services in the Union Ministry of Finance

Signature Not Verified
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Sanjay Kumar
Date: 2023.04.05
17:15:27 IST
Reason:

1 "DRTs"

2 "DRATs"

3 "1993 Act"

issued a notification on 23 January 2020 by which the Debt Recovery Tribunals (DRTs) and Debt Recovery Appellate Tribunals (DRATs) Electronic Filing Rules 2020⁴ were notified. Originally, the e-filing of pleadings and applications was made optional. On 22 July 2021, a notification was issued by which the e-filing of cases involving a value of Rs 100 crores and above was made mandatory. At a conference of the Chairpersons of DRATs and the Presiding Officers of DRTs on 9 June 2022, it was recommended that e-filing should be made mandatory, irrespective of the amount involved in the proceedings.

- 3 On 31 January 2023, a notification was issued by the Union government in exercise of powers under Section 36 of the 1993 Act for amending the Electronic Filing Rules so as to make e-filing of pleadings by applicants mandatory. Any other form of filing, it is provided, shall not be taken on the record.
- 4 These proceedings under Article 32 of the Constitution have been instituted to challenge the provisions of amended Rule 3 of the E-filing Rules and for a direction to the DRTs and DRATs across the country to continue with hybrid filing of pleadings and applications before them.

⁴ "2020 Rules"

- 5 Notice was issued in these proceedings on 24 February 2023.
- 6 Pursuant to the order issuing notice, a counter affidavit has been filed by an officer in the Department of Financial Services of the Union Ministry of Finance. Besides setting out the sequence leading up to the amendment to the E-filing Rules, the affidavit states that prior to the issuance of the notification dated 31 January 2023, an analysis was carried out of the filing of cases before the DRTs. It was observed that in respect of cases where the value is less than Rs 100 crores, the percentage of e-filed cases was approximately 25.89% in the case of Original Applications⁵ and 20.84% in the case of Securitization Applications⁶. This was when e-filing for cases involving a value of less than Rs 100 crores was not mandatory prior to 31 January 2023. As regards cases involving an amount of Rs 100 crores and above, the percentage of e-filed cases was 15.87% in the case of OAs and 23.81% in SAs. On the basis of the above data, it has been submitted that even smaller borrowers were filing their cases through e-filing even when it was not mandatory. The percentage of e-filed cases to the total filed cases where the suit amount was Rs 50 lakhs or below was 27.46% of

⁵ "OAs"

⁶ "SAs"

OAs filed and 20.63% of SAs filed. The affidavit indicates that mandatory e-filing, besides facilitating compliance with timelines, facilitates 24x7 filing by litigants even from remote places with the help of the internet. The total number of e-filed applications across all DRTs in the country during the period between 1 February 2023 and 2 March 2023 was 10,415.

- 7 The counter affidavit states that help desks for facilitating stakeholders for hassle free e-filing of cases have been set up at DRTs and DRATs where currently, 90 staff members are working as Technical Assistants and Data Entry Operators for facilitating e-filing. They are stated to be assisting internal and external stakeholders in the resolution of functional and technical difficulties. Besides this, it has been stated that a help desk option is available on the e-filing website of DRTs and DRATs where users can log their requests/grievances to be addressed on priority. A three-tier grievance redressal mechanism has, therefore, been provided. The counter affidavit has indicated that comprehensive training programmes were conducted by the Department of Financial Services in coordination with the DRTs/DRATs for making litigants and members of Bar Associations acquainted with the e-filing procedure.

Multiple rounds of training sessions were conducted by the Technical Associates deployed in the DRTs/DRATs. The e-filing software has been created and is maintained by the National Informatics Centre by adopting open source technology.

8 In support of the petition, it has been urged by Mr Siddharth R Gupta, counsel appearing on behalf of the petitioner, that the amendment to the 2020 Rules making e-filing compulsory in all cases irrespective of value with effect from 31 January 2023 was without holding deliberations with all stakeholders. Counsel submitted that the DRTs are constituted in far flung areas where internet connectivity may not be adequately available. Hence, it was submitted that an exception should be provided for:

- (i) Just and sufficient cause;
- (ii) Senior citizens; and
- (iii) Female practitioners and clients.

9 Counsel further submitted that in the event of a software glitch occurring, some alternative modalities should be followed.

10 On the other hand, it has been urged by Mr Shyam Gopal, counsel appearing on behalf of the Union of India, that, as the counter affidavit

would indicate, the introduction of mandatory e-filing was not abrupt or hasty. On the contrary, it was preceded by consultations and training programmes which were conducted for the members of the Bar. Moreover, it is urged that implementation was made on a gradual basis in three stages. As regards the availability of infrastructure, it has been submitted that help desks have been provided at all DRTs/DRATs to attend to any glitches or requests for assistance.

- 11 The material which has been placed on the record indicates that the introduction of e-filing by the Department of Financial Services was facilitated in gradual stages. Initially, with the introduction of the e-filing Rules in 2020, e-filing was made optional at the first stage. In the second stage, e-filing was made compulsory by a notification dated 22 July 2022 where the pecuniary value of the subject matter in dispute was in excess of Rs 100 crores. The introduction of mandatory e-filing in all cases irrespective of the value of the subject matter was introduced at the third stage on 31 January 2023. This indicates that the process has been gradual. Sufficient time was given to all stakeholders to adjust to the new regime. A stakeholder's training has been carried out. The counter affidavit indicates the specific dates on which training

programmes have been conducted.

- 12 There can be no gainsaying the fact that e-filing provides transparency and efficiency in the administration of justice. E-filing provides for 24x7 access to the court system and, in fact, facilitates the convenience of lawyers as well as litigants. With the march of technology, it would be too late in the day to postulate that e-filing should not be adopted. As a matter of fact, the decision to take up e-filing must be replicated by other tribunals and courts in the country, including the High Courts in a phased manner and that it eventually becomes mandatory.
- 13 At the same time, the Court cannot be unmindful of the fact that there is a digital divide in the country and not all citizens have access to the internet or the facilities required for the effective use of technology. Technology is an enabler and a facilitator. Hence, no segment of the citizens should be left behind in the adoption of technology, least of all, in terms of access to justice. The submission of Mr Siddharth R Gupta is borne out by realities at the grass roots in the legal profession. Not all lawyers may have access to the facilities required. Their needs can and should be addressed by providing facilities in court establishments.

14 We are of the view that the grievance which has been portrayed in this proceeding can be addressed at two levels. Firstly, we would permit the Bar Associations representing the collective voice of the lawyers in the DRTs/DRATs to submit their representations to the Department of Financial Services if any specific difficulties are encountered in the process of e-filing. The representations should focus on concrete suggestions which have to be implemented to facilitate to e-filing. In other words, we clarify that by permitting an opportunity to file representations, we are not questioning the need for mandatory adoption of e-filing. The purpose is to ensure that any glitches that may arise are attended to effectively. Simultaneously, we would also direct all the Chairpersons of the DRATs and the Presiding Officers of the DRTs to submit reports to the Department of Financial Services on a monthly basis initially for a period of six months, pointing out the experience with e-filing and suggesting, if any upgradation of the facilities or the software is necessary.

15 The National Informatics Centre⁷, which has put into place the e-filing facilities for the DRTs/DRATs, has also been facilitating the same

⁷ "NIC"

exercise in the judicial system. NIC is equipped with a robust team of officials. The Director General of NIC shall constitute a team to monitor the progress of e-filing in the DRTs/DRATs so that any difficulties which are encountered can be suitably addressed on a real time basis. The e-filing module must be upgraded with periodical developments.

- 16 The second aspect which needs to be borne in mind relates to the help desks which have been set up at the DRTs/DRATs.
- 17 Mr Shyam Gopal has adverted to a notice dated 22 February 2023 issued by the DRTs for Madhya Pradesh, Chhattisgarh and Ernakulam and by the DRAT at Delhi indicating the arrangements which have been made for setting up help desks or, as the case may be, providing technical assistance.
- 18 In this regard, we would recommend to the Union Government that in addition to setting up help desks, it would be appropriate if e-sewa kendras are set up at all the centres of the DRTs or, as the case may be, DRATs to facilitate e-filing of cases and provide a one-step solution which encompasses all the e-services at the DRTs/DRATs. The e-sewa kendras should have adequate equipment in the form of computers and

scanners, together with robust internet connectivity so as to facilitate the process of e-filing. In this context, a Standard Operating Procedure⁸ must be prepared by the Department of Financial Services in consultation with NIC, setting out the facilities at every e-sewa kendras. This would be in line with the mission of the e-Committee of the Supreme Court of India for providing e-sewa kendras at court establishments across the country. The setting up of e-sewa kendras would provide access to justice to lawyers and litigants. The Department of Financial Services would be at liberty to review the set up periodically and to take appropriate decisions in that regard.

- 19 Most of the specific grievances which have been urged by Mr Siddharth R Gupta stand assuaged in terms of the above directions.
- 20 The digital divide between men and women in India is a stark reality:
- i. The National Sample Survey Office carried out a Multiple Indicator Survey covering the entire country in its 78th round. The report,⁹ inter alia, looked at the performance of persons between 15-29 years in performing 9 different ICT skills. It concludes that the percentage of

⁸ "SOP"

⁹ *Multiple Indicator Survey in India: NSS 78th Round (2020-2021)*, The National Sample Survey Office, Ministry of Statistics and Programme Implementation, Government of India (March 2023)

men who could successfully perform different ICT tasks is more than the percentage of women. For example, while 19.4% of men of age 15 years and above could send emails with attached files, only 11.5% of women of age 15 years and above could perform the same task.

- ii. The National Family Health Survey-5 data¹⁰ for the period between 2019 to 2021 measured the proportion of men and women (15-49 years of age) who have ever used the internet. The survey reveals that only one in three women in India (33.3%) have ever used the internet, compared to more than half of men (51.2%). The gender divide in rural India is more pronounced, with men (43.4%) being about twice as likely as women (24.6%) to have used the internet.
- iii. The GSMA Mobile Gender Gap Report 2022¹¹ found that from 2020 to 2021, the mobile internet gender gap has widened to 41% in South Asia. In India, men's mobile internet use increased from 45% to 51% while women's mobile internet use remained flat at 30%.

The representations by the Bar Associations on specific difficulties faced in the process of e-filing, and the reports prepared by the Chairpersons of the DRATs and the Presiding Officers of the DRTs

¹⁰ *National Family Health Survey (NFHS-5) 2019-2021*, Ministry of Health & Family Welfare, Government of India (March 2022)

¹¹ Matthew Shanahan, *The Mobile Gender Gap Report 2022*, GSMA (June 2022)

should be cognizant of digital exclusion on the basis of gender, while submitting their respective representations/ reports. The help desks can consider providing a dedicated portal to address the grievances of female litigants. However, we are not inclined to accept the submission that there should be a general exception to female practitioners and litigants. There is no reason to postulate that there is a gender divide in one's inherent ability to use technology.

- 21 For the above reasons, we have issued directions for attending to the genuine grievances of the members of the Bar in regard to the availability of facilities that would ensure that in the adoption of e-filing, no segment of the citizens is unable to access justice. Properly implemented, the above suggestions will meet the purpose.
- 22 The exercise which has been directed to be carried out in the above terms should be completed within a period of three months from the date of this order. This would not preclude the Department of Financial Services from making such further arrangements as are found necessary to deal with an emergent situation in any of the DRTs/DRATs in various parts of the country. In a country as diverse like India, a one-size-fits approach cannot be adopted in all circumstances and

situational modifications can be suitably adopted according to exigencies.

23 The petition shall stand disposed of in the above terms.

24 Pending application, if any, stands disposed of.

.....CJI.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Pamidighantam Sri Narasimha]

.....J.
[J B Pardiwala]

New Delhi;
March 29, 2023
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