

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case: CM(M) No. 254/2023
CM No. 7893/2023
CM No. 7894/2023

M/s Ishwar Rice and General Mills Pvt.
Ltd. Office at Kothi khour Tehsil R.S Pura
District Jammu, Through its Director
Narinder Pal Singh Age-37 years S/o Late
Sh. Surinde Singh R/o Village Kothi
Khour, Tehsil R.S Pura, District Jammu
(J&K)

..... Petitioner(s)

Through :- Mr. Suresh Kumar, Advocate

Vs

Punjab and Sind Bank Branch RS Pura
Jammu Through its Chief
Manager/Authorised Officer Tehsil R.S
Pura District Jammu (181102)

.....Respondent(s)

Through :- Mr. Sandeep Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

ORDER
18.03.2024

1. The petition in hand has been filed by the petitioner assailing the order dated 19.10.2023 passed by the learned Presiding Officer (PO) Debt Recovery Tribunal-I (DRT-I) Chandigarh in an application/appeal in TSA No. 53/2022 titled M/s Ishwar Rice & General Mills Pvt. Ltd. Vs. Punjab & Sind Bank.
2. It is submitted that at the time of filing of the appeal/application, no Debt Recovery Tribunal (DRT) was constituted, therefore, under the

provisions of Section 17-A of the SERFAESI Act, petitioner has filed the application before the Principal District Judge, Jammu.

3. Learned 1st Additional District Judge, Jammu after appreciating the case of the applicant and after hearing arguments, had passed an ad-interim stay order vide order dated 19.08.2017, whereby the respondent/bank was directed to sell or auction the mortgaged property. The respondent subsequently filed objections to the interim application, however, the learned Debt Recovery Tribunal (1st Additional District Judge) Jammu has made the interim order absolute till disposal of the main appeal/application and the application was, accordingly, disposed of on 02.06.2018. During the pendency of the appeal before the learned 1st Additional District Judge, Jammu, some negotiations took place for an amicable settlement and, accordingly, the petitioner sent a proposal for One Time Settlement of the loan account on 20.07.2019 for an amount of Rs. 1,65,00,000/-, however, the said One Time Settlement could not be matured and same was withdrawn.
4. It is submitted that on 05.08.2019, the Government of India had abrogated Article 370 of the Constitution of India, resulting which the erstwhile state of Jammu & Kashmir has been converted into Union Territory of Jammu & Kashmir and in this context, Sections 17-A and 18-B of the SERFAESI Act was omitted because of which the learned 1st Additional District Judge, Jammu which was acting as DRT lacks jurisdiction to hear the matter hereinabove and, accordingly, the said

appeal/application has been transferred to the concerned Debt Recovery Tribunal vide order dated 18.01.2021.

5. It is also averred that after transfer of the case from Jammu to Chandigarh, the file was remained under the process of the office of the DRT-1 Chandigarh and could not be traced for couple of months though the applicant has caused appearance in the case on each and every date of hearing, the learned Presiding Officer without proceeding with the trial of the case in accordance with procedure and without affording any opportunity to the applicant to submit regarding the facts straightway passed the impugned order dated 19.10.2023 by virtue of which the learned Presiding Officer has vacated the stay order which has already been made absolute and the application was already stand disposed of, thus, the petitioner has filed a petition under Article 227 of the Constitution of India thereby seeking setting aside the order impugned dated 19.10.2023.
6. We have heard learned counsel for the parties and perused the record.
7. Perusal of the record reveals that in the application seeking interim relief whereby the interim relief was sought in favour of the petitioner has been disposed of on 02.06.2018, thus, once the application has been disposed of by making the interim order absolute, therefore, the impugned order passed by the Tribunal is without application of mind and the same, therefore, is required to be set aside.
8. Accordingly, impugned order is set aside by providing that the Tribunal shall consider and decide the main appeal preferably within a period of

three months from the date copy of this order is supplied by the appellant.

9. Disposed of.

(PUNEET GUPTA) (TASHI RABSTAN)
JUDGE JUDGE

JAMMU
18.03.2024
Tarun

Whether the order is speaking?	Yes/No
Whether the order is reportable?	Yes/No

