



IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI MANOJ KUMAR GUPTA

AND

HON'BLE SRI JUSTICE SUBHASH UPADHYAY

11th August, 2026

WRIT PETITION (M/B) NO. 165 OF 2024

Kavita Srivastava

....Petitioner

Versus

1. Debts Recovery Appellate Tribunal Allahabad, 147-A-58/1, Jawaharlal Nehru Road, Tagore Town, Allahabad, U.P. through its Chairman.
2. Debts Recovery Tribunal, 2nd Floor, Paras Tower, Mazra, Niranjanpur, Saharanpur Road, Dehradun through its Presiding Officer.
3. Union Bank of India Branch Office at plot no. 7, Airon Plaza, opposite Saraswati Sishu Mandir School, Rudrapur, District Udham Singh Nagar, Uttarakhand-263153.

--Respondents

Counsel for the petitioner	: Sri Atul Kumar Bansal, learned counsel (through V.C.).
Counsel for the respondents	: Sri V.K. Guglani, learned counsel for respondent No. 3.

JUDGMENT : (PER: SRI MANOJ KUMAR GUPTA, C.J.)

1. Heard Sri Atul Kumar Bansal, learned counsel for the petitioner (through V.C.) and Sri V.K. Guglani, learned counsel for respondent No. 3.

2. The present writ petition has been filed assailing the order dated 16.05.2023 passed by the Debts Recovery Appellate Tribunal, Allahabad in regular Appeal No. 2 of 2020 titled '*Kavita Srivastava vs. Union Bank of India*', whereby the restoration application (M.A. No. 23 of 2021) filed by the petitioner for restoring the appeal, which had been dismissed in default on account of non-appearance of the appellant on 14.07.2021, has been dismissed.



3. The facts, in brief, are that the respondent-Bank had provided financial assistance to the petitioner and on account of default on the part of the petitioner in repaying the loan, the Bank instituted case under Section 19(1) of the Recovery of Debts and Bankruptcy Act, 1993 against the petitioner before the Debts Recovery Tribunal, Dehradun. The said petition was allowed *ex parte* by judgment dated 25.10.2018. The petitioner filed an application for recall of the *ex parte* judgment before the DRT, Dehradun, which was dismissed by order dated 18.04.2019. Aggrieved thereby, the petitioner filed an appeal bearing Appeal No. 2 of 2020 before the Debts Recovery Appellate Tribunal. The appeal came to be dismissed in default by order dated 14.07.2021. The order passed on the said date is as follows:-

"None is present on behalf of the appellant despite providing the link. On the last occasion also, none was present. Therefore, it appears that appellant is not interested in pursuing the appeal. Hence, the appeal is dismissed for want of prosecution. No order as to costs.

A copy of this order be sent to the parties as well as the DRT concerned and be also uploaded on the e-DRT portal."

4. On 19.07.2021, i.e. just after two days, the petitioner applied for recall of the order dated 14.07.2021 stating that due to poor connectivity, her counsel could not participate in the hearing through the V.C. link provided by the Tribunal and, accordingly, prayed for setting aside the order dated 14.07.2021. The said application was rejected by the Debts Recovery Appellate Tribunal by impugned order dated 16.05.2023, which is as follows:-



2026:UHC:7083-DB

“Present: Shri Gaurav Bajpai, Advocate holding brief of Shri Amit Khanna, counsel for the applicant, Shri Sandeep Arora, counsel for the respondent-Bank,

Heard the learned counsel for the parties on the restoration application.

No good ground is made out for allowing the restoration application. Hence, the same is liable to be rejected. Accordingly, the restoration application is dismissed.”

5. Learned counsel for the petitioner submits that the impugned order is a completely non-speaking order. The explanation, submitted by the petitioner for the absence of her counsel, has not at all been taken into consideration. It is further submitted that the effort of the Tribunal should have been to decide the appeal on merits and, therefore, the rejection of the restoration application by the impugned order is manifestly illegal.

6. On the other hand, learned counsel for the respondent-Bank submits that in pursuance of the *ex parte* decree dated 25.10.2018, the Bank had proceeded to sell the mortgaged property and a sale certificate has also been issued. According to him, the aforesaid subsequent events have rendered the instant writ petition infructuous.

7. The submission of the learned counsel for the respondent-Bank that because of the subsequent sale, the present writ petition has become infructuous is without any merits. In case the Bank has succeeded in selling the mortgaged property in pursuance of the *ex parte* decree, it would not render infructuous the proceedings pending before this Court for setting aside the order of the Tribunal. The proceedings for sale, as are stated to

8. As regards the present writ petition, we find that the order under challenge is a completely non-speaking order. The explanation given by the petitioner for absence of her counsel on the date fixed for hearing has not at all been taken into consideration. Therefore, the order impugned cannot be sustained and is, accordingly, set aside.

9. The writ petition is allowed. The Debts Recovery Appellate Tribunal, Allahabad is directed to decide the Misc. Application No. 23 of 2021 taking into consideration the explanation given by the petitioner in the said application in respect of the absence of her counsel on the date of hearing of the appeal.

10. All pending applications stand disposed of accordingly.

MANOJ KUMAR GUPTA, C.J.

SUBHASH UPADHYAY, J.

Dt: 11th August, 2026
Bathour

PRAVINDRA
SINGH
RATHOUR

Digitally signed by PRAVINDRA SINGH RATHOUR
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