

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-26162-2014 (O&M)
Date of decision:- 24.07.2015

M/s Shiv Shakti Medical Society

...Petitioner

Versus

Debts Recovery Appellate Tribunal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Anand Chhibbar, Senior Advocate,
with Mr. Ranjit Chawla, Advocate,
and Mr. Gaurav Manhota, Advocate,
for the petitioner.

Mr. N.C. Sahni, Advocate,
for respondent No. 2 – bank.

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S.J. VAZIFDAR, A.C.J. (ORAL)

The petitioner has challenged an order of the Debts Recovery Appellate Tribunal dated 01.12.2014 on the ground that the discretion vested in the Tribunal to reduce the pre-deposit amount to 25% of the amount claimed has not been exercised.

2. The amount claimed is ₹ 16.69 crores. 50% thereof amounts to about ₹ 8.35 crores. By an order dated 20.10.2014, the Debts Recovery Appellate Tribunal, in the first instance, directed the petitioner to deposit 25% of the amount demanded and directed that subject to the petitioner doing so it would consider the application for reducing the amount from 50% of the amount claimed.

3. The petitioner has in installments deposited an aggregate amount of ₹ 7 crores thus far. A sum of ₹ 3 crores was deposited in this Court by 04.09.2014 in Civil Revision No. 2009 of 2014. That Civil Revision was

dismissed as not being maintainable. The amount has been received by the bank. A further amount of ₹ 1.50 crores was paid on 01.12.2014 as recorded in the impugned order of the Tribunal of the same date. In the course of the proceedings, in this writ petition, an aggregate amount of ₹ 2 crores has been paid thus far - ₹ 50 lacs each on 11.02.2015 and 11.03.2015, a sum of ₹ 40 lacs on 21.05.2015 and a demand draft of a sum of ₹ 60 lacs has been handed over to the respondent No. 2-bank today. The aggregate amount paid thus far is ₹ 7 crores.

4. Thus, a balance amount of about ₹ 1.35 crores remains to be paid as per the order of the Debts Recovery Appellate Tribunal towards the pre-deposit. Mr. Chhibbar states that we ought to exercise our discretion and waive the balance amount of ₹ 1.35 crores.

5. The Appellate Tribunal has referred to the various proceedings adopted by the petitioner before this Court and the Supreme Court. It is noted that contempt proceedings had been initiated by this Court which were dropped only after an apology was tendered by the petitioner and upon costs being paid by the petitioner. There are serious grievances regarding the non-deposit of the amounts into the proper bank accounts. Further, a large amount is still due and payable on the petitioner's own case.

6. In these circumstances, it cannot be said that the Debts Recovery Appellate Tribunal has not exercised its discretion at all. However, in view of the fact that whatever be the petitioner's conduct this Court ultimately accepted the apology and in view of the fact that substantial amount has been paid, we are inclined to exercise our discretion only to a limited extent. On the other hand, by having obtained the facility of deferred payment even

in this Court, the petitioner has benefited by way of interest even on the pre-deposit amount.

7. Thus, taking into consideration all the facts and circumstances of the case, the ends of justice would be met by disposing of this petition by directing the petitioner to deposit a further sum of ₹ 1 crore by 30.09.2015 as a condition precedent to the maintainability of the appeal. The amount of ₹ 60 lacs tendered today may be appropriated by the respondents entirely without prejudice to their rights and contentions.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

24.07.2015
Amodh