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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: May 22, 2015.

+ W.P.(C) 5127/2015, C.M. No. 9286/2015

RAJ KUMAR GUPTA

..... Petitioner

Through: Mr. B.S. Nagar, Mr. Mithilesh Kumar
and Ms. Kuldeep Kaur, Advs.

versus

PUNJAB NATIONAL BANK & ANR

..... Respondents

Through: Ms. Bindu Das and Mr. Kamal Kishore,
Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. Issue notice.
2. Ms. Bindu Das, Advocate accepts notice.
3. The petitioner is aggrieved by the order of the Debts Recovery Appellate Tribunal (hereinafter referred to as "the DRAT") dated 06.05.2015, by which the DRAT refused to set aside the order of the Debts Recovery Tribunal (hereinafter referred to as "the DRT") dated 24.03.2015. By the said order, the DRT refused to set aside its ex-parte final order dated 17.06.2013. The DRT did not condone the delay in filing M.A. 107/2013 against the order dated 17.06.2013 and dismissed the appeal.

4. The respondent bank had initiated proceedings in this Court against the petitioner by way of a summary suit, under Order XXXVII of the Code of Civil Procedure seeking to recover the outstanding dues against the petitioner. These were in respect of guarantee furnished by him. Apparently when the suit was pending before this Court, in certain orders, the Court had doubted the maintainability of the proceedings given that the residence of the principal borrower was not within the jurisdiction of this Court or in India. Upon coming into force of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as “the RDDBFI Act”), the suit was transferred to the DRT. Initially, the petitioner was represented. Its written statement was on record. However, sometime in the later part of 2004 onwards, there was no representation on behalf of the petitioner and he was set down ex-parte. It may be stated that the petitioner had on an earlier occasion been declared ex-parte on 17.07.1996 but his request for setting aside that order was accepted and he was allowed to appear. Eventually, by the final order, the DRT decreed the bank’s Original Application (OA) no. 1158/1995 against the petitioner on 17.06.2013. The petitioner moved an application, M.A. 107/2013, for recall of that final order. The said application was rejected by the DRT on 24.03.2015. The DRAT refused to interfere with this order by the impugned order. Learned counsel urges that the DRT’s order is untenable in law. He urges that the liability could not be fastened without the bank in the first instance proceeding against the principal borrower. That was not possible on account of legal impediments. It was urged that the petitioner was set down ex-parte on 21.07.2004. Final order was kept reserved and eventually pronounced in 2013.

5. We have considered the records. The petitioner was set down ex-parte on 21.07.2004, however, the petitioner's further submission that the DRT had heard final arguments and that the orders were kept reserved for nine years is not correct. The bank's arguments were sought to be addressed and on several occasions, on account of administrative reasons, including the absence of presiding officer, the OA was adjourned. Change of the presiding officers (necessitated by reason of ending of tenure) led to appointment of new presiding officers, who took charge and had to hear arguments all over again. In these circumstances, all that can be inferred is that the matter was pending. The petitioner's argument that the judgment or orders were reserved is not borne out from the record. In response to the contention that the petitioner had no credible explanation for his absence after 21.07.2004, learned counsel urged that being an old man, he lost track of the proceedings. However, we notice that the petitioner had engaged a counsel, who would have been expected to keep track of the proceedings and defend his interest. In these circumstances, no fault can be found with the approach of the DRT in making the ex-parte order on 17.06.2013 and declining to recall it in the application filed by the petitioner by its order dated 24.03.2015.

6. The petitioner apparently chose to prefer an appeal only in respect of the order declining to set aside the ex-parte final order. In these circumstances, the DRAT's order in our opinion cannot be faulted. At the same time, this Court is conscious that the net result of all these circumstances is that the petitioner is now faced with the final order without the benefit of appropriate scrutiny. In the peculiar circumstances of this case, we are of the opinion that even though the DRAT declined to interfere

with the ex-parte final order, on the ground that the appeal against the order of 24.03.2015 was delayed, the petitioner should not be ultimately prejudiced. The DRAT was of the opinion that no interference was called for, since the application for setting aside the ex-parte decree was filed with a delay of 181 days.

7. In the peculiar circumstances of the case, the result and position is that the petitioner has been left remediless against the final order of the DRT. We consequently grant the liberty to the petitioner to file an appeal on merits against the final order of the DRT dated 17.06.2013, provided the same is done within two weeks from today. In such an event, the DRAT shall consider the merits of the appeal uninfluenced by questions of delay. The DRAT may pass appropriate orders on any application for waiver of pre-deposit that the petitioner may file along with the appeal pursuant to the liberty given by this Court.

8. The writ petition is partly allowed to the above extent.

9. Petitioner is directed to pay costs quantified at ₹75,000/- to the respondent within four weeks from today.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

MAY 22, 2015
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