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

Date of Decision : 26th February, 2016.

+ **C.M.No.6392/2016 in W.P.(C) 11112/2015**

M/S IMPACT ENTERPRISES

..... Petitioner

Through: Mr.Sanjeev Bhandari, Advocate.

versus

UNION BANK OF INDIA

..... Respondent

Through: Mr.Aditya Madan, Advocate.

+ **C.M.No.6286/2016 in W.P.(C) 11114/2015**

M/S IMPACT ENTERPRISES

..... Petitioner

Through: Mr.Sanjeev Bhandari, Advocate.

versus

UNION BANK OF INDIA

..... Respondent

Through: Mr.Aditya Madan, Advocate.

+ **C.M.No.6184/2016 in W.P.(C) 11121/2015**

M/S IMPACT ENTERPRISES

..... Petitioner

Through: Mr.Sanjeev Bhandari, Advocate.

versus

UNION BANK OF INDIA

..... Respondent

Through: Mr.Aditya Madan, Advocate.

+ **C.M.No.6307/2016 in W.P.(C) 11126/2015**

M/S IMPACT ENTERPRISES

..... Petitioner

Through: Mr.Sanjeev Bhandari, Advocate.

versus

UNION BANK OF INDIA

..... Respondent

Through: Mr.Aditya Madan, Advocate.

+ **C.M.No.6285/2016 in W.P.(C) 11130/2015**

M/S IMPACT ENTERPRISES

..... Petitioner

Through: Mr.Sanjeev Bhandari, Advocate.

versus

UNION BANK OF INDIA

..... Respondent

Through: Mr.Aditya Madan, Advocate.

+ **C.M.No.6309/2016 in W.P.(C) 11131/2015**

M/S IMPACT ENTERPRISES

..... Petitioner

Through: Mr.Sanjeev Bhandari, Advocate.

versus

UNION BANK OF INDIA

..... Respondent

Through: Mr.Aditya Madan, Advocate.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

GITA MITTAL, J (ORAL)

1. By this application, the writ petitioner has sought setting aside the order dated 29th January, 2016 passed by the Debt Recovery Appellate Tribunal (hereinafter referred to as the DRAT), dismissing the petitioner's appeal bearing nos.462/2014, 463/2014, 464/2014, 465/2014 466/2014 and 467/2014 on the ground that the petitioner had chosen not to appear before the Appellate Tribunal and was also not represented to press the matters.
2. It is completely unnecessary to go into the dispute on merits.

However, certain procedural aspects deserve to be noticed by us.

3. On account of default with regard to financial facilities availed by the petitioner from the respondent-bank, after issuance of notice dated under Section 13(2) of the SARFAESI Act, 2002 the Bank had initiated measures under Section 13(4) of the enactment with regard to the property of the petitioners.

4. Aggrieved thereby, the petitioner had filed applications under Section 17(1) of the statute being Securitization Application No.317/2011. This application was disposed of by the DRT-III on 7th December, 2012, giving the petitioner 30 days time to approach the Bank with the settlement proposal. Review thereof was rejected on 22nd July, 2013.

5. It appears that the property which was bound as security for the financial facility, was sold by the Bank in a public auction held on 10th March, 2014. In this background, several interim applications filed by the petitioners were rejected on 22nd September, 2014 observing that the reliefs prayed for ceased to exist after the sale of the property.

6. On the 13th April, 2014, the DRAT dismissed the petitioner's challenges to the order dated 22nd September, 2014. This dismissal was on the ground of non-prosecution, inasmuch as the petitioners' counsel was unable to reach the Tribunal and the petitioner was not represented. The application for recall of the order of dismissal of the appeals was also rejected due to non-appearance on 19th August, 2015. The petitioners' application for restoration of the appeal came to be rejected on 21st September, 2015 by the DRAT.

7. The dismissal of the appeal as well as rejection of the applications seeking restoration of the appeal, were assailed by the petitioner by way of

six writ petitions bearing W.P.(C) Nos.11112/2015, 11114/2015, 11121/2015, 11126/2015, 11130/2015 and 11131/2015. These writ petitions came to be allowed by judgment dated 22nd December, 2015 with the following directions:

“8. Accordingly, present writ petitions are allowed. The impugned order dated 21.9.2015 is set aside and quashed. The matters would now be listed before the Appellate Tribunal for directions on 15.1.2016 when the Appellate Tribunal would fix a date for hearing. We make it clear that the petitioner would not be granted any adjournment in the matters. All legal questions sought to be raised are kept open. Both the parties to place written submissions on record before the next date of hearing, for which purpose no adjournment would be granted to the petitioner”.

8. The present application relates to facts which have transpired thereafter. It is undisputed by the parties that the appeal was not listed before the DRAT on 15th January, 2016 as directed. The petitioner has submitted that he was advised by the Registry of the Tribunal to file an application for listing of the matter enclosing a copy of the order passed by this Court.

9. Appearing for the respondent, Mr.Aditya Madan, learned counsel submits that the petitioners had received *dasti* copy of the order on the 4th January, 2016 and yet slept over the matter instead of placing before the DRAT. It is further submitted that despite a specific direction by this Court, the petitioners deliberately did not care to file any application before the DRAT for listing of the matter.

10. As against this, Mr.Sanjeev Bhandari, learned counsel for the writ petitioners would submit that the petitioner had acted diligently but before it could file the said applications which were being prepared, an advance copy of the application on behalf of the respondent-Bank seeking directions for

listing of the matters was received by counsel for the petitioner. In these circumstances the petitioner was awaiting of the listing of the applications of the respondent so as to get a date of hearing fixed before the Tribunal.

11. The records of the present cases show that the application of the respondent- Bank was listed for the first time on 29th January, 2016. By way of this application the respondent-Bank had informed the DRAT about the orders dated 22nd December, 2015 passed by this Court and had made a prayer for listing of the appeals for hearing in compliance thereof. We note that the advance copy of the Bank's applications was received on 20th January, 2016. However, the applications were not listed till the 29th January, 2016. The petitioner has submitted that he was not present or represented as it was not aware of the listing of the application.

12. The order dated 29th January, 2016 placed before us would show that on that date no notice of the applications or of a date of hearing to the petitioners was issued. Instead, the same was allowed and it was directed that the appeal would be heard then and there. For the reason that the petitioner was not present or represented, the appeals were once again dismissed. It is submitted by Mr.Madan, learned counsel for the respondent-Bank that the dismissal this time was on merits.

13. The present application makes a prayer for compliance of the directions made by this Court for fixing a date of hearing and disposing of the appeal on merits after affording an opportunity of hearing in accordance with law is given to the parties.

14. There can be no manner of doubt that when passing the order dated 22nd December, 2015, the Court was of the firm view that the petitioner deserves to be granted a hearing in the matters and the grievance of the

petitioner that the appeals should be heard on merits was subject to the condition that on the date fixed before the Appellate Tribunal “no adjournment would be sought by the petitioner”. The matters were not listed before the DRAT on the 15th January, 2016 appointed by this Court.

15. Mr.Sanjeev Bhandari, learned counsel for the petitioner has placed before us the cause list of the DRAT for the 29th January, 2016 which shows that the applications of the respondent-Bank being I.A.Nos.59/2016, 60/2016, 61/2016, 62/2016, 63/2016 and 64/2016, were listed from S.No.5 to 10 in the category of “For Fresh Interim Application”. We are informed that the cases which are listed for arguments are placed in the category of “For Arguments” in the cause list. On the 29th January, 2016, three cases were listed from S.No.19 to 21 in the category of “For Arguments”. The 29th January, 2016 was not a date fixed by the DRAT for hearing the appeals. On that date, only the applications filed by the respondent-Bank seeking a direction to set a date for hearing the appeals were listed.

16. In view of the above, compliance with the directions passed by this Court on 22nd December, 2015 contemplated fixing a date of hearing of the appeals on merits. It appears that this aspect of the matter has been overlooked by the Tribunal while disposing of the appeals on 29th January, 2016. Even though, observations on the merits of the matters are made, however, in terms of the directions made by this Court on 22nd December, 2015, the petitioner was entitled to hearings, even if the Bench was to ultimately disagree with its contentions.

17. The present applications came up before us on 24th February, 2016. The above position was pointed out to counsel for the respondent, who had made a strong grievance with regard to the dilatory tactics adopted by the

petitioner. This very submission has been noted by this Court in the order dated 22nd December, 2015. However, insofar as non-listing of the appeals after the passing of the said order is concerned, delay cannot be attributed to the petitioner.

18. In this view of the matter, and to avoid any further delay because of grant of opportunity to the petitioners of hearings on merits, on request of counsels for the parties, we adjourned the matter for today to enable them to ascertain a date convenient to the DRAT, when the appellants could be heard on merits. We are informed by learned counsel for the parties before us that they had mentioned the matter before the DRAT and that it would be conveniently possible for the DRAT to hear the appeals on the 9th March, 2016.

19. We may note that in regular course, the petitioner could be diverted to filing six writ petitions challenging the order dated 29th January, 2016. However, keeping in view the experience expressed by the respondent-Bank and the fact that the respondent-Bank cannot possibly object to time-bound directions, upon the convenience of the DRAT having been ascertained by learned counsel for the parties, we are inclined to grant the prayer made in this application.

20. In view thereof, it is directed as follows:-

- (i) The order dated 29th January, 2016 to the extent that it rejects the appeals of the petitioner is hereby set aside.
- (ii) It is directed that the appeals bearing Nos.462/2014, 463/2014, 464/2014, 465/2014 466/2014 and 467/2014 shall be listed before the DRAT on the 9th March, 2016 for actual hearing in the category of “For Arguments” in the cause list.

- (iii) The petitioners shall ensure that the appeals are argued on merits on that date. It shall be for the DRAT to direct the schedule.
- (iv) It is made clear that nothing herein contained is an expression of opinion on the merits of the both sides and the Tribunal shall proceed in the matter uninfluenced by any observations made by us today.

21. These applications are allowed and disposed of in the above terms.

A copy of this order shall be given *dasti* to both the parties who shall ensure that the same is served upon the Registry of the DRAT.

GITA MITTAL
(JUDGE)

I.S.MEHTA
(JUDGE)

FEBRUARY 26, 2016
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