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

\+ ***W.P.(C) 11112/2015, W.P.(C)11114/2015, W.P.(C)11121/2015, W.P.(C)11126/2015, W.P.(C)11130/2015 & W.P.(C)11131/2015***

% ***Judgment dated 22nd December, 2015***

M/S IMPACT ENTERPRISES ..... Petitioner
Through : Mr.Sanjeev Bhandari, Adv.

versus

UNION BANK OF INDIA ..... Respondent
Through : Mr.Sudhir Nandrajog, Sr. Adv. with Advocate (Appearance not given).

**CORAM:**
**HON'BLE MR. JUSTICE G.S.SISTANI**
**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**G.S.SISTANI, J (*ORAL*)**

1. Present writ petitions have been filed by the petitioner under Article 226 of the Constitution of India assailing common orders dated 21.9.2015 (hereinafter referred to as the impugned order) passed by Debts Recovery Appellate Tribunal (in short '*Appellate Tribunal*').
2. In this case, appeals filed by the petitioner herein before the Appellate Tribunal were dismissed for non-prosecution on 13.4.2015. Relevant portion of the order dated 13.4.2015 reads as under:

> "*Present : None for the appellant*
> *Mr.Aditya Madan, counsel for the respondent Bank.*

*None appears for the appellant during second call. Request for pass over was made during the first round. These are the last cases on the board. Dismissed for non-prosecution.*"

3. The petitioners thereafter filed applications before the Appellate Tribunal seeking recall of the order dated 13.4.2015, which were also dismissed in default by the Appellate Tribunal on 19.8.2015. Thereafter the petitioner filed applications seeking restoration of appeals, however, the said applications also stand dismissed on 21.9.2015.

4. Mr.Bhandari, learned counsel for the petitioner, submits that a complete reading of the order dated 21.9.2015 would show that the learned Tribunal took into account the statement made by the Manager of the Bank on 10.7.2015 giving an explanation why he did not appear on 1.7.2015. Counsel further submits that the Tribunal thereafter took into account that when the same question was posed to the counsel who was representing the petitioner before the Appellate Tribunal, he had stated that he was busy in different courts and by the time he reached the Appellate Tribunal the matter had been adjourned. Mr.Bhandari further submits that the Tribunal relied upon the statement of the Bank Manager, who said that he was prevented from entering the Court on account of a call for strike, which fact was concealed by the counsel for the petitioner before the Appellate Tribunal. Mr.Bhandari clarifies that neither there was any falsehood in the statement made by him nor any suppression in view of the fact that the Lawyers were abstaining from appearing in Court, which fact was not hidden either from the Court or from the lawyers. Mr.Bhandari submits that in this background, applications seeking recall of the order of dismissal were not entertained, which is evident upon reading of the concluding portion of the order dated 21.9.2015.

Concluding portion of the order dated 21.9.2015 reads as under:

> "*I have considered the request made in these applications and I am not convicted of the reasons given therein. This seems to an apparent attempt to mislead on the part of the appellant. The representative of the respondent bank has come up to disclose the facts clearly where the apparent cause for the counsel to remain absent was a strike call. This is rather a clever move to hide 'true' state of affairs. The appellant had not been vigilant enough to prosecute these appeals. On more than one occasion, the counsel has failed to appear. At the request of the proxy counsel, the cases were adjourned on 19.8.2015. Still, the counsel did not put in appearance on the date fixed. Such casual attitude cannot be accepted. The counsel ought to have realized that he was to appear in an application seeking recall of the order whereby the appeals had been dismissed for non-prosecution. I am, therefore, not inclined to recall the order dismissing the applications for non-prosecution.*"

5. Learned senior counsel appearing on behalf of the respondent-Bank submits that the petitioner has been delaying the matter after a decree was passed based on an application filed by the petitioner stating that the order may be passed.

6. We have heard learned counsel for the parties and considered their rival submissions. We have also examined the impugned order dated 21.9.2015 passed by the Tribunal. We may note that in a batch of writ petitions including W.P.(C) 7166/2015, where the appeals have been dismissed by the learned Appellate Tribunal and the restoration applications had also been dismissed, we had issued notice to the President, Secretary and other members of the Bar Association of Debt Recovery Tribunal. In paras 4 and 5 of the order dated 1.9.2015 we had noticed as under:

> "*4. Pursuant to the aforesaid order, we have taken up the matter*

*in the Chamber today to this Court. We have also perused the Minutes of the Meeting forwarded by the Chairman. Mr. Nagar, on behalf of all the Members of the Committee submits that as is evident from the Minutes of the Meeting, the Committee Members had met the Chairman and expressed their regret for the incident which had taken place. They reiterate that any incident which may have taken place was only in the heat of moment and they never had nor do they have any intention of hurting or showing any disrespect to the Chairman or with regard to doubting his capacity as Chairman of the Tribunal and, thus, the apology, so tendered, should be accepted. Mr. Nagar also submits that any complaint made to the Finance Minister shall be withdrawn and also any communication addressed to any journalist would also be withdrawn within one week from today and due compliance will be filed in this Court and they would also get an appropriate item published in the newspaper to clarify this aspect. The Committee has also expressed regret on the use of words "incapable and misbehaviour". Mr.Nagar also agreed that they will write to the Finance Ministry and to the Press and annex copies of both the orders dated 17.8.2015 and the order passed today.*

*5. We have heard the learned counsel for the parties. We have noticed the events which led to the dismissal of the appeals filed by the petitioners before the Debts Recovery Appellate Tribunal. We may notice that all the appeals were dismissed as the counsels did not appear on account of a call given by the Bar Association for abstinence of work. We have noted that the office bearers have met the Chairman and tendered their unqualified apology which has been reiterated before us as well.*

7. Having regard to the orders passed by us in the batch of writ petitions including W.P.(C) 7166/2015 and to meet the ends of justice, we are of the view that the appeals should be heard on merits, subject to the condition that on the date fixed before the Appellate Tribunal, no adjournment will be sought by the petitioner.

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.

9. Accordingly, writ petitions stand disposed of in view of above.

10. DASTI.

**G.S.SISTANI, J**

**SANGITA DHINGRA SEHGAL, J**

**DECEMBER 22, 2015**

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