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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 11602/2015, CM APPL. No. 30712/2015 (Stay)**

Date of Judgment : 14th December, 2015

SARITA GULATI AND ANR. Petitioners
Through : Mr. Sanjay Sharawat, Mr. Ashok Kumar
and Mr. Ratish Kumar, Advocates.
versus

DENA BANK Respondent
Through : Mr. Karan Khanna, Additional Standing
Counsel .

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

G.S.SISTANI, J. (ORAL)

CM APPL. No 30713/2015 (Exemption)

1. Exemption allowed subject to all just exception.
2. Application stands disposed of.

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3. Challenge in this writ petition is to the order dated 18.11.2015 passed by the Debt Recovery Appellate Tribunal (DRAT) by which the appeal filed by the appellant, assailing the order dated 14.10.2015 passed by the Debt Recovery Tribunal by which SA filed by the petitioner was dismissed in default.
4. Learned counsel for the petitioner submits that non appearance of the petitioner and his counsel was neither intentional nor the petitioner would have gained by not appearing on the date fixed. Learned counsel further submits that in case the impugned orders are not set aside and the matter is not heard on merits, serious prejudice would be caused to the rights of the petitioner.

5. Issue notice to show cause as to why petition be not admitted. Mr. Khanna, learned Additional Standing Counsel accepts notice for respondent bank.
6. We have heard counsel for the parties.
7. Reading of the order sheet would show that 23.03.2015, the petitioner herein sought an adjournment for 19.04.2015 which was declared a holiday and the matter was listed on 20.04.2015 when none had appeared on behalf of parties and matter was adjourned to 26.05.2015. On 26.05.2015 when the matter was taken up for proper orders, it was adjourned at the request of the parties to 07.07.2015 and thereafter to 25.08.2015 when counsel for the appellant failed to appear. The Appellate Tribunal has been persuaded by the observation of the Debt Recovery Tribunal that sufficient opportunities have been granted to the petitioner herein to make submissions, but submissions were not made. In our view, learned Appellate Tribunal has failed to take into account the reason of absence on the date when the matter was listed. The past conduct of course of the appellant can be taken into consideration but the relief can not be declined only due to the past conduct of the petitioner.
8. In the interest of justice, we allow the present writ petition subject to payment of Rs.20,000/- as costs to be paid by the petitioner to the respondent for the delay caused and for the absence on the date of hearing. It is made clear that petitioner shall not be granted any adjournment before the Debt Recovery Tribunal.

9. Accordingly, impugned orders dated 14.10.2015 passed by the Debt Recovery Tribunal and order dated 18.11.2015 passed by the Debt Recovery Appellate Tribunal are set aside. Present petition and all pending applications are disposed of.
10. List before the Debt Recovery Tribunal on 18th January, 2016.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 14, 2015 / gr