

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

CWP No. 24296 of 2015 (O&M)
DATE OF DECISION : 23.08.2016

Pushpinder Kaur

.... PETITIONER

Versus

Punjab & Sind Bank, The Mall, Bathinda and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. J.S. Rana, Advocate, for
Mr. H.C. Arora, Advocate,
for the petitioner.

Mr. B.P.S. Dhaliwal, Advocate,
for respondent No.1.

* * *

RAMENDRA JAIN, J.

1. By way of present petition under Article 226 of the Constitution of India, the petitioner has sought quashing of orders dated 03.07.2015 (Annexure P-21) and 19.08.2015 (Annexure P-23) passed by the Debts Recovery Appellate Tribunal, Delhi (for short 'DRAT').

2. Briefly stated, the respondent bank had filed Original Application (O.A.) against M/s Oriental Motors, G.T. Road, Bathinda. The petitioner and her mother Ms. Gurtej Kaur (now deceased) were also impleaded as respondents in the said case. Vide judgment dated 12.06.2002 (Annexure P-1), the said Original Application was accepted for an amount of ₹ 2,15,82,549.79 along with pendente lite and future interest. In the execution proceedings, initiated by the Recovery Officer, DRT, Chandigarh,

a proclamation of sale dated 14.11.2005 (Annexure P-2) was issued. The

petitioner and her mother filed an objection petition (Annexure P-3) against the said proclamation, which was rejected vide order dated 03.01.2006 (Annexure P-4) by the Recovery Officer, while observing that he had no jurisdiction to go beyond the decree/judgment passed by the Presiding Officer. The said order was challenged by the petitioner and her mother by filing CWP No. 48 of 2006, which was dismissed as withdrawn vide order dated 04.01.2006 (Annexure P-5) with liberty to them to take recourse to an appropriate remedy by way of appeal against the aforesaid order dated 03.01.2006. It was ordered that if such an appeal is preferred within one week, the sale, proposed to be held in terms of the proclamation of sale dated 14.11.2005 shall not be confirmed till appropriate orders are passed by the Appellate Tribunal in the appeal, proposed to be filed. Accordingly, the petitioner and her mother filed appeal (Annexure P-11). During the pendency of the appeal, upon an application of the petitioner, vide order dated 08.12.2006 passed by the Presiding Officer, DRT-II, Chandigarh, Balraj Singh (respondent No.2 herein), the auction purchaser, who had purchased the property was permitted to be impleaded as a respondent in the appeal. Thereafter, respondent No.2 – auction purchaser filed written statement dated 22.02.2008 (Annexure P-13) in the said appeal. The petitioner and her mother filed written submissions dated 05.12.2011 (Annexure P-14). Ultimately, vide order dated 17.02.2012 (Annexure P-15), the Presiding Officer, DRT – II, Chandigarh, dismissed the aforesaid appeal against the order dated 03.01.2006. Aggrieved by the said order dated 17.02.2012, the petitioner and her mother filed appeal (Annexure P-17) before the DRAT. During the pendency of the said appeal, the petitioner filed two applications No. 258 of 2013 and 192 of 2015 (Annexures P-18

and P-19).

3. It is the case of the petitioner that the aforesaid appeal along with the above noted interlocutory applications was listed for hearing before the DRAT on 02.07.2015. On that day, Mr. J.S. Rana, learned counsel for the petitioner reached New Delhi for appearing before DRAT, but on account of strike by DRAT Bar Association, he had very serious apprehension about strong adverse reaction from the members of the DRAT Bar Association who had assembled there in strength and were asking the Advocates not to appear before the DRAT due to strike call given by them. Faced with this situation, learned counsel for the petitioner filed written submissions (Annexure P-20) with the office of the Registrar of the DRAT. The appeal of the petitioner was adjourned to 03.07.2015. The DRAT Bar Association had extended the strike call, which continued on 03.07.2015 and for some more days. Due to the above compelling circumstances, learned counsel for the petitioner could not physically appear before the DRAT. Resultantly, vide order dated 03.07.2015 (Annexure P-21), appeal of the petitioner along with both the aforesaid interlocutory applications was dismissed for want of prosecution. Thereafter, the petitioner filed application dated 20.07.2015 (Annexure P-22) for re-calling the said order. However, vide order dated 19.08.2015 (Annexure P-23), the said application of the petitioner was also dismissed.

4. Hence, the petitioner has filed the instant petition seeking quashing of the aforesaid orders dated 03.07.2015 and 19.08.2015.

5. Learned counsel for the petitioner submitted that vide order dated 19.08.2015 while declining to re-call the order dated 03.07.2015, though the DRAT correctly appreciated the position of law on the issue of

strike by the lawyers, but the stark reality of the atmosphere in which the counsel for the petitioner could not physically resist the striking Advocates for entering into the Court room of the DRAT, has not been properly appreciated. Though learned counsel for the petitioner had gone to Delhi for putting in appearance before the DRAT to pursue the appeal of the petitioner and was not supporting the strike call of the DRAT Bar Association, but due to strong resistance by some advocates to the entry of any Advocate or party in the Court room, he could not appear in the case, which resulted into dismissal of the appeal for non prosecution. The absence of the counsel was beyond his control and was due to the compelling circumstances, as mentioned in the application for re-calling the order dated 03.07.2015. Dismissal of the appeal for non appearance of the counsel has caused irreparable loss to the petitioner, which cannot be compensated in terms of money. After setting aside the order dated 03.07.2015, DRAT may be directed to hear the appeal of the petitioner on merits, as it is settled principle of law that no body should be condemned unheard.

6. On the other hand, learned counsel for respondent bank argued that learned counsel for the petitioner failed to appear before the DRAT on 02.07.2015 and then on 03.07.2015, on account of strike of Advocates. Therefore, appeal of the petitioner was rightly dismissed by the DRAT for non prosecution vide order dated 03.07.2015. Absence of counsel due to strike call by the Advocates cannot be a legal and valid reason or sufficient cause to re-call the order passed, dismissing the appeal for non prosecution, as has been observed by the DRAT vide order dated 19.08.2015 while dismissing the application of the petitioner to re-call the order dated 03.07.2015. The impugned orders dated 03.07.2015 and 19.08.2015 passed

by the DRAT do not require any interference by this court.

7. We have thoughtfully considered the submissions made by learned counsel for the parties.

8. A perusal of the order dated 19.08.2015 would reveal that the application of the petitioner, seeking restoration of the appeal which was dismissed for non prosecution on 03.07.2015, has been dismissed by the DRAT in view of the observations made by it in another case, i.e. Misc. Case No. 538 of 2015, titled as Smt. Neelam Nagpal & Anr. Vs. Syndicate Bank & Ors. and two other connected matters, decided on 09.07.2015. Though the DRAT has rightly observed that absence of counsel due to call of strike by the Bar Association cannot be taken as sufficient cause to justify his non-appearance, but facts and circumstances of the instant case are different than that of Neelam Nagpal's case, relied upon by the DRAT. In the case in hand, it is the specific case of the petitioner that his counsel was very much present in the court premises of DRAT on 02.07.2015 and was willing to argue the case, as is apparent from the fact that he filed written submissions (Annexure P-20) with the office of the Registrar of the DRAT. However, due to strong adverse reaction from the members of DRAT Bar Association, who had assembled there in a large number and were not allowing the outside Advocates to appear before the DRAT on account of strike call given by them, counsel for the petitioner could not make his entry into the court room. It is apparent that for no fault of the petitioner, on account of non appearance of her counsel, her appeal challenging the order dated 17.02.2012 (Annexure P-15) passed by the Presiding Officer, DRT – II, Chandigarh, whereby the order dated 03.01.2006 rejecting the objections of the petitioner and her mother against the proclamation of sale was

upheld, has been dismissed for non prosecution. It is the admitted case of the parties that during the pendency of proceedings before the Presiding Officer, DRT-II, Chandigarh, Balraj Singh (respondent No.2 herein), had purchased the property of the petitioner. Thus, he is the beneficiary of the impugned order passed by the DRAT, dismissing the appeal of the petitioner for non prosecution. But despite service, he did not appear in this petition to contest the claim of the petitioner. Even otherwise, it would be in the interest of justice if the appeal of the petitioner is decided on merits. It is needless to mention here that no body should be condemned unheard.

9. Consequently, keeping in view the peculiar facts and circumstances of the case, as narrated above, and in the interest of justice, the impugned orders dated 03.07.2015 (Annexure P-21) and 19.08.2015 (Annexure P-23) are set aside and the case is remanded back to the DRAT with a direction that the appeal (Annexure P-17) filed by the petitioner challenging the order dated 17.02.2012 (Annexure P-15) of the Presiding Officer, DRT – II, Chandigarh, whereby the order dated 03.01.2006 passed by the Recovery Officer was affirmed, be decided on merits, in accordance with law.

11. Petition is, accordingly, allowed.

(RAMENDRA JAIN)
JUDGE

August 23, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes