

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No. 11169 of 2016
Date of Decision: 28.04.2017

Allahabad Bank

..Petitioner

versus

Debts Recovery Appellate Tribunal, Delhi and others ..Respondents

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

Present: Mr. Kamal Preet Singh Dhillon, Advocate, for the petitioner.

RAMENDRA JAIN, J.

Briefly stated, Respondent nos. 2 and 3 (for short “borrowers”) obtained cash credit limit facility of Rs.10 lakh from the petitioner-bank in the year 2008 against execution of various documents like demand promissory note, consent letter, acknowledgment letter, agreement of guarantee etc. in favour of the petitioner-bank. Since borrowers could not adhere to the financial discipline, their cash credit facility account was declared Non Performing Asset (“NPA”) on 27.1.2010. Thereafter, on 02.07.2010, the petitioner-bank filed Original Application No.295 of 2010 against respondent nos. 2 to 5 before the Debts Recovery Tribunal-II, Chandigarh (for short “ DRT”) for recovery of the outstanding loan amount. Upon notice, when respondent nos. 2 to 5 did not appear, they, vide order dated 16.04.2012 were proceeded ex parte. However, vide order dated 28.5.2013 (Annexure P-2) passed by the DRT-II, Chandigarh, the aforesaid Original Application filed by the petitioner-bank was dismissed in

default. Resultantly, the petitioner-bank filed an application dated 18.10.2013 (Annexure P-3) for restoration of its Original Application, which, according to the petitioner-bank, was dismissed vide order dated 10.2.2015 (Annexure P-4) passed by the DRT-II, Chandigarh, in an illegal manner by the learned Presiding Officer, DRT-II, Chandigarh, without applying his judicial mind and appreciating the fact that there was justifiable reason to restore the Original Application and its non-restoration would cause irreparable loss, harm and injury for no fault of the petitioner-bank. Being aggrieved against both the orders dated 28.5.2013 (Annexure P-2) and 10.2.2015 (Annexure P-4) dismissing the original Application of the petitioner-bank and further dismissing the restoration application, respectively, the petitioner-bank filed an appeal under section 20 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 before the learned Debts Recovery Appellate Tribunal, Delhi ("DRAT), which, too, was dismissed on 13.05.2015 (Annexure P-1).

By way of the instant writ petition under Articles 226/227 of the Constitution, the petitioner-bank has prayed for issuance of a writ in the nature of certiorari for quashing the order dated 13.5.2015 (Annexure P-1) passed by the learned DRAT-Delhi, orders dated 28.5.2013 (Annexure P-2) and dated 10.2.2015 (Annexure P-4) passed by the learned DRT-II Chandigarh.

Learned counsel for the petitioner contended that on dismissal of the Original Application of the petitioner-bank vide order dated 28.5.2013 (Annexure P-2) by DRT-II, Chandigarh, immediately an application for restoration of the Original Application was filed on 18.10.2013. However, the learned DRT-II Chandigarh, took around one

year and four months in deciding the aforesaid application and finally dismissed the same on 10.2.2015 (Annexure P-4). The appeal of the petitioner-bank was illegally and wrongly dismissed on account of misconduct on part of its counsel, who did not inform about the proceeding of the case, rather intimated wrong dates, besides failing to attend the case properly. In fact, counsel for the petitioner-bank, instead of appearing himself before the DRAT, Delhi, further appointed an associate counsel to represent the petitioner's case and simultaneously, informed it that there was no requirement of the presence of its authorised officer before the Presiding Officer, DRAT, Delhi. It was urged that if the impugned orders are not set aside, it would suffer an irreparable loss and injury for no fault of the petitioner-bank.

After giving our thoughtful considerations to the contentions made by the learned counsel for the petitioner-bank, we find merit in the instant writ petition, inasmuch as on dismissal of the Original Application of the petitioner-bank on 28.5.2013 (Annexure P-2), the petitioner-bank had filed its application for restoration, which the learned DRT-II, Chandigarh, kept pending for one year and four months and then dismissed the same vide order dated 10.2.2015 (Annexure P-4). A perusal of the said order shows that the Presiding Officer, DRT-II Chandigarh, dismissed the restoration application on the ground that the applicant-petitioner-bank could not explain the delay from 7.6.2013 to 9.10.2013, despite the fact that its counsel had contended before him that two matters were listed on 6.2.2013, but the date, in both the cases, was wrongly noted as 7.6.2013. On 7.6.2013, the case was adjourned to 9.10.2013. Since the petitioner-bank has averred that its non-appearance before the DRT-II, Chandigarh, was not

on account of its fault, rather was on account of lapse on the part of its counsel, who kept it in dark, in our opinion, that the petitioner-bank should not have been condemned unheard by the DRT-II, Chandigarh, keeping in view the settled proposition of law that no body should be non-suited on technical ground. A further perusal of the order dated 13.5.2015 (Annexure P-1) passed by the DRAT, Delhi dismissing the appeal of the petitioner-bank, shows that the petitioner-bank had specifically pleaded before it that they had also initiated action against its erring counsel and thus, this plea of the petitioner-bank had put strength in its stand. Further, dismissal of the application for restoration of the Original Application of the petitioner-bank was on account of lapse on part of its counsel. In view of the above factual aspect of the case, the petitioner-bank cannot be made to suffer on account of negligence on the part of its counsel.

For the reasons stated hereinabove, the writ petition is allowed, the impugned orders dated 28.5.2013 (Annexure P-2), dated 10.2.2015 (Annexure P-4) passed by DRT-II, Chandigarh and dated 13.5.2015 (Annexure P-1) passed by the DRAT-Delhi, are set aside and the case is remanded back to the DRT-II, Chandigarh, to proceed with the same, in accordance with law.

(RAMENDRA JAIN)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

28.4.2017
VK

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| 1. | Whether reasoned/speaking | Yes/No |
| 2. | Whether reportable | Yes/No |