

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

CWP No. 27583 of 2017 (O&M)

Date of decision : 4.12.2017

M/s Surya Impex and others

..... Petitioners

VS

Debts Recovery Tribunal-II and another

..... Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
 Hon'ble Mr. Justice Gurvinder Singh Gill**

Present: Mr. Anshul Mangla, Advocate, for the petitioners.

Rajesh Bindal J.

Challenge in the present petition is to the order dated 5.6.2017 passed by the Debts Recovery Tribunal-II, Chandigarh (for short, 'the Tribunal'), whereby the right of the petitioners to file the written statement as well as counter-claim was closed. Order dated 23.9.2017 passed by the Tribunal has also been challenged, whereby the application filed for recalling of the aforesaid order was dismissed.

The proceedings in the present case arise out of OA No. 1039 of 2017 – Punjab National Bank vs M/s Surya Impex and others filed by respondent no.1 against the petitioners for recovery of ₹ 54,92,814.12 with pendent lite and future interest.

For the view we are taking in the present petition, we do not deem it appropriate to issue notice to the respondents, as the same would unnecessarily delay not only the disposal of the present petition but also the Original Application as well.

Learned counsel for the petitioners submitted that initially the Application was filed before the Debts Recovery Tribunal-I, Chandigarh, where the same was numbered as OA No. 842 of 2016. It was listed for the first time on 24.8.2016, on which date notice was issued to the petitioners. It was ordered to be listed on 25.10.2016 before the learned Registrar for completion and service and pleadings. Vide order dated 24.8.2016, the respondent bank was directed to collect the summons and ensure service upon the petitioners and file proof of the same within a period of 30 days from the date of the order. However, the respondent bank failed to comply with the order dated 24.8.2016. The service report was filed only on 24.10.2016 vide diary no. 11353, as incorporated in the order dated 25.10.2016 of the Assistant Registrar, on which date petitioner nos. 2 and 3 appeared through their counsel and filed vakalatnama. Further as service of petitioner nos. 1 and 4/ defendant nos. 1 and 4 was not complete, substituted mode of service was allowed. The case was ordered to be listed before the Registrar on 27.3.2017, on which date the case was directed to be listed before the DRT-II, Chandigarh, and the parties were directed to appear on 5.6.2017. On 5.6.2017, the petitioners changed their counsel as the previous counsel had returned the brief on account of his continued illness. However, the learned Tribunal refused to grant any time to the petitioners to file written statement. On 23.8.2017, the petitioners filed application for

re-calling the order dated 5.6.2017. The case was adjourned to 25.8.2017, on which date it was adjourned to 23.9.2017 as counsel for the respondent-bank was not available. On 23.9.2017, the Tribunal dismissed the application.

Learned counsel for the petitioners submitted that delay in filing the written statement was not intentional. It was further submitted that proceedings are yet to start. The case is now fixed for 21.12.2017. The prayer is that orders dated 5.6.2017 and 23.9.2017 be set aside and one opportunity be granted to file the written statement along with counter-claim.

Heard learned counsel for the petitioners and perused the paper book.

A perusal of the paper-book shows that the defendant nos. 2 and 3/petitioner nos. 2 and 3 appeared for the first time on 21.12.2016 and counsel for the respondent bank sought time for substituted mode of service of defendant nos. 1 and 4. Thereafter, the case was transferred to DRT-II. As the earlier counsel engaged by the petitioners had returned the brief due to ill health, they engaged another counsel on 5.6.2017. He could not prepare the written statement, which resulted in passing of impugned order. Thereafter, the petitioners immediately filed application for recalling of the order dated 5.6.2017, which was also dismissed.

We find merit in the contentions raised by learned counsel for the petitioners. Cause shown for delay in filing of written statement is sufficient. Accordingly, we set aside the orders dated 5.6.2017 and 23.9.2017 and grant one opportunity to the petitioners to file written

statement and counter-claim. The petitioners are permitted to file written statement and counter-claim, with an advance copy to counsel for respondent-bank one week before the next date of hearing fixed before the Tribunal i.e. 21.12.2017, subject to payment of ₹ 10,000/- as costs to the respondent bank by way of demand draft. Further proceedings will be held thereafter.

The writ petition stands disposed of accordingly. The bank, if aggrieved will have right to file application for recalling of the order.

(Rajesh Bindal)
Judge

4.12.2017
vs

(Gurvinder Singh Gill)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No