

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

CWP No. 22088 of 2015 (O&M)
Decided on : 24.09.2018

Allahabad Bank

..... Petitioner

Versus

Debts Recovery Appellate Tribunal, Delhi and others Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr. K.P.S.Dhillon, Advocate
for the petitioner.

Mr. R.Kartikeya, Advocate and
Mr. K.S.Khaira, Advocate
for respondents No.2 to 5.

Mr. Ashish Kumar-respondent No.4 in person.

Mr. Aalok Jagga, Advocate
for respondents No.6 and 7.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of order dated 22.01.2015 (Annexure P-10) passed by Debt Recovery Appellate Tribunal, Delhi (for brevity, 'DRAT'). Further, a prayer is made for quashing of orders dated 09.01.2013 and 28.04.2014 (Annexures P-6 and P-8) respectively passed by the Debts Recovery Tribunal-II, Chandigarh (for brevity, 'DRT')

2. The brief facts necessary for adjudication of the present writ petition are that Allahabad Bank (petitioner) Clock Tower Branch, Ludhiana extended a financial assistance of ₹62 lakhs in the year 1991, to

the sole proprietorship concern namely M/s Amar Kaur and Company. The sole proprietor of the concern was Ms. Amar Kaur. In order to secure the loan, the properties owned by Ashish Kumar (respondent No.4 in the writ petition) was mortgaged with the bank. The borrower was not able to maintain the financial discipline and contravened the terms and conditions governing the loan facilities. The petitioner bank lodged an FIR. A civil suit was filed for recovery of ₹11,27,236/- along with pendente lite and future interest. The suit vide order dated 26.07.1996 was transferred to DRT, Jaipur. Later on, the proceedings were transferred to DRT, Chandigarh.

3. During the pendency of the proceedings before the DRT, Ms. Amar Kaur expired. Thereafter, pleadings were completed, written submissions were filed by the bank and the case was adjourned to 06.06.2012 for pronouncement of the order. The order was not pronounced on 06.06.2012 and the matter was adjourned to 09.01.2013. On the said date, none was present on behalf of the parties and the case was dismissed in default.

4. The bank filed the miscellaneous application for recalling the order dated 09.01.2013. Along with the application there was an application for condonation of delay. DRT issued notice on the application for restoration for 28.04.2014. The application was dismissed vide order dated 28.04.2014 stating that the postal receipts and returned envelopes were not in order and no affidavit of service of respondents had been filed with the writ petition.

5. The petitioner bank being aggrieved filed an appeal before DRAT. The application was made for seeking permission to serve

Sh. Vinod Kumar by way of substituted service through publication. The appellant effected the publication. Ashish Kumar (respondent No.4 in the writ petition) appeared before the DRAT and submitted that Sh.Vinod Kumar (respondent No.5 in the writ petition) was killed long ago by Punjab Police and nothing has been heard about him since past seven years and he may be presumed dead. The DRAT held that the bank should have been more careful to bring this fact before the Tribunal. Further, taking note of the fact that a bundle of postal receipts as well as returned envelopes produced before DRT were not in proper order, it was held that the bank was not making serious efforts qua the proceedings, therefore, the appeal was dismissed vide order dated 22.01.2015.

6. Aggrieved of the orders of DRT and DRAT, the present writ petition has been filed by the bank.

7. Learned counsel for the petitioner contended that the case was fixed before the DRT for pronouncement of order but the same was dismissed in default as none was present for the parties. He argued that the DRT erred in dismissing the application for recalling the order on the ground that the postal receipts and returned envelopes produced were not in proper order. Moreso, when earlier the DRT itself had proceeded exparte against the respondents. He also challenged the finding of the DRAT that the petitioner bank was not serious qua the proceedings.

8. Respondent No.4 Ashish Kumar appeared in person and argued that his brother impleaded as respondent No.5 in the writ petition was killed by Punjab Police and appropriate steps were not taken by the bank to implead his LR's.

9. It is pertinent to note that during the pendency of the writ

petition, the memo of parties was amended. The application was allowed vide order dated 04.05.2017 and amended memo of parties was taken on record. From perusal of amended memo of parties, it is evident that respondent No.4 Ashish Kumar himself is the legal heir of Vinod Kumar and he was present in proceedings before DRAT.

10. The pleadings in the case were complete before DRT, the bank had already filed the written submissions. The case was fixed for pronouncement of orders. In such circumstances, it was not appropriate for the DRT to dismiss the case in default.

11. In the interest of justice and keeping in view the facts of the case, Annexures P-6, P-8 and P-10 are set aside and the matter is remitted to the DRT for decision on merits, subject to the petitioner depositing a sum of ₹ 25,000/- as cost in Kerala Chief Minister Relief Fund. The parties are directed to appear before DRT on 25.10.2018.

12. The writ petition is disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 24, 2018
anju

Whether speaking/reasoned: Yes

Whether reportable : Yes