

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

CWP No. 27472 of 2018
Decided on : 26.10.2018

Rajesh Kumar Chauhan and another

..... Petitioners

Versus

Presiding Officer, DRT-II, Chandigarh and another

..... Respondents

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

Present : Mr. Atul Sharma, Advocate
for the petitioners.

Mr.C.S.Pasricha, Advocate
for the respondent-bank.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of impugned orders dated 15.09.2018 and 22.09.2018 (Annexures P-4 & P-6) whereby the petitioners have been proceeded *ex parte* and the application for setting aside the *ex parte* order has been dismissed.

2. The petitioners are the borrowers of loan. Presiding Officer, Debts Recovery Tribunal-II, Chandigarh and Punjab National Bank, Main Branch Fountain Chowk, Gurugram, have been arrayed as respondents No.1 and 2 respectively in the present writ petition.

3. The petitioners availed financial assistance from respondent No.2. The petitioners failed to maintain financial discipline and defaulted in repayment of credit facility availed.

4. Respondent No.2 filed an application under Section 19 of the Recovery of Debts & Dues to Banks and Financial Institution Act, 1993 (for brevity, 'the Act') for recovery of ₹1,41,23,990/-. The DRT issued notice for appearance of the petitioners on 17.08.2018. The said notice was served upon the petitioners. None appeared, thereafter the case was adjourned to 15.09.2018. None appeared for the petitioners and the petitioners were proceeded *exparte*.

5. The petitioners moved an application for setting aside the *exparte* order. The Tribunal held that inspite of service of the notice to appear on 17.08.2018, none appeared. The case was adjourned to 15.09.2018, even on the said date, none appeared inspite of their being full knowledge about the proceedings and there was no satisfactory explanation for non-appearance. The application was dismissed by the DRT on 22.09.2018.

6. Aggrieved of the *exparte* order and dismissal of the application for setting aside the *exparte* order, the present petition has been filed.

7. Learned counsel for the petitioners argued that the notice for appearance of 17.08.2018 was received by the petitioners but along with the said notice there was no copy of original application or the other supporting documents. He contended that counsel was engaged to appear on 17.08.2018 but the counsel could not appear as the work was suspended because of the demise of Ex-Prime Minister of India. He

argued on 15.09.2018, by the time the counsel could file his power of attorney the matter was proceeded exparte.

8. Learned counsel for respondent No.2 submitted that the petitioners were aware of the proceedings, the entire endeavour is to delay the recovery of the amount due to the bank.

9. Considering the facts of the case and after hearing the arguments, it is not in dispute that the petitioners were aware of the proceedings. Even if the averment of the petitioner is accepted that on 17.08.2018 the counsel was engaged but he was unable to appear as the work was suspended, even in that case, the power of attorney should have been filed in the Registry of DRT. On 15.09.2018, no power of attorney was filed rather it is stated that by the time the counsel went to file power of attorney in the Registry, the DRT had already proceeded exparte.

10. It would not be appropriate that the petitioners are condemned unheard and are denied the opportunity to defend themselves. The ends of justice would be met if the order dated 15.09.2018 whereby the Tribunal proceeded exparte is set aside subject to the petitioners depositing ₹25 lakhs with respondent No.2 within 15 days from today, who shall adjust the same against the outstanding dues of the petitioners.

11. It has been informed during the course of hearing that the DRT has fixed the case for 27.10.2018. The DRT shall adjourn the case to 13.11.2018. The parties would appear before the DRT on 13.11.2018 to show that the order of this Court has been complied with.

12. Subject to the compliance of the conditions stated above, orders dated 15.09.2018 and 22.09.2018 (Annexures P-4 & P-6) are set aside. It is, however, clarified that in case failure of the petitioners to

deposit the amount stated above within time specified, the writ petition shall be deemed to be dismissed and the impugned orders upheld.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

October 26, 2018
anju

Whether speaking/reasoned: Yes

Whether reportable : Yes