

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.8443 of 2018.

Date of Decision: April 05, 2018

Meena Bansal and another

.....Petitioners

versus

State Bank of India and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SHEKHER DHAWAN.

Present: Mr.Rajesh Narang, Advocate, for the petitioner.

Mr.Gaurav Goel, Advocate, for respondent Nos.1 & 2.

-. -

Surya Kant, J. (Oral)

Notice of motion to respondent Nos.1 & 2 only at this stage.

On our asking, Mr.Gaurav Goel, Advocate, accepts notice on their behalf.

Let two copies of the writ petition be handed-over to him during the course of day failing which this order shall be automatically recalled and the writ petition shall be deemed to have been dismissed for non-prosecution.

In view of the nature of order which we propose to pass, it is not necessary to seek any counter-reply from respondent Nos.1 & 2 or to serve respondent Nos.3 & 4 at this stage as no order on merits prejudicial to their interest is being passed.

The petitioners are aggrieved by the order dated 09.01.2018 passed by Debts Recovery Tribunal-I, Chandigarh whereby their two Miscellaneous Applications, one moved for restoration of MA No.26 of 2016 and other for condonation of delay in filing the SA-RR-5157 of 2014, have been dismissed.

As regard to the petitioners' restoration application, it was their case that the main case was listed before Tribunal on 13.01.2016 and petitioners being residents of a far away place, i.e., Abohar, could not remain present on every date of hearing and their counsel was also busy in the High Court who made a request through his colleague that he had forgotten the date of hearing and it may be adjourned. The Tribunal however declined to accede to the request. The case was dismissed in default. The petitioners immediately moved MA No.101 of 2017 but the same has been dismissed vide the impugned order. Consequently, the application for condonation of delay also stands dismissed.

Having heard learned counsel for the parties, it appears to us that the Tribunal has acted erroneously while dismissing the application for restoration of MA No.26 of 2016. It was a case of human error on the part of counsel for the petitioners who did not appear and requested his colleague to make a request before the Tribunal for adjournment of the case. The petitioners are residents of a far-away place who were not expected to appear in person on every date of hearing. Since the petitioners had engaged a counsel through whom the case was filed, it cannot be said that they were not vigilant in pursuing their claim. At best, the Tribunal ought to have burdened them with cost for restoration of the proceedings.

For the reasons afore-stated, we allow this writ petition in part; the impugned order dated 09.01.2018 to the extent of dismissal of the restoration application is set-aside; MA No.26 of 2016, which was an application for restoration of SA-RR-5157 of 2014, is allowed and SA-RR-5157 of 2014 is restored to its original number, with a cost of Rs.10,000/- which shall be paid by the petitioners to the respondent-bank on the day of

appearance before the Tribunal. However, we do not express any views on the merits of application for condonation of delay in filing the SA, i.e., I.A. No.662 of 2016. Since the main SA has been restored, the Tribunal is directed to decide the said application afresh and in accordance with law.

The parties are directed to appear before the Tribunal on 17.04.2018.

[SURYA KANT]
JUDGE

April 05, 2018
mohinder

[SHEKHER DHAWAN]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No