

(1) CWP No.36644 of 2019
Date of decision: 20.12.2019

Lakhwinder Singh ...Petitioner

Versus

Corporation Bank and others ...Respondents

(1I) CWP No.37210 of 2019

M/s Sagar Power Products & others ...Petitioners

Versus

Corporation Bank and another ...Respondents

**Coram: Hon'ble Mr. Justice Rakesh Kumar Jain
Hon'ble Mr. Justice Ashok Kumar Verma**

Present: Mr. Aditya Bhushan, Advocate for the petitioner.

Mr. G.S.Ahluwalia, Advocate
for the respondent-Bank.

Rakesh Kumar Jain, J. (Oral)

This order shall dispose of two petitions bearing CWP No. 36644 of 2019 titled as “Lakhwinder Singh Vs. Corporation Bank and others” (for short the first petition) and CWP No. 37210 of 2019 titled as “M/s Sagar Power Products and others vs. Corporation Bank and another” (for short the second petition) as both these petitions are filed against the order dated 25.01.2019 by which the petitioners have been proceeded against ex parte and against the order dated 20.11.2019 passed by Debts Recovery Tribunal-II, Chandigarh (for short “DRT”) by which the applications bearing No. IA No.915 of 2019 and IA No. 926 of 2019, for setting aside the ex parte order, have been dismissed.

Counsel for the petitioners has submitted that both the petitioners had engaged Ashok Kumar Kalsi, Advocate, who has though filed his memo of appearance in the Registry of the DRT but could not appear on 25.01.2019 when the said case was called up for hearing. Thereafter, the case was adjourned to 14.08.2019 but he could not appear on that date because he was out of India. Counsel for the petitioners has further submitted that the petitioners had done whatever was in their control by engaging the counsel to represent them before DRT and the said Advocate had though filed his memo of appearance but could not appear before the DRT for some reasons. Counsel for the petitioners has relied upon the decision of the Supreme Court in a case of **Rafiq and another Vs. Munshilal and another (1981) 2 SCC 788** to contend that the inaction on the part of the advocate should not adversely affect the rights of the petitioners.

Counsel for the respondents has vehemently argued that there was a deliberate failure on the part of the petitioners to represent before the DRT.

We have heard counsel for the parties and after going through the record, are of the considered opinion that there is merit in the submissions made by counsel for the petitioners because it is not a case where the petitioners, after having being served with the notice of DRT, had not engaged the counsel. The counsel had also filed his memo of appearance as well in the Registry in order to appear on the date of hearing but could not appear because he had gone out of the country.

Though there is some lapse on the part of the counsel for the petitioners but it can be condoned by compensating the respondents with costs. Consequently, both the petitions are hereby allowed and the impugned order(s) are set aside though with costs of ₹20,000/- in each case which shall be paid by the petitioners to the respondent-Bank by way of a demand draft on their appearance.

The parties are directed to appear before DRT on 06.02.2020.

[RAKESH KUMAR JAIN]
JUDGE

[ASHOK KUMAR VERMA]
JUDGE

December 20, 2019

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Whether speaking / reasoned	:	Yes/No
Whether reportable	:	Yes/No