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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4006/2017 & C.M. APPL. 17628/2017**

NARESH KUMAR AGGARWAL Petitioner
Through: Mr. Sushant Mahajan, Advocate.

versus

STATE BANK OF INDIA Respondent
Through: Mr. Rajiv Kapur, Advocate for SBI.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **30.10.2019**

1. The Petitioner is aggrieved by an *ex parte* order dated 7th August, 2014 passed by the Debt Recovery Tribunal-I ('DRT') allowing O.A. No. 87/2012 filed by the Respondent Bank as well as the subsequent order dated 10th September 2015 passed by the DRT declining to recall the *ex parte* order and the order dated 8th March, 2016 passed by the Debt Recovery Appellate Tribunal ('DRAT') dismissing the Petitioner's appeal against the said order.

2. This Court has heard learned counsel for the parties. It requires to be noted at the outset that the Petitioner stood guarantor for a loan advanced by the Respondent bank to the main borrower. A perusal of the order-sheets of the DRT reveals that on 27th May 2014, the counsel appearing before the DRT on behalf of the Petitioner submitted that he was not getting instructions from his client. On the subsequent date i.e. 9th July 2014, he

simply informed the DRT that he had taken discharge from the instant case. Instead of ordering a notice afresh to the Petitioner, the DRT proceeded to list the case for final orders on 7th August, 2014. On that date, in the absence of the Petitioner, the DRT allowed OA No. 87/2012.

3. The above fact was brought to the notice of the Petitioner in the parallel proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ('SARFAESI Act'). At the hearing of W.P.(C) No. 5804/2014 in this Court by the Petitioner arising out of those proceedings on 3rd September 2014, counsel for the Petitioner prayed for a week's time to take steps to challenge the said order dated 7th August 2014. On 5th September, 2014, the Petitioner filed an application before the DRT for setting aside the *ex parte* order dated 7th August, 2014, and for permitting the Petitioner to contest OA No. 87/2012. When the writ petition again came up for hearing on 10th September, 2014 before this Court, the counsel for the Petitioner sought leave to withdraw the petition with liberty to take appropriate steps.

4. The aforesaid application has been dismissed by the DRT by the impugned order dated 10th September 2015, on the strange reasoning that the order dated 7th August 2014 could not be termed an *ex parte* order because it had been passed after considering the written statement of the present Petitioner.

5. It is not disputed that on 7th August, 2014 when OA No. 87/2012 was decreed by the DRT, none represented the Petitioner. The mere fact that the

Petitioner's written statement may have been taken into account does not cease to make it an *ex parte* order.

6. Once it was brought to his notice on 3rd September 2014 that the aforementioned order dated 7th August, 2014 had been passed by the DRT *ex parte*, the Petitioner within two days thereafter, i.e. 5th September 2014 applied to the DRT to set aside the *ex parte* order. In the fitness of things, therefore, the DRT ought to have allowed the Petitioner to contest the proceedings by recalling the *ex parte* order and restoring OA No. 87/2012 to its file. There is no denial of the fact that there was no document or letter placed on record by counsel appearing for the Petitioner before the DRT on 9th July, 2014 to show that he had been discharged. He did not even file a formal application seeking such discharge.

7. In the circumstances, the Court is of the view that the Petitioner ought to have been given an opportunity to defend himself in OA No. 87/2012. The DRAT in the impugned order has overlooked the above error in the impugned order of the DRT.

8. For the aforementioned reasons, both the orders dated 7th August, 2014 and 10th September 2015 of the DRT as well as the order dated 8th March, 2016 of the DRAT are hereby set aside. OA No. 87/2012 is restored to the file of the DRT for being proceeded with from the stage at which it was when the impugned order dated 7th August, 2014 was passed. The matter is fixed before the DRT for directions on 18th November, 2019

9. It is made clear that this Court has not expressed any view on the merits

of the contentions of either the Petitioner or the Respondent bank. These are left open to be urged before the DRT and to be considered by it on merits in accordance with law.

10 Considering that the matter has been pending before the DRT for many years, the DRT is requested to dispose of the said OA No. 87/2012 as expeditiously as possible.

11. The petition is disposed of in above terms. The pending application is also disposed of. No costs.

12. *Dasti* under the signatures of the Court Master.

S.MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 30, 2019
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