**IN THE HIGH COURT AT CALCUTTA**

**CIVIL REVISIONAL JURISDICTION**

Present:

The Hon'ble **JUSTICE SUVRA GHOSH**

**C.O. No. 1157 of 2018**

**Union of India**

**- VERSUS -**

**UCO Bank and Others**

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| For the Petitioner: | Mr. Moti Sagar Tiwari, Adv. |
| For the Respondent No. 4: | Mr. Subhankar Nag, Adv.<br>Ms. Sreya Basu Mallick, Adv.<br>Mr. Ankit Dey, Adv., |
| For the Respondent No: 1: | Mr. Pranit Bag, Adv. |

Heard on: 05-01-2021

Date: 05-01-2021

**SUVRA GHOSH, J. :-**

1. The Union of India is represented.
2. Respondent numbers 1 and 4 are represented and the other respondents are found absent on call despite service of notice upon them.
3. It is submitted on behalf of the petitioner that opposite party no. 3 Bharat Process and Mechanical Engineers Ltd. obtained credit facility from respondent no. 1 UCO Bank and defaulted in repayment of the

same resulting in institution of a civil suit by opposite party no. 1. The petitioner stood guarantor to such loan to the extent of Rs. 250 lakhs. The civil suit was transferred before the DRT-1 and registered as T.A. No. 216 of 1994. The said case was allowed with the following observations:-

*(i)* *"The UCO Bank, the respondent no. 1 herein was entitled to realize a sum of Rs. 1,92,12,957.92p. from the defendant no. 3;*

*(ii)* *The UCO Bank, the respondent no. 1 herein was also entitled to realize a sum of Rs. 2,16,13,312.35p. from the Petitioner and Respondent no. 3 jointly;*

*(iii)* *The respondent no. 1 (UCO bank) was entitled to realize interest at the rate of 19.5% per annum on the aforesaid certificate amount;*

*(iv)* *The respondent no. 3, Bharat Process and Mechanical Engineers Ltd. was restrained from selling and/or transferring its suit property;*

*(v)* *The respondent bank was entitled to realize its certificate amount by sale of the suit property and certificate was directed to be prepared;"*

4. Subsequently on 17-11-2009 the aforesaid decree/certificate of more than 4 crores was wrongfully assigned by opposite party no. 1 in favour of opposite party no. 2 upon consideration of meagre sum of Rs. 55 Lakhs. After addition of opposite party no. 2 as a co-certificate holder in the proceeding, the certificate was put into execution before

the recovery officer, who on 06-10-2010, passed an order of attachment of the shares which were not the assets of the company in liquidation i.e. Opposite Party no. 3 Bharat Process and Mechanical Engineers Ltd. On the prayer of opposite party no. 2, the recovery officer passed an order for sale of the shares vide order dated 23-03-2011. Opposite party no. 4 preferred an appeal against the said order before the DRT which was disposed of vide order dated 23-02-2012 with the following directions :-

*"....... However the Union of India may discharge its liability as decided in this matter by transferring these shares in favour of Respondent No. 2 or by another way. Respondent Nos. 1 and 2 may proceed under the Recovery Proceeding to recover the dues in respect of the other properties of Certificate Debtor Nos. 1 and 2 in accordance with law."*

5. The petitioner preferred an appeal before the Debts Recovery Appellate Tribunal (hereinafter referred to as the DRAT) against the said order, being Appeal No. 118 of 2012 after expiry of the statutory period of time for filing the same for which the prayer for condonation of delay in filing the appeal was taken out and was allowed by the DRAT.

6. In course of hearing the appeal, the DRAT observed that three orders could not be challenged in a single appeal and granted liberty to the petitioner to delete prayers (e) and (f) of the appeal. Due to change of the panel of lawyers of the petitioner the said directions of the DRAT

could not be complied with and the matter was called on and dismissed on 06-04-2015. The petitioner immediately filed an application for restoration of the appeal but the said application was considered and dismissed by the DRAT by the order impugned dated 12-02-2018.

7. Being aggrieved by and dissatisfied with the said order the petitioner has come up before this court praying for setting aside the same and restoring the appeal to its file and for consideration of the same by the DRAT on merits.

8. It is submitted by the Learned Counsel for the Union of India that the order of the DRAT dated 10-03-2015 could not be complied with by the appellant as there was a change in the panel of advocates representing the petitioner and the newly appointed advocate was not aware of the order dated 10-03-2015. The restoration application was filed immediately thereafter and was moved before the DRAT on 12-02-2018 by the learned advocate Mr. Tiwari who filed his Vakalatnama on 15-07-2017.

9. According to the Learned Counsel, he was not aware of the order dated 10-03-2015 and was under the impression that only the order dated 23-02-2012 was challenged in appeal. Learned Counsel concedes to the observation of the DRAT that three orders cannot be challenged in a single appeal and further submits that he intends to

challenge only the order dated 23-02-2012 before the DRAT. Learned Counsel prays for restoration of the appeal before the DRAT and consideration of the same on merits.

10. Opposite party no. 4 Braithwaite, Burn and Jessop Construction Company Limited (BBJ) has spoken in tune with the submission of the petitioner and has prayed for restoration of the appeal. Learned Counsel for opposite party no. 4 has added that UCO Bank has merged with Punjab National Bank and is not duly represented in the present case after the said merger.

11. Learned Counsel appearing on behalf of the opposite party UCO Bank has vehemently opposed the prayer of the petitioner. He has submitted that the Vakalatnama of Learned Counsel for the petitioner suggests that Learned Counsel appeared in the appeal in 2017 and had ample opportunity to comply with the order of the DRAT dated 10-03-2015 in spite of which he failed and neglected to do so. Learned Counsel has further submitted that restoration of the appeal would amount to restoration of the prayer with regard to all the three orders in the appeal which is not permissible in law. At best, liberty may be granted to the petitioner to prefer three separate appeals against the three orders of the recovery officer. Learned Counsel has referred to Order 41 Rules 11 and 19 of the Code of Civil Procedure in support of his contention and has submitted that as the appeal was dismissed due to non appearance of the appellant before the DRAT,

fresh appeals can be preferred by the petitioner with regard to the prayers stated in the memorandum of appeal.

12. I have heard the submissions of Learned Counsel for the parties and have considered the documents placed on record. At the very outset, it should be stated that the contention of opposite party no. 4 with regard to merger of UCO Bank with Punjab National Bank is not supported by any document and has also been denied by opposite party no. 1. Therefore it cannot be said that opposite party no. 1 has not been duly represented in the present case.

13. As envisaged in Order 41 Rule 11(2) of the Code of Civil Procedure, the Court may dismiss an appeal if the appellant does not appear when the appeal is called on. Rule 19 says that the appellant may apply before the appellate court for readmission of the appeal so dismissed provided the court is convinced that the appellant was prevented from appearing before the court due to sufficient cause.

14. In the present case, the petitioner challenged three orders dated 23-02-2012, 15-06-2010 and 04-11-2003 respectively in the appeal before the Appellate Tribunal. The Tribunal held that three separate appeals ought to have been filed challenging the three orders passed by the recovery officer. The Tribunal granted liberty to the appellant/petitioner to delete prayers (e) and (f) and challenge only order dated 23-02-2012. Unfortunately the petitioner was not

represented before the Tribunal on two consecutive days, i.e. 31-03-2015 and 06-04-2015 for which the appeal was dismissed for default on 06-04-2015. The ground for such dismissal was stated to be absence of the petitioner as well as non compliance of the order dated 10-03-2015.

15. The petitioner has explained that there was a change in the panel of advocates representing the petitioner and the newly appointed advocate misread the date as 30-04-2015.

16. It is trite law that a petition for restoration of an application should be construed liberally and an application ought to be disposed of on merits and not thrown overboard on mere technical grounds.

17. It is admitted on behalf of the petitioner that the three orders impugned should have been challenged in three separate appeals and Learned Counsel expresses his intention to delete prayers (e) and (f) from the memorandum of appeal and challenge only order dated 23-02-2012 before the Appellate Tribunal.

18. In my considered view, absence of the petitioner before the Appellate Tribunal on two consecutive days may be condoned and the appeal should be restored to its original file and number in order to enable the petitioner to comply with the order of the Tribunal dated 10-03-2015 so that the appeal can be disposed of on merits. The petitioner should not be made to suffer on account of laches or negligence, if

any, on the part of its Learned Counsel.

19. Accordingly order dated 12-02-2018 in Application No. 136 of 2015 in Appeal No. 118 of 2012 before the Debts Recovery Appellate Tribunal, Kolkata is set aside.

20. The Appeal be restored to its original file and number subject to payment of Rs. 25,000/- by the petitioner and on condition that the petitioner shall take necessary steps for compliance of order dated 10-03-2015 in the appeal within seven days.

21. The Tribunal shall dispose of the appeal on merits after giving opportunity to the parties to place their respective cases before it.

22. With these observations, C.O. No. 1157 of 2018 is disposed of.

23. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

**(Suvra Ghosh, J.)**