

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP-15125-2021

Date of Decision:10.08.2021

M/s Ramsons Tyres and others

...Petitioners

Versus

Canara Bank and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH  
HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. Vikas Bali, Advocate,  
for the petitioners.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

**SANT PARKASH, J.**

The present writ petition, filed under Article 226/227 of the Constitution of India, seeks to challenge the order dated 29.07.2021 (P-1) as well as the order dated 29.08.2019 (P-8) passed by the learned Debt Recovery Tribunal-III, Chandigarh (for short 'DRT')-respondent No.2.

Vide order dated 29.08.209 (P-8), the petitioners were proceeded against ex part and their right to file defence was struck off by the DRT. The same was sought to be recalled by the petitioners by filing an review/recalling application before the DRT, which was also dismissed vide order dated 29.07.2021.

The facts, which are relevant for adjudication of the present case, are that respondent No.1-Bank instituted the proceedings against the petitioners in July 2018 before the DRT by filing a petition under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'the R.D.B. Act, 1993') for recovery of a sum of

Rs.20,07,51923.48, which was outstanding against the petitioners. In those proceedings, the petitioners put in appearance on 23.01.2019 by filing their memo of appearance. Subsequently, when the matter again came up for consideration on 14.02.2019, the following order was passed by the DRT:-

*“The counsel for defendants has filed death certificate of defendant no.4. Bank is directed to place on record list of legal heirs of defendant no.4 on next date. Paper book supplied to the counsel for defendants for filing WS on next date.*

*The case is fixed for next date 14.03.2019.”*

Thereafter, on 14.03.2019 and 16.07.2019, the matter could not be taken up before the DRT as the Presiding Officer was on leave. Eventually, on 29.08.2019 when the matter came up for consideration before the DRT, no one had put in appearance on behalf of the petitioners, accordingly, the DRT ordered to proceed against them ex parte and also struck off their defence. The order dated 29.08.2019 reads as under:-

*“No one has appeared on behalf of the defendant Nos. 1 to 3 and 5.*

*Defendants have not filed written statement as per order dated 14.02.2019, therefore, their right to file written statement is closed and defence is struck off and they are ordered to be proceeded ex parte.*

*Bank is directed to place on record list of legal heirs of deceased defendant No.4 along with amended memo today.*

*Fresh notice be issued to legal heirs of deceased defendant No.4 for appearance on next date of hearing.*

*List on 23.01.2020.”*

Feeling aggrieved, the petitioners filed an application before the Tribunal for review/recalling of the order dated 29.08.2019 (P-8). The said application came up for final consideration on 29.07.2021 (P-16) and

while passing the detailed order, the DRT dismissed the application for review/recalling filed by the petitioners.

Hence, the present writ petition.

Heard.

Learned counsel for the petitioners would argue that only on one date of hearing, there was no representation on behalf of the petitioners before the DRT and hence, it was not justifiable to struck off their defence and to proceed them ex parte. It has further been argued by the learned counsel that since counsel for the Bank did not supply the complete paper-book to the petitioners, they were not in a position to file their written statements. He further submits that this fact could not be brought to the notice of the DRT that on 14.03.2019 and 16.07.2019 there was no hearing of the case as the Presiding Officer was on leave. Leaned counsel also drew attention to the orders dated 28.04.2021 (P-17) and 30.06.2021 (P-18) passed by Hon'ble 1<sup>st</sup> Division Bench while hearing a Public Interest Litigation vide which certain directions were issued to the Subordinate Courts as also to other Forums in relation to passing of any adverse orders on eviction, dispossession, demolition etc. which were not executed.

So far as the directions issued by Hon'ble 1<sup>st</sup> Division Bench vide orders dated 28.04.2021 and 30.06.2021 (P-17 & P-18, respectively) are concerned, the petitioners cannot take the advantage as these instructions are not applicable in the matter of ex parte proceedings. It relates only with regard to any adverse orders regarding eviction, dispossession, demolition etc. by the subordinate courts/forums and the same remained unexecuted.

Apart from that, if glanced through, the impugned order appears to be very well reasoned and Section 19 of the R.D.B. Act, 1993 specifically entails filing of written statement within a period of 30 days and only in the exceptional cases, a further period of 15 days can be extended by the Presiding Officer for filing of written statement.

Otherwise also, the petitioners have equally efficacious remedy of challenging the order before the Debt Recovery Appellate Tribunal and the petitioners, instead of availing that opportunity, directly approached this Court under Article 226/227 of the Constitution of India, which is legally not permissible.

Faced with the above-said situation, learned counsel for the petitioners prays for withdrawal of the present petition with liberty to approach the avail alternative remedy before the appropriate authority.

In view of the above, the present writ petition is hereby dismissed as withdrawn with liberty as aforementioned.

**(JASWANT SINGH)**  
**JUDGE**

**(SANT PARKASH)**  
**JUDGE**

10.08.2021

mks

Whether Speaking/Reasoned: YES / NO  
Whether Reportable: YES / NO