IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205 CWP-16906 of 2018 (O&M)
Date of decision: 18.04.2022

Amanpreet Singh Sodhi

...Petitioner

Versus

Debt Recovery Tribunal-III, Chandigarh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Ankush Verma, Advocate for the petitioner.

Mr. Rakesh Gupta, Advocate for respondent No.3.

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M.S. RAMACHANDRA RAO, J. (Oral)

The petitioner in this case is an auction purchaser in an auction held by the Recovery Officer-I of the Debt Recovery Tribunal-III, Chandigarh of certain property, and he had deposited 25% of the sale consideration of Rs.12.50 lakhs, and poundage fee of Rs.50,010/- on the date of auction within the stipulated time, but failed to deposit the balance 75% of the sale consideration within 15 days from the date of sale as required under the terms and conditions given in the sale notice.

It is contended that the petitioner had deposited the balance 75% of the sale amount of Rs.37.50 lakhs on 27.02.2018 before the Recovery Officer through a demand draft bearing No.079577 dt.

26.02.2018 after 91 days from the date of sale.

The petitioner then filed an application for extension of time, and for acceptance of the demand draft representing the remaining sale consideration amount on 27.02.2018.

The Recovery Officer, however, dismissed the same placing reliance on Rules 57 and 58 of Second Schedule of the Income Tax Act holding that he had no authority to extend time for payment of the balance amount of 75% beyond the period of 15 days, and that under Rule 58 if there is such a default in payment within the period mentioned in Rule 57, the deposited amount may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold.

Challenging the same, the petitioner preferred an appeal bearing No.02 of 2018 before the Presiding Officer of DRT-III, Chandigarh. However, the said appeal was also dismissed on 07.05.2018, confirming the order of the Recovery Officer, observing that there is no provision of law which empowers the Recovery Officer to extend the 15 days time to make the balance 75% payment.

Challenging the same, this writ petition is filed.

Counsel for the petitioner has contended that seven attempts have been made by respondent No.3-Bank to sell the machinery of the borrower M/s Amco Fabrics Pvt. Ltd., and the petitioner had given highest bid of Rs.50 lakhs four times more than the reserved price, but on account of some misunderstanding, the petitioner went on the last day for such payment i.e. 12.12.2017 to respondent No.3-Bank with the remaining amount of 75%, but he was informed that the said amount had to be deposited before the Recovery Officer-I of the Debt Recovery Tribunal-III, Chandigarh. It is contended that when he went to the said office on 14.12.2017 along with demand draft of Rs.37.50 lakhs representing the 75% of the balance sale consideration, the said Recovery Officer was not available as he had gone on leave, and the matter had already been adjourned to 27.02.2018. Petitioner contends that there was also an objection filed by third party to the sale which was dismissed on 27.02.2018, and on that day, the petitioner deposited the balance amount through demand draft. Petitioner, therefore, prays that the orders passed by the Recovery Officer-I of Debt Recovery Tribunal-III, Chandigarh as well as the appellate order passed by Presiding Officer of the DRT-III, Chandigarh be both set aside, and a direction be given to the Debt Recovery Officer-I, DRT-III, Chandigarh to confirm the sale in favour of the petitioner.

Written statement has been filed by respondent No.3, supporting the petitioner, and pleading that the machinery which was proposed to be sold to the petitioner had turned into junk, and it would be in public interest to confirm the sale in favour of the petitioner. It is contended that the Recovery Officer had discretion to accept the sale consideration even after the expiry of 15 days period in view of Section 29 of Recovery of Debts and Bankruptcy Act, 1993. It is also stated that respondent No.3 has no objection if the High Court sets aside the orders passed by the Recovery Officer as well as Presiding Officer of DRT-III, Chandigarh, and directs confirmation of sale in favour of the petitioner.

The Supreme Court of India in **C.N. Paramsivan, 2013 (9) SCC 460** has held that though Section 29 of the Recovery of Debts and Bankruptcy Act states that the provisions of the Second and Third Schedules to the Income Tax Act, 1961, and the Income Tax (Certificate Proceedings) Rules, 1962, would apply as far as possible, the phrase "as far as possible" should be understood to mean that the flexibility extends only to what is "not at all practicable", and that in order to show that Rules 57 and 58 of the Second Schedule of the Income Tax Act may be departed from, it would have to be proved that the application of these Rules "is not at all practicable".

In view of the legal position, it cannot be said that the application of Rules 57 and 58 of the Second Schedule of the Income Tax Act would be "not at all practicable", because it was incumbent on the part of the petitioner to acquaint himself with the appropriate Rule and act in accordance thereto, and any ignorance of the same on the part of the petitioner cannot be taken advantage of by seeking exemption from the application of the said Rule. Once the said Rules have been declared to be mandatory, neither the Recovery Officer by himself nor the Presiding Officer of DRT-III nor this Court can violate the said Rules in the absence of proof that it is "impracticable" to apply the said Rules, and grant relief to the petitioner.

Therefore, we do not find any merit in this writ petition. It is accordingly dismissed.

No costs.

(M.S. RAMACHANDRA RAO)
JUDGE

(H.S. MADAAN)
JUDGE

18.04.2022
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No