

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.25078 of 2022

Date of Decision: 17.11.2022

SALIL BINDRA

.....Petitioner

V/s.

***DEBT RECOVERY TRIBUNAL-II, SECTOR 17, CHANDIGARH
THROUGH ITS REGISTRAR AND OTHERS.***

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO.
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. V.K. Sachdeva, Advocate,
for the petitioner.

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

In this Writ petition the petitioner has assailed the order dt.12.07.2019 passed by the Debts Recovery Tribunal-II, Chandigarh (for short "Tribunal") in OA No.388 of 2018 rejecting application dt.03.04.2019 (IA No.320/2019) filed by the petitioner to set aside the order dt.17.11.2018 setting the petitioner *ex-parte* in the said proceedings.

Notice of motion.

Mr. Gaurav Goel, Advocate accepts notice on behalf of the respondents No.2-Bank.

It is the contention of the petitioner that the petitioner was the defendant No.4 in the said OA; on 17.08.2019, since the counsel engaged by the petitioner did not appear before the Tribunal, the petitioner was said *ex-parte*; that the petitioner engaged a new counsel and filed an application before the Tribunal to set aside its order dt.17.11.2018 disclosing this reason; and though the Tribunal records this reason in the order passed by it

on 12.07.2019, it goes on to say that there is nothing to show the reason for the delay in filing the application, and the Tribunal had erroneously held that the petitioner was not pursuing his case with diligence and had filed the IA No.320 of 2019 for setting aside the order dt.17.11.2022 with the delay of 4 months.

Counsel contends that even thereafter, the said OA continues to be pending till date, and the next date of hearing is 23.11.2022.

Counsel contends that there is power vested in the Tribunal to condone the delay in filing of the application bearing No. IA 320 of 2019 and also to set aside the *ex-parte* order dt.17.11.2018, subject to payment of costs but an opportunity to defend cannot be denied when the reason of absence of the counsel on 17.11.2018, appears to be genuine.

It is further contended that for the default of the counsel in appearing before the Tribunal on 17.11.2018, the parties cannot be punished.

We find force in the said contentions of counsel for the petitioner and hold that even if there is some delay on the part of the petitioner in approaching the Tribunal with delay, the Tribunal could have imposed costs and compensated the respondent No.2-Bank instead of dismissing the application outright.

Counsel for respondent No.2-Bank states on instructions that respondent No.2-Bank has no objection, if this Writ Petition is allowed and the order dt.12.07.2019 dismissing the applicant bearing No. IA 320 of 2019 is set aside, and the said IA is allowed.

We appreciate the conduct of the respondent No.2-Bank.

Accordingly, this Writ Petition is allowed; order dt.12.07.2019 in IA No.320 of 2019 passed by the Tribunal is set aside; the said IA is allowed subject to the petitioner paying costs of the ₹25,000/- to respondent No.2-Bank within 4 weeks from today; on such payment, the petitioner is directed to file written statement in the OA 388 of 2018 within 4 weeks from the date of receipt of copy of this order.

Respondent No.2 shall forthwith supply to the petitioner or the petitioner's counsel a copy of the complete paper-book filed by it in the OA.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

November 17, 2022

Ess Kay

<i>Whether speaking / reasoned</i>	:	<i>Yes /No.</i>
<i>Whether Reportable</i>	:	<i>Yes/No</i>