

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

**CWP-30197-2022
Decided on: 23.12.2022**

Sh. Parminder Singh Dhillon & anotherPetitioners

Versus

Debts Recovery Tribunal-I, Chandigarh & othersRespondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr.Ishneet Bhatia, Advocate, for the petitioners.

Mr.Rohit Ahuja, DAG, Punjab.

Mr.R.V.Mehra, Advocate, for respondent No.2.

G.S. Sandhawalia, J. (Oral) :-

Challenge in the present writ petition *inter alia* is to the order of the Debt Recovery Tribunal-I dated 16.12.2022 (Annexure P-15), wherein the application for restoration has been dismissed on the ground that the applicant has failed to show sufficient cause for non appearance on the date of hearing i.e. on 14.09.2022 when the SA was dismissed in default. The reasoning given as such is that the earlier counsel Shri N.S. Swaitch had not put in appearance and no affidavit had been filed and accordingly, the application has been dismissed.

Counsel for respondent-bank is also present having advance copy of the writ petition. It is pointed out by the counsel that in the S.A.145/2022 the possession notice dated 28.08.2019 and 08.09.2020 and the impugned auction notice dated 17.02.2021 and 12.04.2022 was the subject matter of consideration. A perusal of the zimni orders would go on to show that the application was fixed with the connected O.A. on

24.08.2022 and the case was adjourned to 07.09.2022 and then to 14.09.2022 on that date, it was dismissed in default by the order which reads as under:

“It is 3:00 pm, case called several times since morning but nobody is appearing on behalf of the applicant. It appears that applicant is not interested in pursuing this matter. Therefore, the application filed by the applicant is dismissed in default.

File be consigned to record room after due compliance.”

We have also perused the zimni orders which go on to show that counsel for the petitioner was appearing since 07.07.2022 and the case was adjourned to 14.07.2022 and thereafter to 19.07.2022. On 19.07.2022, the matter was adjourned to 22.07.2022 and thereafter to 25.07.2022. On 25.07.2022 it was adjourned to 26.07.2022 and after that adjourned to 05.08.2022 and further proceedings which were fixed for 11.08.2022, 24.08.2022 and 07.09.2022. On all the dates, counsel Mr. N.S. Swatch was present. It is only on one date he was not available when the S.A. had been dismissed.

Admittedly, there is no interim order in favour of the petitioner and thereafter we are of the considered opinion that since the application for restoration was on the ground that the counsel had been changed also it would be almost impossible for the petitioner to get an affidavit from the counsel as to why he was absent on 14.09.2022. Therefore the learned Tribunal was in error in not restoring the SA. It is a settled principle that rules of procedure are handmaids of justice and the S.A. was going along with the OA filed by the bank itself to recover the amount. The order dated 24.08.2022 reads as under:-

“Counsel for the parties’ states that connected OA is pending in this Tribunal, which is fixed for 07.09.2022. This file be also put up on that day. To come up on 07.09.2022.”

In such circumstances the valuable rights of the petitioner have been nipped in the bud by the Tribunal. The petitioners could have been put to notice by imposition of costs before the order of the dismissal and on that account also we are of the considered opinion that the reasons given in the impugned order dated 16.12.2022 dismissing the application for restoration is not justifiable. More so, on account of fact that even the petitioners had approached this Court by filing Civil Writ Petition 26994/2022 wherein this Court as such on 24.12.2022 did not exercise its jurisdiction on account of fact that on an earlier occasion, the writ petition bearing CWP-22836-2022 had been dismissed on 30.09.2022 but directed the Tribunal to consider the application. The relevant observations read as under:

“Having regard to the order passed by this Court on 30.09.2022 in CWP No.22836 of 2022, wherein petitioner herein was granted liberty to pursue the Securitization Application filed by him before the Debts Recovery Tribunal-I, Chandigarh, we are not inclined to entertain this Writ Petition. Accordingly, this writ petition is dismissed.

The Debts Recovery Tribunal-I, Chandigarh shall consider the application filed by the petitioner for restoration of the Securitization Application within two weeks and pass appropriate order in the same.

Pending application(s), if any, also stands disposed of accordingly.”

Thus, it is apparent that the petitioners were rightly pursuing their legal remedy and by passing the said order their rights have been adversely affected.

The arguments raised as such by the counsel for the respondent-Bank that there was alternate and efficacious remedy before the appellate Tribunal is not justified since the Writ Court has always jurisdiction to reach out in the interest of justice especially where in the facts and circumstances the litigant has been prejudiced on an act of the Court.

Resultantly, the writ petition is allowed to the extent that the order dated 16.12.2022 (Annexure P-15) is quashed, the S.A. is restored to its original position. It is open to the petitioners to file appropriate application for protection of their possession since we are not going on that issue regarding the amounts paid or received by the bank as it is within the jurisdiction of the Tribunal as disputed questions of fact are involved and both parties should be given appropriate opportunities.

Accordingly, the writ petition is disposed of in the above said terms.

Parties shall put in appearance before the Tribunal on 23.01.2023.

(G.S. SANDHAWALIA)
JUDGE

23.12.2022
sailash

(HARPREET KAUR JEEWAN)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes