



W.P.No.6132 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2023

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.P.No.6132 of 2023
and W.M.P.No.6154 of 2023**

D.Prem

.. Petitioner

Versus

**Indian Overseas Bank,
Rep. by its Assistant General Manager,
Tirupur Main Branch,
122, Kumaran Road,
Tirupur - 641 601.**

.. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari to call for the records culminating to the order, dated 15.11.2022 passed in A.I.R.No.214 of 2022 by the Debts Recovery Appellate Tribunal, Chennai and quash the same and consequently, allow M.I.A.No.2 of 2021, dated 19.01.2022 on the file of the Debts Recovery Tribunal, Coimbatore.

**For Petitioner : Mr.N.Murali Kumaran,
Senior Counsel,
Assisted by Mr.Akhil Bhansali**



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W.P.No.6132 of 2023

For Respondent : Mr.V.Kadhirvelu



W.P.No.6132 of 2023

ORDER

D.BHARATHA CHAKRAVARTHY, J.

This Writ Petition is directed against the order of the Registrar, Debts Recovery Appellate Tribunal, Chennai in A.I.R.No.214 of 2022, by which, the appeal filed by the writ petitioner was declined in terms of Rule 6(4) of *The Debts Recovery Appellate Tribunal (Procedure) Rules, 1994*.

2. *Mr.N.Murali Kumaran*, learned Senior Counsel appearing on behalf of the petitioner would strenuously argue that the appeal was filed before the Debts Recovery Appellate Tribunal, Chennai only as against the order dismissing the application for condonation of delay in filing an application for setting aside the *ex parte*. As such, the very insistence upon the filing of a waiver petition by the Registrar, Debts Recovery Appellate Tribunal, Chennai is incorrect in law. In any event, when the compliances are being made, the matter can only be decided by the Tribunal and the Registrar himself ought not to have declined the appeal in exercise of Rule 6(4) of *the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994*.

3. We have considered the said submissions made by learned Senior Counsel and perused the material records of the case. It can be seen that



W.P.No.6132 of 2023

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originally, the bank had filed O.A.No.75 of 2016 claiming the loan amount due of Rs.156,09,80,089.50 ps with further interest at the rate of 14.50% per annum. In the said Original Application, the petitioner did not appear and was set *ex parte* on 07.12.2016. Thereafter, the petitioner filed I.A.No.2225 of 2016 on the file of the Debts Recovery Tribunal, Coimbatore to set aside the *ex parte* order. By an order, dated 14.02.2017, the said application was allowed with a condition to pay costs of Rs.3,000/- to the respondent Bank on or before 14.03.2017 and the matter was posted for hearing on 15.03.2017.

4. On 15.03.2017, there was no representation on behalf of the petitioner herein. The petitioner did not pay the costs. As such, the I.A was dismissed for non-compliance of the conditional order. Thereafter, the matter proceeded further and ultimately, only on 30.07.2018, more than a year after the setting aside application was dismissed, the consequential *ex parte* decree was passed and Debt Recovery Certificate was also issued. Much belatedly after the recovery proceedings were being proceeded by the Bank, the petitioner filed M.I.A.No.2 of 2021 to condone the delay of 889 days in filing the application to set aside the *ex parte* decree. By an order,



W.P.No.6132 of 2023

WEB COPY

dated 19.01.2022, the Debts Recovery Tribunal, Coimbatore found that there was no reason which was adduced in the application to condone the substantial delay of 889 days and dismissed the petition. As against the said order, the present Appeal was filed before the Debts Recovery Appellate Tribunal, Chennai.

5. It is seen from the records that the appeal was returned for certain compliances and the matter was listed before the Registrar, Debts Recovery Appellate Tribunal, Chennai on 01.11.2022. On 01.11.2022, it is recorded that learned Counsel for the appellant was present and he sought for further time for compliance of office objections. In view thereof, one more opportunity was granted and the matter was posted on 15.11.2022 for compliance of the remaining office objections. On the said date, again there was no representation for the petitioner. Therefore, the order impugned in the Writ Petition was passed by the Registrar.

6. Thus, on a perusal of the records, it can be seen that firstly, the petitioner did not choose to defend the Original Application and allowed the same to be *ex parte*. He was again given an opportunity by setting aside the



W.P.No.6132 of 2023

WEB COPY

ex parte order, but, however, even the sum of Rs.3,000/- costs was not paid and there was not even representation before the Tribunal. Even thereafter, for more than one year, the petitioner kept quiet and proceedings were pending and ultimately, only in July, 2018, *ex parte* decree was passed. Even thereafter, no steps were taken by the petitioner and only after recovery proceedings were initiated, belatedly, the application to set aside the *ex parte* decree was filed with a prayer to condone a huge delay of 889 days. The Tribunal found that absolutely, no reason whatsoever has been mentioned in the application so as to condone such a huge delay and dismissed the prayer.

7. Further, when the appeal is filed before the Debts Recovery Appellate Tribunal, Chennai and when the matter is posted for compliance of the defects irrespective of the nature of the return or the compliance which was sought for, it was the duty of the petitioner to have represented his case before the Registrar, which was not done. Thus, it is obvious from the record that the petitioner is willfully and repeatedly leaving the matter for default and thereafter filing petitions and therefore, we are of the view that the extraordinary remedy under Article 226 of the Constitution of India



W.P.No.6132 of 2023

WEB COPY

should not aid such a person as the petitioner who repeatedly allows the matter to be decided against him for his own default.

8. Therefore, finding no merits, this Writ Petition shall stand dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(T.R., ACJ.)

(D.B.C., J.)

28.02.2023

Index : yes

Speaking order

Neutral Citation : yes

grs



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W.P.No.6132 of 2023

**T.RAJA, ACJ.,
AND
D.BHARATHA CHAKRAVARTHY, J.,**

grs

W.P.No.6132 of 2023

28.02.2023