

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

CWP-8204-2023

DATE OF DECISION: 15.05.2023

IDFC FIRST BANK LIMITED

.....PETITIONER

VS.

UNION OF INDIA AND OTHERS

.....RESPONDENTS

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

Present: Ms. Nirmal Kaur, Advocate, for
Mr. Aditya Grover, Advocate,
for the petitioner.

Ms. Shivani Khareedi, Advocate, for
Mr. Dheeraj Jain, Sr. Panel Counsel,
for UOI.

HARPREET KAUR JEEWAN, J.

1. This petition has been filed under Article 226/227 of the Constitution of India challenging the order dated 02.03.2023 (Annexure P-2) whereby Original Application (OA) has been dismissed-in-default by the Presiding Officer, Debts Recovery Tribunal-II, Chandigarh-respondent No. 2 (for short 'the Tribunal) and seeking relief of the restoration of the said application filed by the petitioner Bank under the Recovery of Debts and Bankruptcy Act, 1993 (for short 'the Act')

2. Learned counsel for the petitioner has submitted that the Original Application No. 341 of 2023, was filed by the petitioner-Bank with the Registry of the Tribunal on 17.02.2023, *inter alia* seeking a recovery of ₹4,99,31,026.85/- along with interest w.e.f. 15.02.2023 from

the private respondents being borrowers of the petitioner-Bank. The clerk to the counsel for the petitioner-Bank had been visiting the Registry of the Tribunal time and again but no information regarding listing of the said OA was communicated. Ultimately, upon inquiry, it came to the notice of the petitioner that the said OA stood listed on 02.03.2023 for the first time and the same was dismissed-in-default. The OA has been dismissed-in-default without any knowledge of the petitioner-Bank as such huge loss is caused to the Bank.

3. The counsel for the petitioner has argued that the original application was filed on 17.02.2023 and no actual date of hearing was given by the office of the Tribunal.

4. We have considered the above submissions.

5. The OA was drafted on 15.02.2023. As per the copy of the impugned order dated 02.03.2023 (Annexure P-2), it was taken up on 02.03.2023 and was dismissed-in-default for non-appearance of the parties.

6. The matter has not been decided on merits though the claim of the petitioner-Bank is for recovery of a huge amount to the tune of about ₹5,00,00,000/- along with interest. On the first day of hearing the order of dismissal was passed on the ground of non-appearance of the counsel for the petitioner. No notice was issued to the petitioner-Bank, showing that the case was fixed for the said date.

7. We have also noticed that at the relevant time the relationship of the Bar and the Presiding Officer of the relevant Bench of the Tribunal was sore, when the impugned order of dismissal of the OA was passed for non-appearance of the counsel for the petitioner-Bank that too on the first

date of hearing. The order dated 27.10.2022 passed by the co-ordinate Bench of this Court in CWP-24795-2022 titled **Debts Recovery Tribunal Bar Association vs. Union of India and others** is relevant which reflects the strained relationship of the Bar Association at the relevant point of time. The observation made by the co-ordinate Bench of this Court in the said matter are as under:-

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“Relationship with the Bar Association appears to be severally strained, and the Bar appears to have gone on strike from 26.10.2022, and counsels are not appearing before the 4th respondent. Though Nodal Officers of Banks were appearing in cases before the 4th respondent, the 4th respondent has taken a stand that they had no authority to appear in the OAs, and they are not authorized officers of the respective Banks who have instituted the OAs, and several orders have been passed by the 4th respondent dismissing OAs for default which are enclosed as Annexure P-10, all of which are almost identical.

While we do not appreciate the conduct on the part of the members of the petitioner's Association going on strike, in view of the severally strained relationship between members of the petitioner's Association and the 4th respondent, some steps need to be taken to ensure that injustice is not done to the parties, and there is no wholesale dismissal of cases pending before the 3rd respondent Tribunal or passing of adverse orders therein by the 4th respondent (as is evident from Annexure P-10 orders)

Therefore, in exercise of the powers of superintendence possessed by this Court under Article 227 of the Constitution of India as highlighted by the Supreme Court in its judgment dt.22.1.2013 in Civil Appeal Nos. 617-618 of 2013 in the cases of Union of India and Ors. Versus Debts Recovery Tribunal Bar Association and another, the

4th respondent is restrained from today from passing any adverse orders in any of the cases (OAs or SAs) pending before the 3rd respondent Tribunal of which he is the Presiding Officer, till the next date of hearing.”

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(Emphasis applied by this Court)

8. The aforesaid order of this Court was modified by the Hon'ble Apex Court, vide interim order dated 02.12.2022 passed in Special Leave Petition (C) No. 21138/2022 filed by the third respondent, i.e. the Presiding Officer of the Debts Recovery Tribunal-II, Chandigarh, titled **M.M Dhonchak vs. Debts Recovery Tribunal Bar Association and others,** whereby the judicial member of the Tribunal (DRT-II, Chandigarh) was permitted to proceed with the hearing of the matters pending before him and to decide the same on merits. It was further observed by the Apex Court that wherever the applications are dismissed for non-prosecution, it will be open to the concerned authorities to move an appropriate application for restoration which may be considered positively with a view to see that no injustice is caused to the litigants. The said order reads as under:-

“By the impugned order, the High Court in exercise of powers under Article 227 of the Constitution of India and in a writ petition filed by the Debts Recovery Tribunal Bar Association, has restrained the Judicial Member of the Tribunal from passing any adverse orders in any of the cases (OAs or SAs) pending before him of which he is the Presiding Officer.

Such an interim order of not to pass any adverse orders in any of the cases by the Judicial Member of

the Tribunal cannot be passed and is unsustainable.

At this stage, Shri Vikas Singh, learned Senior Advocate, appearing on behalf of the original writ petitioner-Bar Association has fairly conceded that, let the concerned Judicial Member of the Tribunal proceed further with the hearing of the cases and decide the same on merits and the members of the Bar shall cooperate. However, he has requested that self-respect of the members of the Bar Association shall also be maintained. He has stated at the Bar that therefore, the Bar has no objection if the impugned order is modified to the extent allowing/permitting the Judicial Member of the Tribunal to proceed further with the hearing of the cases and to decide the same by him on merits.

In that view of the matter, we modify the impugned order passed by the High Court and permit the petitioner-herein, Judicial Member of the Tribunal to proceed further with the hearing of the matters before him and decide the same on merits.

It goes without saying that the Judicial Member as well as the Bar should always try to maintain cordial atmosphere/relationship as both are part of the justice delivery system and both are the two wheels of the chariot of justice. Therefore, it is expected that both the sides may respect each other.

We impress upon the petitioner also to see that there is no unnecessary confrontation and he may decide the cases in accordance with law on its own merits. That does not mean that we have commented upon the conduct on the part of the advocates and/or the petitioner-Judicial Member of the Tribunal.

It goes without saying that wherever the applications are dismissed for non-prosecution, it will be open for the concerned parties to move for restoration, which may be considered positively with a view to see that no injustice is caused to the litigant.

Put up on 12.12.2022.

*Let a copy of the petition be served in the office
of Shri Tushar Mehta, learned Solicitor General.”*

9. The said SLP was finally disposed of vide order dated 12.12.2022 and the *ad interim* relief granted vide order dated 02.12.2022 was confirmed leaving the matter to the Chairman of the DRAT to take an appropriate decision independently and if required after giving an opportunity to the representative (s) of the Bar Association, as well as to the petitioner.

10. Another order dated 23.03.2023 was passed by this Bench in CWP-24795-2022 reflecting that matters were being dismissed by the said Bench of the Tribunal which was also challenged by the Presiding Officer of Debts Recovery Tribunal-II by way of SLP (C) No. 7926-2023. The said SLP has also been dismissed by the Hon'ble Supreme Court, vide order dated 12.05.2023.

11. Even after the final order, dated 12.12.2022 was passed by the Hon'ble Supreme Court in Special Leave Petition (C) No. 21138 of 2022, titled **M.M.Dhinchak vs. Debts Recovery Tribunal Bar Association and others**, the OA filed by the petitioner-Bank resulted in non-suiting the petitioner Bank for recovery of a huge amount of about ₹5,00,00,000/- without hearing them on merits. The rules of procedure are handmaids of justice and are not to be used to oust the rightful claim of the parties without giving them a semblance hearing.

12. As such, we are of the considered opinion that miscarriage of justice would be done in case the Original Application No. 341 of 2023 filed by the bank seeking recovery of an outstanding of ₹4,99,31,026.85/-

as on 15.02.2023 is dismissed without giving an opportunity to the bank to recover the amount which is public money outstanding against the borrowers. It is in the interest of justice that the matter should be adjudicated upon the merits. As such, the impugned order dated 02.03.2023 (Annexure P-2) is liable to be set aside. We are not issuing any notice to the present respondents No. 4 and 5, the borrowers since they were not aware of the proceedings filed before the Tribunal which was at a nascent stage.

13. Consequently, the present petition is allowed and the impugned order dated 02.03.2023 (Annexure P-2) is set aside. The Tribunal is directed to hear the matter on merits and decide the same afresh in accordance with law.

14. Pending miscellaneous application (s), if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

May 15, 2023
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Whether Speaking	Yes
Whether Reportable	No