

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-7737-2023

DATE OF DECISION: 02.05.2023

UNION BANK OF INDIA

.....PETITIONER

VS.

DEBTS RECOVERY TRIBUNAL-II, CHANDIGARH AND OTHERS

.....RESPONDENTS

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

Present: Mr. Tribhawan Singla, Advocate,
for the petitioner.

Mr. Rohit Suri, Advocate,
for respondent No. 2 to 4.

HARPREET KAUR JEEWAN, J.

1. This petition has been filed under Article 226/227 of the Constitution of India for quashing/setting aside the order dated 26.10.2022 (Annexure P-3) passed by respondent No. 1-Debts Recovery Tribunal-II, Chandigarh, whereby OA/970/2018, titled **Corporation Bank vs. Vishesh Kumar** was dismissed-in-default.

2. Learned counsel for the petitioner has submitted that respondents No. 2 to 4 availed credit facilities from the petitioner-Bank to the tune of ₹2,75,00,000/- from time to time. The account turned bad and was declared as NPA on 31.12.2017 and the bank initiated recovery proceedings by filing an Original Application, dated 16.05.20218 (Annexure P-1) under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, before the Debts Recovery Tribunal-II, Chandigarh (for short

'the Tribunal). Respondents No. 2 to 4 were proceeded against *ex parte* and did not contest the said proceedings. On 26.10.2022, Sh. Naveen Kumar, the Nodal Officer of the petitioner-Bank, appeared before the Tribunal but the Advocates were abstaining from work on account of the resolution passed by the Bar Association. However, the said OA was dismissed by respondent No. 1-Tribunal, on account of non-appearance of counsel for the Bank by passing the impugned order dated 26.10.2022 (Annexure P-3).

3. Learned counsel for the petitioner further submitted that the dismissal of the said OA has caused miscarriage of justice as the outstanding are to the tune of ₹1,88,90,464.90/- as on 30.04.2018 which is public money and even respondents No. 2 to 4 were not contesting the said petition.

4. A perusal of the impugned order dated 26.10.2022 (Annexure P-3), indicates that the Nodal Officer of the bank was present but none appeared for the defendants. The Tribunal has dismissed the application filed by the bank observing that the Nodal Officer has no authority to appear on behalf of the bank.

5. As per the order dated 27.10.2022 (Annexure P-4), i.e. on the next day after passing of the impugned order, the co-ordinate Bench of this Court passed an order dated 27.10.2022 in CWP-24795-2022 titled **Debts Recovery Tribunal Bar Association vs. Union of India and others,** whereby the following observing were made:-

XXXX

XXXX

XXXX

XXXX

“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.”

XXXX XXXX XXXX XXXX

(Emphasis applied by this Court)

6. 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 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.”

7. 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.

8. In view of the above, we are of the considered opinion that miscarriage of justice would be done in case the Original Application dated 16.05.2018 (Annexure P-1) filed by the bank seeking recovery of the tax payer's money of an outstanding of ₹1,88,90,464.90/- as on 30.04.2018 is

dismissed, especially when the Nodal Officer of the bank was present and the defendants were not contesting the said petition. The bank cannot be faulted for the festering bad relationship between the Bar Association and the Presiding Officer of DRT-II. We are also allowing the said petition rather than remanding the matter to the Tribunal, as the bank had already approached this Court.

9. As such, we are of the considered opinion that the matter is required to be heard on merits and the impugned order dated 26.10.2022 (Annexure P-3) passed by respondent No. 1-Tribunal is liable to be set aside.

10. Consequently, the present petition is allowed and the impugned order dated 26.10.2022 (Annexure P-3) is set aside. The Tribunal is directed to hear the matter on merits and decide the same in accordance with law.

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

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

May 02, 2023
nitin

Whether Speaking	Yes
Whether Reportable	No