IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

111 ***2023:PHHC:053894-DB***

CWP No. 28298 of 2022
Date of Decision: 18.04.2023

Sanjay Mendiratta and others .....Petitioner(s)

Versus

DRT-II, Chandigarh and others ....Respondent(s)

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

Present: Mr. Aditya Jain, Advocate,
and Mr. Rahul Vohra, Advocate,
for the petitioners.

Mr. Nitin Grover, Advocate,
for respondent Nos.2 and 3, Canara Bank.

G.S.SANDHAWALIA, J. (Oral)

1. The present writ petition has been filed under Articles 226 and 227 of the Constitution of India praying for setting aside the orders dated 18.10.2022 and 10.11.2022 (Annexures P-12 and P-13), respectively passed by Debt Recovery Tribunal-II, Chandigarh. Challenge has also been raised to the impugned e-auction sale notice dated 02.11.2022 (Annexure P-15) whereby, the property is proposed to be sold.

2. A perusal of the paper book would go on to show that respondent No.2-Canara Bank filed original application under Section 19 of Recovery of Debts and Bankruptcy Act, 1993 for recovery of Rs.53,04,44,774.91/-, in which the present present petitioners were arrayed as defendant Nos.8 to 12, being the legal heirs of late guarantor Amir Chand Mendiratta. While completing service, it was noticed that defendant No.6 namely Smt. Shanti Chawla w/o Late Mehar Singh Chawla had expired, whose family members including the son Amarjeet Singh Chawla were already arrayed as defendant

Nos.2 to 5. The bank had taken time to file appropriate I.A. for bringing on record the legal representatives of the deceased-defendant No.6. Accordingly, directions were issued on 02.08.2022 by the Registrar of the Tribunal directing defendant Nos.1 to 7, who were the Director/loanees and the family of Amarjit Singh Chalwa to supply the details of the L.Rs. The case was directed to be listed before the Presiding Officer on 07.09.2022, whereby, the defence of defendant Nos.1 to 5 and 7 was struck off. Resultantly, the following order was passed on 07.09.2022:-

> *"IA for impleading LRs of defendant No.6 has not been filed. It was stated by the proxy counsel for the applicant bank that the details of the LRs of the deceased were not supplied by the counsel for defendant Nos. 1 to 5 and 7. No reason/circumstance has been put forward to explain away the defiance/omission. There is no assurance to do the needful. Also, there is no repentance or penitence for causing the delay. This omission is not maiden. Therefore, this Tribunal is left with no other alternative but to strike off the defence of the defendant Nos. 1 to 5 and 7."*

3. Thereafter, I.A. No.65 of 2022 was filed by defendant Nos.9 to 12, who are the present petitioners for production of documents. The said IA was dismissed on 18.10.2022 by holding out that if there were any defects in the original application, those could be voiced in the written statement and the application was not filed within a period of 30 days prescribed for filing written statement and there were irrelevant averments. Accordingly, costs of Rs.25,000/- were imposed, to be payable to the Poor Patient Welfare Fund, Post Graduate Institute of Medical Education and Research, Chandigarh vide order dated 18.10.2022. The relevant part of the order reads thus:-

"After giving thoughtful consideration to the rival submissions at Bar, in the facts and circumstances of the case, this Tribunal is of the considered opinion that the application for production of the documents is mis-conceived and the same has no merits. What are the defects in the OA, those can be Voiced in the written statement. There is hardly any explanation for not bringing this IA within the stipulated period of 30 days prescribed for filing the written statement. The IA is marred by irrelevant averments with a view to giving it a flavour or semblance of legitimacy. Accordingly, the IA is dismissed.

However, written statement shall be allowed to be filed within a fortnight subject to payment of Rs. 25,000/- as cost to Postgraduate Institute of Medical Education and Research (PGIMER) Chandigarh, Poor Patients' Welfare Fund. To come up on 10.11.2022.

Sd/- (M.M.Dhonchak)
Presiding Officer
DRT-2, Chandigarh"

4. Thereafter, the matter was kept for 10.11.2012 for payment of costs and proceedings were deferred on the said date on account of the pendency of *CWP No. 24795 of 2022, titled as DRT Bar Association vs. Union of India and others* and the original applications were adjourned for 19.05.2023 for further proceedings. At that point of time, the co-ordinate Bench in the said case had directed the said officer not to pass any adverse order.

5. It is not disputed that the said order has been set aside by the Apex Court. However, the writ petition is pending. Rather the Apex Court on 02.12.2022 has also directed the said officer to reconsider all such adverse

orders passed. However, without going into the said aspect and without asking the said officer to do the needful, we proceed to decide the issue.

6. We are of the considered opinion that the orders passed are not legally sustainable. A perusal of the first order dated 07.09.2022 would go on to show that the defence of defendant Nos.1 to 5 and 7 was struck off, though all the other family members were already on record as respondent Nos.2 to 6, which fact has not been appreciated by the Presiding Officer which shows total non-application of mind even though the said persons are not party and aggrieved against the said order. The officer has failed to notice the huge amount of recovery i.e. Rs.53,04,44,774.91/- which the said defendants have to defend and in a cursory manner, cut out their defence. The subsequent order whereby the IA was dismissed by imposing exorbitant costs of Rs.25,000/-, is also a similar order which requires to be set aside on that ground as the present petitioners who are guarantors have been further subjected to payment of a huge amount which has become payable even though they were seeking their legal remedy for production of documents so that they could file a detailed written statement. It is settled principle that the rules of procedure are handmaids of justice.

7. Resultantly, we are of the considered opinion that the present writ petition is liable to be allowed by setting aside the order dated 18.10.2022 whereby costs of Rs.25,000/- have been imposed. The petitioners will only be required to deposit costs of Rs.1,000/- with the High Court Legal Services Authority for delaying the proceedings as such before the Tribunal within a period of two weeks from today. Regarding the e-auction which was slated for 02.11.2022 where the property is proposed to be sold, the petitioners can always prefer to file an application under Section 17 of the

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 which has been time and again prescribed by the Apex Court.

8. Accordingly, the petition stands allowed in the above said terms.

(G.S. SANDHAWALIA)
JUDGE

18.04.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	Yes