



2023:DHC:9121-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 14th December, 2023*+ **W.P.(C) 4971/2015****INTERCON RECYCLOPOLIS PVT. LTD. & ANR**

..... Petitioners

Through: Mr. Manish Pratap Singh, Adv.
through V.C.

versus

BANK OF BARODA & ORS RespondentsThrough: Mr. R.P. Agrawal, Ms. Manisha
Agrawal and Ms. Reema
Mishra, Advs. for R-1 (through
V.C)**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE AMIT MAHAJAN****VIBHU BAKHRU, J. (Oral)**

1. The petitioners have filed the present petition impugning an order dated 27.03.2015 (hereafter '**impugned order**'), passed by the learned Debts Recovery Appellate Tribunal, Delhi (hereafter '**DRAT**') in Miscellaneous Appeal No.435/2014. The petitioners had filed the aforesaid appeal before the learned DRAT impugning an order dated 14.10.2013 passed by the learned Debts Recovery Tribunal-II, Delhi (hereafter '**DRT**') in M.A. No.81/2013 in O.A. No.59/2012, whereby

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the application filed by the petitioners for recall of the *ex-parte* final order dated 24.01.2013, was dismissed. The learned DRT by final order dated 24.01.2023 had directed issuance of a Recovery Certificate for an amount of ₹12,18,67,058/- along with interest and costs. The petitioners were proceeded *ex-parte* in O.A. No.59/2012 in terms of the order dated 20.09.2012.

2. The petitioners had sought recall of the order dated 24.01.2013 before the learned DRT on the ground that the summons were not served upon them, and therefore, they could not have been proceeded *ex-parte* without service of the same. The learned DRT did not find any merit in the application. This is essentially for three reasons. First, that an affidavit of service had been filed on behalf of the respondent bank affirming that attempts were made to serve the summons on the petitioners. However, the same were refused. Second, that the respondent bank had enclosed a copy of the Original Application (O.A. 59/2012 filed in the learned DRT) in its reply to the petitioners' application under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter '**the SARFAESI Act**'), being S.A. 99/2012. Thus, the petitioners had notice of the OA. Third, that in addition to the above, the notice of the said O.A. was published in the daily newspaper.

3. The petitioners' appeal against the order dated 14.10.2013, passed by the learned DRT, was rejected as the learned DRAT found no infirmity with the decision of the learned DRT.



4. The learned counsel appearing for the petitioners submits that enclosing a copy of O.A. 59/2012 along with the reply to S.A. 99/2012 by the respondent bank, cannot be construed as a service of the said O.A. This is because the said reply was handed to the counsel engaged by the petitioners for pursuing the said Securitisation Application (S.A.99/2012). He submits that it was not necessary for the said counsel to communicate the said O.A. to the petitioners, as he obviously would be under the impression that another counsel was engaged to defend the O.A.

5. Insofar as service by publication in a daily newspaper is concerned, he submits that a copy of the said publication had not been placed on record.

6. He submits that the affidavit of service filed by the respondent bank is also suspect as the same had been filed by the advocate's clerk. The clerk had affirmed that an attempt was made to serve all the defendants arrayed in O.A. 59/2012, including the petitioners, but they had refused. He further submits that in his deposition, the Bank Manager of the respondent bank had stated that one of the guarantors, Mr. Harmeeek Chahal (Defendant No. 3 in O.A. 59/2012), had vacated the premises. He submits that in the aforesaid view, the affidavit of the clerk stating that the said guarantor had refused service was clearly fabricated.

7. Before proceeding further, it is necessary to note that this Court had also asked the learned counsel for the petitioners whether the petitioners were willing to deposit any amount as required for



maintaining an appeal before the learned DRAT. He, however, responded in the negative.

8. We find no fault with the impugned order. It is apparent from the record that the petitioners were served. First of all, an affidavit of service dated 26.04.2012 had been filed by the clerk of the learned counsel for the respondent bank affirming that the petitioners had declined to accept service, on the same being tendered to them.

9. Although, it is stated that Mr. Harmeeek Chahal was not found to reside in the said premises, we are unable to accept that the said affidavit is required to be discarded on the basis of such assertion. Be that as it may be, the petitioners were also served by publication in a newspaper. Although, the publication is not on record, the learned counsel appearing for the respondent bank submits that the notice was published in the 'Statesman'. This was informed to the learned DRT and the order to proceed against the petitioners *ex-parte* was passed thereafter.

10. It is also not denied that copy of O.A. 59/2012 was filed along with the respondent bank's reply to S.A.99/2012 preferred by the petitioners. The contention that the service of the said reply would not constitute any service on the petitioners, is also not persuasive. The respondent bank had served a copy of the reply on the counsel of the petitioners, who was duly authorized to receive the same. It has to be presumed that all information contained in the reply was brought to the knowledge of the petitioners.

11. It is also relevant to note that in terms of Section 21 of the



Recovery of Debts and Bankruptcy Act, 1993, any person preferring an appeal is required to deposit 50% of the amount of the debt due or claimed for maintaining the said appeal. Although, at the material time, the said condition could be waived by the learned DRAT for reasons to be recorded in writing, this Court is informed that no such order has been passed.

12. As noted above, the learned counsel for the petitioner has stated in unequivocal terms that the petitioners would not deposit any amount as adjudicated, as they are unable to do so.

13. It does appear, that the present petition has been filed only for the purpose of further delaying the proceedings. In any view, the petition is unmerited and, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 14, 2023
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