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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 124/2024, CM APPL. 3996/2024--stay

AXIS BANK LTD

..... Petitioner

Through: Mr. Darpan Wadhwa, Sr. Adv. with  
Mr. Amer Vaid and Mr. Sanjay  
Kumar, Advs.

versus

SRI RAM & ORS.

..... Respondents

Through: Mr. S.L. Gupta, Mr. Brij Mohan  
Rastogi, Mr. Asutosh Sharma, Mr.  
Ankit Bhatnagar and Ms. Gunjan  
Sharma, Advs. for R-1.

**CORAM:**

**HON'BLE MS. JUSTICE SHALINDER KAUR**

**ORDER**

**25.01.2024**

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1. The present petition under Article 227 of the Constitution of India has been filed impugning the order dated 02.08.2021 passed by the learned National Consumer Disputes Redressal Commission ('NCDRC'), New Delhi, in First Appeal No. 496/2018 titled as "*Citi Bank N.A. & Anr. vs. Sri Ram & Ors.*", whereby the learned NCDRC had dismissed the appeal of petitioner for non-prosecution on the ground for non-service of the notice upon respondent no.2. The petitioner herein is the appellant before the learned NCDRC.

2. The present petition has been filed pursuant to order dated 27.09.2023 passed by Hon'ble Supreme Court of India in "*Axis Bank Ltd. vs. Sri Ram & Ors.*" Bearing Special Leave to Appeal (C) no. 17207/2021 whereby Hon'ble Supreme Court directed the parties to raise its grievances before the jurisdictional High Court.

3. It is submitted that on 18.12.2009 the respondent no.1 herein filed a



Consumer Complaint bearing no. 341/2009 before the learned State Commission, New Delhi against Citibank N.A. and high-lightened his grievance that Rs. 34,92,000/- was illegally withdrawn from his account through ATM Card, bearing account no. 5136284225 with petitioner i.e. the Citi Bank N.A., 33, Basant Lok, Vasant Vihar branch, New Delhi-110057.

4. It is submitted by the learned senior counsel that the learned State Commission vide its order dated 04.01.2018 passed in complaint no. 341/2009 titled as "*Sri Ram & Anr. vs. Citibank N.A. & Anr.*" allowed the consumer complaint filed by the respondent no.1 and directed the petitioner to pay Rs. 32,94,000/- along with interest @ 9% per annum from respective date of withdrawal of the amounts till the date of refund along with Rs. 5,00,000/- as compensation.

5. The aggrieved petitioner herein preferred First Appeal bearing no. 496/2018 before the learned NCDRC challenging the order dated 04.01.2018 of learned State Commission. The learned NCDRC while adjudicating upon the appeal vide order dated 12.04.2018 granted stay on the order dated 04.01.2018 which was impugned before the learned NCDRC. The stay was granted subject to the petitioner depositing 50% of the awarded amount including the interest awarded therein.

6. The learned senior counsel further submits that in compliance of the order dated 12.04.2018 the petitioner deposited 50% of the awarded amount by way of FDR bearing no. 0997997 dated 17.05.2018 drawn on Indian Overseas Bank in favour of the Registrar, Delhi State Consumer Dispute Redressal Commission.

7. It is further submitted by the learned senior counsel for the petitioner that the matter was being listed for service of notice of the appeal on the



respondents arrayed as parties before the learned NCDRC. The petitioner was duly executing the orders for seeking service of the respondents.

8. In the meanwhile, during Covid-19 pandemic, the matters could not be regularly taken up before the learned NCDRC. Subsequently, it was taken up for hearing on 02.08.2021 whereby the learned NCDRC dismissed the first appeal of the petitioner herein for non-prosecution as the petitioner could not take up all the steps for effecting the substituted service as directed and the appeal was dismissed accordingly for non-prosecution.

9. It is submitted by the learned senior counsel that he was duly complying with all the orders passed by learned NCDRC for effecting the service upon the respondents. The contesting respondent, that is the respondent no.1 herein had put his appearance before the learned NCDRC, but the respondent no. 2, who is a proforma party could not be served.

10. The learned counsel further submits that the petitioner challenged the order dated 02.08.2021 vide Special Leave Petition ('SLP') (Civil) bearing no. 17207/2021 titled as "*Citibank N.A. vs Sri Ram & Ors.*" wherein again, the stay with respect to implementation of the order dated 02.08.2021 was granted by the Hon'ble Supreme Court vide order dated 08.11.2021.

11. Learned senior counsel for the petitioner further submits that the Hon'ble Supreme Court vide order dated 27.09.2023 disposed of the SLP directing the parties to raise their grievances before the jurisdictional High Court. The Hon'ble Supreme Court further directed that the High Court would proceed on the basis of available pleadings but may permit reasonable time for exchange of further pleadings.

12. It is submitted that in the said background, the present petition was filed as the learned NCDRC failed to consider that there was an nation wide



lock down and various circulars regarding not to pass any adverse orders in the pending cases were issued by the learned NCDRC.

13. It is thus submitted on behalf of the petitioner that the learned NCDRC did not appreciate the directions for substituted service of respondent no. 2, which were given vide order dated 06.03.2020 and subsequent to which, the matter was never taken up for hearing till the passing of impugned order due to nationwide lockdown. Moreover, Hon'ble Supreme Court extended limitation period under various statutes vide order dated 23.03.2020. Further, learned NCDRC ought to have considered Rule 14(6)(a) of the Consumer Protection (Consumer Disputes Redressal Commission) Rules, 2020 as in the light of said Rule, first appeal of the petitioner should not have been dismissed for non-prosecution, when the counsel of the petitioner was present in Court on 02.08.2021 and hence, the matter may be remanded back to the learned NCDRC to decide the First Appeal bearing no. 496/2018 on merits and the impugned order dated 02.08.2021 be set aside.

14. The learned counsel for the respondent no.1 submits that he has no objection in case the prayer of the petitioner is allowed, subject to the condition that 50% of the amount that was deposited before the learned State Consumer Disputes Redressal Commission be ordered to be released to him and in addition the petitioner be further directed to deposit the balance 50% of the awarded amount.

15. Apart from hearing the submissions, the record has been perused.

16. In view of the above submissions and the fact that the learned counsel for the respondent also has no objection, if the order dated 02.08.2021 is set aside and the matter be remanded back, in the interest of justice, the order



dated 02.08.2021 is set aside subject to cost of Rs. 30,000/- to be paid by the petitioner to the respondent no.1 within two weeks.

17. The matter is remanded back to the learned NCDRC to decide the appeal no. 496 of 2018 on merits. Further, the respondent is at liberty to raise the plea with respect to release of 50% amount in addition to deposit of 50% amount before the learned NCDRC.

18. The petitioner to approach before the learned Registrar of the learned NCDRC for listing of the petition.

19. With above observations, the petition stands disposed of.

**SHALINDER KAUR, J.**

**JANUARY 25, 2024/SDS**