



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

Reserved on : 03.12.2025

Pronounced on : 06.03.2026

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Whether only operative part of the judgment is pronounced or the full Judgment is pronounced: ***Full Judgment***

1. CWP-26365-2019 (O&M)

SHRI SHRI RAM GUPTA AND OTHERS

... PETITIONERS

Versus

DEBT RECOVERY APPELLATE TRIBUNAL AND OTHERS

... RESPONDENTS

2. CWP-25611-2022 (O&M)

M/S TRIVENI KNITS PVT. LIMITED AND OTHERS

... PETITIONERS

Versus

DEBT RECOVERY TRIBUNAL AND OTHERS

... RESPONDENTS

**CORAM:- HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV BERRY**

Present:- Mr. Aalok Jagga, Advocate (Arguing counsel) with
Mr. Harkirat S. Jagdev, Advocate
for the petitioners (in CWP-26365-2019)

Mr. V.K. Sachdeva, Advocate
for the petitioners (in CWP-25611-2022)

Mr. Harsh Garg, Advocate (Arguing counsel) with
Ms. Ramneek Kaur Mann, Advocate
for respondent No.3-Bank (in CWP-26365-2019)

Mr. Abhay Karan Khanna, Advocate (Arguing counsel) with
Mr. N.C. Saini, Advocate
for respondents No.2 and 3-Bank (in CWP-25611-2022)



SANJIV BERRY, J.

1. Both the aforesaid writ petitions are being taken up for decision in this single order as the prayer sought for therein is essentially for the quashing of the order dated 24.07.2019 passed by respondent No.1, Debt Recovery Appellate Tribunal, Delhi in Misc. Appeal No. 468 of 2018 titled as “*M/s Shakti Bhog Snacks Limited vs. Corporation Bank & Others*” and the consequent orders passed by DRT-III Chandigarh in both the petitions.

2. Brief facts of the case, **CWP-26365-2019**, in nut shell, are that the respondent Bank had filed OA No.1332 of 2018 titled as ‘*Oriental Bank of Commerce vs. A.G. Oils Pvt. Ltd. And Others*’ under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as ‘RDB Act, 1993’) seeking the recovery of amount due alongwith interest. Notice was issued on 15.06.2018 to the defendants calling them to appear on 08.11.2018 vide Annexure P-2. The petitioners have placed on record the copies of orders passed by the learned DRT-III, Chandigarh from 08.11.2018 to 07.06.2019 (Annexure P-3) to plead that on account of non-availability of the Presiding Officer the case was adjourned from 08.11.2018 to 12.03.2019 and then to 08.05.2019.

2.1. On 08.05.2019 the counsel appearing on behalf of defendant No.1 to 6 had filed power of attorney while defendant No. 7 to 8 were proceeded against *ex-parte*. The Bank was directed to supply copy of paper-book to defendant No.1 to 6 and the case was adjourned to 07.06.2019 for filing of written statement.

2.2. The defendants (petitioners herein) prepared the written statement on 17.05.2019 as is apparent from the attestation of the Oath Commissioner for filing the same on the next date i.e. 07.06.2019, but on 07.06.2019 the learned



Presiding Officer was not available and the case was adjourned to 02.08.2019 and on account of *bona fide* belief that the written statement is to be filed by the next date, the petitioners filed the written statement on 01.08.2019 being prior to the next date of hearing i.e. 02.08.2019. It is pleaded that, had the case been taken up on 07.06.2019 the petitioner could have filed the written statement on that date itself, however it was on account of the Presiding Officer having gone to attend the duties of DRT, Jaipur on that day, the matter was adjourned to 02.08.2019.

2.3. On 02.08.2019 the learned Presiding Officer however, refused to take the written statement on record and struck off the defense of the petitioners by passing the impugned order 02.08.2019 (Annexure P-5) and adjourned the case to 28.08.2019 for passing final orders in terms of the order dated 24.07.2019 (Annexure P-7) passed by learned DRAT, Delhi, duly circulated to all the DRTs for passing of the judgment/order straightway once defendants were proceeded *ex-parte* on their defense is struck off. Thereafter, on 28.08.2019, the impugned order (Annexure P-6) was passed.

3. Brief facts pleaded in **CWP-25611-2022** are that the respondent Bank had filed OA No.2633-2018 for recovery of its alleged dues along with interest. Vide order dated 05.11.2018 (Annexure P-5) learned DRT-III, Chandigarh issued notice for 03.04.2019 and on 03.04.2019 (Annexure P-6) fresh notice was directed to be issued for 06.08.2019 (copy of notice dated 05.04.2019 Annexure P-7). Pursuant to the receipt of notice, the petitioners engaged Mr. Akashdeep Miglani, Advocate to represent and defend them.

3.1. On 06.08.2019 the case was listed before learned DRT-III, Chandigarh at serial No.37 and when their counsel entered the Court room at 10:32 am the



matter at serial No. 39 had already been taken and the counsel was astonished to know that petitioners were proceeded against *ex-parte* to which he requested to learned Presiding Officer, who told him that his request would be heard after taking all the cases. The learned Presiding Officer after proceeding *ex-parte* against the petitioner had fixed the case for 14.11.2019 for passing of the judgment, in terms of the judgment of DRAT Delhi vide impugned order dated 24.07.2019 whereby it was directed to all DRTs that the DRTs should not adjourn the case once the defense is struck off and straightway allow the OAs to achieve the main objective of the Act for speedy disposal of the case.

3.2. The counsel for the petitioner filed application (Annexure P-2) along with affidavit seeking recall of the order dated 06.08.2019 on which the reply of the Bank was called and the case was adjourned to 24.03.2020 vide order dated 01.11.2019 (Annexure P-8). Thereafter, the functioning of the DRT was closed due to Covid-19 and the matter was adjourned to different dates and ultimately on 23.05.2022, the application was dismissed and the case was adjourned to 03.03.2023 for *ex-parte* arguments. The impugned order dated 23.05.2022 is Annexure P-1.

4. A conjoint perusal of both the petitions would reveal that the petitioners have essentially assailed the order dated 24.07.2019 passed by learned DRAT, Delhi.

5. It is *inter alia* contended by learned counsel representing the petitioners that the impugned order dated 24.07.2019 passed by learned DRAT, Delhi is in complete contravention to the provisions of law laid down by the Hon'ble Supreme Court of India and is liable to be set-aside. They had referred to the law laid down by Hon'ble Supreme Court in **C.N.Ramappa Gowda v.**



C.C.Chandregowda, (2012) 5 SCC 265 wherein it has been held that even if the defendant had not filed written statement, a decree cannot be passed without calling upon the plaintiffs to prove its own case. They contend that a bare perusal of provisions contained in RDB, Act 1993 would reveal that as per Section 19(5) (A) it is mandatory for Tribunal to fix the date for hearing for admission or denial of the documents produced by the parties, before proceeding under Section 19(5)(B) which is not been followed by the Tribunal. They contend that the provisions contained in Section 19(5) for filing of the written statement is *pari materia* to Order 8 Rule 1 CPC and it has been held by Hon'ble Supreme Court in the case of Salem Advocate Bar Association, Tamil Nadu vs. Union of India, 2005 (3) RCR (Civil) 530, that order 8 Rule 1 CPC is directory and not mandatory in nature and in the given case, the Court has discretion to allow the defendant to file the written statement, even after expiry of 90 days in exceptional hard cases.

6. It is contended by learned counsel for the petitioners in CWP-26365-2019, that the petitioners had filed the written statement on 01.08.2019 even before the date fixed i.e 02.08.2019 for that purpose, therefore, the impugned order Annexure P-5 passed by DRT-III, Chandigarh whereby their defense had been struck off, is totally unsustainable and unwarranted in the eyes of law.

6.1 Whereas the learned counsel for the petitioner in CWP-25611-2022 contended that the petitioners were proceeded against *ex-parte* totally in violation of principles of natural justice as the concerned DRT started working at 10:30 am and at about 10:32 am their counsel entered the Court room, the learned Presiding Officer had already proceeded *ex-parte* against them in the OA



listed at serial No. 37 in the cause-list. He submits that the action of learned DRT in proceeding *ex-parte* against the petitioners within two minutes of starting the proceedings while their case was fixed at serial No.37 in the cause-list and especially in spite of the presence of their counsel to submit the power of attorney, is blatantly arbitrary, unjust and liable to be set-aside, based on the arbitrary directions given by learned DRAT Delhi in the impugned judgment dated 24.07.2019, as is evident from the perusal of the order dated 06.08.2019 (Annexure P-3) passed by DRT-III, Chandigarh.

6.2 On the strength of above said arguments the learned counsel for the petitioners have prayed for setting-aside of the impugned orders.

7. *Per contra*, the learned counsels for the respondent-Bank have assailed these arguments and submitted that the petitions are without any basis and deserve to be dismissed. They contend that there is specific remedy available under Section 20 of the Act in the form of appeal to the Appellate Tribunal for the petitioners to seek redressal of their grievance qua the impugned orders passed by the respective DRTs which they have not availed. They have referred to Order 8 Rule 10 CPC to submit that it empowers a Court to pronounce the judgment against the defendants or pass any appropriate order if they failed to submit the written statement within the prescribed time and the impugned orders therefore, do not suffer from any infirmity. They submitted that the present petitions are without any merit, and hence deserve no interference.

8. After considering the rival contentions and going through the record, it is observed that so far as the factual position is concerned, there is no dispute qua the same in the light of the copies of the orders passed by the respective DRTs having been placed on record by the petitioners.



8.1. It is not disputed that in CWP-26365-2019, while dealing with the OA No. 1332-2018 it was ordered as under by DRT on 08.05.2019:-

“Bank has filed service report and as per service report, Sh. Namit Gautam, Advocate appeared on behalf of defendant No.1 to 6 and filed POA. No one appeared on behalf of defendant No.7 and 8, therefore, they are proceeded against ex-parte. Bank is directed to supply paper book to defendant No.1 to 6 today for filing WS on the next date.

The case is fixed for next date 07.06.2019.

8.2. Then on 07.06.2019, DRT-III Chandigarh had passed following order:-

“Hon’ble Presiding Officer is on official duty for holding charge of DRT, Jaipur.

The case is fixed for next date 02.08.2019.”

8.3. The written statement on behalf of petitioners (Annexure P-4) was filed on 01.08.2019 i.e. before 02.08.2019, the date already fixed.

8.4. Thereafter, the DRT, Chandigarh proceeded to pass the order (Annexure P-5) dated 02.08.2019, which reads as under:-

“Defendant Nos. 1 to 8 were directed to file written statement on or before 07.06.2019 but they have filed written statement on 01.08.2019 as per order dated 08.05.2019. Therefore, written statement filed by defendants after this date cannot be taken on record and right to file written statement deemed to be closed on 07.06.2019 and defense of defendant Nos. 1 to 8 is struck off.

Since, the defense of defendant Nos.1 to 8 has already been struck off and right to file written statement has already been closed so there is no necessity to call the original documents to be compared as the affidavit of evidence has been filed along with the OA.

Hon’ble DRAT Delhi has given directions in its judgment in Miscellaneous Appeal No.468/18 arising out of



OA, No. 385/17 pending in DRT-3 Delhi in ‘M/s Shakti Bhog Snacks Limited Vs. Corporation Bank and others’ that DRT should not adjourn the case once defense is struck off and should straight-away allow the OA to achieve the main objective of the act for speedy disposal of the cases.

In its judgment Hon’ble DRAT, Delhi has given observations that when defense is struck off the evidence adduced by the bank at the time of filing OA is with affidavit of evidence and the same should be considered and should not adjourn the case for adducing evidence which unnecessarily delays the disposal of the cases. This Tribunal is bound to follow the directions given by Hon’ble Chairperson DRAT Delhi.

Therefore, in the light of above-mentioned observations since, the defense of defendants has already been struck off.

*This OA is fixed for **judgment**.*

List on 24.08.2019.”

Consequently, the impugned order dated 28.08.2019 (Annexure P-6) was passed allowing the Original Application.

9. So far as CWP-25611-2022 is concerned, the fact as emerges from the record is that OA No. 2633-2018 was filed by the respondent Bank before the DRT-III, Chandigarh and vide order (Annexure P-6) dated 03.04.2019 following order was passed:-

“ Present:- Sh. Veerbhan Adv., for Bank.

Fresh Notices be issued. Let the notices be issued to all the defendants. Defendants be served notices by way of electronic mode as well as by personal service and registered post. If defendants are served personally, then bank is directed to bring all the original documents on next date. The concerned



clerk is directed to issue notices within three days from the date of this order.

The case is fixed for service report on next date 06.08.2019.”

9.1. Thereafter, on 06.08.2019, the impugned order (Annexure P-3) was passed which reads as under:-

“ITEM NO.37

OA 2633/18 PNB vs TRIVENI KNITS

06.08.2019

Present: Shri Veer Bhan Advocate for Applicant

None for the defendants.

No one has appeared on behalf of defendants despite effective service. Therefore, all defendants are proceeded ex parte. Since, no one has appeared to controvert or to rebut the claim of applicant bank and as the OA has been filed along the affidavit of evidence, there is no necessity to call the original documents to be compared.

Hon'ble DRAT Delhi has given directions in its judgment in Miscellaneous Appeal No.468/18 arising out of OA, No.385/17 pending in DRT-3 Delhi in ‘M/s Shakti Bhog Snacks Limited Vs Corporation Bank and Others’ (date of judgment 24.07.2019) that DRT should not adjourn the case once defense is struck off and should straight-away allow the OA to achieve the main objective of the act for speedy disposal of the cases.

In its judgment Hon'ble DRAT Delhi has given observations that when defense is struck off the evidence adduced by the bank at the time of filing OA is with affidavit of evidence and the same should be considered and should not adjourn the case for adducing evidence which unnecessarily delays the disposal of the cases. This Tribunal is bound to follow the directions given by Hon'ble Chairperson DRAT Delhi.



"Since, the defendants are ex parte clearly goes to show that the evidence as filed by the bank in their claim is un rebutted. Therefore, there is no need to call the original documents from the bank".

Therefore, in the light of above-mentioned observations since, the defendants are ex parte, this case is fixed for judgment.

List on 14.11.2019.

(Sd/-)

Presiding Officer DRT-III, Chandigarh

After pronouncement of order, Shri Akashdeep Advocate for defendants appeared. He has filed memo of appearance on behalf of all defendants and has been apprised about the above order”

9.2. Thereafter, an application (Annexure P-2) for recalling of the order dated 06.08.2019 was filed by the petitioner vide IA NO. 718-2019 which too was dismissed vide impugned order dated 23.05.2022 (Annexure P-1).

9.3. Feeling aggrieved, the petitioner preferred the CWP-25611-2022 wherein vide order dated 11.11.2022, this Court taking cognizance stayed all the further proceedings in the OA No.2633/2018 pending before the DRT-III Chandigarh.

10. It is pertinent to mention here that in both the writ petitions the proceedings carried out by learned Presiding Officers of the DRT, Chandigarh which have been impugned by the petitioners, is primarily based on the order dated 24.07.2019 passed by DRAT Delhi in Misc. Appeal No. 468 of 2018 titled as ‘M/s Shakti Bhog Snacks Limited vs. Corporation Bank & Others’. Although none of the parties in the present writ petitions happens to be party in the aforesaid appeal pending before the DRAT, Delhi but on account of the copy of the order having been circulated to all the DRTs under the jurisdiction of DRAT



Delhi, the learned Presiding Officers passed the impugned orders based on said order. The relevant portion of the impugned order dated 24.07.2019 passed by the DRAT Delhi is reproduced as under:-

“XXXXXXXX

Before winding up, this Tribunal once again would like to mention here, as had been observed on an earlier occasion also while dealing with an appeal arising out of an order passed by one DRT striking off the defence of the concerned borrower/defendant, that even when defence of defendants is struck off by the DRTs, still the O.As keep on lingering for years. Some time is consumed for filing of evidence by the banks and some time is consumed before the Registrars on the pretext of 'exhibition of documents'. In that process, years get consumed and in that process the very purpose of enactment of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which is speedy disposal of Bank recovery cases and expeditious recovery of 'public monies' gets frustrated. When a defendant does not file written statement and his defence is struck off, he conveys to the Tribunal that he has no opposition to the claim of the bank. So, in a way the entire claim of the Banks stands admitted.

DRTs should appreciate that when defence is struck off the averments made in the OAs get admitted and Section 19(5B) of the RDDBFI Act, 1993 mandates that when the claim of the Bank is admitted, in full or in part, by a defendant the DRT SHALL direct that defendant to pay the admitted amount within thirty days.

As far as the procedure being adopted by the DRTs for giving time to the banks as well as defendants for adducing evidence and exhibition of documents is concerned, this Tribunal feels that in view of the existing provision under Section 19(10B) of the Act of 1993, banks as well as defendants are supposed to



file evidence by way of affidavits alongwith the O.A. by banks and along with written statements by defendants. The objective is to save unnecessary time which otherwise gets consumed for completion of evidence and thereby delays are caused in the final disposal of bank recovery cases which even otherwise are to be finally disposed of within 180 days as provided under Section 19(24) of RDDBFI Act, 1993. It is seen that in almost every case the banks make reference to all the loan documents in their O.As and make them as annexures to the O.As. The O.As are duly verified also and are supported by affidavits also, which means the documents which the banks annex with the O.As become part of the O.As itself and normally there should not be any problem in accepting those documents straightaway as part of evidence and particularly in cases where defence of defendants stands struck off, which procedure, if adopted, will go a long way to cut short the period of disposal of the O.As in which crores of public monies are involved. This will also ensure that the Banks do not get any undue special treatment for filing of documents and adducing evidence. The DRTs must apply Section 19(10B) equally for the banks as well as the borrowers-defendants. It is hoped that whenever a situation arises when defence of defendants is to be struck off and even otherwise also the learned Presiding Officers will keep in mind the aforesaid observations in order to achieve the objective for which DRTS have been established.

This appeal with the aforesaid observations is dismissed.

Copy of this order be circulated amongst all the DRTs under the jurisdiction of this DRAT.

(CHAIRPERSON) ”

11. Before proceeding further, it would be apt to have a glance on the relevant provisions contained in RDB Act, 1993 as well as Code of Civil



Procedure in the context of filing of the written statement. The relevant provisions of Section 19(5) of the RDB Act 1993 reads as under:-

“ **Section 19(5)- Recovery of Debts and bankruptcy Act, 1993**

(5) (i) the defendant shall within a period of thirty days from the date of service of summons, present a written statement of his defence including claim for set-off under sub-section (6) or a counter-claim under sub-section (8), if any, and such written statement shall be accompanied with original documents or true copies thereof with the leave of the Tribunal, relied on by the defendant in his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, extend the said period by such further period not exceeding fifteen days to file the written statement of his defence;

(ii) where the defendant makes a disclosure of any property or asset pursuant to orders passed by the Tribunal, the provisions of sub-section (4A) of this section shall apply to such property or asset;

(iii) in case of non-compliance of any order made under clause (ii) of sub-section (4), the Presiding Officer may, by an order, direct that the person or officer who is in default, be detained in civil prison for a term not exceeding three months unless in the meantime the Presiding Officer directs his release:

Provided that the Presiding Officer shall not pass an order under this clause without giving an opportunity of being heard to such person or officer.

Explanation.—For the purpose of this section, the expression ‘officer who is in default’ shall mean such officer as defined in clause (60) of [section 2](#) of the Companies Act, 2013 (18 of 2013).



(5A) On receipt of the written statement of defendant or on expiry of time granted by the Tribunal to file the written statement, the Tribunal shall fix a date of hearing for admission or denial of documents produced by the parties to the proceedings and also for continuation or vacation of the interim order passed under sub-section (4).

(5B) Where a defendant makes an admission of the full or part of the amount of debt due to a bank or financial institution, the Tribunal shall order such defendant to pay the amount, to the extent of the admission within a period of thirty days from the date of such order failing which the Tribunal may issue a certificate in accordance with the provisions of sub-section (22) to the extent of the amount of debt due admitted by the defendant.”

11.1.1. Corresponding Provisions contained under Order 8 Rule 1 of Code of Civil Procedure reads as under:-

“ORDER 8 RULE 1 – CODE OF CIVIL PROCEDURE

[Written Statement, Set-Off And Counter-Claim]

1. Written statement. – *The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:*

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

12. Considering the factual position of the present petitions emanating from the passing of the impugned orders, in the light of the procedure laid down in the relevant provisions of RDB Act, 1993, there is no doubt that as per Section



19(5), the written statement may be filed within 30 days and such period can be extended not beyond another 15 days for filing of the written statement while as per Order 8 Rule 1 CPC, such period of 30 days can be extended up to 90 days from the date of service of summons. The provisions contained in Section 19(5) of RDB, Act 1993 is *pari materia* to Order 8 Rule 1 CPC. The question arises as to whether such period so specified therein for filing of the written statement is mandatory or directory in nature, the answer thereto can be fetched from the landmark judgment of Hon'ble Apex Court rendered in **Salem Advocate Bar Association's case (supra)**, wherein it has been held that Order 8 Rule 1 CPC is directory and not mandatory in nature and the Court has discretion to allow the defendant to file the written statement even after expiry of 90 days in exceptionally hard cases. The relevant portion of the judgment **Salem Advocate Bar Association's case (supra)** is reproduced here as under:-

“22. In construing this provision, support can also be had from Order 8 Rule 10 which provides that where any party from whom a written statement is required under Rule 1 or Rule 9, fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him, or make such other order in relation to the suit as it thinks fit. On failure to file written statement under this provision, the Court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to suit as it thinks fit. In the context of the provision, despite use of the word 'shall', the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order 8 Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10



Order 8, the court in its discretion would have power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order 8 Rule 1. There is no restriction in Order 8 Rule 10 that after expiry of ninety days, further time cannot be granted. The Court has wide power to 'make such order in relation to the suit as it thinks fit'. Clearly, therefore, the provision of Order 8 Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases. While extending time, it has to be borne in mind that the legislature has fixed the upper time limit of 90 days. The discretion of the Court to extend the time shall not be so frequently and routinely exercised so as to nullify the period fixed by Order 8 Rule 1."

13. Further, it has been held by Hon'ble Supreme Court in **Modula India vs. Kamakhya Singh Deo 1988(4) SCC 619**, that on the failure of the defendant to file the written statement, leading to defence having been struck off, it is not mandatory for the Court to pass the decree in favour of the plaintiff straightway on non-filing of the written statement and the Court has to exercise discretion as to what further proceedings should take place based on the facts of a particular case.

14. Further in **Kailash v. Nanhku (2005) 4 SCC 480**, the Hon'ble Supreme Court observed as under:-

" 46. (iv) The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the court to extend the time. Though the language of the proviso to Order 8 Rule 1 CPC is couched in negative form, it does not specify any penal consequences flowing from the non-



compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away.”

15. The issue as to whether the trial Court before whom the defendant failed to file the written statement, could straightaway pass the decree in favour of the plaintiff without entering into the merits of his case and without directing the plaintiff to lead the evidence in support of his case and appreciating any evidence or in spite of absence of written statement, the trial Court ought to try the suit critically appreciating the merits of plaintiffs case directing the plaintiff to adduce evidence in support of his case examining the weight of evidence so lead by the plaintiff.

16. Further, this aspect again came up for consideration before Hon’ble Supreme Court in C.N.Ramappa Gowda’s case (supra), the relevant portion reads as under:-

“23. In the light of the ratio decidendi of the cases cited hereinabove, when we examined the judgement and order of the trial court granting a decree of partition in favour of the plaintiff-appellant, we could notice that the plaintiff-appellant has sought to prove his case that the suit property was a joint family property only on the strength of affidavit which he had filed and has failed to lead any oral or documentary evidence to establish that the property was joint in nature. Even if the case of the plaintiff-appellant was correct, it was of vital importance for the trial court to scrutinize the plaintiff’s case by directing him to lead some documentary evidence worthy of credence that the property sought to be partitioned was joint in nature. But the trial court seems to have relied upon the case of the plaintiff merely placing reliance on the affidavit filed by the plaintiff



which was fit to be tested on at least a shred of some documentary evidence even if it were by way of an ex-parte assertion.

24. Reliance placed on the affidavit in a blindfold manner by the trial court merely on the ground that the defendant had failed to file written statement would amount to punitive treatment of the suit and the resultant decree would amount to decree which would be nothing short of a decree which is penal in nature.

25. We find sufficient assistance from the apt observations of this Court extracted hereinabove which has held that the effect of non-filing of the written statement and proceeding to try the suit is clearly to expedite the disposal of the suit and is not penal in nature wherein the defendant has to be penalised for non filing of the written statement by trying the suit in a mechanical manner by passing a decree. We wish to reiterate that in a case where written statement has not been filed, the Court should be a little more cautious in proceeding under Order 8 Rule 10 CPC and before passing a judgement, it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgement and decree could not possibly be passed without requiring him to prove the fact pleaded in the plaint.

26. It is only when the Court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the Court can conveniently pass a judgement and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the Court to record an ex-parte judgement without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex-parte judgement although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the



delay in finally disposing of the suit giving rise to multiplicity of proceeding which hardly promotes the cause of speedy trial.

27. *However, if the Court is clearly of the view that the plaintiff's case even without any evidence is prima facie unimpeachable and the defendant's approach is clearly a dilatory tactic to delay the passing of a decree, it would be justified in appropriate cases to pass even an uncontested decree. What would be the nature of such a case ultimately will have to be left to the wisdom and just exercise of discretion by the trial court who is seized of the trial of the suit.*

28. *When we examined the instant matter on the anvil of what has been stated above, we have noticed that the trial court has decreed the suit without assigning any reason how the plaintiff is entitled for half share in the property. The same is absolutely cryptic in nature wherein the trial court has not critically examined as to how the affidavit filed by the plaintiff in support of his plea of jointness of the family was proved on relying upon Ex.P-1 to P-10 without even discussing the nature of the document indicating that the suit property was a joint property. Ex.P-1 to P-10 are the preliminary records viz. Atlas, Tipni Book, R.R. Pakka Book, Settlement Akarband, sale deeds etc. The trial court although relied upon these documents, it has not elaborated critically as to why these documents have been believed without indicating as to how it proves the plea that the property always remained joint in nature and had never been partitioned between the parties. Even if the trial court relied upon these documents to infer that the property was joint in nature, it failed to record any reason as to whether the property was never partitioned among the coparceners.*

29. *It is a well acknowledged legal dictum that assertion is no proof and hence, the burden lay on the plaintiff to prove that the property had not been partitioned in the past even if there was no written statement to the contrary or any evidence of rebuttal. The trial court in our view clearly adopted an erroneous approach by*



inferring that merely because there was no evidence of denial or rebuttal, the plaintiff's case could be held to have been proved. The trial court, therefore, while accepting the plea of the plaintiff-appellant ought to have recorded reasons even if it were based on ex-parte evidence that the plaintiff had succeeded in proving the jointness of the suit property on the basis of which a decree of partition could be passed in his favour"

17. Thus, from the above, it transpires that it is settled proposition of law as has been laid down by Hon'ble Supreme Court in catena of judgments that even in case of non-filing of written statement, the Court should proceed cautiously by exercising its discretion in a just manner. The burden of proof would always remain on plaintiff and his mere assertion in plaint or affidavit would not be sufficient to discharge the burden, if the plaint indicated some disputed question of fact, then Court should require the plaintiff to lead the evidence, then on independent examination thereof, it should pass judgment and decree. It has been observed in ***C.N.Ramappa Gowda's case (supra)*** that passing of any uncontested judgment in case of failure to file written statement by the defendant, when it is evident that some disputed facts are involved, has been depreciated by observing that although such decree may appear to decide suit expeditiously but ultimately such decree compounds delay in final disposal of suit, in view of multiplicity of proceedings.

18. The view expressed by Ld. DRAT Delhi in the impugned order dated 24.07.2019 shows that emphasis has been on the expeditious disposal of the proceedings and to cut short the period of disposal of the Original applications but such approach of allowing the OA (Original Application) straightway to achieve the objective of speedy disposal certainly is causing violation of the



principles of natural justice besides leading to multiplicity of the proceedings as is evident from the peculiar facts and circumstances of the instant case, wherein one case, despite the written statement having been filed before the date fixed, the defense was struck off and concerned DRT adjourned the case for passing of the final order while in the other case despite the case being at serial No.37 of the cause list, within 2 minutes of starting of proceedings, the Presiding Officer passed the order proceeding against the defendant petitioners *ex-parte* and straightaway adjourned the case for passing of the final order, ultimately resulting in passing of award/decreed in mechanical manner without even calling for the applicant Banks to prove their own case on merits. Such orders were passed by the concerned Presiding Officers of the respective DRTs basing reliance on the directions so circulated vide the impugned order dated 24.07.2019, passed by the Ld. DRAT, Delhi, which in the circumstances of the case appears to be against the settled position of law laid down by the Hon'ble Supreme Court of India in the catena of judgments referred to above besides being violative of the principles of natural justice. Therefore, the impugned order passed by Ld. DRAT, Delhi dated 24.07.2019 is held liable to be quashed by issuing a writ in the nature of certiorari.

19. So far as the arguments of the respondent Bank regarding maintainability and entertainability of the instant petitions despite availability of alternative remedy of appeal under Section 20 of RDB Act 1993, is concerned, in the facts and circumstances we find no merit in this contention because it is settled preposition by now that a writ petition under Article 226 of the Constitution of India can be entertained despite an alternative remedy if there is violation of fundamental rights, breach of principles of natural justice or the



order is without jurisdiction. Reference in this regard is made to the judgment rendered by the Hon'ble Apex Court in case, *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, 1998(8) SCC 1*, wherein it has been observed that while dealing with the question of alternative remedy qua entertainment of writ petition under Article 226 of the Constitution of India, normally the High Court would not exercise its writ jurisdiction where there is an effective and efficacious remedy available but alternative remedy would not be a bar in at least three contingencies namely:-

- i. Where writ petition has been filed for the enforcement of any of the Fundamental Rights.
- ii. Where there has been a violation of the principles of natural justice.
- iii. Where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

19.1. This apart, plain reading of the provisions contained in 19(5A) of RDB Act, 1993 would reveal that on receipt of written statement of the defendant **or on expiry of the time granted by the Tribunal to file the written statement, the Tribunal shall fix a date of hearing for admission or denial of documents produced by the parties to the proceedings.**

19.2. However, in the present case, the learned Tribunal on the basis of the order passed by Ld. DRAT, Delhi dated 24.07.2019, after proceeding *ex-parte* against the petitioners straightway adjourned the case for the pronouncement of the final order in utter disregard and violation to the mandatory provision contained in Section 19(5A) of the RDB Act, 1993.



19.3 Since, the provisions contained in Section 19 of the RDB Act, 1993 read in consonance with Order 8 Rule 1 CPC is by now settled to be directory in nature and not mandatory one, therefore, the action of Presiding Officer DRT-III, Chandigarh in striking off the defense at 10:32 am in OA No.2633-2018 titled as 'Punjab National Bank vs. Triveni Knits Pvt. Ltd' and not accepting the written statement already filed before the date fixed in OA No.1332 of 2018 titled as '*Oriental Bank of Commerce vs. A.G. Oils Pvt. Ltd. And Others*', being the result of hyper-technical approach/ haste, is held unsustainable in the eyes of law.

20. As a result of the above discussion, the impugned orders dated 02.08.2019 (Annexure P-5), dated 28.08.2019 (Annexure P-6) passed in OA No.1332 of 2018 titled as '*Oriental Bank of Commerce vs. A.G. Oils Pvt. Ltd. And Others*', and orders dated 06.08.2019 (Annexure P-3) and dated 23.05.2022 (Annexure P-1) in OA No.2633-2018 titled as '*Punjab National Bank vs. Triveni Knits Pvt. Ltd.*' and also the order dated 24.07.2019 passed by Ld. DRAT, Delhi in Misc. Appeal No. 468 of 2018 titled as "*M/s Shakti Bhog Snacks Limited vs. Corporation Bank & Others*" are found to be not sustainable in the eyes of law and are hence liable to be set-aside.

21. In the light of the above discussion both the writ petitions are hereby disposed of by issuing writ of certiorari, thereby quashing the impugned orders dated 24.07.2019 passed by Ld. DRAT, Delhi in Misc. Appeal No. 468 of 2018 titled as "*M/s Shakti Bhog Snacks Limited vs. Corporation Bank & Others*" and also quashing the impugned orders dated 02.08.2019 (Annexure P-5) and 28.08.2019 (Annexure P-6) passed in OA No.1332 of 2018 titled as '*Oriental Bank of Commerce vs. A.G. Oils Pvt. Ltd. And Others*' (in CWP-26365-2019), and impugned orders dated 06.08.2019 (Annexure P-3) and 23.05.2022



(Annexure P-1) passed in OA No.2633-2018 titled as ‘Punjab National Bank vs. Triveni Knits Pvt. Ltd’(in CWP-25611-2022).

22. Consequently, by setting aside the aforesaid impugned orders, the aforementioned Original Applications no. 1332 of 2018 and 2633-2018 are hereby remanded back to the DRT-III, Chandigarh with the directions to allow the petitioners to file their written statements to the respective Original Applications for which the concerned DRT will give 15 days time as last and final opportunity for that purpose and thereafter to proceed further in the Original Applications after following the mandatory provisions contained in Section 19(5A) of RDB Act, 1993, in accordance with law.

23. Both the writ petitions are accordingly disposed of in above terms.

24. Pending application(s) if any shall also stand disposed of.

(SANJIV BERRY)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

Dated: 06.03.2026

Gyan

- i) Whether speaking/reasoned?
- ii) Whether reportable?

Yes/No
Yes/No