

% 09.06.2008

Present: Mr. Aseem Mehrotra & Mr. Parmod Kumar
for the petitioner
Mr. Mukesh Kumar for respondent No.1

+CM No. 8654/2008 (exemption)

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Allowed subject to all just exceptions.

WP(C) No. 4487/2008 & CM No. 8653/2008 (stay)

The present petition impugns order dated 3.6.2008 passed by the Debts Recovery Appellate Tribunal (DRAT), Delhi directing the petitioner to deposit a sum of Rs.5 lacs within 10 days from the date of the order to meet the requirement of Section 21 of the RDDBFI Act.

In the present case the respondent bank had filed an OA against the petitioner for recovery of loan amount which was decreed ex-parte on 9.1.2008 to the tune of Rs.15,25,42,808/- only.

The petitioner aggrieved by the said ex-parte decree filed an application under Order 9 R. 13 CPC for setting aside the judgment and decree dated 9.1.2008. The DRT vide order dated 6.5.2008 came to a conclusion that the petitioners herein were negligent in pursuing their case. However, taking into consideration the circumstance of the written statement filed on behalf of the petitioners not having been considered at the time of passing the ex parte decree, the DRT set aside the ex-parte decree subject to the following conditions:-

"10(i) The defendants shall deposit a sum of Rs.15.00 lacs within two weeks hereof by way of Security in the shape of FDR in the name of applicant bank within the

Signature Not Verified

Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

Registrar of this Tribunal. In case I found at any subsequent stage of proceedings that the defendants are deliberately misusing the process, the Tribunal may direct to forfeit entire amount or part thereof, as the tribunal deems fit and proper under the facts and circumstances.

(ii) An affidavit be filed to the effect that the defendants no.1 to 5 have not dealt with the mortgaged properties during the pendency of the case nor they shall deal with or part with its possession until final adjudication of the O.A.

(iii) The defendants shall have right to file their evidence within a period of 10 days by way of affidavit. Thereafter, the applicant shall have right to file Rejoinder Affidavits, if any, within two weeks."

Aggrieved by the said directions, the petitioner preferred an appeal against the said order dated 6.5.2008 before the DRAT. Vide the impugned order dated 3.6.2008, the application filed by the petitioner herein was disposed of with a direction, requiring in order to balance the rights of the parties, the petitioner herein to deposit a sum of Rs.5 lacs to meet the requirements of Section 21 of the Act within ten days from the said date.

Learned counsel for the petitioner urges that once an application under Order 9 R. 13 CPC had been allowed and the ex-parte decree had been set aside, the Tribunals below had fallen into an error in directing the petitioner to deposit a sum of money as a condition of setting aside the ex-parte decree.

It is seen that respondent bank has yet to recover outstanding dues to the tune of Rs.15,25,42,808/- from the petitioners. It is also an admitted position that the petitioners herein did not participate in the proceedings before the DRT

diligently and were proceeded ex parte on 5.9.2005, whereas the application under Order 9 R. 13 CPC was filed on their behalf only on 8.2.2008 i.e. about 2-1/2 years thereafter.

In view of the above, we see no infirmity in the impugned order and are not inclined to interfere with it in the exercise of this Court's extraordinary and discretionary jurisdiction.

The present petition is dismissed as being without merit.



SIDDHARTH MRIDUL
(Vacation Judge)



MANMOHAN
(Vacation Judge)

June 09, 2008
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