

Recall of DRT order dismissing bank's application for non-compliance of directions: DRAT KOLKATA

Indian Bank

...Appellant

M/s. S.P. Enterprise

...Respondent

Case No: Appeal No. 29 of 2023

Date of Judgement: 25th April, 2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Pralay Kar, Advocate.

For Respondent: None.

Facts:

Allahabad Bank (now Indian Bank) filed an original application (O.A. No. 186 of 2014) before the Debts Recovery Tribunal (DRT)-I, Kolkata against M/s S.P. Enterprise and its proprietor and guarantor. On 2nd January 2019, DRT issued directions to the Bank to comply with certain requirements. As the Bank did not comply with directions dated 2nd January 2019, the DRT dismissed O.A. No. 186 of 2014 vide order dated 22nd July 2019. The Bank filed Misc. Application No. 35 of 2019 seeking recall of dismissal order dated 22nd July 2019 on the ground that its counsel was suffering from some ailment on the date fixed and could not appear. DRT dismissed the Misc. Application vide impugned order dated 25th September 2019 observing that there is no merit in the application.

Bank's Appeal before DRAT:

Feeling aggrieved, the Bank filed Appeal No. 29 of 2023 before the Debts Recovery Appellate Tribunal (DRAT), Kolkata.

Elaborate Opinions by DRAT:

DRAT referred to the settled principle that an order should always be a speaking order reflecting the grounds upon which the conclusions are arrived at. The grounds taken by the appellant should be considered before accepting or rejecting the same (Para 5). DRAT relied on the Supreme Court judgment in Brijmani Devi v. Pappu Kumar which laid down various principles regarding duty to give reasons for a decision arrived at by courts/tribunals (Para 6). DRAT held that DRT did not consider the Bank's ground regarding its counsel's inability to appear due to ailment. It was incumbent upon DRT to consider this ground. By not doing so, DRT passed an illegal order without application of mind (Para 7).

Arguments by Bank's Counsel:

DRT did not consider the Bank's specific ground in the recall application regarding its counsel's inability to appear on 22nd July 2019 due to ailment (Para 4). The impugned order shows that DRT dismissed the recall application merely mentioning that there is no merit, without considering the grounds raised by the Bank (Para 4).

Cited Cases:

Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497

Conclusion and Order by DRAT:

Allowed the Bank's appeal, set aside impugned DRT order dated 25th September 2019, allowed recall application being M.A. No. 35 of 2019, and restored O.A. No. 186 of 2014 to its original number before DRT (Para 8). Directed DRT to decide the O.A. expeditiously as it is an old matter (Para 8).

Case Laws Referred:

No case laws were referred in the order.

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Full Text of Judgment:

1. Affidavit of Service filed be taken on record. Respondents are served but none is present for the Respondents.

2. The instant appeal arises against an order dated 25th September, 2019 dismissing M.A. 35 of 2019 arising out of O.A. 186 of 2014.

3. It appears that O.A. 186 of 2014 was filed by the Appellant before the Learned DRT-I, Kolkata which was pending for hearing. On 4th of March, 2019 direction was issued to the Appellant to comply the order date 2nd January, 2019 and the matter was listed for 22nd July, 2019. Since compliance of the order dated 2nd January, 2019 was not made, O.A. 186 of 2014 was dismissed for non compliance. Feeling aggrieved, the Appellant preferred the appeal. Heard the Learned Counsel for the Appellant and perused the record.

4. Learned Counsel for the Appellant submits that in the Misc. Application for recall of the order dated 22nd July, 2019, specific ground was taken that on the date fixed, i.e. 22nd July, 2019, Learned Counsel for the Appellant was suffering from some ailment and could not appear but the ground was not considered by the Learned DRT and the impugned order was passed. Bare perusal of the impugned order would show that the Learned DRT dismissed M.A. 35 of 2019 merely mentioning that there is no merit in the Misc. Application.

5. It is a settled legal proposition that an order should always be a speaking order wherein it should reflect the grounds upon which the Learned DRT have arrived at a particular conclusion. The grounds taken by the Appellant should also be considered before accepting or rejecting the same. If reasons are not given in the order, it is an arbitrary exercise of power by the DRT.

6. In *Brijmani Devi -vs- Pappu Kumar and Another*, reported in (2022) 4 SCC 497, The Hon'ble Apex Court held as under:

"32. On the aspect of the duty to accord reasons for a decision

arrived at by a court, or for that matter, even a quasijudicial authority, it would be useful to refer to a judgment of this Court in *Kranti Associates (P) Ltd., v. Masood Ahmed Khan*, (2010) 9 SCC 496 wherein after referring to a number of judgments this Court summarised at para 47 the law on the point. The relevant principles for the purpose of this case are extracted as under:

32.1. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

32.2. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

32.3 Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

32.4. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

32.5. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision making justifying the principle that reason is the soul of justice.

32.6. Judicial or even quasi-judicial opinions these days can be as different as the Judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

32.7. Insistence on reason is a requirement for both judicial accountability and transparency.

32.8. If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

32.9. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be

equated with a valid decision-making process.

32.10. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the Judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

32.11. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

"34. The Latin maxim "cessante ratione legis cessat lex" meaning "reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself, is also apposite."

7. In the impugned order, Learned DRT has not considered the grounds taken by the Appellant that his Counsel was suffering from some ailment on the date fixed and could not appear. It was incumbent upon the Learned DRT to consider the grounds hence I am of the view that the Learned DRT has passed an illegal order without applying its mind. Accordingly, the appeal is liable to be allowed.

The appeal is allowed. Impugned order dated 25th September, 2019 is set aside. M.A. 35 of 2019 is allowed. O.A. 186 of 2014 is restored to its original number. Learned DRT should decide the O.A. expeditiously as this is an old matter.

Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT.

File be consigned to Record room.

Order dictated, signed, dated and pronounced in open Court.

Copy of the Judgment/Final Order be uploaded in the Tribunal's Website.