

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA
Appeal Dy No. 365 of 2022
 (Arising out of M.A. 547 of 2007 in TA 271 of 2001 – DRT-Cuttack)
THE HON'BLE JUSTICE SHRI ANIL KUMAR SRIVASTAVA,
CHAIRPERSON

08.06.2023

Smt. Anita Agarwal, wife of Sri Suresh Kumar Agarwal, residing at Plot No. H/11, Civil Township, Rourkela – 769-004 PS. Raghunathpalli.

... Appellant

Vs.

1. Punjab National Bank, having office at Sector 19, Rourkela – 5, PS – Sector-19, Dist. Sundargarh.

Proforma respondent –

2. M/s. Kalinga Mills Pvt. Ltd. having office at Industrial Area, PO Rourkela, PS. Raghunathpalli, Dist. Sundargarh.

3. Sri Mayank Khemka, C/o Kalinga Mill (P) Ltd. residing at Industrial Area, PO Rourkela-4, also at 15, Brabourne Road, Kolkata – 700001.

4. M/s. Motor Transport of India (P) Ltd. having office at Naya Bazaar, Gwalior – 9.

5. Bihar Road Lines having office at Firozabad Road, Rambagh Crossing, Agra- 6.

6. M/s. Maharathi Transport having office at OSFC Building, W No.28, OM Square, Mahanadi Vihar, Cuttack, Odisha – 753004.

7. Orissa State Financial Corporation having office at Dibai Nabora Railway Road, Dibai Bulandsahar.

..... Respondents

For Appellant : Mr. Nemani Srinivas, Learned Counsel
 For Respondent : Mr. S. Pal Chowdhury, Learned Counsel with
 Ms. Swasati Sikdar, Learned Counsel.

JUDGEMENT

THE APPELLATE TRIBUNAL :

I.A. No. 247 of 2022

Heard learned counsel for the parties and perused records.

Impugned order dated 31.12.2007 was passed by learned DRT whereby the application of the appellant for setting aside the

order dated 27.12.2004 after condoning the delay in filing application was dismissed. Feeling aggrieved the appeal is preferred along with application u/s 5 of the Limitation Act as would appear from the judgement of Hon'ble High Court of Orissa at Cuttack in WP(C) No. 1101 of 2008 dated 28.06.2022 appellant was given liberty to file an appeal before 1st August, 2022. Appellant preferred the appeal on 29.07.2022. Accordingly, there is no delay in preferring the appeal.

I.A. No. 247 of 2022 is allowed. Delay in filing the appeal is condoned.

Appeal Dy. No. 365 of 2022

This appeal arises against the impugned order dated 31.12.2007 passed by the learned DRT, Cuttack whereby the application for condonation of delay was dismissed, consequently, the prayer for setting aside the order dated 27.12.2004 passed in TC 271 of 2001 was not taken into consideration.

Learned counsel for the appellant submits that appellant is a lady who has purchased the property from the borrower of the respondent. Respondent bank filed an O.A. for recovery against the borrower and guarantor along with present appellant for recovery of Rs.22.00 thousand. In the O.A. proceeding, as far as claim against other defendants are concerned was allowed, but as far as appellant is concerned it was dismissed for recovery of Rs.22.00 thousand, but with an observation that there is an equitable mortgage of the appellant's property in favour of the

bank, which was a wrong finding. The appellant is aggrieved with this finding and filed an application for setting aside the judgement and order dated 27.12.2004. It is further submitted that appellant once appeared before learned DRT, but thereafter she could not appear. She came to know the finding of the impugned judgement when Recovery Officer initiated recovery proceeding by issuing notice, which is per se illegal. Hence, on coming to know the finding in the body of the judgement appellant filed the application for recalling the judgement and its finding that the property in question is equitable mortgage with the bank along with the application for condonation of delay which was dismissed by learned DRT.

Learned counsel for the respondent bank vehemently opposes the prayer and submits that appellant was fully aware of the proceeding, but did not appear. Appellant cannot take advantage of the fact that she is a lady. Accordingly, learned DRT has rightly dismissed the application for condonation delay.

Heard learned counsel for the parties and perused records.

As far as merits are concerned, in this proceeding, although issues could not be dealt with, however, it is observed that claim of the bank against the appellant for recovery of Rs.22.00 thousand was dismissed. It appears that inadvertently learned DRT has recorded a finding that property in question is in equitable mortgage with the bank. Appellant is aggrieved with this finding. Obviously when the claim of the bank against the

appellant was dismissed there is no question of filing any appeal, but she came to know about the finding in the body of the judgement when the Recovery Officer initiated proceeding. On the basis of the finding recorded in the observation portion of the judgement, appellant moved an application for recalling the order along with an application for condonation of delay. It is a good ground to condone the delay as well as recalling of the order which was refused by learned DRT. Accordingly, I am of the view that impugned order could not be sustained and liable to be set aside. Appeal is liable to be allowed.

O R D E R

Appeal is allowed. Impugned order dated 31.12.2007 is set aside. Accordingly, learned DRT, Cuttack is directed to decide the application for recalling the order dated 27.12.2004 in the light of the observation made in the body of this judgement. It is expected that learned DRT shall decide the matter within a period of three months from the date of receipt of the copy of the judgement as it is a very old matter. No order as to costs.

File be consigned to record room.

Copy of the order be supplied to the appellants and the respondents and a copy be also forwarded to the concerned DRT.

Copy of the judgement/Final Order be uploaded in the Tribunal's website.

Order dictated, signed and pronounced by me in the open Court on this the 8th day of June, 2023.

(Anil Kumar Srivastava, J)
Chairperson

Dated : 08.06.2023
pkb