
(2015) 05 DEL CK 0055
In the Delhi High Court
Case No : Writ Petition (C) 4589 of 2015

Dharam Nath Sharma

APPELLANT

Vs

State Bank of Indore and Others

RESPONDENT

Date of Decision : 28-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 151

Criminal Procedure Code, 1973 (CrPC) — Section 340

Limitation Act, 1963 — Section 5

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 31

Citation : (2015) 05 DEL CK 0055

Hon'ble Judges : S. Ravindra Bhat, J;R.K. Gauba, J

Bench : Division Bench

Advocate : Triloki Pandit, for the Appellant

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.

1. The petitioner is aggrieved by an order of the Debt Recovery Appellate Tribunal (hereinafter referred to as "DRAT") dated 21.1.2015. The DRAT dismissed the appeal preferred against an order rejecting the application for recall of the final order dated 2.12.1999.

2. The respondent-bank i.e. State Bank of Indore had filed a suit on the file of this Court. With the constitution of the Debt Recovery Tribunal (DRT) under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the Recovery Act"), by virtue of Section 31, the suit was transferred to DRT. Apparently, before the DRT, present petitioner was represented through counsel. However, the final order, after taking note of the documents and materials placed before it, decreed the application (OA No. 392/1995) for Rs. 117,73,199/- with pendent lite future interest @ 21.50% p.a. from 29.10.1992. A recovery certificate was drawn. Subsequently, during the pendency of proceedings apparently other judgment debtors discharged part of

the liabilities. Their immovable properties had been secured as collateral for the loan guaranteed by them. The petitioner upon being served with the recovery notice applied to the DRT contending that the final order was a nullity since he had never authorized any counsel and that the so-called written statement and vakalatnama was falsely filed before the DRT. The DRT on 14.8.2012 disbelieved these submissions. Before that the DRT had rejected an application, by the petitioner seeking appropriate action under Section 340 of the Code of Criminal Procedure. The DRT reasoned as follows :

"The judgment in OA 392/1995 has reached finality. The applicant herein is D5 in the O A. He had appeared and filed written statement. He says it was not under his authority. Then he has to take steps to see that the judgment in O A is set aside. There is no such move on the side of the applicant. He says he is the owner of the property Plot 248, Khasra 527, Village Pasonda, Pargana Loni, Ghaziabad, U P. He has to give a reasonable explanation how his documents reached the bank. There is no whisper about the same.

Thus the whole case setup by the applicant is misconceived. In the absence of any application to set aside the final order passed by this Tribunal after conducting a valid enquiry this application has no merit at all. The application is misconceived and the same is dismissed."

3. The petitioner was unsuccessful in his attempt to have the DRT's order set aside. The DRAT held as follows :

"The appellant has impugned the order dated 02nd December, 1999. This appeal accordingly is filed with delay of 5456 days. Concededly, the appellant states to have learnt about the impugned order passed in the year 1999 on 29th November, 2007. Thereafter, the appellant filed an application under Order IX Rule 13 read with Section 151 CPC alongwith an application under Section 5 of the Limitation Act for condonation of delay. This application was dismissed on 14th August, 2012. The appeal against the said order was filed which was dismissed on May 05, 2014. In fact, the appellant had chosen to file an application under Section 340 Cr.P.C. which was found not maintainable and accordingly this Tribunal dismissed the appeal filed against the order passed by the Tribunal below. It is now the appellant has chosen to file the present appeal against the order about which he has concededly knowledge since 2007. The explanation offered by the appellant to explain this delay is totally unacceptable. Accordingly, no case for condonation of delay as prayed for is made out. The appeal is accordingly dismissed on account of limitation."

4. We have heard counsel for the petitioner. As noticed by DRT, no reasonable explanation was given with any particulars as to when the petitioner became aware of the order. Furthermore, the explanation given by him was deemed insufficient to warrant the setting aside of the final decree. The petitioner had no doubt alleged that he had not authorized the counsel filing the written statement on his behalf to do so and that his signatures were not found in the documents.

However, the DRT rejected his application under Section 340 Cr.P.C. In these circumstances, it cannot be said that the Tribunals below fell into any error. During the course of submission, counsel pointed out that the other guarantors/ judgment debtors had deposited certain amounts and the same ought to be taken into consideration while determining the liabilities, if any, of the petitioner. This submission is merited and shall be taken into account in recovery proceedings by the RO.

5. The writ petition is dismissed in the above terms.