
(2025) 05 DRAT CK 0999

In the Debts Recovery Appellate Tribunal, Allahabad

Case No : Regular Appeal No. 471 Of 2013

Jai Gopal Kansal And Anothers

APPELLANT

Vs

Indian Bank And Anr

RESPONDENT

Date of Decision : 21-05-2025

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 20

Citation : (2025) 05 DRAT CK 0999

Hon'ble Judges : R. D. Khare, Chairperson

Bench : Single Bench

Advocate : R.P. Srivastava, O.P. Mishra

Final Decision : Allowed

Judgement

R. D. Khare, Chairperson

1. The present appeal has been filed by the appellants under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the RDB Act, 1993") against the impugned order dated 04.09.2013 passed by the Tribunal below, by which the M.A. No. 04/2010 filed by the appellants has been rejected.

2. The brief facts of the matter are that the respondent-Bank had filed a Suit No. 737/1986 before the Civil Court, Ghaziabad on 31.03.1986 against the appellants as well as other borrowers/guarantors. The appellant nos. 1 & 2 were made parties in the said suit as defendant nos. 4 & 8. After creation of DRT, the same was transferred to the DRT, Jabalpur, DRT, Allahabad and ultimately the said suit was transferred to DRT, Lucknow, where the same was registered and renumbered as T.A. No. 819 of 2002. The Tribunal below has allowed the said suit vide ex-parte judgment and decree dated 31.08.2009. Against the said judgment and decree, the appellants filed a Misc. Application No. 04 of 2010 before the Tribunal below for recalling the said ex-parte judgment and decree on the ground of non-service of any summons with regard to the transfer of the said

suit. The Tribunal below vide order impugned has rejected the said Misc. Application holding that the appellants had due knowledge of pendency of the case against them since beginning, but they deliberately and intentionally did not contest the case rather silently watched the proceedings. Being aggrieved by the said order, the present has been filed by the appellants stating therein that no notice of date fixed was ever received by the appellants after 2004 nor did they receive any notice by any other mode from the DRT.

3. Learned counsel of the appellant submitted that the finding of the Tribunal below in the order impugned is that a letter dated 22.08.2003 was received by the Tribunal on 26.08.2003 from the appellant, wherein he sought time to file written submission. It was contended that initially, the suit was filed by the Bank, in which the written submissions were filed, which is on record, but thereafter, it was transferred to DRT, Jabalpur and thereafter DRT, Allahabad and ultimately to the DRT, Lucknow. The learned counsel states that the appellant contested the said suit till DRT-Allahabad, but subsequent to that, they did not get any notice from the DRT, Lucknow, therefore, he failed to appear and the order impugned has been passed, but it is incorrect to say that there was no written statement filed by the appellants, whereas the same was filed before the Civil Court at Ghaziabad.

4. It was further contended that suit no. 223 of 1984 was also filed before the Civil Judge (Sr. Division), Hapur, Ghaziabad, which was decreed vide order dated 24.12.2004, against which appeal no. 14 of 2005 was filed before the District Judge, Ghaziabad, which was dismissed on 30.09.2009. Against the said order, the second appeal (defective) no. 338 of 2010 was filed by the respondent-Bank, which was also dismissed by the Hon'ble High Court vide order dated 02.02.2015, copy of which has been produced before this Tribunal, which is taken on record. It was thus contended that the said order has attained finality, as it has not been challenged by the Bank before the Hon'ble Apex court.

5. It was also contended that the suit filed by the respondent-Bank was remitted to the DRT, Lucknow, in which the impugned order has been passed without considering the aforesaid facts. It was further contended that on the date, on which the appellant filed suit no. 223 of 1984 before the Civil Court, the total outstanding against the appellant was Rs. 1.28 lacs and the FDR of the appellant worth more than the said amount was with the Bank and the appellant requested to adjust the same against his demand of Rs. 1.28 lacs, but the Bank did not pay any heed to the same. It was, therefore, prayed that the order impugned may be set aside and the appeal may be allowed.

6. Learned counsel for the respondent-Bank submitted that two suits were filed, one by the respondent-Bank for recovery of the amount Rs. 10.00 lacs and odd and the second suit was filed by the appellant for injunction and the appellant had tried to get back the title deed of the property in question, which was taken by the respondent-Bank in the proceedings under SARFAESI Act, which cannot be sustained. It was also contended that the Bank has filed the suit for recovery

of public money, which was utilized by the appellant. It was also argued that as to whether the special Act enacted for recovery of public money was having overriding effect on the proceedings of the original suit, which was filed for injunction, or not?

7. It was also contended that the contention of the appellant that they have not been noticed at the time of proceedings before the DRT, Lucknow is totally misconceived, as the appellant had filed the written submissions before the Civil Judge, Ghaziabad and appeared there and thereafter, the DRT, Jabalpur as well as DRT, Allahabad, but subsequent to that, the appellant chose not to appear there, therefore, the appellant cannot take the advantage of his lapses, as they were well aware of the proceedings of the aforesaid suit before the DRT, Lucknow. It was, therefore, prayed that the appeal may be dismissed with heavy costs.

8. Considered the rival contentions of the learned counsels for the parties and perused the documents available on record.

9. It is to be seen that initially the suit was filed by the Bank before the Civil Court, Ghaziabad and after issuance of summons, the written statement was filed by the defendants including the appellants, who were defendants no. 4 & 8 in the said suit. After creation of DRTs, the said suit was transferred to DRT, Jabalpur and thereafter to DRT, Allahabad and ultimately, the same was transferred to the DRT, Lucknow, where it was renumbered as 819/2002.

10. The main controversy involved in the present case is as to whether the appellants were served with any summons after transfer of the aforesaid suit from the DRT, Allahabad to the DRT, Jabalpur or not?

11. It has been contended on behalf of the respondent-Bank that after transfer the suit from DRT, Jabalpur to DRT, Allahabad, the said suit was registered and renumbered as T.A. No. 1103 of 2000, in which the notices/summons were issued to the defendants including the appellants on their address and thereafter on 01.02.2001 all the defendants including the appellants had appeared through counsel and sought time to file written statements, but they failed to do so. It was further contended that after transfer of the said suit and being re-numbered as T.A. No. 819/2002, the notices with regard to transfer of the same was sent to the appellants/defendants including the appellants on their addresses. It was further contended that the appellant no. 1 had sent a letter dated 22.08.2003 to the Tribunal below, which was received on 26.08.2003, whereby the appellant sought time to file written statement, but he failed to file the same. With regard to the service of appellant no. 2 (defendant no. 8), it has been stated by the Bank that the summons sent to the appellant no. 2/defendant no. 8 returned back as un-served, therefore, the same was published in Hindi Daily Dainik Jagran in Delhi Edition on 01.12.2003. Thus, it was contended that both the appellants well aware of the proceedings of the case. The contentions of the respondent-Bank that the appellants were served with the summons issued by

the Tribunal below are not tenable because the Bank has not filed any documents viz; copy of postal receipts, copy of publications nor the copy of letter dated 22.08.2003 sent by the appellant no. 1 to the Tribunal below, which may authenticate the submissions of the respondent-Bank. Thus, the oral submissions and the pleadings without any supportive documents made by the Bank with regard to the service of summons either through registered post or its publications cannot be accepted.

12. It is also to be noted that if there was any proof with regard to the service of summons upon the appellants or any letter seeking time to file WS, the same ought to have been filed by the Bank before this Tribunal also, but the Bank did not do so, therefore, in absence of any proof or documents with regard to the service of summons upon the appellants, it cannot be said that the appellants were aware about the proceedings conducted before the DRT, Lucknow. Thus, the order impugned is not sustainable.

13. In view of the discussions as held above, the order impugned is set aside and the M.A. No. 04/2010 filed by the appellants is allowed. Consequently, the ex-parte order and judgment dated 31.08.2009 is also set aside and the case is remanded back to the Tribunal below for deciding it afresh after affording proper opportunity of hearing to the parties concerned in accordance with law most expeditiously preferably within three months from the date of production of certified copy of this judgment.

14. A copy of this judgment be supplied to the parties as well as to the DRT concerned and be also uploaded on the e-DRT portal.