
(2007) 10 AHC CK 0085
In the Allahabad High Court
Case No : R.A. No. 842 of 2007

Sandeep Kakkar

APPELLANT

Vs

Union Bank of India and others

RESPONDENT

Date of Decision : 09-10-2007

Acts Referred:

Citation : (2007) 10 AHC CK 0085

Hon'ble Judges : R.S.Tripathi, J

Final Decision : Dismissed

Judgement

R.S.Tripathi, J.—Chairperson. This is an appeal filed against an order dated 23rd/28th March, 2007 passed by D.R.T., Allahabad in M.A. No. 13/07 rejecting the application moved by the appellant for setting aside the order dated 17th March, 2003 deciding LA. No. 1626/2000 ex parte.

2. In this application moved before the D.R.T., the present appellant had pleaded that for the proceedings of T.A. No. 1626/2000, he was not served with any notice. According to him he was a victim of the fraud played by defendant No. 2, one of the Directors of Idol Commerce Pvt. Ltd. and his signatures were obtained on blank papers for the cash credit facilities granted to above opposite party Idol Commerce Pvt. Ltd. According to the appellant, he had shifted from Kanpur to Raibareilly in connection with his employment and the publication of notice of the T.A. No. 1626/2000 in newspaper Amar Ujala was never brought to his notice as there is no wide publication and circulation of above newspaper in Raibareilly. According to the appellant his tenant Sri K. Sharma found a notice of auction dated 1.3th July, 2004 pasted on the wall of appellant's house then he informed the appellant who contacted his local Counsel who advised him to engage some Counsel at Allahabad then he engaged Sri Vibhuti Narain, Advocate at Allahabad, and then on inspection, it was found that the exparte judgment has been passed on 17th March, 2003 without any service of the notices of the T.A. No. 626/2000 upon appellant then he moved an application for restoration of above case after obtaining the certified copy of the judgment dated 17th March, 2003.

3. The appellant had preferred the civil miscellaneous writ petition No. 11191 of 2007 wherein Hon''ble Allahabad High Court on 1st March, 2007 passed an order for decision on his application pending before the Tribunal expeditiously in accordance with law. The learned D.R.T. in pursuance of the above direction of the Hon''ble High Court passed above order rejecting the application of the appellant and feeling aggrieved with this order, this appeal has been filed.

4. At the admission stage, this Tribunal has heard the Counsel for the appellant and has also gone through the memo of appeal and original record also. It is argued from the side of the appellant that the learned D.R.T. while passing the impugned order has not touched the merits of the case and has not discussed all the grounds taken by the appellant in the restoration application rather it has rejected the restoration application summarily, therefore, for noncompliance of the direction of the Hon''ble High Court the impugned order should be set aside. Direction of Hon''ble High Court was for the D.R.T. to decide the case on merits. He has cited ruling in Raj Kumar v. Prescribed Authority, Moradnbad, 1983 (9) ALR 224 (SC) in support of his argument.

5. Having heard the Counsel for the appellant this Tribunal after going through the record finds that in the instant case the learned D.R.T. has observed while passing the impugned order that the appellant was a guarantor of the loan advanced to Idol Commerce Pvt. Ltd. and others of which defendant No. 2 Rajesh Singhania was one of the Directors. The Tribunal has further observed that a criminal case has been got registered by the bank against all the Directors as well as against the present appellant who is on bail but in that case except appellant rest of the guarantors and Directors are absconding. The amount of bank has swollen to the extent of more than Rs. 100 crores. The learned Tribunal has observed that the appellant gave his address of Kanpur in the papers of guarantee and he shifted to Raibareilly without any information to the bank about the change of his address. There is no cogent reason from the side of the appellant as to why the appellant did not inform about the change of his address from Kanpur to Raibareilly. The other important fact noted by the learned D.R.T. is that in the instant case the similar restoration application registered as miscellaneous application No. 38/2004 was moved on behalf of the present appellant on 20th August, 2004 for setting aside exparte judgment dated 17th March, 2003 passed in T.A. No. 1626/2000 through Sri P.C. Sharma, Advocate. From perusal of records of D.R.T's M.A. No. 38/2004 which is available before the Tribunal it is clear that Sri Sandeep Kakkar, present appellant has signed his restoration application dated 20th August, 2004 alongwith Sri P.C. Sharma as his Advocate.

6. In support of his above restoration application No. 38/2004 appellant Sri Sandeep Kakkar had filed his own affidavit dated 20th August, 2004 available on the record of M.A. No. 38/2004. In this affidavit he took the ground that the summons were not served upon him although service was taken to be sufficient by means of publication of newspaper. He pleaded in his above affidavit dated

20th August, 2004 that his friend Sri Surendra Bajpai of Mohalla Daboli, Kanpur informed him on 10th August, 2004 about the auction of his house in pursuance to above exparte judgment. In the present application M.A. No. 13/2007 it has been averred on behalf of the appellant in his affidavit filed before D.R.T, in support of second restoration application that his tenant K. Sharma had found the notice of auction dated 13th July, 2004 pasted on the wall of his house then he informed him on 14th July, 2004. Thus, the appellant has himself given two contradictory sources of his knowledge and the date of the knowledge of the case, not only this, in the earlier application M.A. No. 38/2004, he filed his affidavit mentioning therein that he was residing in Gali Mohan Lai, Tahsil and Police Station Fazilka, Punjab but in the affidavit filed in M.A. No. 13/2007 he has mentioned that after the signature of loan of guarantee although on blank papers he shifted to Raebareilly from Kanpur without any mentioning of residing in Punjab. There is no mention in second application/affidavit that he never lived in Punjab after leaving Kanpur. The learned D.R.T. has very rightly taken the view that neither there is any proper explanation nor any cogent reasons for making out a case for restoration. On the own contrary stand of the appellant, this Tribunal is of the opinion that no case has been made out from the side of the appellant to consider the matter of admission of this appeal and the learned D.R.T. has committed no error in passing the impugned order which cannot be taken to be a summary order. The argument that the impugned order is not on merits, is fallacious argument. The ruling cited by the side of the appellant is not helpful in the instant case, in view of above facts and circumstances, when a huge amount of bank is left unpaid.

7. The result of above discussion is that this appeal is worth dismissal therefore, it is dismissed as such at admission stage.

ORDER

8. The appeal is, hereby, dismissed.