(2016) 03 DEL CK 0216

In the Delhi High Court

Case No : W.P.(C) 4454 of 2015

Yogesh Jain & Ors. APPELLANT

Vs

Central Bank of India RESPONDENT

Date of Decision : 31-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 19

Citation : (2016) 3 BankJ 426 : (2016) 2 DRTC 44

Hon'ble Judges : Mr. Pradeep Nandrajog and Ms. Mukta Gupta JJ.

Bench : Division Bench

Advocate : Ms. Deeksha Ladi Kakar, Advocate, for the Appellant; None appeared, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J. (Oral) - None appears for the respondent even at the second call.

2. Since July 21, 2015, in spite of three opportunities granted counter affidavit has not been filed.

3. We thus proceed to decide the writ petition.

4. Yet another case of callous disposal by the Debts Recovery Tribunal.

5. The Reserve Bank of India had notified an Education Loan Scheme on April 28, 2001 as per which education loan to study abroad could be sanctioned upto Rs. 15,00,000/- (Rupees Fifteen Lacs only). Simple interest @ PLR + 1% could be charged with penal interest @ 2% for the overdue amount till the same remained overdue.

6. Petitioner No.2 approached the respondent bank for sanction of loan upto to Rs. 15,00,000/- (Rupees Fifteen Lacs only). Petitioner No.1 his mother created equitable mortgage of property and petitioner No.3 stood guarantee.

7. Though loan was sanctioned in sum of Rs. 15,00,000/- (Rupees Fifteen Lacs only), only 11.5 lacs was disbursed and that too in three instalments in sum of 3.75 lacs each on October 01, 2002, July 25, 2003 and April 23, 2004.

8. Respondent No.1 filed OA No. 254/2010 before the Debts Recovery Tribunal invoking Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 claiming Rs. 24,93,510/- (Rupees Twenty Four Lacs Ninety Three Thousand Five Hundred Ten only) as the outstanding amount, and admittedly neither petitioner returned any money to the bank for nearly six years.

9. The bank filed an incomplete statement of account and the petitioners prayed to the Debts Recovery Tribunal that the bank be directed to supply complete statement of account so that the interest debited to the account could be ascertained. On May 28, 2012, August 02, 2012, September 26, 2012, October 15, 2012 and October 25, 2012 directions were issued and repeated to the bank to supply the complete statement of account. An illegible copy of statement of account and that too incomplete was supplied on December 05, 2012.

10. On August 7th, 2013, petitioner No. 3 handed over to the bank a fixed deposit receipt in sum of 35.11 lacs.

11. Petitioners filed IA No.1174/2013 bringing to the notice of the Debts Recovery Tribunal that complete statements of account had not been supplied and pending adjudication of the application on February 21, 2014 the claim of the bank was allowed.

12. The impugned order dated February 21, 2014 has not discussed anywhere whether interest charged was correct. It has not discussed whether the agreed rate of interest @ PLR + 1% and 2% on the outstanding overdue amount was debited.

13. On March 07, 2014, the bank appropriated Rs. 35.11 lacs by encashing the fixed deposit receipts.

14. Petitioners filed appeal No.353/2014 which has been disposed of by the learned Debts Recovery Appellate Tribunal and once again we find that Debts Recovery Appellate Tribunal has no where looked into the grievance of the petitioners.

15. The appeal has been dismissed vide impugned order dated February 03, 2015.

16. The principal grievance of the petitioners was that complete statement of account had not been supplied by the bank. This aspect has neither been considered by the Debts Recovery Tribunal nor the Debts Recovery Appellate Tribunal. We are surprised that the OA filed by the bank was allowed in the teeth of the various orders passed by the Debts Recovery Tribunal directing the bank to supply a complete statement of account to the petitioners. We are surprised to note that the Debts Recovery Tribunal did not ensure compliance with orders

passed by it.

17. We therefore dispose of the petition setting aside the impugned order dated February 03, 2015. We allow No.353/2014 filed by the petitioners before the Debts Recovery Appellate Tribunal and as a consequence we set aside the order dated February 21, 2014 passed by the Debts Recovery Tribunal-III. We restore OA No.254/2010 with a direction to the Debts Recovery Tribunal to ensure that a complete legible statement of account is filed by the bank with copy given to the petitioners. The Debts Recovery Tribunal-III would thereafter grant an opportunity to the petitioners to scrutinised the statement of account so filed by the bank and if debit entries concerning interest and overdue interest are attacked by the petitioners, giving reasons the said objections would be decided and the amount due would be quantified. At the remanded stage the Debts Recovery Tribunal would take note of the fact that on March 07, 2014 the fixed deposit receipts in sum of Rs. 35.11 lacs had been encashed by the bank and money appropriated. The said amount would be given adjustment of and if any refund is due, the same shall be made over to the petitioners with such interest as the Debts Recovery Tribunal shall determine. Needless to state it has a result of the adjustment sum amount is outstanding and payable, the petitioners shall clear the same.

18. No costs.

