IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1093 of 2024
In
Civil Writ Jurisdiction Case No.1388 of 2024

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1. M/s Tirupati Storage and Allied Pvt. Ltd., Anandpur, Bihta, Patna, having its registered office at M-52/22A, Road No. 25, Sri Krishna Nagar, Patna-800001, through its Managing Director, Smt. Vijya Singh.
2. Smt. Vijya Singh Wife of Dr. Yashwant Singh Resident of M-52/22A, Road No. 25, Sri Krishna Nagar, Patna-800001.
3. Dr. Satish Kumar Singh Son of Late Durga Prasad Singh Resident of M-52/22A, Road No. 25, Sri Krishna Nagar, Patna-800001.
4. Dr. Yashwant Singh S/o Late Shakti Prasad Singh Resident of M-52/22A, Road No. 25, Sri Krishna Nagar, Patna-800001.

... ... Appellant/s

Versus

1. UCO Bank Frazer Road Branch, Patna through its Branch Manager namely Abhishek Sinha, S/o-Sri Ajit Sinha, UCO Bank, Frazer Road Branch, Patna P.S.- Kotwali, District- Patna.
2. The Union of India, through the Secretary, Ministry of Finance, Department of Financial Services, Govt. of India, New Delhi.
3. The Debt Recovery Appellate Tribunal, Allahabad through the Registrar, Debt Recovery Appellate Tribunal, Allahabad.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Deo Prakash Singh, Advocate Mr. Pankaj Kumar, Advocate Ms. Nishu Kumari, Advocate
For the Bank	:	Mr. Ranjeet Kumar Pandey, Advocate
For the UOI	:	Mrs. Radhika Kumari, CGC.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 16-04-2026

Heard learned counsel for the parties.

2. The present intra court appeal has been preferred against the judgment dated 04.09.2024 passed by the learned Single Judge in CWJC No. 1388 of 2024, whereby the writ

petition preferred by the respondent- Bank was allowed and the order dated 29.09.2023 passed by the Debt Recovery Appellate Tribunal, Allahabad (for brevity ‘DRAT’), restoring Appeal No. R-99/2014, was set aside.

3. In the writ petition, the writ petitioner had sought the following reliefs:

> *“(i) For issuance of writ/writs, order/orders or direction/directions in the nature of certiorari for setting aside order dated 29.09.2023 passed in Appeal Dy. No.748/2023 passed by learned Chairperson, Debt Recovery Appellate Tribunal, Allahabad whereby and whereunder restoration /recall application filed on behalf of private respondents no. 3 to 6, after expiry of more than 8 years for recall of order dated 23.03.2015 by which the appeal preferred by the private respondent no. 3 to 6 was dismissed as not maintainable for want of pre deposit, has been recalled and the main appeal has been directed to be restored to its original number and the private respondents were permitted to file waiver application by the next date, although the waiver application filed on behalf of the appellants was disposed of on 13.02.2015 itself and the appeal was dismissed as not maintainable for want of pre deposit as per order dated 23.03.2015.*
> *(ii) For a declaration that order dated 29.09.2023 passed in Appeal Dy. No. 748/2023 by learned Chairperson, DRAT, Allahabad is without jurisdiction as order dated 13.02.2015 passed in Appeal No. R-99/2014 whereby waiver application of the private respondents was disposed of and they were directed to deposit 50% of the determined amount to maintain the appeal and order dated 23.03.2015 has attained finality and merged with the order passed by the Hon'ble High Court whereby writ petition vide CWJC No. 4678/2015 preferred by private respondents against order dated 13.02.2015 and 23.03.2015 has been dismissed on 27.06.2023 and as such after dismissal of writ petition by the Hon'ble High Court, learned Chairperson DRAT, Allahabad has got no jurisdiction to recall the order*

dated 23.03.2015 which has already attained finality by order of Hon'ble High Court.
(iii) For any other relief/reliefs for which the petitioner may be found entitle in the eye of law and in the facts and circumstances of the case may also be granted in favour of the petitioner."

4. The brief facts of the case are that the respondent-Bank had sanctioned a term loan to the appellants. Upon default in repayment, the account was classified as NPA, and recovery proceedings were initiated by filing O.A. No. 283 of 2011 before the DRT, Patna. The Tribunal, by judgment dated 17.09.2012, allowed the Bank's claim and issued a recovery certificate for Rs. 1,53,38,333/-, while rejecting the counterclaim filed by the appellants.

5. Subsequently, appellants filed M.A. No. 406 of 2012 and M.A. No. 482 of 2012, both of which were dismissed. Thereafter, Appeal No. R-99/2014 was preferred before the DRAT, Allahabad against the order passed in M.A. No. 482 of 2012. By order dated 13.02.2015, the appellants were directed to deposit 50% of the decretal amount under Section 21 of the Act. Despite grant of further time vide order dated 23.03.2015, the appellants failed to comply with the pre-deposit condition, resulting in dismissal of the appeal as not maintainable.

6. The appellants challenged the pre-deposit condition before this Court in CWJC No. 4678 of 2015, which was

dismissed on 27.06.2023.

7. In the meantime, appellants had also filed a third miscellaneous application, being M.A. no. 150 of 2014 before the DRT, Patna, seeking settlement of the loan account. The DRT passed an order dated 05.05.2014 allowing such settlement.

8. The Bank challenged the said order before the DRAT, Allahabad, which, by judgment dated 13.02.2018 in Appeal No. R- 79 of 2014, set aside the DRT's order. A review application (M.A. No. 37 of 2018) filed by the appellants was dismissed on 14.10.2019. The appellants further challenged these orders before this Court in C.W.J.C. No. 1178 of 2020, which was dismissed on 09.08.2021 with costs. The LPA therefrom was withdrawn on 05.04.2022, thereby affirming the said orders.

9. Subsequently, the appellants claim to have deposited approximately Rs. 76 lakhs in June 2023 and filed a restoration application before the DRAT, Allahabad. The DRAT, Allahabad, by order dated 29.09.2023, allowed the same and revived Appeal No. R-99/2014.

10. The respondent-Bank challenged the said restoration order in CWJC No. 1388 of 2024, which was

allowed by the learned Single Judge on 04.09.2024, holding that the DRAT lacked jurisdiction to recall its order after such lapse of time and finality of proceedings. The relevant extract of the said order is reproduced hereinbelow:

> *"6....Though the learned counsel for the Respondent No. 3 has tried to argue the matter on merits of the case, this Court is not inclined to go into the same as the only issue before this Court is as to whether the DRAT, Allahabad had the power or jurisdiction to recall its own order which had attained finality after the dimissal of the CWJC, that too after lapse of more than eight years. Admittedly, there is no specific provision in the Act for recalling or reviewing the orders passed by the Tribunal. It is settled principles of law that unless and until the statute confers the power of review/recall, the Tribunal cannot exercise the power of review more so, after the lapse of more than eight years. Further, it is pertinent to mention that the orders of Tribunal dated 13.02.2015 & 23.03.2015 were already challenged before this Court in CWJC No. 4678 of 2015. The said CWJC was dismissed on 27.06.2023 confirming the earlier orders passed. Once an order has been challenged before a superior Forums/Court and the same has been confirmed and become final, the Tribunal/Forum which has passed the order cannot review or recall its own orders. Further, it is pertinent to note that in the impugned order, the Tribunal has not given any reason for recalling its earlier order except adverting to the judgement of the Allahabad High Court passed in Writ-C No. 7439 of 2023 in the case of M/s Sai Enterprises & 2 Ors. Vs. Debts Recovery Appellate Tribunal & Anr. decided on 17.03.2023 which is distinguishable on the facts of this particular case. 7. Having regard to the same, the present writ petition is allowed, the impugned order passed by the DRAT, Allahabad dated 29.09.2023 is set aside."*

11. Learned counsel for the appellants submits that the appellants had already complied with the requirement of pre-

deposit by depositing more than 50% of the decretal amount on 07.06.2023, i.e., prior to dismissal of CWJC No. 4678 of 2015 on 27.06.2023. The proof of such compliance was also brought on record. Therefore, the finding that the orders dated 13.02.2015 and 23.03.2015 attained finality or merged with the judgment dated 27.06.2023, is erroneous and contrary to the material on record. It is further submitted that Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 (for brevity the 'Act') does not prescribe any limitation for making pre-deposit, nor does it contemplate dismissal of an appeal for non-deposit.

12. Learned counsel further submits that the Tribunal/DRAT has the power to review/recall its own orders under Section 22(2)(e) & (g) of the Act, and therefore, the order dated 29.09.2023 restoring the appeal was well within jurisdiction. Moreover, since the original DRT judgment was under challenge, it could not have been said to have attained finality. Thus, the impugned judgment suffers from errors of law and deserves to be set aside.

13. *Per contra*, learned counsel for the respondent submits that the order dated 17.09.2012 passed by the DRT, Patna had already attained finality after dismissal of earlier writ proceedings, pursuant to which recovery was completed, the

secured asset was auctioned, and possession was handed over. The appellants cannot now reopen settled issues by seeking restoration of an appeal dismissed more than eight years ago. It is further submitted that the orders dated 13.02.2015 and 23.03.2015, passed by the DRAT, Allahabad attained finality after dismissal of CWJC No. 4678 of 2015 on 27.06.2023, and therefore, the DRAT had no jurisdiction to restore the appeal thereafter. The restoration order dated 29.09.2023 was without jurisdiction and has rightly been set aside by the learned Single Judge.

14. In the backdrop of the facts and submissions noticed hereinabove, the following issues arise for consideration:

(i) *Whether the learned Single Judge was justified in law in setting aside the order dated 29.09.2023 passed by the DRAT, Allahabad on the ground of lack of jurisdiction, by holding that the Appellate Tribunal had no power to recall/restore its earlier order dismissing the appeal for non-compliance of pre-deposit?*

(ii) *Whether the requirement of pre-deposit under Section 21 of the Act, and the expression "shall not be entertained", can be construed to result in automatic dismissal*

of the appeal for non-compliance, thereby rendering such dismissal final and incapable of recall upon subsequent compliance?

15. This Court has carefully considered the rival submissions advanced on behalf of the parties and perused the materials available on record. The controversy in the present appeal centers around the interplay between the requirement of pre-deposit under Section 21 and the scope of powers of recall/review vested in the Debts Recovery Appellate Tribunal under Section 22(2) of the Recovery of Debts and Bankruptcy Act, 1993.

Re. Issue No. (i)

16. At the outset, it would be apposite to refer to the statutory scheme governing the powers of the Tribunal. Section 22(2) of the Recovery of Debts and Bankruptcy Act, 1993 provides as follows:

> *"22. Procedure and powers of the Tribunal and the Appellate Tribunal.-*
> *(1) xx xx xx*
> *(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-*
> *(a) xx xx xx*
> *(b) xx xx xx*
> *(c) xx xx xx*

> *(d) xx xx xx*
> *(e) Reviewing its decisions:*
> *(f) xx xx xx*
> *(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;*

17. A plain and purposive reading of the aforesaid provision makes it abundantly clear that the Tribunal and the Appellate Tribunal are not mere adjudicatory bodies with limited jurisdiction, but are vested with substantive powers akin to those of a Civil Court, including the power to review their own decisions and to set aside orders passed for default. The legislative intent behind incorporating such provisions is to ensure that procedural lapses do not result in irreparable prejudice and that matters are, as far as possible, decided on merits.

18. In this context, the Hon'ble Supreme Court in ***Grindlays Bank Ltd. v. Central Government Industrial Tribunal & Ors*** reported in ***1980 Supp SCC 420***, has held that where an order is passed due to a procedural defect or inadvertent error, the Tribunal is empowered to recall the same *ex debito justitiae* to prevent abuse of process. The relevant part of the said order reads as follows:

> *"13…The expression 'review' is used in two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a*

> *palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Narshi Thakershi's case held that no review lies on merits unless a status specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal."*

19. The Hon'ble Supreme Court in ***Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Ltd. & Ors.*** reported in ***(2005) 13 SCC 777***, has elaborately explained the distinction between review on merits and procedural recall, holding that where an order is vitiated on account of a procedural illegality which goes to the root of the matter, the Tribunal has the power to recall such order without entering into the merits. It was further held that such power is exercised to correct proceedings which stand vitiated due to procedural defects, and the matter must be re-heard in accordance with law. The relevant part of the said order reads as follows:

> *19. Applying these principles it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but*

> *in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. v. Central Government Industrial Tribunal and Ors. (supra), it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again."*

20. Applying the aforesaid principles to the facts of the present case, it is evident that the dismissal of the appeal on 23.03.2015 was not an adjudication on merits, but was occasioned solely on account of non-compliance of the pre-deposit requirement. Such dismissal is, therefore, in the nature

of a dismissal for default or non- compliance of a procedural condition.

21. Once such dismissal falls within the category contemplated under Section 22(2)(g), the Tribunal cannot be said to be denuded of its jurisdiction to recall or set aside the same. The reasoning adopted by the learned Single judge, that there exists no provision for recall or that the Tribunal becomes *functus officio*, overlooks this express statutory conferment of power under Section 22(2). The doctrine of finality, though significant, cannot be applied in a manner so as to render a statutory provision otiose.

22. Accordingly, this Court holds that the DRAT, Allahabad did possess the jurisdiction to recall/restore its earlier order in exercise of powers under Section 22(2)(e) and (g) of the Recovery of Debts and Bankruptcy Act,1993, and the learned Single Judge was not justified in holding otherwise. Issue No. (i) is answered in favour of appellants.

Re. Issue No. (ii)

23. Section 21 of the Act reads as follows:

> *"21. Deposit of amount of debt due, on filing appeal.— Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal 3 [fifty per cent.] of the*

> *amount of debt so due from him as determined by the Tribunal under section 19: Provided that the Appellate Tribunal may, for reasons to be recorded in writing, 4 [reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent. of the amount of such debt so due] to be deposited under this section."*

24. Section 21 of the Act provides that an appeal "shall not be entertained" unless the appellant deposits the prescribed percentage of the debt. The provision, however, neither prescribes any limitation for making such deposit not provides that failure to deposit within a particular time would result in automatic dismissal of the appeal.

25. The expression "entertain" has been interpreted by the Hon'ble Supreme Court in ***Lakshmi Rattan Engineering Works Ltd. v. Assistant Commissioner Sales Tax, Kanpur & Ors.*** reported in ***1968 AIR 488,*** to mean "to admit to consideration" (Para 10), and does not necessarily imply dismissal. Thus, the embargo under Section 21 operates at the threshold stage of consideration of the appeal and does not amount to a final adjudication. The relevant part of the said order reads as follows:

> *"10. The word 'entertain' is explained by a Divisional Bench of the Allahabad High Court as denoting the point of time at which an application to set aside the sale is heard by the court. The expression 'entertain', it is stated, does not mean the same thing as the filing of the application or admission of the application by the court. A similar view was again taken in Dhoom Chand*

> *Jain v. Chamanlal Gupta & Anr., in which the learned Chief Justice Desai and Mr. Justice Dwivedi gave the same meaning to the expression 'entertain'. It is observed by Dwivedi J. that the word 'entertain' in its application bears the meaning 'admitting to consideration'. and therefore when the court cannot refuse to take an application which is backed by deposit or security, it cannot refuse judicially to consider it. In a single bench decision of the same court reported in Bawan Ram & Anr. v. Kuni Beharilal A.I.R. 1961 All. 42, one of us (Bhargava, J.) had to consider the same rule. There the deposit had not been made within the period of limitation and the question had arisen whether the court could entertain the application or not. It was decided that the application could not be entertained because proviso (b) debarred the court from entertaining an objection unless the requirement of depositing the amount or furnishing security was complied with within the time prescribed. In that case of the word 'entertain' is not interpreted but it is held that the court cannot proceed to consider the application in the absence of deposit made within the time allowed by law. This case turned on the fact that the deposit was made out of time. In yet another case of the Allahabad High Court reported in Haji Rahim Bux & Sons and Ors. v. Firm Samiullah & Sons A.I.R. 1963 All. 326, a division bench consisting of Chief Justice Desai and Mr. Justice S. D. Singh interpreted the words of O. 21, r. 90, by saying that the word 'entertain' meant not 'receive' or 'accept' but proceed to consider on merits' or 'adjudicate upon'.”*

26. Therefore, non-compliance with the requirement of pre- deposit may justify the Tribunal in declining to proceed with the appeal at that stage; however, such non-compliance cannot be construed as leading to an irrevocable dismissal so as to extinguish the statutory right of appeal. The dismissal of the appeal on 23.03.2015 must, therefore, be understood as a procedural order, amenable to recall upon subsequent

compliance.

27. A similar view has been reiterated by the Hon'ble Supreme Court in ***Hindusthan Commercial Bank Ltd. v. Punnu Sahu*** reported in ***(1971) 3 SCC 124***, wherein it was held that the expression "entertain" has been consistently understood to mean "adjudicate upon" or "proceed to consider on merits", and not the initiation of proceedings. The said interpretation, as adopted in earlier decisions of the Allahabad High Court, was expressly approved by the Hon'ble Supreme Court. The relevant part of the said order reads as follows:

> *"4...It is the contention of the appellant that the expression. "entertain" found in the proviso refers to the initiation of the proceedings and not to the stage when the court takes up, the application for consideration. This; contention was rejected by the High Court relying on the decision of that court in Kundan Lal v. Jagan Nath Sharma .The same view had been taken by the said High Court in Dhoom Chand Jain v. Chamanlal Gupta and Haji Rahim Bux and Sons v. Firm Samiullah and Sons and again in Mahavir Singh v. Gauri Shankar. These decisions have interpreted the expression "entertain" as meaning 'adjudicate upon' or 'proceed to consider on merits'. This view of the High Court has been accepted as correct by this Court in Lakshmiratan Engineering Works Ltd. v. Asst Commr., Sales Tax, Kanpur. We are bound by that decision and as such we are unable to accept the contention of the appellant that Clause (b) of the proviso did not apply to the present proceedings."*

28. In such circumstances, once the appellants complied with the requirement of pre-deposit and approached the Tribunal, the DRAT was well within its jurisdiction to

consider the application for restoration. To hold otherwise would result in an unduly rigid interpretation, defeating the very purpose of providing a statutory remedy of appeal.

29. Accordingly, it is held that in light of Section 21 of the Act, dismissal of an appeal for non-compliance of pre-deposit is procedural in nature, and is amenable to recall subject to compliance of the statutory requirements.

30. Issue No. (ii) is also answered in favour of the appellants.

31. In the present case, it is not in dispute that the appellants, though belatedly, have complied with the requirement of pre-deposit and approached the Tribunal for restoration of the appeal. The DRAT, while passing the order dated 29.09.2023, exercised the jurisdiction vested in it under the Act. The absence of elaborate reasoning in the order, by itself, would not render the exercise of jurisdiction *non est*, if the power to pass such an order otherwise exists in law.

32. Another aspect which merits consideration is that the powers under Section 22(2) are intended to advance the cause of justice and to ensure that adjudication is not thwarted solely on technical grounds. The legislative intent underlying such provision is to strike a balance between procedural

discipline and substantive justice. To hold that the Tribunal becomes completely powerless to recall its order, even in a situation where the statute expressly provides for review and setting aside of dismissal orders, would lead to an unduly restrictive interpretation, contrary to the object of the enactment.

33. In view of the aforesaid, the judgment dated 04.09.2024 passed by the learned Single Judge in CWJC No. 1388 of 2024 is hereby set aside.

34. Consequently, the order dated 29.09.2023 passed by the Debts Recovery Appellate Tribunal, Allahabad in Appeal Dy. No. 748/2023, restoring Appeal No. R-99/2014, is affirmed.

35. Accordingly, the present intra court appeal stands allowed.

36. Pending application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Sunil Dutta Mishra, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	NA
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