

Comp. App. (AT) (Ins) No. 652 of 2023 & I.A. No. 2239, 2240, 2241, 2242 of 2023

b. The applicant thereafter was diligently pursuing the application and having taken necessary steps for service upon the company.

c. However subsequent to the merger of United Bank of India with Punjab National Bank which came into effect from 1st April 2020, the Advocate-on-Record of the applicant did not receive any instruction from the applicant for pursuing the matter.

d. Amidst such merger of the above-referred banks alongwith the ongoing pandemic, the Advocate-on-Record of the applicant was panic stricken since one of the family member of the Advocate-on-Record was affected from Covid-19 and as such, could not obtain instruction to pursue the matter.

e. However after the second wave of the Covid-19 pandemic subsided, the Advocate-on-Record of the applicant contacted the officers of the Applicant sometime in or around June 2021 and thus received instructions to appear on behalf of the Applicant.

f. Again sometime in or around June, 2021 one of the family members was again affected from Covid-19 and had to be hospitalized and hence could not appear 18th August 2021 and 07th October 2021 when the matter was called on by the Hon'ble Bench.

g. Thereafter the Advocate-on-Record of the applicant finally on 14th December 2021 appeared before the Hon'ble Bench and could finally make submissions only after the order was dictated due to internet connectivity issues, as would appear upon reading the order dated 14th December 2021 and sought for time to obtain appropriate instructions and take necessary steps. Pursuant to her submissions, this Hon'ble Bench was pleased to fix the matter on 27th January 2022. A copy of the order dated 14th December 2021 is annexed hereto and marked with the letter "A"

h. However due to the poor internet connectivity, the Advocate-on-Record of the applicant wrongly heard and noted the next date of hearing to be 17th January, 2022.

i. Consequentially the Advocate-on-Record of the Applicant could not login into the virtual hearing portal on 17th January, 2021 since it was declared a holiday which the Advocate-on-Record was not aware of until that day.

J. Subsequently in or around 23rd February 2022 when the Advocate-on-Record came to know that the matter was taken up on 27th January 2022 and was dismissed for default, the Advocate-on-Record took instructions from the applicant without any delay and/ or negligence to file the instant application. A copy of the order dated 27th January 2022 is annexed hereto and marked with the letter "B".

3. The aforesaid application was dismissed by the Adjudicating Authority vide its order dated 01.03.2023 and hence, the present appeal has been filed.

4. Counsel for the Appellant has submitted that the Appellant Bank filed the application for resolution of an amount of Rs. 44.20 Crores. It is submitted that the Appellant engaged a counsel to pursue the petition before the Adjudicating Authority but for the reasons mentioned in the application, the Counsel could not put appearance and hence the application was dismissed for non-prosecution. It is submitted that the Appellant, being a bank, relied upon the Advocate who could not appear for the reasons already mentioned hereinabove and therefore, the petition filed under Section 7 of the Code for the resolution of a huge amount of Rs. 44.20 Crores could not materialise.

5. Notice in the appeal was issued on 25.05.2023 and it is recorded in the order dated 20.10.2023 passed by this Court that notice in the appeal was delivered upon the Respondent on 29.05.2023, therefore, they were properly served but no one appeared on behalf of the Respondent today as well as on the last date of hearing.

6. Be that as it may, Counsel for the Appellant has relied upon a decision of the Hon'ble Supreme Court in the case of Rafiq and Another Vs. Munshilal and Another reported in 1981 (2) SCC 788 and referred to Para 3 which is reproduced as under:-

“What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the

learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs.200/- should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr. A.K.Sanghi.”

7. We have heard Counsel for the Appellant and after perusal of the record, are of the considered opinion that this is one such case in which the impugned order dated 27.01.2022, by which the petition has been dismissed for non-prosecution deserves to be recalled by allowing the application i.e RST.A (IBC)/5/KB/2023 for the reasons mentioned by the Appellant in the application.

8. Consequently, the order dated 27.01.2022 as well as 01.03.2023 are set aside. The petition is restored to its original number. However, the appeal is allowed subject to payment of Rs. 1 Lakh as cost which shall be paid by the Appellant to the Respondent before the Adjudicating Authority. The parties are directed to appear before the Adjudicating Authority on **10.01.2024**.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)