

## Pawan Kumar Jindal Vs Bank of India, Gorakhpur Branch and Others

**Court:** Allahabad High Court

**Date of Decision:** Sept. 7, 2007

**Citation:** AIR 2008 All 51 : (2007) 4 AWC 159

**Hon'ble Judges:** Shishir Kumar, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

Shishir Kumar, J.

An application has been filed by the petitioner to recall the interim order which was vacated by this Court vide its order dated 16.1.2007. As the counsel for the parties are ready to argue the matter initially, therefore, with the consent of the parties the writ petition is

being disposed of.

2. By means of the present writ petition, the petitioner has approached this Court for issuing a writ of certiorari quashing the order dated

25.9.2006 (Annexure 10 to the writ petition) passed by the respondent No.3. Further a writ in the nature of certiorari quashing the order dated

11.12.2006 passed by respondent No.2 on the application dated 7.12.2006 in Appeal No. Nil of 2006 (Annexure 14 to the writ petition) and

further prayer in the nature of mandamus has been made in the writ petition that the appeal filed by the petitioner be entertained by the respondents

u/s 30(1) of the Debts Recovery Tribunal (Procedure) Rules, 1993 after accepting Court fee of Rs. 250/- only.

3. The facts arising out of the present writ petition are that the petitioner moved an application before the Recovery Officer in Case No. 128 of

2003 on 10.10.2005 to release the Immovable property Arazi Nos. 559, 560, 561 and 562 situated at Mohalla Lachhipur, District Gorakhpur,

which was subject matter of mortgage in O.A. No. 8 of 2003 filed by the respondent No. 1 against respondent No.4 and others, attached by the

Recovery Inspector, Debt Recovery Tribunal on 7.10.2004 and stay the auction of the proceeding.

It was pleaded by the petitioner that a Suit No. 177 of 1990 was filed in the year 1990 by one Sri Laxman Das Jindal in the Court of Civil Judge

(Senior Division), Gorakhpur. The said suit was decided in terms of compromise on 10.4.1992. By virtue of the aforesaid compromise decree, the

property mentioned above, was given to the petitioner that is Pawau Kumar Jindal, who is the absolute owner of the said property. The

respondent No.4 fraudulently created an equitable mortgage on 21.1.1994 with the Bank of India by depositing the title deeds of the Immovable

property of the aforesaid arazi numbers. This fact has not been disclosed by the respondent No.4 that there was a compromise decree by the

competent court of law. When the petitioner came to know regarding the aforesaid fact, he intimated the bank with all the relevant documents

regarding compromise as well as to the effect that the property has come in the share of the petitioner and the title deed deposited by the

respondent No.4 may be returned to the petitioner but in spite of the aforesaid fact, the Bank has not return the title deed.

4. It appears that the Bank has filed a suit, that was been allowed in favour of the Bank. When the petitioner came to know then he filed an

objection to this-effect for the disposal. The application filed by the petitioner was rejected on the ground that the basis on which petitioner has put

his claim on the basis of compromise decree as it has not been registered to create a new right in favour of the petitioner in the self-acquired

property of the respondent No. 4, requires compulsory registration. Since it is admitted that this decree is not registered, therefore, the third party

objector cannot claim his right in the mortgaged property of the respondent No. 4 on the basis of compromise decree and the objection filed by

the petitioner was rejected. Aggrieved by the aforesaid order, the petitioner filed an appeal application before the appellate authority and that has

been rejected only on the ground that the petitioner is liable to pay the court fees of Rs. 9,750/- Aggrieved by the aforesaid order the petitioner has

approached this Court.

Sri Pawan Shree Agarwal, learned Counsel appearing for the petitioner has submitted that the petitioner is liable to pay only Rs. 250/- as a court

fees in view of the provision of Rule 7 of the Debt Recovery Tribunal (Procedure) Rules, 1993. In view of the provision of Sub-Rule 4 of Rule 7.

as it is an application against an interlocutory order, therefore, the petitioner is liable for payment of court fees only Rs.250/-. As the amount has

not been quantified or liability upon the petitioner has not yet been fixed, therefore, the court fee according to the provision mentioned in Sub-Rule

5 of Rule 7 is not payable by the petitioner. Rule 7 is being quoted below:

1. Application Fee- (1) Every Application u/s 19(1), or Section 19(2), or Section 19(8), or Section 30(1) of the Act, or interlocutory application

or application for review of decision of the Tribunal shall be accompanied by a fee provided in the Sub-rule (2) and such fee may be remitted

through a crossed Bank Demand Draft drawn on a bank or Indian Postal Order in favour of the Registrar of the Tribunal and payable at the place

where the Tribunal is situated. Registrar of the Tribunal and payable at the place where the Tribunal is situated.

2. The amount of fee payable shall be as follows:

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S. Nos. Nature of Application Amount of the fee payable

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1. Application for recovery of,

debts due u/s 19(1)

or Section 19(2) of the Act

(a) Where amount of debt Rs. 12,000

due is Rs. 10 lakhs Rs. 12,000 plus Rs. 1,000 for every one

(b) Where the amount of lakh rupees of debt due or part thereof

[debt due is above Rs. 10 in excess of Rs. 10 lakhs, subject to a

lakhs. maximum of Rs. 1,50,000

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2. Application to counter claim

u/s 19(8) of the

Act-

(a) Where the amount of Rs. 12,000

claim made is upto Rs. 10

lakhs.

(b) Where the amount of Rs. 12,000 plus Rs. 1,000 for every one

claim made is above Rs. 10 lakh rupees or part thereof in excess

lakhs. of Rs. 10 lakhs, subject to a maximum

of Rs. 1,50,000

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3. Application for Review

including review application

in respect of the counterclaim

(a) against an interim order Rs. 125

(b) against a final order 50% of fee payable at rates as

excluding review for applicable on the applications under  
correction of clerical or Section 19(1) or 19(8) of the Act,  
arithmetical mistakes subject to a maximum of Rs. 15,000

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#### 4. Application for Rs. 125

interlocutory order

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#### 5. Appeal against orders of the

Recovery Officer

If the amount appealed

against is

(i) less than Rs. 10 lakhs Rs. 12,000

(ii) Rs. 10 lakh or more but Rs. 20,000

less than Rs. 30 lakhs

(iii) Rs. 30 lakhs or more Rs. 30,000

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#### 6. Vakalatnama Rs. 5

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5. Further submission has been made that the appellate authority has clearly observed ""Admittedly the appellant is not judgement-debtor in DRT

and he is a third party."" In such a situation, right of the petitioner has to be adjudicated, therefore, the payment of court fee will be only Rs.25/-

according to Sub-Rule 4 of Rule 7 of the Rules. Reliance has been placed upon a judgement by the learned Counsel for the petitioner of the Debt

Recovery Appellate Tribunal, Chennai reported in 2007(1) Bank CLR 63. (DRAT Chen) Mrs. Ananthalakshmi and Ors. v. State Bank of India,

Chennai and has placed reliance upon para 8 of the said judgement. Para 8 is being reproduced below:

8. Appellants' contention that they are neither borrowers nor guarantors cannot be brushed aside. In fact, the recovery proceedings by the

Recovery Officer would be available only after passing of the orders on the applications filed by the creditor u/s 19 of the Act. Section 19(1) also

states, ""Where a Bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local

limits of whose jurisdiction."" It is, therefore, clear that the debt must be due from any person. The word "any person" occurring in Section 19(1)

and Section 30(1) would mean that the debt must be due from that person and then only the application should be filed against that person for

recovery, including the guarantor. The appellants admittedly in our case, are neither borrowers nor guarantors and the determination of the amount

payable by them does not at all arise. The application filed before the Recovery Officer is only an interlocutory application, which is incapable of

valuation and hence the Court fee payable is Rs.250/- under Sl. No.4 of rule 7(2). The appeal before the DRT is against the orders of Recovery

Officer, which is also incapable of valuation. That in the absence of any specific provision under the RDDB & FI Act, 1993, we can look into the

analogue provisions for the payment of Court fee in Tamil Nadu Court Fee. and Suits Valuation Act, 1955 ("Tamil Nadu Act XIV of 1955).

Section 52 of the said Act deals with the appeals, which states "" The fee payable in an appeal shall be the same as the fee that would be payable in

the Court of first instance on the subject-matter of the appeal."" Applying this principle, the fee payable before the DRT in an appeal arising out of

the order passed by the Recovery Officer shall be the same fee that had been paid before the Recovery officer i.e. Rs.250/-. As it has already

been pointed out, there is no determination of liability required to be made and hence payment of Court fee as prescribed under Sl. No.5 of Rule

7(2) of DRT (Procedure) Rules, 1993. is not attracted. Hence the order of the learned PO directing the appellants to pay Court fee as provided

under SL. No.5 of Rule 7(2) of the DRT (Procedure) Rules, 1993, does not appear to me correct. Hence the order passed by the DRT is liable

to be set aside and accordingly it is set aside.

6. I have heard learned Counsel for the petitioner and Sri Siddharth learned Counsel for the respondents and have perused the record.

7. From the record, it is clear that a compromise decree by the competent court of law is there determining the property in favour of the petitioner

but that has not been taken into consideration by the recovery officer only on the ground that the same is not registered.

8. In my opinion, the finding to this effect regarding registration of decree by the competent court of law is not required because the compromise

decree if that has been passed by the competent court having jurisdiction, then in my opinion, there is no necessity or requirement to get it

registered as held by the recovery officer. The recovery officer ought to have taken into consideration that compromise decree. In my opinion, it

cannot be ignored but that is not a question involved in the present writ petition. The question involved in the present writ petition is whether the

petitioner who is admittedly, a third party if he is aggrieved by the order passed by the recovery officer, files an appeal or application before the

appellate authority, what will be his liability of payment of court fee according to Rule 7 of the Debt Recovery Tribunal (Procedure) Rules, 1993. I

am of the opinion, that after perusal of the aforesaid provision the sub rule 4 will be applicable regarding payment of court fees by the petitioner.

Rule 5 will not be applicable as the amount against the petitioner has not been quantified. No liability has been fixed upon the petitioner by any

authority either by the Tribunal or by the Bank to pay certain amount by the petitioner. Therefore, unless and until amount is quantified, Sub Rule 5

will not be applicable. Admittedly, the petitioner is a third party, therefore, I am of the opinion, that Sub Rule 4 will be applicable. The judgement

mentioned above, while interpreting Rule 7 has held that as the petitioner admittedly is not a borrower nor guarantor and the determination of

amount payable by them does not at all arise. The application filed before them was an interlocutory application to decide the rights, therefore, the

court fees payable by the petitioner will be only Rs. 250/-. As the appeal before the Debt Recovery Tribunal is the order of recovery officer, which

is also incapable of valuation, therefore, in absence of any proviso under RDDB & FI Act, if an appeal is filed, the court fees payable by the

person concerned will be only Rs. 250/-.

9. In view of the aforesaid fact, I am of the view that the order passed by the appellate Tribunal respondent No. 2 dated 11.12.2006 is not

sustainable in law and is hereby set aside. The writ petition is allowed and the appeal filed by the petitioner be heard on merits after payment of

court fee of Rs. 250/-, if ""possible, within a period of three months from the date of production of the certified copy of the order.

10. No order as to costs.