

**Company:** Sol Infotech Pvt. Ltd. **Website:** www.courtkutchehry.com

Printed For:

**Date:** 27/11/2025

## (2007) 09 AHC CK 0213 Allahabad High Court

Case No: None

Pawan Kumar Jindal APPELLANT

۷s

Bank of India, Gorakhpur Branch and Others

RESPONDENT

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 he 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 m 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 or 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:

5.

Appeal against orders of the

Recovery Officer

S. Nos. Nature of Application		Amount of the fee payable	
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 eve	
	(b) Where the amount of	lakh rupees of debt due or part	
	[debt due is above Rs. 10	in excess of Rs. 10 lakhs, subjec	
	lakhs.	maximum of Rs. 1,50,000	
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 even	
	claim made is above Rs. 10	lakh rupees or part thereof in	
	lakhs.	of Rs. 10 lakhs, subject to a roof Rs. 1,50,000	
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 ra	
	excluding review for	applicable on the applications	
	correction of clerical or	Section 19(1) or 19(8) of the	
	arithmetical mistakes	subject to a maximum of Rs. 15,00	
4.	Application for	Rs. 125	
	interlocutory order		

```
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
```

6. Vakalatnama Rs. 5

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 he 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. Slate 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 SI. 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 mode and hence payment of Court fee as prescribed under SI. 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.