

DEBTS RECOVERY TRIBUNAL-2, CHANDIGARH

ITEM NO.27

OA/343/2019

STATE BANK OF INDIA Vs MUKESH KUMAR

30.08.2023

**Present: Sh. Chirag Sharma proxy counsel for Sh. Sidharth Sangal
Advocate for the applicant bank (through VC)
None for the defendants**

Today, none is present on behalf of the defendants despite several pass overs.

It needs to be mentioned here that since 07.06.2023, hardly any Advocate has appeared in any case before this Tribunal except through Video Conference (virtual mode) and thus, it is clearer than crystal that the Advocates have boycotted this Tribunal.

The suspension of work/strike/boycott of the Courts/Tribunals by the Advocates, has no legal sanctity whatsoever, in view of the law laid down in the following authorities:

(1) Hon'ble Apex Court in the matter of **In Re: 'Sanjiv Datta and Others Vs Unknown' (1995) 3 SCC 619**, has *inter alia* observed as under:

"The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the Courts the unpleasant duty. We say no more."

(2) The Apex Court again in the matter of **IN RE: 'Ajay Kumar Pandey, vs. Virendra Saran', AIR 1998 SC 3299**, has *inter alia* held in para No.27 in the following terms:

" Another very important aspect of the matter is also involved in this matter, wherein for accepting their demand to restore the jurisdiction of Police Station 'Bhaleri' which was changed after approval of the Hon'ble High-Court, the Bar Association of Sub-Divisional headquarters at Sardarshar has given the call of strike/work suspension in defiance of the law laid down by Hon'ble the Apex Court in number of judgments and that too as an opening and primary measure without resorting to the recourses available under the legal system and by ignoring the duty which the learned members of Bar owe towards the clients whose briefs they hold and also towards the Courts and the Institution as a whole, being the officers of the Court and also being the honourable members of the noble profession.

It is now settled proposition of law that strike/boycott by advocates is per se illegal and unethical and it amounts to gross professional misconduct."

(3) On the issue of strike/boycott by the advocates, the Hon'ble Apex Court in the matter of '**Mahabir Prasad Singh, vs. M/s. Jacks Aviation Pvt. Ltd.**', AIR 1999 SC 287, while holding the strike/boycott by advocates illegal, has held in para Nos. 2, 16, 17 & 18 as under:

"2. Judicial function cannot and should not be permitted to be stonewalled by browbeating or bullying methodology, whether it is by litigants or by counsel. Judicial process must run its even course unbridled by any boycott call of the Bar, or tactics of filibuster adopted by any member thereof. High Courts are duty bound to insulate judicial functionaries within their territory from being demoralised due to such onslaughts by giving full protection to them to discharge their duties without fear. But unfortunately, this case reflects apathy on the part of the High Court in affording such protection to a judicial functionary who resisted, through legal means, a pressure strategy slammed on him in open Court.

16. If any counsel does not want to appear in a particular Court, that too for justifiable reasons, professional decorum and etiquette require him to give up his engagement in that Court so that the party can engage another counsel. But retaining the brief of his client and at the same time abstaining from appearing in that Court, that too not on any particular day on account of some personal inconvenience of the counsel but as a permanent feature, is unprofessional as also unbecoming of the status of an advocate. No Court is obliged to adjourn a cause because of the strike call given by any Association of Advocates or a decision to boycott the Courts either in general or any particular Court. It is the solemn duty of every Court to proceed with the judicial business during Court hours. No Court should yield to pressure tactics or boycott calls or any kind of browbeating.

17. A three-judge bench of this Court has reminded members of the legal profession in 'Lt. Col. S. J. Chaudhary v. State (Delhi Administration)', (1984) 1 SCC 722: (AIR 1984 SC 618), that it is the duty of every advocate who accepts brief to attend the trial and such duty cannot be overstressed. It was further reminded that "having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend. A lawyer is under obligation to do nothing that shall detract from the dignity of the Court, of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the Court room.

18. Of course, it is not a unilateral affair. There is a reciprocal duty for the Court also to be courteous to the members of the Bar and to make every endeavour for maintaining and protecting the respect which members of the Bar are entitled to have from their clients as well as from the litigant public. Both the Bench and the Bar are the two inextricable wings of the judicial forum and therefore, the aforesaid mutual respect is sine qua non for the efficient functioning of the solemn work carried on in Courts of law. But that does not mean that any advocate or group of them can boycott the Courts or any particular Court and ask the Court to desist

from discharging judicial functions. At any rate, no advocate can ask the Court to avoid a case on the ground that he does not want to appear in that Court."

(4) Hon'ble Apex Court in the matter of '**Ramon Services Pvt. Ltd., vs. Subash Kapoor and others**', AIR 2001 SC 207, while considering the earlier judgments, has held that the strike/boycott by advocates is illegal and the Court is under no obligation either to wait or to adjourn the case on account of strike/boycott call given by the advocates. It has also been reiterated by Hon'ble Apex Court that an advocate has no right to stall the Court proceedings on the ground of decision of strike/boycott taken by the advocates. Hon'ble Apex Court in para No.28 of this judgment has also cautioned the defaulting Courts, that such Courts may be contributory to the contempt of Court. Para No. 28 reads as follows:

"28. Though a matter of regret, yet it is a fact, that the Courts in the country have been contributory to the continuance of the strike on account of their action of sympathizing with the Bar and failing to discharge their legal obligations obviously under the threat of public frenzy and harassment by the striking advocates. I find myself in agreement with the submission of Sh. M. N. Krishnamani, Senior Advocate that the Courts were sympathizing with the Bar by not agreeing to dismiss the cases for default of appearance of the striking advocates. I have my reservations with the observations of Thomas, J. that the Courts had not been sympathizing with the Bar during the strikes or boycotts. Some Courts might have conducted the cases even during the strike or boycott periods or adjourned due to helplessness for not being in a position to decide the lis in the absence of the counsel but majority of the Courts in the country have been impliedly sympathizers by not rising to the occasion by taking positive stand for the preservation of the high traditions of law and for continued restoration of the confidence of the common man in the institution of judiciary. It is not too late even now for the Courts in the country to rise from the slumber and perform their duties without fear or favour particularly after the judgment of this Court in Mahabir Singh's case (1998 AIR SCW 3806: AIR 1999 SC 287) (supra). Inaction will surely contribute to the erosion of ethics and values in the legal profession. The defaulting Courts may also be contributory to the contempt of this Court."

(5) The law on the same lines has again been laid down by Hon'ble the Apex Court in the matter of '**Koluttumottil Razak Versus State of Kerala**', (2000) 4 SCC 465, in the matter of '**Ex-Capt. Harish Uppal, vs. Union of India and another**', AIR 2003 SC 739, and in the case of '**Common Cause 'A' Registered Society vs. Union of India and others etc.**', AIR 2005 SC 4442.

Given the above discussed legal position, this Tribunal is of the considered opinion that the non-appearance of the Advocates warrants to be ignored outrightly by this Tribunal as justifying the same overtly or covertly would tantamount to nothing short of displaying cowardice and commission of the contempt of the Hon'ble Supreme Court by this Tribunal. It needs to be mentioned here that the menace of strike/boycott of the Courts by the Advocates, cannot be condoned in

the guise of interests of the parties/justice. Great Sardar Patel stated: 'Problems if not faced squarely, those are going to take heavy revenge in the times to come.'

Vide order dated 23.08.2023, Registrar-in-charge of this Tribunal suggested closure of right to file written statement. It is closed accordingly and the defendants are proceeded against ex parte.

To come up on **10.09.2026** for ex parte arguments. Synopsis be filed at least 3 days before the day of hearing.

(M.M. Dhonchak)
Presiding Officer
DRT-2, Chandigarh