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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on 13th March, 2015

+ **W.P.(C) 2361/2015 & C.M.Nos.4244-45/2015**

+ **W.P.(C) 2364/2015 & C.M.Nos.4248-49/2015**

RAMA SINHA & ORS Petitioners

Through: Mr.Chirag Jamwal, Adv.

versus

CANARA BANK Respondent

Through: Mr.Karan Khanna, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioners are aggrieved by an order of the Debts Recovery Appellate Tribunal (DRAT) dated 15.07.2014 in Misc Appeal Nos. 326-327/2012 dismissing their appeal. The appeals were preferred against the order of Debts Recovery Tribunal (DRT) dated 31.07.2012. The petitioners contended that the ex parte final order rendered earlier required to be set aside, since they were not duly served in accordance with law.

2. The brief facts are that the respondent Canara Bank instituted proceedings being Original Applications (OAs) 137/2002 and 138/2002 against various borrowers and guarantors i.e. M/s Eider PWI Paging Ltd., M/s Eider Technologies Ltd. and Eider Financial Services Ltd., Sh.A.K.Sinha, and the present petitioners i.e. Ms. Rama Sinha and Mr.Sanjay Sinha. The addresses given of Sh.A.K.Sinha and that of the

present two petitioners were common, i.e. House No.667, Sector-6 Panchkula as is disclosed in the application. The service of summons was apparently accepted by one Sh. Hardam Singh. The petitioners were not represented in the proceedings. Recovery proceedings ultimately culminated in final order dated 25.08.2004. The present petitioners moved applications bearing M.A.Nos.168/2003 and 94/2004 for recalling of the ex parte orders contending that summons were not duly served.

3. The DRT noticed that the circumstance of receipt of summons by one Sh.Hardam Singh, pursuant to which the petitioners Ms.Rama Sinha and Mr.Sanjay Sinha entered appearance and were represented, was not denied. The petitioners' contention in appeal, in addition to the points urged before the DRT, was with respect to Order 5 Rule 9-A(2), of the Code of Civil Procedure (CPC). In this regard, it was urged that the mode of personal service in the present case had not been applied by it. These contentions were, however, rejected.

4. Learned counsel for the petitioners urges that the DRAT's reasoning rejecting the appeal is untenable. It was submitted that the mode prescribed under Order 5 Rule 9-A of the CPC had directly applied and that the DRAT did not appreciate the circumstances. At least one petitioner i.e. Sanjay Sinha did not live at the address indicated in the Original Application i.e. House No. 667, Sector-6 Panchkula. Learned counsel highlighted that if the impugned orders are not set aside, there would be grave miscarriage of justice. It is apparent from the above discussion that the petitioners are aggrieved by the concurrent rejection with respect to an application for recall of an ex parte order. What is a matter of record is that one Hardam Singh accepted notice. Apparently, he did so after obtaining instructions on

telephone from the petitioners. Sh.Hardam Singh filed an affidavit before the Tribunal too. Having regard to these circumstances and crucially the fact that Sh.A.K.Sinha was closely related to petitioners being the father of Sanjay Sinha and husband of Ms.Rama Sinha, both the DRT and DRAT observed that it was highly improbable that the present petitioners were unaware of the proceedings. As far as the submissions with respect to the applicability of Order 5 Rule 9-A(2) CPC are concerned, firstly we are of the opinion that the argument is misplaced as the DRT is not bound by the Rules of CPC. Secondly, even otherwise, the second proviso of Order 9 Rule 13 CPC specifically indicates that no Court can set aside an ex parte decree merely on the ground that there is irregularity in the mode of service. In any case, it is clear that petitioners have noted the date of hearing. All circumstances point out the awareness of the petitioners of the date of hearing as well as the proceedings before the DRT. We also recollect that Article 226 of the Constitution of India does not permit a second Appellate review over DRAT's findings in this respect. In the absence of manifest injustice or completely untenable reasoning, the Court would hardly exercise its discretion and set aside what are purely factual findings.

5. Writ petitions are, therefore, without merit and consequently dismissed alongwith pending applications.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

MARCH 13, 2015/mr