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

+ W.P.(C) 227/2016

PARTHO BHATTACHARYA Petitioner

Represented by: Mr.P.Bhattacharya, Advocate
with Mr.K.K.Bose, Advocate

versus

LD. PRESIDING OFFICER, DEBT RECOVERY
TRIBUNAL-III & ANR

..... Respondents

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **12.01.2016**

1. Concededly the writ petitioner was granted an interim stay requiring it to deposit ₹10,00,000/- within 45 days as a condition for stay of proceedings initiated by the bank. Vide impugned order dated November 20, 2015 the Presiding Office of DRT-3 has permitted the proceedings to continue noting that the writ petitioner has not complied with the order.

2. In the prolix writ petition spanning 26 pages we find no positive averment that the money was deposited on a particular date. In the annexures filed there is no proof of the money being deposited. The counsel for the writ petitioner wants to argue the matter by referring to certain orders allegedly containing admissions of the bank. It is trite that where primary material can be shown to prove a fact asserted, the Court may refuse to look into secondary material unless it is pleaded that the primary material is lost.

3. To our mind the simple thing, if assertion is that : '*I have deposited the money as directed*', is to file proof of the deposit made.
4. We dismiss the writ petition but observe that if the writ petitioner has proof of having made the requisite deposit which was a condition for the stay granted, upon proof of the primary document showing the deposit being annexed, the writ petitioner would be permitted to file an application before the Debt Recovery Tribunal pleading that in view of compliance made the further proceedings be stayed.
5. No costs.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

JANUARY 12, 2016
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