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

\+ W.P.(C) 1169/2015

PRAHALAD DUTTA LATA ..... Petitioner
Represented by: Mr.Vaibhav Dang, Adv.

versus

JAMMU & KASHMIR BANK LTD. & ORS. ..... Respondent
Represented by: Mr.Rohit Singla, Adv. for R-1.
Mr.Ajay Sharma, Ms.Rupali Sharma, Advs. for R-2&3.

**CORAM:**
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**
**HON'BLE MS. JUSTICE MUKTA GUPTA**

**ORDER**

% **24.02.2016**

1. The Jammu & Kashmir Bank Ltd. (in short 'the bank') respondent No.1 herein filed OA No.44/06 before DRT-II Delhi under Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short RDDB&FI Act) for recovery of ₹18,08,82,432.02 (Rupees Eighteen Crore Eight Lacs Eighty Two Thousand Four Hundred Thirty Two and Paise Two Only) along with Pendente-lite and future interest @ 15% per annum. In the application M/s.Lata Steel Agencies (P) Ltd. was impleaded as respondent No.1, Shri Sanwar Mal Lata, Shri Prahlad Dutt Lata and Shri Inder Kumar Lata all sons of Shri Puran Mal Lata as respondents No.2 to 4. The address of Prahlad Dutt Lata, the petitioner before this Court and respondent No.3 in OA No.44/06 was Plot No.64, Neighbourhood No.1, Neelam Bata Road, Faridabad and Room No.11&12, First Floor, 2897/98/99

Bazar Sirkiwalan Hauz Qazi, Delhi-110006.

2. Notice of the OA was sent at 1/6B, Asaf Ali Road as well as Bazar Sirkiwalan Hauz Qazi besides Plot No.64, Neighbourhood No.1, Neelam Bata Road, New Faridabad and a common counsel appeared for all the respondents on the first date, however on the next date learned counsel stated that he was appearing only for M/s.Lata Steel Agencies (P) Ltd., Sanwar Mal Lata, Inder Kumar Lata and not for Prahlad Dutt Lata. Once the counsel withdrew his appearance, the DRT ordered for effecting service on Prahlad Dutt Lata by way of publication. Thereafter, the petitioner was proceeded ex-parte on April 22, 2009.

3. The Original Application filed by the bank was allowed vide order dated November 11, 2010 making the respondents in the OA jointly and severally liable for recovery. In case the respondents in the original application failed to pay the amount within 60 days, the amount was directed to be recovered from the secured assets, if any, and the balance, if any, from the personal assets of the respondents in the original application.

4. Against the order dated November 11, 2010 passed by the DRT-II, the petitioner filed a miscellaneous appeal No.148/2013 before the Debts Recovery Appellate Tribunal Delhi which has been dismissed by the impugned order dated November 25, 2014.

5. The case of the petitioner is that he was never served and remained unaware of the proceedings in the Original Application No.46/06 before the DRT-II. When a demand notice dated February 22, 2011 was received at the petitioner's residence at H.No.3, Hunger Ford Street, Kolkata on April 08, 2011 he engaged counsel on April 11, 2011 in Kolkata who advised him to engage a counsel in Delhi and inspect the records. On or about April 25,

2011 he engaged a counsel in Delhi who was granted permission to inspect the record on April 29, 2011 where after the petitioner came to know about the proceedings in the original application and he being proceeded ex-parte.

6. Though the claim of the petitioner before the DRAT and before this Court is that he was never served and his correct address was not mentioned as for the last many years he was settled and residing with his family at Kolkata, he was neither a shareholder nor a director nor office bearer of M/s.Lata Steel Agencies (P) Ltd., thus the impugned order and the order of DRT-II dated November 11, 2010 are liable to be set aside, however we find no merit in these contentions for the reason that the Tribunal ordered for effecting service on the petitioner by way of publication as well, and as per Form-32 produced by the bank, the petitioner was one of the directors of the company. We however note that the learned DRAT vide the impugned order did not avert itself as to how the petitioner could be made personally liable for the default of the company. There is no discussion in the impugned order as to the extent the bank was secured by the assets of the petitioner or whether he stood personal guarantee.

7. It is trite law that a company is a juristic entity independent of its directors and/or shareholders, enjoys its own legal rights and is subjected to duties statutory or otherwise. The company alone is bound to discharge its debts and liabilities unless the directors of the company have stood as guarantors for discharge of such a liability. There is no discussion in the impugned order as to how the petitioner even though a director of M/s.Lata Steel Agencies (P) Ltd. was personally liable for the debts of the company.

8. Even though the petitioner was proceeded ex-parte, the DRAT could not have dismissed the appeal without considering the legal aspects as noted

above. Consequently the impugned order is set aside. Miscellaneous appeal No.148/2013 is restored to its original position. DRAT will reconsider the miscellaneous appeal in the light of the law noted above.

9. Writ petition is disposed of.

<u>CM 2058/2015 (stay)</u>

Dismissed as infructuous.

**PRADEEP NANDRAJOG, J.**

**MUKTA GUPTA, J.**

**FEBRUARY 24, 2016**
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