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

+ W.P.(C) 2930/2015

ASHA VOHRA AND ANR.

..... Petitioners

Represented by: Mr.R.P.Vats, Advocate

versus

ORIENTAL BANK OF COMMERCE

AND ANR.

..... Respondents

Represented by: Mr.H.P.Bhardwaj, Advocate for R-1

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**ORDER**

% **21.01.2016**

1. Having heard learned counsel for the parties we find complete callousness in the impugned orders, the first dated November 01, 2012 and the second dated December 13, 2014, passed by the Debts Recovery Tribunal and thereafter the Debts Recovery Appellate Tribunal.
2. It is settled law that all relevant evidence needs to be taken note of and considered by a Tribunal vested with exclusive jurisdiction.
3. Constituted under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 the Debts Recovery Tribunal is charged with the duty to adjudicate claims by banks and financial institutions concerning debts. Parties have to complete their pleadings. Evidence is led. The claim is thereafter decided.
4. Claim of the respondent-bank was on the plea that M/s.Lexus Traders approached the bank for grant of a credit overdraft limit against bankers'

lien to a saving account No.11972 in the name of Om Prakash Patney and Asha Vohra. The bankers' lien was created and request was sanctioned. Om Prakash Patney and Asha Vohra executed a letter of lien which was proved as Ex.PW-1/6. The account became sticky and hence the claim.

5. Om Prakash Patney and Asha Vohra disputed their signatures and denied having consented to any lien being created in their account.

6. Filing affidavit by way of evidence the passbook issued by the bank was exhibited as Ex.R-1. The same does not contain any endorsement by the bank showing the lien.

7. We find that neither the Debts Recovery Tribunal nor the Debts Recovery Appellate Tribunal have even bothered to note the affidavit by way of evidence and Ex.R-1 proved therewith.

8. No expert evidence has been led concerning the signatures on Ex.PW-1/6. Finding has been returned on the percipient perception of the Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal.

9. In a cursory manner the Tribunal and the Appellate Tribunal have trashed the argument that the passbook issued to Om Prakash Patney and Asha Vohra did not produce the passbook. Both Foras have overlooked the affidavit by way of evidence and that the passbook was exhibited as Ex.R-1. On the record it is a photocopy. But it is clear that secondary evidence was permitted to be led. With respect to Ex.R-1 the deponent of the affidavit has not been even been subjected to a cross-examination.

10. We speak no further because we are remanding the matter to the Debts Recovery Tribunal lest parties be prejudiced.

11. The writ petition is disposed of setting aside the impugned order dated December 30, 2014 dismissing Appeal No.462/2012 as also the order dated

November 01, 2012 allowing OA No.75/1997.

12. OA No.75/1997 is revived for adjudication afresh before the Debts Recovery Tribunal.

13. No costs.

CM No.5242/2015

Dismissed as infructuous.

**PRADEEP NANDRAJOG, J.**

**MUKTA GUPTA, J.**

**JANUARY 21, 2016**

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