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

+ W.P.(C) 4073/2015

PRADEEP MISRA

..... Petitioner

Represented by: Ms.Mukti Chaudhry, Advocate with
Mr.Nitin Gupta, Advocate

versus

**THE CATHOLIC SYRIAN BANK
LIMITED & ORS**

..... Respondents

Represented by: Mr.Rahul Singh, Advocate for R-4

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **05.02.2016**

1. Having heard learned counsel for the parties we are satisfied that the Debts Recovery Tribunal as also the Debts Recovery Appellate Tribunal have acted with material irregularity in refusing to set aside the ex-parte decree dated August 25, 2009 passed in OA No.85/2005 against the appellant.

2. The record of the Debts Recovery Tribunal, certified copies whereof has been filed with the writ petition, would evince that in the memo of parties the address of the petitioner disclosed is D-III/3507, Vasant Kunj, New Delhi, but admittedly the petitioner resides at D-III/3057, Vasant Kunj, New Delhi. Notice issued in the original application by the Debts Recovery Tribunal for service upon the petitioner resulted in an affidavit filed by the clerk of the bank on April 03, 2006 enclosing therewith a document obtained

from the Postal Authorities recording that the postal docket containing the notice was served upon the petitioner on February 07, 2006. But as per the order dated November 22, 2006 the Tribunal did not accept the same as service and directed fresh notice to be issued. Since service could not be effected, the petitioner was therefore served by publication.

3. When the decree was put into execution and a farm land of the petitioner was sought to be attached, learning of the ex-parte decree dated August 25, 2009, the petitioner filed an application before the Debts Recovery Tribunal praying that the ex-parte decree be set aside.

4. The impugned orders passed by the Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal show that the reason for not setting aside the ex-parte decree is that the postal documents show that the petitioner received the postal docket on February 07, 2006 and thus he was aware of the original application filed against him.

5. The material illegality in the two orders is to overlook that the petitioner denied his signatures on the postal documents, original whereof was not before the Debts Recovery Tribunal. Evidence was warranted to resolve this issue. But more fundamentally the fact, that this very postal record was not accepted by the Debts Recovery Tribunal and the Tribunal did not treat the petitioner to be served for February 27, 2006 and directed fresh notice to be issued. Thus, at the second stage of the proceedings the Debts Recovery Tribunal could not treat same documents as proof of petitioner being served on February 07, 2006.

6. The petition is allowed. The ex-parte decree dated August 25, 2009 against the petitioner is set aside.

7. OA No.85/2005 is restored for fresh adjudication with a direction to

the Registrar of the Debts Recovery Tribunal to list the same before the Debts Recovery Tribunal for direction on April 04, 2016 and for which date the petitioner notes his obligation to appear. Thus, the Debts Recovery Tribunal need not serve the petitioner.

8. At this stage we note that the debt has since been assigned by respondent No.1 in favour of respondent No.4 who would be substituted as the claimant before the Debts Recovery Tribunal and for which a formal application would be filed by respondent No.4.

9. Pursuant to interim orders passed by this Court on April 25, 2015 the petitioner has deposited some money in this Court, the exact amount not being in the knowledge of learned counsel for the petitioner and the office file also does not indicate the amount. We direct that the amount deposited together with the accrued interest thereon shall be transmitted by the Registry to the Debts Recovery Tribunal and it would be open for the parties to move an application concerning return/disbursement of the amount.

10. No costs.

CM No.7288/2015 & 23251/2015

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 05, 2016

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