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

+ W.P.(C) 10799/2015

PAWAN KUMAR

..... Petitioner

Represented by: Ms.Amita Gupta, Advocate with
Mr.Abhimanyu K.Singla, Advocate

versus

PUNJAB & SIND BANK & ORS

..... Respondents

Represented by: Ms.Seema Gupta, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **01.04.2016**

1. In the impugned order dated January 30, 2015 the Debt Recovery Appellate Tribunal has recorded that '*it would have been appropriate for the petitioner to come up with an affidavit of the concerned postman in regard to the manner in which he was served with notice*'. We highlight said aspect of the matter to bring home the point that DRAT was conscious of the evidentiary value of the statement of the postman.

2. The writ petitioner suffered an ex-parte decree before the Debts Recovery Tribunal and admittedly was served by publication because summons sent by post for service were returned repeatedly with the endorsement that the address was incomplete. When warrants were issued at the same address, the petitioner was served with the warrant and he filed an application before the Debts Recovery Tribunal to recall the ex-parte decree against him.

3. The Debts Recovery Tribunal took the view that summons sent in the original application were at the same address on which the warrants were issued and if the postman could contact the petitioner at the second stage, it was a fact from which an inference could be drawn that the petitioner was aware of the proceedings. The stand of the petitioner was that being a teacher in a small hamlet in Punjab called Mansa, the postman who brought the summons at the second stage served him in the school because the postman knew him.
4. It is this aspect of the matter which has been picked upon by the Debts Recovery Appellate Tribunal.
5. Now, the reasoning of the Debts Recovery Tribunal overlooks that there is no evidence that the postman who took the summons in the original application also knew the petitioner. Merely because some postman knew the petitioner and therefore served him in the school and not at the residential address mentioned would not mean that a presumption has to be raised that every postman in Punjab knows the petitioner.
6. It is not a case where the postal authorities claimed to have delivered the postal envelope at the given address. It is an admitted case where service was effected upon the petitioner by publication.
7. On merits, the stand of the petitioner is that he never stood guarantee and his signatures were forged. The petitioner highlights that another person who was alleged to be a guarantor had made a complaint to the police and the result of the investigation was that Kailash Gupta carrying on business as sole proprietor of North East Trading Corporation (the borrower) had forged his signatures. This is merely illustrative to bring home the point of the issue being serious.

8. Since admittedly the petitioner was served by publication we are of the opinion that the petition needs to be allowed. Impugned order dated January 30, 2015 dismissing Miscellaneous Appeal No.399/2013 is allowed. The order dated August 20, 2013 passed by DRT-II is set aside. MA No.139/2009 filed by the petitioner in OA No.101/1999 is allowed. The ex-parte judgment dated July 11, 2008 against the petitioner is set aside. OA No.101/1999 is restored qua the petitioner alone.

9. No costs.

CM No.27745/2015

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

APRIL 01, 2016

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