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

+ CM(M) 1152/2016 & CM Nos.42331-332/2016

GOVIND BIRLA ..... Petitioner

Through Mr.Rohit Kumar Modi, Advocate

versus

M/S SAINI FABRICATORS & ORS ..... Respondents

Through None.

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**

% **07.12.2016**

**CM Nos.42331-42332/2016** (*exemptions*)

Allowed subject to all just exceptions.

**CM(M) 1152/2016**

1. By the present petition, the petitioner seeks to impugn the order dated 03.08.2016 by which an application of the petitioner that an amount of Rs.1,62,000/- which is deposited in court be released to the petitioner, was dismissed.

2. Respondent No.1 had filed a suit for recovery of Rs.76,043/- against the petitioner, respondent No.2 company and respondent No.3. On 15.10.2002, the petitioner resigned from respondent No.2 company. On 16.12.2005 the suit was decreed as *ex-parte*. At that stage, when the execution proceedings were commenced, the petitioner is said to have moved an application for *setting aside* of the *ex-parte* proceeding under Order 9 Rule 13 CPC. On 22.09.2008 on the application filed by the

petitioner and respondent No.3 the trial court subject to deposit of decretal amount stayed the proceedings in the execution till further orders. Similarly, on 26.09.2008 warrants of arrest against the petitioner and respondent No.3 were stayed on deposit of Rs.1,62,000/-. Subsequently, it appears that the application of the petitioner under Order 9 Rule 13 CPC was allowed and *ex-parte* decree was set aside. Suit proceeded and subsequently dismissed in default. As the execution petition had been dismissed as infructuous, the amount deposited in court became liable to be released to the petitioner/respondent No.2. Hence, the trial court on 02.07.2016 directed that the amount of Rs.1,62,000/- be released in favour of the judgment debtor. Subsequently, on an application of the petitioner the court clarified that the amount would be released to company respondent No.2 as the amount had been deposited in the name of the company.

3. The learned counsel appearing for the petitioner submits that it is clear from the order of the court dated 26.09.2008 that it was the petitioner and respondent No.3 who had approached the court for *setting aside* of the *ex-parte* decree by moving an application under Order 9 Rule 13 CPC. It is on the application of the petitioner/respondent No.3 that the the decree was set aside. Similarly, the warrants of arrest against the petitioner and respondent No.3 were also stayed on deposit of the amount. No steps were taken by respondent No.2 company and hence nothing could have been deposited by the respondent No.2 company. The said company is now under liquidation but in any case the petitioner had resigned long back.

4. Keeping in view the explanation given by the learned counsel for the petitioner and also the orders of the court dated 26.09.2008 and 22.09.2008 it is clear that the money has been deposited by the petitioner and not by the

company. Accordingly, the amount lying deposited, i.e. Rs.1,62,000/- be released to the petitioner.

5. With the above observations, the petition stand disposed of.

**JAYANT NATH, J.**

**DECEMBER 07, 2016/v**