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

+ W.P.(C) 10663/2015

SHRI DESHPAL SINGH

..... Petitioner

Represented by: Mr.Rakesh Tiku, Sr. Advocate
instructed by Mr.Abhishek Maratha
and Mr.Abhinav Bajaj, Advocates

versus

PUNJAB & SIND BANK & ORS

..... Respondents

Represented by: Mr.Rajinder Wali, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **13.01.2016**

CM No.456/2016

Allowed.

W.P.(C) No.10663/2015

1. The prolix pleadings in the writ petition and useless documents filed need to be decanted and then concentrated. We do so.
2. OA No.260/1995 filed by Punjab & Sind Bank had one Smt.Vera Wali impleaded as a respondent because for loans obtained by respondent No.1 and 2 in the Original Application she had stood as a guarantor and had mortgaged an immovable property belonging to her by depositing the title deed with the bank. The property is 7/27, West Patel Nagar, New Delhi. Vera Wali died during the pendency of the proceedings and within the time granted by law her legal heirs were not brought not record resulting in an

order being passed that qua her the proceedings abate. Subsequently on an application filed by the bank the order concerning abatement of the proceedings qua Vera Wali was recalled and her legal heirs, which included the petitioner and respondent No.4 were brought on record.

3. OA No.260/1995 was decreed on June 06, 2007. Qua the legal heirs of Vera Wali the decree is ex-parte because they did not appear before the Debt Recovery Tribunal.

4. When the decree was put into execution the petitioner (son of Vera Wali) filed a miscellaneous application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the ex-parte decree dated June 06, 2007, which application was dismissed by the Debt Recovery Tribunal on January 18, 2010, against which appeal filed before the Debt Recovery Appellate Tribunal was dismissed on November 22, 2010. Thereafter the petitioner filed an objection in the execution petition filed by the bank which was dismissed on August 20, 2014. Appeal No.61/2014 filed against said order was dismissed by the Debt Recovery Appellate Tribunal on March 03, 2015.

5. Thereafter the petitioner was advised to file an appeal against the ex-parte decree dated June 06, 2007 and along with the appeal prayed for delay in filing the appeal to be condoned. The appeal has been dismissed by the Debt Recovery Appellate Tribunal by reasoning as under:-

“The observation made by the Tribunal below apparently has prompted the appellant to file appeal not only against the order passed in an appeal under Section 30 of the Act, but also against the order passed in the O.A. Once the appellant could not succeed in his effort to get ex-parte judgment set aside in the O.A. in the year 2007, he seems to have been ill-advised to challenge the order passed in the O.A. now. Appeal/Inward No.162/2015 filed to challenge the order dated 6.6.2007 is

nothing but abuse of process of Court. Not only the effort by the appellant to seek setting aside the ex-parte judgment in the O.A. was rejected, but appeal against this order was also dismissed. How can the appellant be heard in this appeal which is nothing but a second appeal? In any case, this appeal is filed with inordinate delay. If anything can be said about the conduct of the appellant is that he has filed the Appeal/Inward No.162/2015 which is an abuse of the process of the Court. It is to mislead this Tribunal that this appeal is filed to impugn the order which otherwise has attained finality. The M.A. 35/2007 filed by the appellant was dismissed on 18.1.2010. The appeal filed against this order was then dismissed by this Tribunal on 22.11.2010. Both the orders are detailed orders passed after considering the challenge raised against the order passed in O.A. on merits. If the appellant had any intention to challenge the order in the O.A. on any other ground, then he ought to have raised those grounds in the said M.A. or in appeal before this Tribunal. Having not done so, the appellant even cannot justify the delay in filing the appeal against the order passed in O.A. The appellant had the knowledge of this order when it was passed in the year 2007. He cannot be heard now at this stage to seek condonation of this delay.”

6. The argument by learned senior counsel for the writ petitioner is sound. If a decree is passed ex-parte the judgment debtor has two independent remedies. One remedy is to file an application before the original forum praying for the ex-parte decree to be set aside and this prayer would require a consideration whether the judgment debtor had a sufficient cause for non-appearance when the claim was decreed ex-parte. The second remedy would be to challenge the ex-parte decree in appeal where the consideration would be whether on the existing evidence the original forum could decree the claim.

7. The reasoning given by the Debt Recovery Appellate Tribunal to

dismiss the appeal challenging the ex-parte decree dated June 06, 2007 is patently illegal.

8. We find an observation by the Debt Recovery Appellate Tribunal that the writ petitioner cannot justify the delay in filing the appeal, but the observation is sans a detailed reasoning dealing with the application filed by the writ petitioner in which facts have been pleaded with the prayer that delay in filing the appeal be condoned.

9. Accordingly, the writ petition is disposed of setting aside the order dated April 23, 2015 passed by the Debt Recovery Appellate Tribunal. Appeal No.61/2014 and interim applications filed therein by the petitioner are restored for adjudication afresh by the Debt Recovery Appellate Tribunal.

10. No costs.

CM No.27284/2015

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

JANUARY 13, 2016

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