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

+ CM(M) 1259/2015 & CM Nos.31743 & 31745/2015

STATE BANK OF PATIALA Petitioner

Through Mr.Shiv Tyagi, Advocate

versus

LEELU KHANDELWAL & ORS Respondents

Through Mr.C.M.Sharma, Advocate for R-1
Mr.Kush Sharma, Mr.Anirudh
Chadha & Mr.Ekant Luthra,
Advocates for R-4/DDA

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **19.10.2016**

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 24.08.2015 by which an application filed by the petitioner/defendant No.1 under Order 9 Rule 7 CPC for recalling of *ex-parte* order dated 12.02.2014 was dismissed.
2. Respondent No.1 has filed the present suit for declaration and cancelation of documents and for permanent and mandatory injunction. The controversy pertains to a property situated in Pocket-12, Sector-20, Rohini Residential Scheme, Rohini against which the petitioner bank have commenced proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*hereinafter referred to as the 'SARFAESI Act'*).

3. The suit was dismissed in default on 09.05.2012. Subsequently, an application under Order 9 Rule 4 CPC was filed by respondent for restoration of the suit. The petitioner was served but did not appear and was proceeded *ex-parte* on 12.02.2014.

4. The petitioner, thereafter moved the present application stating that the counsel who had been engaged was informed about hearing on 12.02.2014 but he did not appear and hence it was prayed that *ex-parte* proceedings be set aside.

5. The trial court by the impugned order noted that the petitioner/bank was aware about the proceedings pending and the date fixed, however, despite the same the application has been filed 15 months after passing of the *ex-parte* order. The trial court also noted that though it is the case of the petitioner that earlier counsel had not properly conducted his duties, no action appears to have been taken against the earlier counsel.

6. Respondent No.2 and 3 were served by substituted service. None is present on their behalf. They are proceeded *ex-parte*.

7. At the outset, the learned counsel appearing for respondent No.1 very fairly conceded that though there is a gross negligence on the part of the petitioner/bank in pursuing the present suit, however, with a view to expedite the disposal of the suit before the trial court, he does not oppose the present petition and setting aside of the *ex-parte* order provided heavy cost are imposed on the petitioner/bank.

8. Keeping in view the conduct of the respondent/petitioner, the present petition is allowed and the *ex-parte* order dated 12.02.2014 is set aside, subject to payment of cost of Rs.10,000/- to be paid to respondent No.1 within three weeks from today. Petition is allowed as above. All the pending

applications stand disposed of.

JAYANT NATH, J.

OCTOBER 19, 2016/v