

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

% *Date of Judgment: 06.04.2011*

+ **RSA No.55/2009 & CM No.6268/2009**

NEW DELHI MUNICIPAL COUNCIL Appellant
Through: Mr.Arjun Pant, Advocate.

Versus

SHRI I.C. MITTAL Respondent
Through: Mr. Arvind Kumar Gupta & Mr. Ankit
Chaudhary, Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1 This appeal has impugned the judgment and decree dated 06.12.2008 which had reversed the findings of the trial Judge dated 28.08.2008. The trial Judge vide judgment and decree dated 28.08.2008 had dismissed the suit of the plaintiff which was a suit for permanent and mandatory injunction. The impugned judgment had reversed this finding. The suit of the plaintiff had been decreed in appeal.

2 The case of the plaintiff is that he is the co-owner of the property bearing No. 52, Todermal Road, New Delhi. He along with his three brothers had inherited this property from their deceased father late Shri Data Ram Mittal. He has 1/4th share in the suit property. There are two water connections and two electricity

meters supplying electricity on the first floor which is under the occupation of the plaintiff. He has no concern or control over the other water and electricity connections which are being occupied by other co-owners. After the death of their father in 1977, the plaintiff had been writing to the concerned authorities to transfer the electricity and water connections of the property in his name. Documents had also been furnished by him to the said effect but to no avail. The plaintiff was regularly making payment of his electricity and water bills. However without notice his water connection was disconnected; the plaintiff apprehends that the electricity connection would also be disconnected as the department is bent on harassing him. Suit was accordingly filed.

3 The defence of the defendant was that the plaintiff claimed himself to be co-owner of the suit property; there were 4 electricity connections and 3 water connections in the name of their late father; plaintiff was required to clear all dues of aforementioned connections; arrears in the sum of Rs. 2,09,139/- were still due and payable.

4 On the pleadings of the parties, the following four issues were framed:-

1. *Whether the plaintiff is entitled to the relief of permanent and mandatory injunction as prayed for? OPP*
2. *Whether the plaintiff has no locus standi to file the present suit?*
3. *Whether the suit is not maintainable for the want of statutory notice under Section 385 of NDMC Act?*
4. *Relief.*

5 Oral and documentary evidence was led. The trial Judge was of the view that the plaintiff had failed to supply the relevant documents to the department; in this view of the matter electricity

and water connection could not be transferred in his name; he was not entitled to any relief; his suit was dismissed.

6 The impugned judgment had reversed this finding. The Account Officer of the defendant had on oath deposed that the NDMC had sanctioned a new connection in the name of Naresh Mittal and Sudesh Mittal (the other two co-owners and brothers of the plaintiff); he had further admitted that the plaintiff has been mutated 1/4th share of the said property; his share of payment would also be 1/4th; the impugned judgment had noted that a 'No Objection' had been granted to other legal heirs Naresh Mittal and Sudesh Mittal without claiming from them their 1/4th share which was due in their account; no surcharge had also been claimed from Naresh Mittal. The impugned judgment had accordingly on the basis of the aforementioned evidence drawn a conclusion that the plaintiff is entitled to pay 1/4th share of his share which was payable on the principal amount as also the surcharge amount. The suit of the plaintiff was decreed to that extent. The finding returned in the impugned judgment is as follows:-

"The Accounts Officer, Commercial Department, NDMC has appeared before this Court and has made a statement on oath that as per the record a total sum of ₹4,77,818/- is due on the property which includes the actual demand of ₹1,81,442/- and surcharge of ₹2,96,376/-. As per the statement of S.N. Gupta, Accounts Officer made before this Court on oath, the NDMC has already sanctioned a new connection in the name of Naresh Mittal and Sudesh Mittal, the other legal representative of the deceased Data Ram. According to him, in so far as the appellant is concerned in view of the mutation he is required to pay his 1/4th share i.e. ₹1,19,455/- on the basis of the formula or equal distribution amongst the legal heirs of late Data Ram. It is evident from the statement of S.N. Gupta, Accounts Officer that he is evasive to the specific queries put by this court with regard to the amount recovered from the other two legal heirs. The original record pertaining to the property has been placed before this Court, which shows that the formula of equal distribution amongst legal heirs as proposed by the department has not been followed and 1/4th share has not been claimed from the legal heirs Naresh Mittal and Sudesh Mittal while sanctioning

the connections to them. The record also reveals that no surcharge has been claimed from Naresh Mittal on the original demand and an incorrect statement has been made by the Accounts Officer in this regard. The counsel for the respondent is unable to place before this Court any Rule of department policy showing that the legal heirs of the deceased consumer are required to pay their respective share as per the mutation i.e. on the basis of the principle of equal distribution amongst the legal heirs. Despite repeated queries the respondents are unable to satisfy the court the principle on which the outstanding dues had been previously charged from other two legal heirs of Data Ram namely Naresh Mittal and Sudesh Mittal since on the grounds of parity the 3rd legal heir should also be charged on the same basis. The appellant I.C. Mittal who is present in the court alongwith his counsel submits that he is ready and willing to pay his 1/4th share of the actual demand or any other amount so directed by the court.

I have applied my mind to the statements made by the parties made before me and also to the departmental record produced before me in terms of which I direct the appellant I.C. Mittal to pay the 1/4th share of the actual outstanding demand which was for a sum of ₹1,81,442/- on the basis of principle of equal distribution amongst the legal heirs and the appellant being the holder of 1/4th share. The appellant shall further pay the surcharge on the said 1/4th share of the actual outstanding demand of ₹1,81,442/- from the date it becomes due, till the date of filing of the suit before the trial court and not thereafter (i.e. 17.07.2001). No surcharge shall be claimed for the period thereafter (i.e. after 17.07.2001). The respondents are directed to inform the appellant details of the exact amount to be paid by him on the basis of the aforesaid within 15 days from today and the appellant shall deposit the same on or before 31.12.2009 in 4 equal installments as requested by him. Pursuant to the payment of the aforesaid amount the respondent shall thereafter proceed to transfer the electricity and water connections in the name of the appellant as per rules on the appellant fulfilling the other formalities if any and shall not disconnect the electricity connection bearing K. No. 64748 and K-64749 installed at premises bearing No. 52, Todarmal Road, New Delhi.

Before disposing off the appeal it is necessary to observe that this court will not allow different yardsticks to be adopted for different occupants and users of the same property using the same connections. The principle to be adopted by the respondent while raising the demand for all the legal heirs has to be consistent in order to rule out arbitrariness and bias. Having taken a stand before this court, that the principle followed by the department is equal distribution of shares within legal heirs on the basis of the mutations, the officers of the respondents cannot be allowed to adopt a different principle for the other legal heirs. It is time for the courts to come down heavily upon the "... You show me the face, I will give you that order..." Kind of attitude of the Babus manning these statutory bodies/instrumentalities of State. Uniformity & consistency are antithesis to arbitrariness and hallmark of justice.

Prima facie the respondent which is an instrumentality of State has been put to loss on account of non recovery of the dues in respect of 1/4th share of

other legal heirs Naresh Mittal and Sudesh Mittal in respect of the outstanding dues since it is evident from the record that the only amount claimed from Naresh Mittal while giving the no objection for installation of fresh connection was ₹11,055/- whereas no amount was claimed from Sudesh Mittal. It seems that while getting the disputes of Naresh Mittal and Sudesh Mittal disposed off in the Lok Adalat, the officers of the department for reasons best known to them did not inform the Ld. Lok Adalat Judge about the outstanding dues on the property which the other legal heirs Naresh Mittal and Sudesh Mittal were required to pay on the principle of equal distribution of shares amongst legal heirs on the grounds of parity which amount is now not recoverable being time barred thereby putting the department to loss. By doing so the concerned officials of the defendant have rendered themselves liable for departmental action and also to possible criminal prosecution. It has, therefore, before desirable for the Chairman, NDMC to initiate appropriate vigilance inquiry in order to fix the responsibility of the erring employees for the various lapses.

Trial court judgment/decreed dated 28.08.2008 is accordingly modified and appeal is disposed off. Trial court record be sent back along with copy of this order. Copy of this order be sent to the Chairman, NDMC for the purposes of compliance."

7 Substantial questions of law have been embodied on page 2 of the body of the appeal. They have been perused. Learned counsel for the appellant has placed reliance upon 2006 (88) DRJ 595 Madhu Garg & Anr Vs. North Delhi Power Ltd. to support his submission that the plaintiff was liable to pay the entire charges and to clear all arrears of bill. Reliance upon this judgment is totally misplaced. In this judgment, the Apex Court had held that a new owner cannot shy away from his liability to pay the electricity dues; whenever a person purchases a property, it is his duty to find out whether there are any outstanding electricity dues in relation to the premises or not, he cannot be allowed to say later that he was unaware of the fact that there were electricity dues of the previous owner. Reliance upon this judgment is totally out of context. In the present case, admittedly the plaintiff is only a co-owner of the property. This has been admitted by the defendant in evidence. The witness of the defendant has admitted that the

liability of the plaintiff is 1/4th; it has also been noted that the other co-owners/brothers of the plaintiff namely SudeshMittal and Naresh Mittal had been granted electricity connection without a no objection and no surcharge had been claimed from them. Default on the part of the officials of the department is writ large; this burden cannot now be put upon the shoulders of the plaintiff.

8 The finding in the impugned judgment calls for no interference. No substantial question of law has arisen. There is no merit in this appeal. Appeal as also pending application are dismissed in limine.

(INDERMEET KAUR)
JUDGE

APRIL 06, 2011
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