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

+ **W.P.(C) 6310/2015**

Date of judgment 06.07.2015

BANK OF BARODA

..... Petitioner

Through : Mr. Arun Aggarwal, Advocate.

versus

AVM HEALTH CARE PRODUCTS PVT. LTD..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

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1. Exemption allowed subject to just exceptions.
2. Application disposed of.

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3. An application under Order 1 Rule 10 CPC filed by the respondents herein before the Presiding Officer, Debt Recovery Tribunal was allowed by an order dated 22.04.2015, which has forced the petitioner herein to file a Miscellaneous Appeal before the Debt Recovery Appellate Tribunal. The appeal was disposed of on 22.04.2015. Aggrieved by the aforesaid order, the bank has filed the present writ petition.
4. Mr. Aggarwal, learned counsel for the petitioner has forcefully

submitted that the bank being *dominus litis* cannot be forced to prosecute the parties as prayed by the borrower.

5. It is further submitted that the matter is likely to be delayed in case the application of the respondent for impleadment is taken up for hearing by the Debt Recovery Tribunal, as directed by the DRAT.
6. We have heard Mr. Aggarwal. We find the writ petition filed by the bank to be misconceived for the reason that the order passed by the learned Chairman is a well reasoned order, keeping in view the settled position of law and keeping in view the parameters which are to be considered while deciding an application under Order I Rule 10 CPC. By the impugned order dated 22.4.2015 the DRAT, remanded the matter back to the Debt Recovery Tribunal. The order dated 22.4.2015 subject matter of the present writ petition reads as under :

“The Tribunal below has allowed the prayer of the respondents to implead various persons named in the order on the ground that the Bank official in connivance with Shri Amal, the Accountant and Chartered Accountant, had played fraud with the said respondents.

Any person can be permitted to be impleaded as party if he is necessary or proper party. The Tribunal below has allowed this prayer without examining whether the said persons would be proper or necessary parties in the OA filed by the Bank. The Tribunal below ought to have realized that the appellant Bank is a dominus litis and it could not be forced to prosecute its lis against the persons against whom it has not grievance or against it is not claiming any relief. In the light of the above, the Tribunal below ought to have considered this aspect before directing the impleadment of such a large number of persons. The Tribunal may have to consider if any response was needed from these persons who were sought to be

impleaded as party. In any case, a legal issue that these persons are necessary or proper party cannot be ignored.

I, therefore, find that the impugned order passed by the Tribunal below may require reconsideration in the light of the legal position noticed above. For the purpose of this order, I do not consider it necessary to issue notice to the respondents since the case is being remanded back to the Tribunal below for reconsidering the prayer in the application.

The Tribunal would reconsider the prayer made in the application in the light of the law and may pass any appropriate order if it considers that the persons sought to be impleaded as respondents are necessary or proper parties and may also consider if they are required to be put to notice before directing their impleadment.

With the above observations, the present appeal is disposed of in limine. The impugned order shall stand set aside. The case is remanded back to the Tribunal below for passing a fresh order.”

7. A reading of the order would show that the Chairman has in fact noted all the submissions which Mr. Aggarwal would like to urge but has only directed the Presiding Officer to follow the due process i.e. to issue notice in the application and after due hearing decide whether the respondents are proper and / or necessary parties.
8. As far as plea of Mr. Aggarwal that the petitioner is the *dominus litis* and he cannot be compelled to implead persons, as suggested by the respondents, there is no quarrel to the proposition that the plaintiff is *dominus litis*, however, it is also settled law that the theory of *dominus litis* should not be over-stretched in the matter of impleading parties. It is also the duty of the court to ensure that if for deciding the real

issue in dispute, a person is a necessary party, the court can order, such person to be impleaded.

9. We find no infirmity in the order passed by the learned Chairman, Debt Recovery Appellate Tribunal. Consequently, this writ petition is without any merit and the same is dismissed.

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10. In view of the order passed in W.P. (C) 6310/2015, the present application also stands dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 06, 2015

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