

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

Date of decision: March 21, 2016

+ CS(OS) 651/2013, IAs 16139/2015, 9691/2015, 1530/2016 &
15819/2015 & OA 372/2015
THE INDIAN HOTELS COMPANY LTD

..... Plaintiff

Through: Mr.Rajiv Nayar, Sr. Adv.
with Mr.Rishi Aggarwala,
Ms.Misha Rohtgi, Mr.Anuj
Malhotra, Mr.Saurabh Seth,
Advs.

versus

NEW DELHI MUNICIPAL COUNCIL

..... Defendant

Through: Mr. Sanjay Jain, ASG with
Mr. Akshay Makhija
(CGSC), Mr. V.Mohan, Ms.
Bani Dixit, Advs.
Mr. Ajit Sharma, Adv. with
appellant/ applicant in OA
372/2015/4924/2014

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.(Oral)

IA 4924/2014

1. Vide this order, I would decide IA 4924/2014, filed by Mr. Mithlesh Kumar Pandey under Order 1 Rule 10 (2) read with Order 1 Rule 8A and Section 151 CPC for impleading him as defendant No.2.
2. The averments averred in the application are that during the course

of hearing on April 9, 2013 as per the directions of this Court, the applicant was supplied a copy of CS(OS) No. 651/2013. The applicant intervened in the matter as a caveator and also appeared before this Court in this matter on November 7, 2013. In W.P.(C) 6615/2012 filed by the petitioner, which was disposed of on October 17, 2012, the NDMC had stated before the Court that they will hold a public auction within 3-4 months in respect of Taj Mansingh Hotel. But even after 12 months of their promise before the Court, the NDMC officials did not held the auction and thus violated their promise. The petitioner also filed SLP(Civil) No. 9142/2013 before Supreme Court of India, wherein CBI enquiry is prayed along with other reliefs. The Supreme Court issued notice to the plaintiff and the defendant. The plaintiff only for the purpose of delay and to linger on the process filed the present CS (OS) No. 651/2013 in collusion with NDMC. In SLP Civil No. 9142/2013 the Supreme Court of India specifically requested this Court to complete the pleading/filling of documents before January 21, 2014 in this suit.

3. It is also averred by the applicant that in this suit, in para 26, the plaintiff specifically mentioned the name of the applicant, Writ Petition (Civil) No.6615/2012 and about his role. He has averred, that it is necessary to allow the present applicant as a party to unearth the truth as the same relates to public property. The lease, having expired in 2011,

the NDMC was required to expedite the auction of the said property but it was not done despite the fact that date of expiry of lease was known in advance and preparation before hand could have been made for public auction. But the NDMC extended the lease for a period of one year from October 2011 to October 2012 in favour of the plaintiff. The NDMC further extended the lease in favour of the plaintiff from October 2012 to October 2013, which is in violation of the License Deed/Collaboration Agreement dated December 18, 1976 and contrary to the opinion dated September 14, 2012 of the learned Additional Solicitor General of India. The grounds urged in support of the application, primarily are, that (i) the SLP (Civil) No.9142 of 2013 filed by the applicant herein, involving the same issue being agitated in the present suit, is pending before the Supreme Court of India, wherein the plaintiff and the defendant are the respondents; (ii) the present suit has been filed in collusion between the plaintiff and the defendant; (iii) the presence of the applicant is necessary in order to enable this Court to effectually and completely adjudicate upon and settle all questions involved in the suit; (iv) according to the applicant, the applicant apprehends that in case he is not impleaded as one of the defendants, entire/true facts of the case will not likely to be placed before this Court to enable this Court for proper adjudication of the case; (v) by adding the applicant to the array of parties, no prejudice

will be caused to the parties already on record; neither will fair trial of the questions in controversy be prejudiced. On the other hand, not making the applicant party to the present proceedings will cause serious prejudice to the economy of the State. No effective action has been taken by the NDMC despite the assurance to hold a public auction within 3-6 months given to the Division Bench of this Court. NDMC as a public authority is obligated to dispose of its properties at market value. In the present case, NDMC has extended the licence of the hotel property when the license deed itself not contemplate any extension. The NDMC has extended the license deed without inviting public bids and thus in breach of the ratio laid down by the Supreme Court in the case of *Aggarwal & Modi Enterprises Pvt. Ltd. Vs. NDMC (2007) 8 SCC 75*. One of the grounds includes filing of the W.P.(C) 6615/2012 disposed of on October 17, 2012. A reference is also made to the filing of the SLP before the Supreme Court, wherein CBI inquiry is prayed along with other reliefs. As regards locus standi, according to him as large public interest is involved and the issues being agitated in the interest of public and other persons, any person can be impleaded as a necessary party. It is also one of the grounds that if the applicant is not impleaded as defendant No.2, it may cause grave loss to the public exchequer and economy of the State.

4. Mr. Ajit Sharma, learned counsel appearing for the applicant would submit that initial W.P.(C) 6615/2012 seeking a CBI inquiry was filed by him in this Court. The said petition was disposed of on October 17, 2012. He states, that in the said petition, the NDMC was a party. He has placed before me a copy of the order, to contend that the NDMC has stated before this Court that they will hold a public auction within four months, which they violated. He would also state, that the applicant had also filed a SLP where the NDMC and the plaintiff were party before the Supreme Court. According to him, the SLP was withdrawn vide order dated April 4, 2014. It is the case of the applicant that the plaintiff and the defendant are hand in glove and the suit is collusive. He states, that despite opinions of the ASG, no auction has taken place. The learned counsel for the applicant by conceding that the applicant is not a necessary party but a proper party, states he, in public interest, intend to assist the Court with numerous documents. He states, that out of the various issues framed, he would like to assist the Court on issue Nos.1 and 3. In other words, for effective adjudication, the applicant is seeking his impleadment. He states, if it had been a private property, his impleadment was not necessary. The applicant relies upon the judgment of **2010 (7) SCC 417 Mumbai International Airport Pvt. Ltd vs. Rejency Convention Centre & Hotels Pvt. Ltd and ors.**

5. On the other hand, Mr. Rajiv Nayar, learned Senior Counsel appearing for the plaintiff would submit that the applicant in the suit is completely alien to the agreements. He states, he is not even party to them. He also states, prayer (b) of the suit is a direction against the NDMC. According to him, against four issues framed, it is conceded by learned counsel for the applicant, he is concern with issue Nos.1 & 3. According to him, issue No.1 relates to Contract between the plaintiff and the NDMC and on issue No.3, the onus is on the defendant. Even if it is an interpretation of section 141 of the NDMC Act, the applicant is not a proper party. He has referred to paras N, O of the application to submit, under Order 1 Rule 8, which relates to suits in representative capacity, it is persons having same interest, can sue or defend the suit. According to him, the relief primarily is against NDMC and NDMC is defending the suit. Moreover, the plaintiff is the dominus litis and it is for the plaintiff to choose a party against whom relief is to be sought. He relied upon the judgment of this Court reported as **223 (2015) DLT 449 Mehar Chand Sharma vs. Manjeet Singh Kohli and ors.** He states, that in the writ petition filed by the petitioner, the plaintiff was not impleaded as a party. It is, in the Supreme Court unilaterally, the applicant impleaded the plaintiff as a party without seeking any liberty for impleadment. Merely because a document requires a construction,

everybody cannot be impleaded as a party.

6. Mr. Sanjay Jain, learned ASG, on behalf of defendant, would submit, for a Court to decide the issue of a party being a proper party, it is to be seen that presence of such a party is necessary to decide all the questions involved in the suit. According to him, Order 1 Rule 10 (2) contemplates proper party to be such, for the Court, to effectually and completely to adjudicate upon and settle all the questions involved in the suit. He states, learned counsel for the applicant conceding that he would like to assist the Court only on issue Nos.1 & 3, itself is sufficient to dismiss the application. In other words, it is his submission, only such person can be impleaded as a party, without whom, there would not be a complete adjudication. He states, unlike a discretion under Article 226, no such discretion would lie when adjudication is made for impleadment of a party in a civil suit and for which purpose application need to be seen. The application does not show the facts, which would enable the Court to exercise the discretion. He states, merely because a writ petition was filed by the applicant, would not be a ground seeking impleadment. He states, that the NDMC is defending the suit and filed a written statement and seeking early disposal of the suit. The plea that the suit is collusive is the perception of the applicant. He states, the plea, that the applicant would rely upon the documents, if permitted to be

impleaded is outside the domain of the suit. It is his submission that no ground for exercising discretion has been made out. Mr. Jain relies upon the judgment of the Supreme Court in **(2012) 8 SCC 384 Vidur Impex & Traders Pvt. Ltd vs. Tosh Apartment Pvt. Ltd and ors** and connected appeals.

7. Having heard the learned counsel for the parties, it is not the case of the applicant that he is a necessary party. The only question which arises for consideration is whether the applicant is a proper party. In this regard, it is important to refer to the judgment relied upon by Mr. Ajit Sharma learned counsel for the applicant of the Supreme Court in the case of **Mumbai International Airport Pvt. Ltd. (supra)**, wherein, in para 15, the Supreme Court held that a proper party is a party who though not a necessary party but whose presence would enable the Court to completely, effectually and adequately adjudicate all the matters in dispute in the suit, though he need not be a person in whose favour, of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the Court has no jurisdiction to implead him against the wishes of the plaintiff. I may note here, the Supreme Court in the said para has also said that a person is likely to secure a right/interest in a suit property after the suit is decided against the plaintiff will not make such a person a necessary party or a proper party

to the suit for specific performance. In para 24.4, the Supreme Court held that if Court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if the Court finds him to be a proper party. Finally, in para 25, to which reference was made by Mr. Sharma, it was held, the Court has discretion to either allow or reject an application of a person naming to be a proper party depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party merely because he is a proper party.

8. That apart, in ***Vidur Impex & Traders (P) Ltd. (supra)***, the Supreme Court after considering its various judgments, has summed up the principle governing the impleadment as under:-

“41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:-

41.1 The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2 A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3 A proper party is a person whose presence would enable the court; to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4 If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5 In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files; application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.”

9. In the light of the above, it is to be seen that whether the applicant is a proper party and whose presence would enable the Court to completely, effectually and properly adjudicate upon all matters and issues though he may not be a person in favour of or against whom a decree is to be made. In the present case, the issues which have been framed are as under:-

1. Whether the Plaintiff is entitled to the extension of licence as claimed in the Suit? OPP

2. Whether the Suit is barred by Section 385 of the NDMC Act, 1994? OPD

3. Whether Section 141 of the NDMC Act, 1994 is applicable to the contracts and transactions between the Plaintiff and the Defendant in respect of the extension of the licence deed dated 18.12.1976? OPD

4. Whether the Plaintiff is entitled to relief claimed in the present Suit? OPP

5. Any other Relief.

10. The issues have been framed on the basis of the pleadings of the parties. In its written statement, the defendant has opposed the suit and seeks its dismissal. It is the case of the applicant, as argued by Mr. Sharma, that the applicant would like to assist the Court with regard to issues Nos.1 and 3. In other words, not on all issues. This itself will not make the applicant a proper party. The applicant if not a proper party, the Court has no jurisdiction to implead him.

11. That apart, the plea that he was a petitioner who had filed W.P. No. 6615/2012 in this Court is concerned, the plaintiff was not a party in those proceedings. The reliefs sought, as noted above, are at variance with the issues, which arises for consideration of this Court. In the proceedings before the Supreme Court filed by the applicant, the same were withdrawn by him. Mere filing of the petitions would not be a ground for impleadment in view of the ratio of the judgments of the Supreme Court.

12. The plea that the applicant apprehends, that in case he is not impleaded as one of the defendants, entire/true facts of the case will not likely to be placed before this Court for proper adjudication of the case is untenable. It is not in dispute, that the defendant has filed a written

statement and got documents exhibited. It is not the case of the applicant in the application that the same are inadequate or insufficient in response to the averments in the plaint. It is not the case of the counsel that the issues have not been properly/appropriately framed. Further, the plea that no prejudice would be caused to the parties is concerned, suffice to state, the same is not a ground governing impleadment. Similarly, the plea of public interest is also untenable. The plea that the applicant would show various documents while assisting the Court is concerned, the same must be relatable to the issues framed, which arises for the consideration of the Court.

13. Further, there is no dispute, that the defendant is a statutory body governed by Statute. The defendant is represented by Additional Solicitor General, a Law Officer of the Government of India and as such the plea of impleadment of the applicant on the ground to enable this Court to effectually and completely adjudicate upon all questions, is untenable. I do not find any merit in the application. The same is dismissed.

(V.KAMESWAR RAO)
JUDGE

MARCH 21, 2016

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