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

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*Date of Decision: 20.10.2016*

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CM(M) 634/2013

M/S NEW DELHI HOTELS LTD & ANR ..... Petitioners

Through Mr.Mohit Gupta and Mr.Rohit  
Aggarwal, Advocates

versus

ASSOCIATION OF APARTMENT

OWNERS OF MERCANTILE HOUSE (REGD) ..... Respondent

Through Ms.Sunita Bhardwaj, Advocate for R1

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J. (Oral)**

1. The present petition under Article 227 of the Constitution of India has been filed seeking to challenge the order dated 04.06.2013 passed by the Appellate Court setting aside the order of the Senior Civil Judge and passing an injunction order in favour of the respondent.
2. This is an old petition filed in 2013 and is the subject matter of protracted litigation by filing of various miscellaneous applications which seem to have been filed over time.
3. The basic facts are that the petitioners constructed a multi storeyed building at 15, Kasturba Gandhi Marg, New Delhi known as Mercantile House. The maintenance of the building is said to have been handled by one Sh.Anil Khanna, sole proprietor of Mercantile LLC i.e. petitioner No.2. The maintenance of the common area it appears was being handled by the

petitioners.

4. The Division Bench of this court in ***O.S.Bajpai v. Administrator (Lt.Governor of Delhi)***, (2010) 172 DLT 442 (DB) while interpreting Delhi Apartment Ownership Act held that there would be an association of apartment owners for the administration of the affairs in relation to the apartments and the property thereto and for the management of common areas and facilities. There shall be a single association of apartment owners in each multi-storeyed building.

5. There is an intense dispute going on between the petitioner namely the builder and the respondent namely Association of Apartment Owners of Mercantile House who claim to be the majority Association of Apartment Owners and another association namely the Mercantile Flat Owners Association. On 17.04.2016, on an application filed by the said Mercantile Flat Owners Association (*hereinafter referred to as the 'Applicant'*), they were impleaded as a party to the present petition. This court in its said order dated 17.04.2016 noted the averments of the applicant that a majority of the members of the flat owners are on the side of the applicant. Affidavits of the members supporting the applicants were also filed whereby it was revealed that 93 members are on the side of the applicant. This court also noted that the dispute is actually between the respondent and the applicant and it would be necessary to decide which is the legal and valid association i.e. as to whether the respondent association or the applicant association. It was also noted that an application under Order I Rule 10 has already been filed before the trial court which is pending adjudication. In this background the application of the applicant was allowed and it was impleaded as a party.

6. As regarding the present petition, the controversy started with the

respondent filing two suits. The first suit is filed seeking relief of injunction to restrain the petitioners from interfering in the activities of the respondent's association regarding maintenance services, collection of money from the owners and occupiers of the flats. The second suit is filed also for permanent injunction to restrain the defendants from interfering with the survey and installation of the lifts inside the building at Mercantile House. Alongwith these suits, applications for injunction were also filed. These applications were dismissed by the trial court. The respondents filed an appeal before the appellate court. The appellate court vide impugned order dated 04.06.2013 allowed the appeal of the respondent. The petitioners were restrained from interfering with the survey, installation of the lifts inside the building at Mercantile House till disposal of the suit. The petitioners were also restrained from interfering and obstructing in the activities of the respondent till disposal of the suit.

7. It was put to the learned counsel for petitioner that as per judgment of the Division Bench of this court in ***O.S.Bajpai vs. Administrator (Lt. Governor of Delhi) (supra)***, the petitioners being a builder cannot have any right to control the common services of Mercantile House. Hence, the essence of objections of the petitioners was not clear. The learned counsel for the petitioner replied that he obviously is not seeking to control the common facilities but would be interested that the actual association should control the common areas and common facilities of the apartment and not a make belief organisation as the respondent.

8. Learned counsel appearing for the applicant has strenuously urged that the respondent/plaintiff is guilty of gross suppression and has managed to persuade the court to pass interim orders by playing a fraud on the court.

It is pointed out that prior to the present two suits the counsel appearing for the respondent acting as Secretary of the applicant Association herself had filed two suits. One suit was filed on 19.1.2012 purportedly through its General Secretary for permanent injunction to restrain the defendants i.e. New Delhi Hotels Ltd. and Mercantile LLC (the same defendants who are also defendants to the present suit) from interfering in the activities of the said plaintiff association for carrying out maintenance work in Mercantile House. The plaint was accompanied by an affidavit of counsel for the respondent. The second suit is also purportedly filed by the said Association/applicant on 23.1.2012 through its Secretary against the defendants No.1 to 7 seeking that they are stooges of the builder/petitioner. In the suit a prayer was made for decree of permanent injunction to restrain the said defendants from interfering in the activities of the plaintiff association and from misrepresenting themselves as office bearers of the plaintiff association. It is submitted that alongwith the two suits the said counsel had also filed applications for stay on which no ex parte injunction was granted. Later on the said applications are said to have been withdrawn.

9. Thereafter the present suit has been filed on behalf of the respondent in May 2012/July 2012. There is not a whisper in these complaints it is urged regarding filing of the earlier suits except trying to urge that the petitioner is trying to form a stooge owners association to control the building through the same. Hence, it is urged that as already noted by this court the applicant association has the support of 93 members which constitute the majority of flat owners and is the appropriate association to run the affairs of the apartment including maintenance of common areas and common facilities. It is stated that the respondent has by mischief obtained interim orders and is

not permitting the applicants to carry out their duties. It is further urged that the applicant is the first association and registered before the respondent and in terms of the judgment of this court in *O.S.Bajpai vs. Administrator (Lt. Governor of Delhi)* (*supra*) would be appropriate association to look after the maintenance of common areas and common facilities of the apartment.

10. I may note that a perusal of the impugned order shows that on a first reading there appears to be nothing wrong in the said order. The appellate court has noted that there are many suits pending between the parties in court and that the main dispute remains as to which of the associations is the genuine or main or which should control the affairs of the flat owners. The submission of the petitioner that the respondent is not the true association was also noted. It also noted that the civil judge dismissed the application for installation of lifts on the ground that no document is on record to show that the appellant has deputed any lift vendor to renovate the lifts and that the respondent has failed to show that the lift and the buildings are in bad condition. Accordingly the appellate court allowed the request of the appellant therein and restrained the petitioner from interfering in the installation of lifts inside the Mercantile House. The order was passed for the welfare of flat owners and occupiers till final disposal of the suit. Similarly, in the other appeal the court noted that the authenticity and genuineness of the association is not verified and that the appellant cannot be restrained from granting service for the welfare of the occupants of the apartments. Accordingly, the appellate court restrained the petitioner from interfering and obstructing in the activities of the appellant.

11. In view of the judgment of the Division Bench of this court in *O.S.Bajpai vs. Administrator (Lt. Governor of Delhi)* (*supra*) the petitioner

has no role to play in looking after the maintenance of common areas and common services. It has to be one of the associations of members/occupants. At that stage when the impugned order was passed, the respondent was the only association of occupants before the court and accordingly court passed the order.

12. It now transpires that the respondent has prima facie mischievously evaded the basic dispute as to which of the associations is the appropriate association to control the common services and has filed the suit without impleading the real affected party. There is merit in the submission of the applicants that it was obligatory on the part of the respondents to have pleaded in their plaint about the suit filed on behalf of the applicants seeking similar reliefs against the petitioners just a few months before filing of the suits. The complete picture was not given to the court.

13. However, this court is exercising powers under Article 227 of the Constitution of India. Presently, the facts and the materials which have been brought on record by the applicant have not been brought to the notice of the trial court. In fact, the application of the applicants for being impleaded under Order 1 Rule 10 CPC is pending before the trial court. Further, I do not think it appropriate to modify the interim order, at this stage, as the same has been existing for three years and any modification would obviously affect the occupants of the Mercantile House. However, there is a necessity for a detailed examination of submissions made by the applicants. This examination would also include the issue as to which of the associations is more appropriately suited to control the common services of Mercantile House. Accordingly, I dispose of the petition granting liberty to the applicant, namely, Mercantile House Flat Owners Association to move an

application before the trial court for modification/recall of the interim orders which are existing in favour of the appellant vide impugned order dated 04.06.2013. It is appropriate that the application is heard by the trial court. The applicants may also press their application under Order 1 Rule 10 CPC especially in view of the fact that this court had already noted that the applicants are necessary and proper party in its order dated 7.4.2016.

14. In case any such application is filed by the applicants it is of utmost importance that the same be heard expeditiously as uncertainty is affecting the interest of the occupants of Mercantile House. The trial court is requested to dispose of any such application within four months uninfluenced by the observations made by this court in the present order. If necessary and thought appropriate the trial court may also indulge in any exercise required to ascertain as to which of the associations genuinely represents the occupants of Mercantile House.

15. With the above observations the present petition stands disposed of. Pending applications, if any, also stand disposed of accordingly

**JAYANT NATH, J.**

**OCTOBER 20, 2016/v**