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

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Date of decision: 19.7.2016

+ CM(M) 18/2015

RATIONAL ENTERPRISES Petitioner

Through Mr.Shiv Khorana, Adv.

versus

BALKRISHNA INDUSTRIES LTD Respondent

Through Mr.Vikram Dhokalia, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No.25229/2016

On the last date of hearing on 3.3.2016 learned counsel for the respondent had submitted that the respondent Balkrishna Industries Ltd. has amalgamated with Nirvikar Paper Mills Ltd. A copy of the amalgamation order passed by the High Court of Bombay was filed in Court.

Pursuant to the said order the petitioner had today moved an application under Order VI Rule 17 CPC praying that the 'Amended Memo of Parties' be taken on record indicating the name of the respondent as Nirvikar Paper Mills Limited. In view of the submissions made by learned

counsel for the respondent on the last date of hearing and the order of the Bombay High Court the application is allowed and the ‘Amended Memo of Parties’ is taken on record.

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1. Arguments have been heard in the matter. After arguments have been completed learned counsel appearing for the respondent submits that he does not have any instructions from the new entity.
2. Any submission for adjournment ought to have been made at the beginning of the arguments and not at the end. In any case, in my opinion, Balkrishna Industries Limited having stood amalgamated with the new entity, namely, Nirvikar Paper Mills Ltd., in the absence of any specific instruction to the contrary learned counsel for the respondent would be entitled to continue to represent the respondent.
3. The genesis of the controversy between the parties relates to a decree passed by the concerned Additional District Judge for a sum of Rs.4,31,093/- with interest @18% per annum with costs. Against the said order the respondents had filed a petition before this Court being WP(C) No.7011/2003. This Court on 27.8.2008 after hearing the matter at length had noted an agreement between the parties whereby the respondent had agreed to deposit the “decretal amount” by 29.8.2008 in the Court of District Judge who will thereafter mark the matter to the appropriate Court. Liberty was also granted to the respondent to file a leave to defend application within the period of 10 days from 29.8.2008 which was to be considered by the trial Court on merits. The *ex parte* decree was set aside.
4. Subsequently, on 29.8.2008 the respondents had deposited a total sum of Rs.4,31,093/- before the District Judge. The matter was assigned to the

Court of concerned Additional District Judge.

5. The petitioner moved an application under Section 151 CPC wherein it was stated that the respondent has not complied with the order of the High Court and complete decretal amount had not been deposited. It was in these circumstances that the petitioner prayed for dismissal of the application filed by the respondents for leave to defend. The Additional District Judge noted that the respondent had moved miscellaneous application in the Court of District Judge and deposited a sum of Rs.4,31,093/- and thereafter the District Judge had assigned the matter to the concerned Court. The Court held that there will be presumption that the District Judge must have been satisfied about the compliance of the order of the High Court. Accordingly, the Court decided to proceed with the hearing of the arguments of the counsel for the respondent for leave to defend. The petitioner thereafter moved the District Judge by an application under Section 151 CPC for clarification or modification/recall of its order. The District Judge vide order dated 16.7.2014 noted that whether the entire decretal amount was deposited prior to the assignment of the case to the ADJ or not was an issue that was to be agitated by the petitioner at the time when the matter came to be assigned to the ADJ. The District Judge held that in the absence of strict compliance of the orders dated 27.8.2008 passed by the High Court the petitioner had the remedy to either seek review or to challenge the assignment at that point of time in 2009 before the High Court. The District Judge further held that the District Judge had been approached only after the application made before the ADJ had been dismissed.

6. Hence, present petition has been filed challenging the order of the District Judge dated 16.7.2014. Learned counsel appearing for the petitioner

had vehemently argued that as per the decreesheet placed on record the decretal amount comprise of the principal of Rs.4,31,093/- with cost and interest at Rs.18% per annum which is clearly stated in the decree sheet prepared under Section 33 of CPC. Learned counsel appearing for the respondent has submitted that the decretal amount taken by the respondent in the order of the High Court dated 27.8.2008 would only mean the principal amount of Rs.4,31,093/-.

7. Section 2(2) CPC defines a 'decree' as follows:-

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 47 or section 144, but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.”

8. The Supreme Court in the case of ***R.Rathinavel Chettiar & Anr. vs. V.Sivaraman & Ors., (1999) 4 SCC 89*** held that a decree should have the following essentials:-

“10. Thus a "decree" has to have the following essential elements, namely,

(i) There must have been an adjudication in a suit.

(ii) The adjudication must have determined the rights of the parties in respect of, or any of the matters in controversy.

(iii) Such determination must be a conclusive determination resulting in a formal expression of the adjudication.

11. Once the matter in controversy has received judicial determination, the suit results in a decree either in favour of the plaintiff or in favour of the defendant.

12. What is essential is that the matter must have been finally decided so that it becomes conclusive as between the parties to the suit in respect of the subject matter of the suit with reference to which relief is sought. It is at this stage that the rights of the parties are crystallised and unless the decree is reversed, recalled, modified or set aside, the parties cannot be divested of their rights under the decree.”

9. Relevant paragraphs of decreesheet read as follows:-

“Plaint presented on 3.2.2003

The suit coming on this day for final disposal before me in the presence of Sh.Subhash Togra Adv. for the plaintiff and SA Neeraj Sharma, Adv. for the defendant. It is ordered that the suit of the plaintiffs is decreed to pay to the plaintiff sum of Rs.4,31,093/- with interest thereon at the rate of @18% p.a. per cent, per annum from 3.2.2003 to the date of realisation of the said sum and do also pay Rs.6595 the costs of the suit.”

10. Hence, it is clear from the decreesheet that the decretal amount comprised principal of Rs.4,31,093/- plus the interest amount. The rights of the plaintiff get crystallised in terms of the decree. The term includes payment of interest at the rate of 18% per annum from 03.02.2003 to the date of realisation on the principal sum of Rs.4,31,093/-. Hence, it is clear that in terms of the agreed order dated 27.08.2008, the respondent had to deposit the amount including interest and cost as stated in the decree.

11. In the interest of justice, a final opportunity is granted to the respondent to file the full decretal amount with the interest and costs as

quantified in the decreesheet with interest payable upto 29.08.2008 within four weeks from today. This would be alongwith additional costs of Rs.2 lacs for the delay in complying with the order dated 27.8.2008. The cost shall be treated as part of the deposit. In case the necessary compliance is made, the ADJ shall thereafter adjudicate upon the application for leave to defend and proceed accordingly. If for some reason, the order is not complied with, necessary consequences would follow against the respondents.

12. Petition stands disposed of. The impugned order dated 16.7.2014 is modified, as above.

13. A copy of this order be given dasti, as prayed.

JAYANT NATH, J

JULY 19, 2016

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