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

\+ EFA(OS) 26/2015 and CM No. 13461/2015

M/S VLCC HELATHCARE LTD ..... Appellant

Through: Mr Punit D. Tyagi and Mr Ankit Parmar, Advs.

versus

GAJENDER SINGH & ANR ..... Respondents

Through: Mr Davinder N. Grover and Ms Anamika Saraff, Adv. Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

<u>O R D E R</u>

% 18.02.2016

1. This appeal is directed against an order made by the learned Single Judge during the course of execution. The execution proceedings were in respect of a consent award which directed the payment of user charges/damages for a six month period at the rate of Rs 7,00,000/- (the last two months user charges aggregating to Rs.14,00,000/-, being adjustable from the security deposit). In addition, the judgment debtor/appellant was agreed to bear "any statutory liability, including the service tax for the premises".

2. It is not in dispute that the user charges for the six month period were paid by the Judgment Debtor. The Decree Holder claimed a sum of Rs.18.83 lakhs with 18% interest on account of the statutory liability towards the service tax liabilities. The appellant/judgment

debtor disputed contending firstly that the Court lacks jurisdiction and secondly that liability was inchoate and the amount claimed was excessive. The learned Single Judge overruled the objections. The judgment debtor is consequently in appeal before us.

3. Learned counsel for the judgment debtor/appellant reiterated the submissions and relied upon ***Vijay Gupta vs. Renu Malhotra*** *(5) RAJ. 214 (Del)* in support of his argument that the Court did not possess the primary pecuniary jurisdiction in the matter since the amount claimed in the execution was Rs.18.83 lakhs. He urged—on the second issue that the award was silent as to the period of statutory tax liability, i.e., whether it covered the six month period or earlier period as well.

4. This Court has heard the counsel for the parties and is of the opinion that the appeal is meritless. As to the first argument, the reliance upon ***Vijay Gupta*** *(supra)* is inapt because there the decree was of Rs.9,56,760/-; it awarded the interest at the rate of 10% per annum. In this case, the primary award, i.e., the consent award itself was Rs.42,00,000/-. The decree holder approached this Court for partial non-compliance. Consequently, the decree holder was entitled higher value of Rs. 42, 00,000/- plus unsatisfied amount of the decree. That apart, the decree holder also claimed 18% per annum interest over and above the unpaid amount of Rs 18.83 lakhs. Consequently, the submission with respect to lack of pecuniary jurisdiction is unfounded.

5. On the second issue, this Court is again of the opinion that

appellant's submissions are unworthy of acceptance. The award was both in respect of the amount payable post termination of tenancy as well as the entire tenure of the tenancy. The commencement of the concerned stipulation in the award, i.e., the appellant "shall vacate the premises in question, i.e., A-18, Lajpat Nagar-II, New Delhi on 15.11.2011. The respondent shall also pay user charges of Rs.42,00,000/- (Rupees forty two lakhs only) to the claimant for not vacating the premises after the termination of tenancy for the said period of six months being Rs.7,00,000/- (Rupees seven lakhs only) per month in full and final settlement of all disputes inter-se the parties.

6. The user charges are clearly quantified for the period 16.05.2011 to 15.06.2011. Thus, the parties clearly knew as to the period of tenure-as that was not disputed.

7. Having regard to these facts and the circumstance that service tax liability is to be collected by the service provider from the user by virtue of operation of law, the obligation of the owner/decree holder was absolute. In these circumstances, we are of the opinion that there is no infirmity in the impugned order which allowed the execution so far as the unpaid amounts claim were concerned.

8. During the course of hearing, the Decree Holder informed the Court that the amounts were paid under the amnesty Scheme framed by the service tax authorities. If so, the Decree Holder may communicate the account towards which the said payment deposited. It goes without saying that in case any amounts have been paid in

excess by the Judgment Debtor, they would be refunded. The amounts deposited in the Court shall be permitted to be withdrawn by the Single Judge through appropriate orders.

In view of the above findings, the appeal is dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

FEBRUARY 18, 2016
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