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

% *Date of Decision:22.07.2016*

\+ C.R.P. 112/2015 & CM Nos.13562/2015 & 27580/2015

BSES RAJDHANI POWER LTD THR ITS AUTHORISED SIGNATORY ..... Petitioner

Through Mr.Gulshan Chawla, Adv.

versus

I D SHARMA & ORS ..... Respondent

Through Mr.S.P.Singh Chaudhari and Mr.Y.R.Sharma, Adv.
Mr.Malay Dwivedi and Mr.S.K.Chaturvedi, Advs. for DPCL/R-2 with Mr.Sandeep Kr.Dept.Manager Corporate Services/DPCL
Mr.Sumeet Pushkarna, Adv. with Mr.P.Narayan, Manager, for the respondent/Pension Trust
Mr.Gautam Narayan, ASC, GNCTD with Ms.Shruthi Parasa, Adv. for R-4

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. By the present petition the petitioner seeks to impugn the order passed by the Trial Court dated 15.4.2015 by which the petition was dismissed holding that whatever amount is payable by the decreeholder/respondent to the petitioner on account of unauthorised occupation of the official accommodation by the Decree holder would be a separate cause of action for the petitioner and cannot be adjusted against the decretal amount to the satisfaction of the decree in favour of respondent No.1.

2. This Court vide order dated 27.8.2015 had passed a direction pointing

out that the respondent No.1 had been in unauthorised occupation of the official accommodation provided to him and as a consequence of which the Estate Officer has imposed certain damages/user charges exceeding over Rs.5 lacs. This order was not challenged and attained finality. This Court had directed the petitioner to prepare a statement of accounts after deduction of these charges for unauthorised occupation and to file the statement.

3. Learned counsel for the petitioner states that this statement has been filed. Respondent No.1 disputes the statement. Parties have attempted settlement before the Mediation Centre but no settlement could be arrived at. Hence, it has to be seen whether the petitioner can carry out the necessary adjustment it seeks.

4. Relevant portion of Order XXI Rule 18(1) reads as follows:-

> **"XXI 18. Execution in case of cross decrees.-** (1) Where applications are made to a court for the execution of cross decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such court, then—
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> (a) if the two sums are equal, satisfaction shall be entered upon both decrees; and
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> (b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum."

5. Hence, where there are cross decrees in favour of different parties and the two sums are unequal the decree holder for the larger sum would be liable to pay only after deduction of the smaller sum.

6. In the present case the recovery which is sought to be effected by the

petitioners against the respondent does not pertain to a decree in a civil Suit but pertains to assessment of damages made by the Estate Officer in exercise of powers under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 for unauthorised occupation of premises allotted to the respondent as official accommodation while he was in service. The issue that would arise is as to whether these damages fixed by the Estate Officer could be recovered as envisaged for a court's decree under Order 21 Rule 18 CPC. A Full Bench of the Andhra Pradesh High Court in ***Bhoganadham Seshaiah vs. Buddhi Veerabhadrayya & Others, 1971 SCC OnLine AP 104***; ***AIR 1972 AP 134*** noted that on general principals in exercise of its inherent power an Execution Court can entertain and give effect to a claim of set off even in case it do not fall strictly under the provisions of Order 21 Rule 18 or 19 CPC. The Court held as follows:-

> **"16.** Now, order 21 Rule 18, C.P.C. provides that cross decrees for the payment of money shall be set off against each other. However, in order to attract the said Rule, the following condition must be satisfied; (a) the decree must be for the payment of definite sum of money; (b) they must have been passed in separate suites (c) the decree-holder is one must be the judgment-debter (d) the parties must fill the same character in both the suits (e) both decrees must be capable of execution and must be so at the same time and by the same court; and (f) application should have been made to the court for execution of both decrees.
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> **17.** …
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> **19.** The question then is whether apart from the provisions of Rule 18, the court has general or inherent

power to allow a set off in execution proceedings. The matter seems to us beyond any pale of doubt that the court does possess general or inherent power to allow a set off of cross-decrees even in cases where Rule 18 or 19 of Order 21, C.P.C. is not applicable.

20. On general principles and in exercise of its inherent power, an executing court can entertain and give effect to a claim of set off even in case which do not fall strictly within the provisions of Rule 18 or 19 of Order 21, C.P.C. It must be remembered that while Rule 18 is applicable to cases passed in two different suits, Rule 19 relates to cases where there is a decree under which two parties are to recover sums of money from each other. Theser provisions are not, however, exhaustive. De hors these rules, there is general and inherent power in the executing court to grant what is called equitable set off.

23. The distinction between the two has, however to be borne in mind. The difference between the legal set off and an equitable set off is that while in the former case the court is bound to entertain and adjudicate upon the plea when raised, the defence of equitable set off cannot be claimed as a matter of right, but the court has a discretion to adjudicate upon it in the same suit or execution proceedings or to order it to be dealt with in a separate suit or execution proceedings.

24. Form what is discussed above, it would be plain that equitable set off can be claimed in a case where cross-demands arise out of the same transaction as well as in cases where the cross-demands may not arise out of the same transaction but they are so connected in the nature or circumstances that it would be inequitable to allow one party to execute his decree driving the other party to separate proceedings of execution. No hard and fast rules can be laid down, nor it is desirable to do so as to in what circumstances in such cases equitable set off can be permitted. The granting of equitable set off rests in the discretion of the court. This discretion is a judicial discretion and we conceive that the dominant feature of judicial discretion is that it has to be exercised according to settled rules rather than individual fluctuating and unsettled opinion. Thus where a court thinks that investigation into the claim of equitable set off will cause great delay it may refuse to allow it or may order the enquiry to proceed on such terms as it thinks fit.

25. The equitable setoff, however, cannot be treated as a strait jacket formula. It cannot be bound down to the procedural limitations. Since the matter is in the discretion of the court, it may grant equitable set off in a proper case in spite of the fact that no execution petition is independently filed for that purpose. It can grant such a set off if an execution petition is, pending albeit seeking a different mode of executing the decree such as arrest of the judgment-debtor. It is also not relevant that execution petition of a decree which is sought to be set off is or is not filed by the other decree-holder. And even in a case where an independent execution petition if necessary and if filed for the purpose of claiming set off is time barred, that would not deter the court from granting an equitable set of like legal set of would not be permitted if the claim separately enforced would be time barred. But the jurisdiction of the court exists to grant equitable set off if special circumstances permit even in a case where claim for set off is time barred."

7. The above proposition was noted with approval by the Supreme Court in the case of ***Laxmi Chand and Bal Chand vs. State for Andhra Pradesh, MANU/SC/0150/1986; AIR 1987 SC 20*** wherein it was held as follows:-

> "7. We have no doubt that in certain cases the Court has the power to allow a set off even in cases which do not strictly fall within the terms of Order 21 Rule 18 of the Code. A Full Bench of the Andhra Pradesh High Court has discussed the matter in Bhoganadham Seshaiah vs. Budhi Veerabhadraya (died) and Ors. MANU/AP/0049/1972: AIR 1972 AP 134 and has examined at some length the circumstances in which such set off may be granted...."

8. In my opinion, the principle of equitable set off as stated above would be applicable clearly to the facts of the present case. Respondent No.1 being a former employee of the petitioner/predecessor of the petitioner, had over stayed in the official accommodation on account of which certain damages have been fixed by the Estate Officer. This calculation has attained finality and the petitioner is entitled to recover the same. It would be in the interest of justice that the petitioners while honouring the decree passed in favour of respondent No.1 adjusted the dues as calculated by the Estate Officer and made payment of the balance decretal amount following principles of equitable set off.

9. Accordingly, keeping in view the said provision of law the present petition is allowed to the extent that the petitioner shall be entitled to adjust the dues payable on account of unauthorised user of the official accommodation as calculated by the Estate Officer in exercise of powers under the public premises (Eviction of Unauthorised Occupants) Act, 1971

when satisfying the decree dated 16.11.1994 in favour of respondent No. 1.

10. With these observations the present petition stands disposed of. It may be clarified that other than the issue of adjustment rights of the petitioner, no other issue was argued or has been dealt with.

JAYANT NATH, J

JULY 22, 2016

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