

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

% **Date of decision: 21<sup>st</sup> July, 2017**

+ **CM(M) 21/2013 & CM No.378/2013 (for stay)**

**NORTH DELHI MUNICIPAL CORPORATION ... Petitioner**

Through: Ms. Mini Pushkarna, Ms.  
Anushruti and Ms. Vasundhara  
Nayyar, Advs.

Versus

**HARI KISHAN & ANR.**

**.... Respondents**

Through: Mr. Vivek B. Saharya, Adv. for  
R-1.  
Mr. Anurag Mathur, Adv. for  
R-2/DJB.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. This petition under Article 227 of the Constitution of India impugns the order [dated 26<sup>th</sup> October, 2012 in Ex.No.305/08/02 of the Court of Additional Senior Civil Judge (ASCJ), (North), Tis Hazari Courts, Delhi] of dismissal of two applications filed by the petitioner/judgment debtor, both under Section 151 of the Code of Civil Procedure, 1908 (CPC).

2. The petition was entertained and notice thereof issued. On 9<sup>th</sup> April, 2013, the counsel for the respondent No.1/decreed holder stated that he will not get the judgment and decree under execution executed. The said statement continues to bind the respondent No.1/decreed holder. Resultantly, the execution proceedings before the ASCJ remain stayed.

3. The counsels have been heard.
4. The respondent No.1/decree holder, in or about the year 1993, instituted a suit against the petitioner/judgment debtor/Municipal Corporation of Delhi (MCD) for (i) declaration that the services of the respondent No.1/decree holder stood regularised since 1<sup>st</sup> May, 1981; (ii) for a direction to the petitioner/MCD to regularise the services of the respondent No.1/decree holder since 1<sup>st</sup> May, 1981; (iii) for a direction to the petitioner / MCD to pay to respondent no.1 / decree-holder the entire consequential benefits arising out of such regularisation; and, (iv) for a direction to the petitioner/MCD to pay equal pay to the respondent No.1/decree holder as being paid to similarly situated employees of the petitioner/MCD.
5. The counsel for the petitioner/MCD states that the petitioner/MCD was proceeded against *ex-parte* in the said suit.
6. Vide judgment dated 1<sup>st</sup> September, 2001 in the aforesaid suit, being Suit No.683/1993 of the Court of Sh. Sanjay Kumar, Civil Judge, Delhi, the petitioner/MCD was directed to regularise the respondent No.1/decree holder since 1<sup>st</sup> May, 1991 and to pay the entire consequential benefits and to pay to the respondent No.1/decree holder equal pay as being paid to employees in similar position in the regular cadre.
7. The respondent No.1/decree holder filed execution impleading the petitioner/MCD as judgment debtor.

8. The petitioner/MCD filed the application under Section 151 CPC aforesaid *inter alia* pleading (i) that the respondent No.1/deGREE holder at the time of institution of the suit was working with Delhi Water Supply & Sewerage Disposal Undertaking of the petitioner/MCD; (ii) that the said Undertaking of the petitioner/MCD vide the Delhi Water Board Act, 1998 was vested with the Delhi Jal Board (DJB); (iii) that according to Section 46 of the said Act, all the employees of the said Undertaking also stood transferred to DJB; (iv) that the respondent No.1/deGREE holder also in pursuance to the said Act was now working with DJB and thus the liability to satisfy the decree was of DJB and not of the petitioner/MCD.

9. In the other application under Section 151 CPC, prayer was made for impleadment of DJB.

10. The learned ASCJ has vide the impugned order dismissed both the applications observing that the decree has to be executed as per its terms against the petitioner/MCD. It is also noted in the order that the petitioner/MCD has in part satisfaction of the decree already made some payments to the respondent No.1/deGREE holder.

11. Though no error can be found in the reasoning of the learned ASCJ of the Executing Court being bound to execute the decree as per its terms but the decree under execution in the present case is of regularisation of the respondent No.1/deGREE holder and for payment of consequential benefits to the respondent No.1/deGREE holder. Such a decree is in the nature of a decree for specific performance and the question of regularising the services of the respondent No.1/deGREE

holder with an employer with whom the respondent No.1/decreed holder, since the coming into effect of the Delhi Water Board Act, 1998; is not working does not arise. The liability if at all of the petitioner/MCD under the decree would be for the period prior to the coming into force of the said Act and that too, if permissible under the said Act.

12. It is not in dispute that the respondent No.1/decreed holder has not superannuated as yet and is still working with DJB.

13. In these circumstances, the principle of the decree being required to be executed as per its terms, cannot be applied.

14. The nature of the decree cannot be changed by shifting the employment of the respondent No.1/decreed holder from that under DJB to that under MCD.

15. It may also be noted that the respondent No.1/decreed holder also, after coming into force of the Delhi Water Board Act, though became an employee of DJB but continued to pursue the suit against the petitioner/MCD, though must have been drawing his emoluments after 1998 from DJB.

16. Upon the same being put to the counsel for the respondent No.1/decreed holder, he states that it was for the petitioner/MCD to inform the aforesaid fact to the Suit Court and in which case, the respondent No.1/plaintiff/decreed holder would have substituted the petitioner/MCD with DJB.

17. It is the duty of the respondent No.1/decreed holder as the plaintiff to substitute the successor in interest of the defendant against whom the decree is claimed and it is the respondent No.1/decreed holder who only is suffering by not doing so.

18. The counsel for the petitioner/MCD in this regard has referred to Order XXII Rule 10 of CPC and has also stated that DJB has been appearing only in response to the applications aforesaid filed by the petitioner/MCD.

19. In my view, the proper course of action for the respondent No.1/decreed holder in such situation is to make an application in the suit for the purposes of substituting DJB in place of the petitioner / judgment debtor / MCD. Per Section 46 of the Delhi Water Board Act, the Water Supply and Sewage Disposal Account of the Municipal Fund constituted under the Delhi Municipal Corporation Act, 1957 and all properties, assets and liabilities under the control of the Delhi Water Supply & Sewage Disposal Undertaking immediately before the coming into force of the said Act vested in the Delhi Water Board established under the Delhi Water Board Act and all properties, assets and liabilities relating to sewerage under the control of the Municipal Corporation immediately before such date vested in the Board and all officers and employees of the Delhi Water Supply & Sewerage Disposal Undertaking and all such employees of the Municipal Corporation of Delhi who were engaged mainly in connection with water supply and sewerage disposal became employees of the Board, at the same remuneration and on the same terms and conditions, as

they would have held if the Board had not been established. The Delhi Water Board was thus the successor-in-interest of the petitioner / judgment-debtor MCD within the meaning of Order XXII Rule 10 of the CPC. Supreme Court in ***Government of Orissa Vs. Ashok Transport Agency*** (2005) 1 SCC 536 held that normally in a case covered by Order XXII Rule 10 of the CPC where rights are derived by an assignee or a successor-in-interest pending a litigation, it is for that assignee or transferee to come on record if it so chooses and to defend the suit. It was further held that is equally open to the assignee to trust its assignor to defend the suit properly but with the consequence that any decree against the assignor will be binding on it and would be enforceable against it. It was yet further held that in terms of Section 146 of the CPC, a proceeding could be taken against any person claiming under the defendant or the judgment debtor and that a person claiming under the defendant or the judgment debtor could seek to challenge the decree or order that may be passed against the defendant, by way of appeal or otherwise, in the appropriate manner but it would not be open to it to challenge the decree as void or unenforceable in execution in the absence of any specific provision in that regard in the statute or order bringing about such a transfer or assignment.

20. I have not come across any such provision in the Delhi Water Board Act.

21. Reference in this regard can also be made to ***Bhagwan Dass Chopra Vs. United Bank of India*** 1987 (Supp) SCC 536.

22. Supreme Court in ***Ghantesher Ghosh Vs. Madan Mohan Ghosh*** (1996) 11 SCC 446 held that Order XXII Rule 10 applies to execution proceedings also.

23. Though Order XXII Rule 10 of the CPC provides that in cases of assignment or devolution of interest during the pendency of the suit, the suit, may by leave of the Court, be continued by or against person to or upon whom such interest has come or devolved but Supreme Court in ***Dhurandhar Prasad Singh Vs. Jai Prakash University*** (2001) 6 SCC 534 held that even if no such step is taken, the suit may be continued with the original party and the person upon whom the interest has devolved will be bound by and can have the benefit of the decree as the case may be, unless it is shown in a properly constituted proceedings that the original party being no longer interested in the proceeding did not vigorously prosecute or colluded with the adversary resulting in decision adverse to the party upon whom the interest has devolved. It was observed that the legislature while enacting Rules 3,4 and 10 of Order XXII of the CPC has made a clear-cut distinction; in cases covered by Rules 3 and 4, if right to sue survives and no application for bringing the legal representatives of a deceased party is filed within the time prescribed, there is abatement of the suit; in cases covered by Rule 10, the legislature has not prescribed any such procedure in the event of failure to apply for leave of the court to continue the proceeding by or against the person upon whom interest has devolved during the pendency of a suit and which shows that the legislature was conscious

of this eventuality and yet has not prescribed that failure would entail dismissal of the suit as it was intended that the proceeding would continue against the original party although he ceased to have any interest in the subject of dispute. It was further held that the decree against the original defendant in such a situation is not void.

24. The counsel for the respondent No.1/decreed holder states that in fact there is on record of the Executing Court the consent of DJB also to abide by the decree but DJB is refusing from doing so.

25. This being a Revisional / Article 227 Roster, I am constrained by the CPC from issuing directions as sought. It will be open to the respondent No.1/decreed holder to file a petition under Article 226 of the Constitution of India in this regard and which, if filed, shall be considered on its own merits.

26. The counsel for the respondent No.1/decreed holder states that he will be taking the aforesaid steps.

27. Resultantly, the petition succeeds. The order dated 26<sup>th</sup> October, 2012 of the ASCJ is set aside. It is directed that the decree, insofar as against the petitioner/MCD, cannot be executed owing to the provisions of the Delhi Water Board Act, 1998. The application of the petitioner/MCD under Section 151 CPC to the said extent is allowed.

28. As far as the other application of the petitioner/MCD for impleading DJB is concerned, since the counsel for the respondent No.1/decreed holder states that he will be making an application for

amendment of the decree, it is deemed appropriate to allow DJB to be substituted in place of the petitioner/MCD in Execution Petition subject to all objections of DJB in this regard and which shall be considered by the Executing Court.

The petition is disposed of.

**JULY 21, 2017**

‘bs/gsr’..

**RAJIV SAHAI ENDLAW, J.**