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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ CM(M) No.558/2017, CM No.19041/2017 (for stay) & CM  
No.19042/2017 (for calling of the record).

DELHI VIDHUT BOARD

..... Petitioner

Through: Mr. Krishnendu Datta, Mr. Manish  
Srivastava and Mr. Arav Kapoor,  
Advts.

versus

BENTEX PROPERTIES PVT LTD

..... Respondent

Through: Mr. G.P. Sharma, Adv.

**CORAM:**

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

**ORDER**

% **20.07.2017**

1. This petition under Article 227 of the Constitution of India impugns the order (dated 9<sup>th</sup> February, 2017 of the Court of Additional District Judge-06, (West), Tis Hazari Courts, Delhi in CS No.607630/16 filed by the respondent / plaintiff) allowing the application of the respondent / plaintiff for amendment of the plaint.
2. The petition was entertained and notice thereof ordered to be issued.
3. The counsel for the respondent / plaintiff appears and seeks time to file reply.
4. There is no need to call for reply to each and every petition under Article 227 of the Constitution of India preferred before this Court in its supervisory jurisdiction and this Court on a perusal of the order of the Trial Court impugned in the petition and the material on record is to determine whether the same requires any interference. No fresh pleas which may be taken in the reply can be considered.
5. The counsel for the petitioner / defendant has been heard.

6. The counsel for the petitioner / defendant has argued that (i) the suit from which this petition arises was filed as far back in the year 1998, for permanent injunction with respect to a bill raised by the petitioner Delhi Vidyut Board (DVB) and challenging the same; (ii) in the year 2005, the respondent / plaintiff filed an application for amendment to also include in the suit a relief of declaration as to the validity or incorrectness of the bill with respect to which injunction was claimed; (iii) that the learned Additional District Judge, vide the impugned order, has allowed the amendment; (iv) while allowing amendment, the plea to be taken by the petitioner / defendant in the written statement to the amended plaint qua the claim of declaration being barred by limitation, has not been saved; and, (v) the petitioner / defendant is impugning the order to the extent of saving the plea of the petitioner / defendant of limitation qua the relief of declaration.

7. On enquiry, it is informed that till 2005, issues had not been framed in the suit.

8. On further enquiry, it is informed that subject to the respondent / plaintiff depositing some amount, there is stay of enforcement of the bill impugned in the suit.

9. It is further the contention of the counsel for the petitioner / defendant that this Court in *Sarjiwan Singh Vs. Delhi Vidyut Board* 110 (2004) DLT 633 referring whereto the application for amendment was filed, did not lay down any new law and it was the settled position in law even prior thereto that a challenge to the bill is to be made by seeking the relief of declaration with respect to the bill alongwith the consequential relief of injunction. It is contended that the respondent / plaintiff having not sued for

declaration, was not entitled to maintain the suit for injunction simpliciter and objection in which regard had been taken in the written statement to the suit.

10. However a perusal of the written statement does not show the petitioner / defendant to have therein taken a plea of the suit for permanent injunction without claiming the relief of declaration being not maintainable.

11. A reading of **Sarjiwan Singh** supra does indeed show that what was observed therein i.e. that where a bill has been raised by the Electricity Department which is *prima facie* legal, a declaration must be prayed for to the effect that the bill is incorrect or illegal before the plaintiff can legally pray for an injunction against the recoveries made on the basis of such bills, was laid down for the first time without it being the law prior thereto that the suit for injunction simpliciter restraining recovery of amount under the bill or coercive action for non-payment therefor, was not maintainable.

12. In fact I have enquired from the counsel for the petitioner / defendant whether not in every claim for injunction a declaration of the right on the basis of which injunction is claimed, is implicit. It has been so held by me in (i) **Radnik Exports Vs. Standard Chartered Bank** 2014 SCC OnLine Del 3404; and, (ii) **Bharat Bhushan Sabharwal Vs. Rama Bhasin** 2010 SCC OnLine Del 653 and I find it to be so held also in (i) **Messrs. Metro General Traders Vs. The Commissioner, the Corporation of Calcutta** AIR 1965 Cal 442 (DB); (ii) **Unnikrishnan Vs. Ponnu Ammal** AIR 1999 Ker 405; and, (iii) **Sudarshan Kumar Vs. Kabal Singh** 2011 SCC OnLine P&H 12729.

13. It thus appears that the respondent / plaintiff, in 2005, was justified in seeking the amendment to incorporate the relief of declaration in the suit in

accordance with the dicta of this Court in *Sarjiwan Singh*.

14. Though the counsel for the petitioner / defendant has contended that the petitioner / defendant be given liberty to take the defence of limitation to the relief of declaration and the same be left for adjudication at the final stage but I am of the view that in the facts aforesaid where the respondent / plaintiff had admittedly instituted the suit for the relief of injunction very promptly and in which interim order was granted, no ground for interference in the order, in exercise of jurisdiction under Article 227 of the Constitution of India, is made out.

Dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J**

**JULY 20, 2017**

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