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

+ CM(M) 573/2017 & CM No.46032/2016 (for stay)

TDI INFRASTRUCTURE LTD

..... Petitioner

Through: Mr. Vaibhav Agnihotri and Mr. Preet Oberoi, Advs.

Versus

NEW INDIA ASSURANCE CO LTD & ANR

..... Respondents

Through: Mr. D.D. Singh and Mr. Navdeep Singh, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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25.10.2017

1. The challenge in this petition, earlier filed as FAO No.580/2016 and vide order dated 9th May, 2017 converted into a petition under Article 227 of the Constitution of India, is to the order dated 24th August, 2016 in CS No.56630/2016 of the Court of Additional District Judge (ADJ)-02, New Delhi District, Patiala House Courts, New Delhi dismissing the application of the petitioner for recall of the order dated 1st April, 2016 striking off the defence of the petitioner for not filing the written statement within time permitted.

2. I have drawn the attention of the counsel for the petitioner to *Land Acquisition Officer, Andhra Pradesh Vs. Ravi Santosh Reddy* (2016) 14 SCC 238 which lays down that no Revision Petition lies against an order of dismissal of an application for review/recall of the earlier order and

without impugning the order of review/recall is sought. I have in order dated 19th September, 2017 in CM(M) 1028/2017 titled ***Fashion to Fashion Exports Vs. MVM Enterprises*** extended the said principle to a petition under Article 227 of the Constitution of India as well.

3. The counsel for the petitioner states that the petitioner, in the second prayer in the petition, has also sought an opportunity to file written statement.

4. However that would not amount to a challenge to the order dated 1st April, 2016 of which recall was sought.

5. The counsel for the petitioner then seeks time to amend the petition.

6. Finding that the petition has already remained pending for a considerable time and the Trial Court record has also been requisitioned resulting in the proceeding in the suit from which this petition arises also not proceeding further, I have perused the Trial Court record.

7. It is revealed (i) that the suit, from which this petition arises, was filed by the respondent No.1 against the respondent No.2 Delhi Metro Rail Corporation only; (ii) that in the body of the plaint, there was also a reference to plaintiff No.2 but there was no plaintiff No.2 in the plaint; (iii) that after the issues were framed in the suit, the respondent No.1/plaintiff filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908 (CPC) to implead the petitioner as defendant No.2 in the suit; (iv) on 14th November, 2014, time was also sought by the counsel for the respondent No.1/plaintiff to file details of plaintiff No.2; (v) that notice of the application under Order I Rule 10 of CPC supra was ordered to be issued to the petitioner; (vi) the petitioner did not appear inspite of service of CM(M) 573/2017

notice and vide order dated 2nd March, 2015 the petitioner was impleaded as defendant No.2 to the suit and “consequential amendment was also allowed and amended plaint, if any ordered to be filed by the next date of hearing”; (vii) that none of the orders thereafter record the factum of the filing of the amended plaint; (viii) that a perusal of the Trial Court record also does not show any amended plaint on record; (ix) the only plaint on record is dated 15th April, 2014; (x) that the counsel for the respondent No.1/plaintiff is also unable to make any categorical statement, whether any amended plaint or even amended memorandum of parties showing the petitioner as defendant No.2 was filed; he does not have any such copy in his own file also.

8. In the aforesaid circumstances, the counsel for the petitioner has argued that in fact owing to the default aforesaid of the respondent No.1/plaintiff, the occasion for the petitioner to file written statement did not arise.

9. Needless to state that the plaint, as existing on the suit record, contains no averment or relief against the petitioner/defendant no.2. In fact from the said plaint, it also cannot be deciphered as to who is the plaintiff No.2.

10. Since the counsel for the respondent No.1/plaintiff is also found at fault, this petition is disposed of with the following directions:

(I) The respondent No.1/plaintiff to file amended plaint on or before 22nd November, 2017 with advance copy to the counsel for the petitioner as well as the counsel for the respondent No.2/defendant No.1;

(II) The suit file requisitioned in this Court be sent back forthwith and the suit be listed before the Court of (ADJ)-02, New Delhi District, Patiala House Courts, New Delhi before whom it was pending, on 23rd November, 2017;

(III) If no amended plaint is filed by the said date, no further time shall be given and the opportunity given to the respondent No.1/plaintiff to file amended plaint shall be closed and the suit shall be dealt with in accordance with the plaint as existing;

(IV) If the amended plaint is so filed, the petitioner/defendant No.2 and the respondent No.2/defendant No.1 to file their written statement thereto on or before 15th December, 2017;

(V) If the written statements are not so filed, no further time shall be granted and the right to file written statement shall stand closed;

(VI) The Suit Court to proceed with the suit in terms of above.

11. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

OCTOBER 25, 2017

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