

\$~3

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

+ **EFA(OS) 33/2016**

SOM DATT ENTERPRISES LIMITED Appellant
Through: Mr. Naresh Thanai, Mr. G. P.
Thareja, Ms. Bharti and Ms.
Khushboo, Advocates.

versus

M/S VIJAY CABLE INDUSTRIES & ORS. Respondents
Through: Mr. Rajesh Baneti, Advocate with
Mr. Vikram Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

ORDER

% **21.12.2017**

Learned counsel for the respondents states that the execution petition may be restored.

2. In view of the statement made by the learned counsel for the respondents, the impugned order dated 17th August, 2016 dismissing the execution petition is set aside and the execution petition no.126/1997 is restored before the learned Single Judge. Copies of the orders passed in the appeal as well as the report of the Court Receiver will be placed on record before the learned Single Judge. The superdari would continue and would abide by further orders to be passed by the learned Single Judge.

3. The second impugned order under challenge dated 11th August, 2016, *inter alia*, holds that the execution proceedings against M/s. Priya Cable Pvt. Ltd. were not maintainable, not being a defendant and judgment debtor in suit no.2428/1995 which was filed against Vijay Cable Industries, V. K. Bhatia, V.K. Bhatia & Sons (HUF) and T. R. Bhatia. The impugned order

also records that M/s. Priya Cable Pvt. Ltd., though a party to the agreement dated 18th March, 1996 which became the basis of the compromise application being IA no.2872/1996, was not a party to the compromise decree. No liability was undertaken by M/s. Priya Cables Pvt. Ltd. No statement on behalf of M/s. Priya Cable Pvt. Ltd. was recorded.

4. Learned counsel for the appellant, on the other hand, has drawn our attention to the subsequent agreement dated 24th July, 1997 to which M/s. Priya Cable Pvt. Ltd. was a party and this agreement was thereafter filed and enclosed with the execution application no.233/1997 filed in execution petition no.126/1997. Affidavit in support of the application was filed by Ms. Priya Bhatia on behalf of M/s. Priya Cable Pvt. Ltd. Contention of the appellant is that pursuant to the said agreement and the application of M/s. Priya Cable Pvt. Ltd. undertaking and guarantee was given. The execution petition no.126/1997 in view of the subsequent developments would be maintainable against M/s. Priya Cable Pvt. Ltd.

5. Learned counsel appearing for M/s. Priya Cable Pvt. Ltd. submits that there was novation of the agreement dated 24th July, 1997 and hence M/s. Priya Cable Pvt. Ltd. is no longer liable. He submits that vide order dated 15th January 1998, the execution proceedings were revived and the restraint order passed earlier in respect of property No.A-111, New Friends Colony, New Delhi-110065 was also revived.

6. We would observe that these aspects have to be examined and have not been examined and allude to in the impugned order dated 11th August, 2016. Without examining the aforesaid contentions it would not be appropriate to delete and treat M/s. Priya Cable Pvt. Ltd. as not being a party to the execution proceedings. What was the effect of the agreement dated

24th July 1997, execution application No. 233/1997 and the orders passed, would have to be examined and considered.

7. Accordingly, we set aside the operative portion of the order dated 11th August, 2016 deleting M/s. Priya Cable Pvt. Ltd. from the execution petition, while observing that the question of effect of agreement dated 24th July 1997, the execution application no.233/1997 and orders passed thereafter including the order dated 15th January, 1998 would be examined and considered by the learned Single Judge. We clarify that we have not expressed any opinion on the said aspect.

8. Interim order which was already in existence prior to 17th August, 2016 would also get revived.

9. To cut short the delay the parties are directed to appear before the learned Single Judge on 18th January, 2018.

10. Execution appeal is disposed of with the aforesaid terms and without any order as to costs.

SANJIV KHANNA, J

PRATHIBA M. SINGH, J

DECEMBER 21, 2017/dk