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

+ C.R.P. 47/2017

SAUMYA GUPTA

..... Petitioner

Through Ms.Neha Garg, Advocate

versus

BSES YAMUNA POWER LTD

..... Respondent

Through Mr.Manish Kumar Srivastava,
Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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22.02.2017

CM No.7327/2017 (*exemption*)

Allowed subject to all just exceptions.

CM No.7328/2017 (*delay*)

For the reasons stated in the application same is allowed. The delay of 26 days in re-filing the present petition is condoned.

CRP 47/2017

1. By the present petition under section 115 of the CPC the petitioner seeks to impugn the order dated 5.7.2016 by which order the execution filed by the petitioner against the decree dated 3.2.2012 was dismissed holding that there is no formal expression of rights of parties in the decree and hence, the decree cannot be executed.

2. The petitioner had filed a suit for mandatory injunction and recovery of Rs.2,86,576/- against the respondent. The petitioner had apart from the decree of Rs.2,86,576/- had sought a relief that a direction be passed against

the defendant to re-install the electricity meter in the premises of the petitioner/plaintiff. The trial court by judgment dated 6.1.2009 dismissed the suit of the petitioner.

3. In appeal, the appellate court passed a decree of mandatory injunction as prayed for in favour of the petitioner.

4. The petitioner has thereafter filed an Execution Petition which has been dismissed by the executing court vide order dated 5.7.2016 holding that there is no formal expression of rights of parties made in the decree and the decree cannot be executed.

5. I have heard learned counsel for the parties.

6. The findings recorded by the appellate court in its order dated 3.2.2012 is that the removal of the electricity meter from the premises of the petitioner was an illegal act of the respondent and the electricity meter in the name of the appellant is liable to be reinstalled. Based on these findings, the appellate court had passed a decree of mandatory injunction as prayed for in favour of the appellant.

7. By the impugned order the executing court has reached a conclusion that there is no formal expression of rights of parties without giving any reasons. The petitioner having obtained a decree in his favour cannot be told at the end that the decree lacks a formal expression of rights of parties and hence cannot be executed and that in effect he has despite the decree in his favour no relief has been granted.

8. In this context, reference may be had to section 47 of CPC which reads as follows:-

“47. Questions to be determined by the Court executing decree.- (1) All questions arising between the parties to the suit

in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.”

9. Hence, in view of the above provisions all issues relating to execution, discharge or satisfaction of decree have to be determined by the court executing the decree.

10. In the present case, the appellate court has held that a mandatory decree is passed in favour of the petitioner as prayed for. It is manifest that the executing court had to go to the prayer clause of the suit filed by the petitioner to determine the directions and its ambit. The impugned order suffers from material illegality and is contrary to the legal provisions. Same is accordingly quashed. Parties are remanded back to the executing court for fresh adjudication/steps in accordance with law. Parties to appear before the executing court on 15.3.2017.

11. Petition and all pending applications, if any, stands disposed of.

JAYANT NATH, J

FEBRUARY 22, 2017

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