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

+ W.P.(C) 9452/2017 and CM APPL. 38436-38437/2017

MADHUR KRISHAN DHINGRA

..... Petitioner

Through Mr. Rakesh Malhotra, Ms. Rajeshwari
H. and Mr. Shokeen, Advocates.

versus

D.M.C NORTH AND ORS.

..... Respondents

Through Ms. Saroj Bidawat, Adv. for NDMC.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **27.10.2017**

Petitioner is aggrieved of the order dated 25.5.2016, whereby, Id. AT, MCD, having declined an application of a third party in an appeal preferred by the petitioner under Section 347(B) of the DMC Act, reserved the liberty to the said third party to file the documents, if any, as also, to orally argue the matter, at the stage of final arguments.

It comes to be pointed out that against the impugned order dated 25.05.2016, the petitioner had earlier preferred a writ petition before this Court, but, on the liberty granted to seek appropriate remedy, as admissible under law, an appeal was preferred before the concerned Id. District Judge and that, the appeal so preferred, has now come to be dismissed, being not maintainable vide order dated 1.9.2017. Of course, the appeal preferred by the petitioner before the

ld. District Judge against the impugned order was not tenable. The petitioner has now again approached this Court by way of the instant petition. The impugned order dated 25.5.2016 is as under:-

“Arguments on maintainability of the application under order 1 Rule 10 CPC heard. Even if it is presumed that all the averments made in the application is correct, then also in this proceedings between the appellant and the MCD the applicant has no right to participate and he cannot become a party as there is a clear-cut judgment of Delhi High Court in case Hardyal Singh Mehta Vs. MCD, AIR 1990 Delhi 170 in which it is held that in the matter between the appellant and the MCD no third person can join and become a party to such proceedings and in such proceedings the application under order 1 Rule 10 CPC is not maintainable. Any dispute between the applicant moved by application under order 1 Rule 10 CPC is hereby dismissed. However, the applicant is permitted to file the documents, if any and to orally argue the matter at the final arguments stage.”

In Hardyal Singh Mehta Vs. Municipal Corporation of Delhi, in para 22, this Court observed, as under:

“In my view, generally, this does not give right to the third party to approach the Appellate Tribunal, for either producing the documents or for giving statement before the Tribunal. In its discretion, however, the Tribunal, in exercise of its power under Rule 14(4) of the Rules can direct the production of documents and/or examination of a person, as a witness, if the Tribunal is satisfied that this is essential that this will enable the Tribunal to arrive at just conclusion.”

A plain reading of the above-said observations made by this Court in Hardyal Singh’s case (supra) leaves no doubt that even a third party can approach the AT, MCD, though, exceptionally and for a limited purpose, when the circumstances would, so warrant. Though, the impugned order, by itself, does not disclose any such exceptional circumstance or the purpose, for which the third party

was wanting to join in the proceedings before AT, MCD, it also does not disclose as to the reasons for granting the liberty. It appears that ld. AT, MCD granted the application in the larger interest of justice, in the given facts and circumstances of the case.

At this stage, ld. Counsel for the petitioner submits that the impugned order may be modified to the limited extent that the respondent no.2 should not be interfering and joining the proceedings, as if, he is a party to the appeal. Of course, it cannot be so. The basic principle of law elaborated in Hardy Singh's case (supra) is that no third party can join in the statutory appeal preferred under Section 347(B) of DMCT Act, which is inter-se the aggrieved person and the Corporation. It therefore, goes without saying that but for the documents to be filed by the parties seeking to join the proceedings, AT, MCD would give only a restrictive hearing to the third party, if, so called for. Impugned order dated 25.5.2016 stands modified to that effect. Petition and the pending applications stand disposed off accordingly.

A. K. CHAWLA, J

OCTOBER 27, 2017

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