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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 06th February, 2018

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CM(M) 222/2015 and CM 4727/2015

BSES RAJDHANI POWER LTD

..... Petitioner

Through: Mr. Sunil Fernandes, Standing
counsel with Mr. Arnav Vidyarthi and Ms.
Anju Thomas, Advocates

Versus

INDER SINGH & ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petition at hand seeks to assail the order dated 22.11.2014 whereby the petitioner has been impleaded as an additional defendant, besides two others, they being Govt. of NCT of Delhi and Municipal Corporation of Delhi, in the civil suit (CS no.135/14/09) which was instituted by the respondents in February 2009 seeking compensation / damages on account of death of their son Rakesh Singh invoking the provisions contained in the Fatal Accident Act, 1855.

2. It may be mentioned here that Rakesh Singh, per the pleadings in the suit, died upon being electrocuted, he having come in contact with the high tension power lines of the petitioner, running over the property of the parties impleaded as defendants (i.e. sixth to eighth

respondents), his services for laying a connection with such high tension power lines having been allegedly availed by the said set of defendants under duress. The plaint, as originally presented, made no reference to any negligence on the part of the petitioner or any of its employees or servants.

3. The suit had reached the stage of final adjudication, after evidence had been led, it having been contested, when the application under Section 151 of the Code of Civil Procedure, 1908 was moved seeking impleadment amongst others, of the petitioner. The Additional District Judge in *seisin* of the case treated the application as one under Order I Rule 10 CPC. She noted that there was no corresponding move to make an amendment of the plaint but also observed that inept handling of the suit by the counsel could not be allowed to result in the party suffering. She impleaded the petitioner, and the said two others, as additional defendants. It is this order which is challenged by the petition at hand.

4. In the application under Section 151 CPC, which was treated as an application for impleadment under Order 1 Rule 10 CPC, some averments were made to the effect that there was negligence on the part of the petitioner. The trial judge had issued show cause notices on the application and in reply while resisting the prayer for impleadment, the petitioner joined issue denying any neglect on their part, arguing that the negligence was on the part of the deceased himself.

5. In the above facts and circumstances, the impleadment of the petitioner or for that matter of the Govt. of NCT of Delhi or the

Municipal Corporation of Delhi as defendants in the suit is found to be wholly improper. There are no averments in the plaint, as presented, the plaint not having been amended, attributing any neglect on the part of the petitioner or such other two additional defendants. Without such pleadings being simultaneously brought on record, the petitioner or the said two other parties cannot be described as being either necessary or proper for effectual adjudication of the suit.

6. In these circumstances, the impugned order is set aside. The respondents, however, would be at liberty to make appropriate application, if advised including for amendment of the plaint, subject to its permissibility under the law. Needless to add, the petitioner would have the liberty to resist such application and urge all the contentions or defences in case such application were to be moved.

7. The petition and the application filed therewith are accordingly disposed of.

FEBRUARY 06, 2018

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R.K.GAUBA, J.