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

+ CM(M) 596/2016 & CM No. 22561/2016 (stay)

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms. Supreet Bombra for Mr. Sunil
Goel, Standing Counsel for MCD.

versus

RAMA CONSTRUCTION COMPANY Respondent

Through: Mr. Avinash Trivedi, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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28.02.2018

The execution proceedings (Ex.12/2013) pending on the file of the Additional District Judge II for North-West, Rohini District of Delhi from which the present petition arises, pertain to the application made by the respondent (decree holder) for enforcement of the award passed by sole arbitrator in its favour on 08.12.2005 for recovery of certain amounts with interest. It is stated by the learned counsel on both sides that the principal amount payable under the said award has already been paid, the dispute persisting relating to the liability on account of interest levied by the arbitrator. It is against such backdrop that the matter was pending before the executing court on 22.04.2016, when the counsel for the petitioner (judgment debtor) was not present. It appears affidavits had been earlier called for by the executing court to determine if any amount remains to be paid on account of interest. The executing court observed that it “*prima*

facie” appeared to it that the judgment debtor was not sincerely interested in making the payment of the balance amount to the decree holder and proceeded to issue warrant of attachment for recovery. The application later moved by the petitioner (judgment debtor) for recall of the warrant of attachment was dismissed in limine by order dated 10.05.2016. Both the said orders are under challenge by the petition at hand.

After some hearing, the learned counsel for the decree holder fairly conceded that there is no determination by the executing court as to the balance amount due. Without such determination, the warrant of attachment could and should not have been issued. Thus, both the orders are set aside. The executing court is directed to hear the parties and thereafter pass a clear order determining the amount which remains outstanding and issue the necessary process in such respect specifying such amount. It must, however, be added that confusion has occurred on account of neglect on the part of the petitioner and its counsel. It is hoped and expected that the petitioner/judgment debtor will render effective assistance to the executing court in reaching the appropriate conclusions.

The decision by the executing court must be rendered expeditiously preferably within two months of the date next fixed before the executing court.

The petition and the pending application stand disposed of in above terms.

R.K.GAUBA, J

FEBRUARY 28, 2018

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