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

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Date of Decision: 02nd July, 2019

+ W.P.(C) 10656/2017

P N RAMALINGAM

..... Petitioner

Through: Mr.Rajesh Gupta and Mr.Harpreet
Singh, Advocates

versus

THE CHAIRMAN MANAGING
DIRECTOR ITDC AND ORS

..... Respondents

Through: Mr.Anish Chawla, Advocate

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The petitioner's wife, Jaya Prada was working as General Manager (Admn.) with ITDC and she superannuated on 30th November, 2010. The petitioner's wife expired on 17th October, 2011.
2. Vide order dated 19th November, 2010 in Ex.P.13/2007 titled *State Bank of India v. N.S. Mehta*; the Additional Civil Judge/ARC, Karkardooma District Courts, Delhi directed ITDC not to release a sum of Rs.1,98,271/- out of the retiral benefits of late Jaya Prada.
3. Vide order dated 23rd May, 2014 in Ex.P.No.21/2010 titled *State Bank of India v. Jaya Prada*; the Additional District Judge & Wakf Tribunal, Patiala House District Courts, New Delhi attached the gratuity amount of late Jaya Prada to the tune of Rs.3,50,000/- and directed ITDC to

deposit the same in Court. The order dated 23rd May, 2014 is reproduced hereunder:

“Ex.No.21/10

23.05.2014

Present: Ms.Jaya Tomar, Counsel for the DH.

Ms.Nidhi, Employee of the deceased JD.

*Submissions on behalf of DH heard. Ld. Counsel relies on **Ramawati Vs. Krishan Gopal, 1988 (34) DLT 136** wherein the Hon’ble Delhi High Court has held that although gratuity is not attachable U/S 60(g) of CPC, the same becomes attachable where the employer has expired as the amount becomes a debt payable by the employer to the legal heirs of the employee.*

In the present case also, the JD has expired and her employee is holding gratuity amount to the tune of Rs.3,50,000/-. The same is thus now attachable towards satisfaction/part satisfaction of the decree.

ITDC is directed through the counsel to furnish the said amount in the form of a draft/cheque in the name of the decree holder herein.

Matter be listed for the said purpose on 06.06.2014.

*(Ruby Alka gupta
ADJ-02 & Wakf Tribunal
New Delhi/23.05.2014/B”*

4. On 22nd August, 2014, ITDC deposited a sum of Rs.1,51,728/- in Court in compliance with order dated 23rd May, 2014.
5. In 2016, the petitioner filed an application for release of the gratuity amount before the Controlling Authority under the Payment of Gratuity Act.
6. Vide order dated 31st May, 2017, the Controlling Authority directed ITDC to pay the gratuity amount of Rs.10 lakhs along with simple interest @ 10% per annum from 30th November, 2010 to the petitioner.

7. On 07th July, 2017, ITDC paid Rs.13,53,788/- i.e. Gratuity amount of Rs.8,48,272/- (Rs.10,00,000/- minus Rs.1,51,728/-) along with interest @ 10% per annum to the petitioner in compliance of the order dated 31st May, 2017 of the Controlling Authority.
8. With respect to Rs.1,51,728/- deposited by ITDC in Court in compliance with the above mentioned order, ITDC filed an appeal before the Appellate Authority under the Payment of Gratuity Act on the ground that ITDC deposited the said amount in the Court in compliance of the Court order.
9. Vide order dated 17th October, 2017, the Appellate Authority allowed the appeal holding that ITDC was not liable to pay Rs.1,51,728/- and interest thereon to the petitioner. The Appellate Authority held that ITDC cannot be held responsible for paying the aforesaid amount to the decree holder in compliance with the Court order.
10. The petitioner has challenged the order dated 17th October, 2017 on the ground that the gratuity amount is barred from being attached by Section 13 of Payment of Gratuity Act as well as Section 60(g) of the Code of Civil Procedure and ITDC had wrongly paid Rs.1,51,728/- to the decree holder in compliance with the Court orders.
11. The petitioner is seeking a direction to ITDC for release the remaining gratuity amount of Rs.1,51,728/- along with interest at the rate of 18% per annum. The petitioner is seeking a further direction to ITDC to pay compensation of Rs.25,00,000/- for withholding the terminable benefits of the petitioner's late wife since 2010 as well as cost of litigation. The petitioner is also seeking a direction to prosecute the Chairman-cum-

Managing Director and Vice President of ITDC for wrongfully withholding the gratuity amount of petitioner's wife.

12. This Court is of the *prima facie* view that ITDC cannot be faulted for making of payment of Rs.1,51,728/- in compliance with the attachment order of the Court. The balance gratuity amount of Rs.8,48,272/- along with interest at the rate of 10% per annum (total Rs.13,53,778/-) has already been released to the petitioner.

13. The appropriate remedy of the petitioner was to challenge the decree/s against the petitioner's wife as well as two orders of the execution Court for alleged violation of Section 13 of the Payment of Gratuity Act and Section 60(g) of the Code of Civil Procedure and to seek restitution. However, surprisingly, the petitioner has chosen not to challenge those orders. It was put to counsel for the petitioner as to why the petitioner did not challenge the decree(s) and two orders of the Execution Courts. The learned counsel for the petitioner had no explanation to the same. It appears that the petitioner's intention is to have unjust enrichment by claiming the gratuity amount from ITDC and at the same time, also enjoy the satisfaction of the decree(s), otherwise there was no reason for the petitioner to have not approached the Execution Court for restitution. This petition lacks *bona fides* as the petitioner has not approached this Court with clean hands and therefore, this Court declines to exercise the extra-ordinary writ jurisdiction under Article 227 of the Constitution.

14. The writ petition is dismissed.

J.R. MIDHA, J.

JULY 02, 2019 ds/dk