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

%   **Date of decision: 9th December, 2020.**

+   **FAO(OS)(COMM) 171/2020**

AMANPREET SINGH KOHLI ..... **Appellant**
Through: Mr. Arjun Singh Bawa and Ms. Ambika Vohra, Advs.

Versus

PANKAJ DAYAL ..... **Respondent**
Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM APPL. 32061/2020 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.

2. The application is disposed of.

FAO(OS) (COMM) 171/2020 & CM APPL.32062/2020 (for stay)

3. This appeal under Section 13(1) of the Commercial Courts Act, 2015 read with Order XLIII Rule 1 of the Code of Civil Procedure, 1908 (CPC) impugns the order dated 10th September, 2020 of the Commercial Division of this Court on an application under Order XXXIX Rule 4 of the CPC filed by the intervener Meters & Instruments Private Limited (MIPL), vacating the interim order dated 16th June, 2020 earlier granted in CS(COMM) No.175/2020 filed by the appellant against the sole respondent Pankaj Dayal

for recovery of money and seeks restoration of the order dated 16th June, 2020 in CS(COMM) No.175/2020 and seeks restriction on the sole respondent Pankaj Dayal from creating any third party rights in the assets/properties of Real Tech Constructions Pvt. Ltd. (RTCPL), City Emporium Pvt. Ltd. (CEPL) and the City Emporium Mall (CEM).

4. CS(COMM) No.175/2020 aforesaid filed by the appellant for recovery of money came up first before the Commercial Division of this Court on 16th June, 2020 when, while issuing summons thereof, on the pleas of the appellant/plaintiff that the appellant/plaintiff had advanced a sum of Rs.4.30 crores to the respondent/defendant Pankaj Dayal as loan and which loan the respondent/defendant Pankaj Dayal had failed to pay, till the next date of hearing, the respondent/defendant Pankaj Dayal was restrained from creating any further third party rights in the assets/properties of RTCPL, CEPL and CEM, without seeking leave of the Commercial Division of this Court.

5. It is interesting to notice from the order dated 16th June, 2020, that the respondent/defendant Pankaj Dayal, though had not been summoned/issued notice till then, appeared before the Court through advocate, who accepted summons and did not oppose the interim order aforesaid.

6. The intervener MIPL filed IA No.8004/2020 under Order XXXIX Rule 4 of the CPC, pleading that (i) the loan transaction alleged by the appellant/plaintiff with the respondent/defendant Pankaj Dayal was a sham/illegal as evident from the loan of an exorbitant amount of Rs.4.30 crores having been given in cash; (ii) the suit had also been filed by the appellant/plaintiff against the respondent/defendant Pankaj Dayal at the

behest of respondent/defendant Pankaj Dayal; (iii) the intervener MIPL and RTCPL had entered into a Property Development Agreement dated 2nd March, 2006 whereunder the RTCPL had agreed to develop the land of the intervener MIPL and construct and operationalize a Mall thereon and RTCPL, in consideration of its efforts in construction and development, was entitled to share 55% of the revenues earned by the developed property, with the intervener MIPL being entitled to the remaining 45%; (iv) the respondent/defendant Pankaj Dayal was one of the several Directors of RTCPL; (v) the demarcation of the Mall developed, was never carried out in accordance with the Property Development Agreement and the construction and development also was not completed and/or was not carried out in accordance with the Property Development Agreement and the said Property Development Agreement was terminated by the intervener MIPL; (vi) neither RTCPL nor respondent/defendant Pankaj Dayal thus acquired any rights in the land or the CEM; (vii) the Income Tax Department also had vide Notice dated 22nd March, 2018 attached the share of the RTCPL in the Mall to be developed under the Property Development Agreement; (viii) though the counsel for the respondent/defendant Pankaj Dayal appeared before the Commercial Division of this Court on 16th June, 2020 but did not disclose any of the facts aforesaid, obviously to secure an order, to defeat the income tax attachment and the rights of the intervener MIPL; (ix) RTCPL had also been restrained vide interim orders in suits filed by others, from dealing with their portion/share in the Mall aforesaid; and, (x) the intervener MIPL also has monetary claims against RTCPL.

7. The contention of the counsel for the appellant/plaintiff before us is that only a party to the suit is entitled to apply under Order XXXIX Rule 4

of the CPC and a non-party is not entitled to apply thereunder and the Commercial Division of this Court erred in entertaining the application under Order XXXIX Rule 4 of a non-party to the suit and vacating the interim order dated 16th June, 2020 on such application. It is contended that the intervener MIPL was required to first implead itself as a party to the suit and only if so impleaded, could have applied under Order XXXIX Rule 4 of the CPC. Reliance is placed on ***Madhavji Jeyram Kotak Vs. Jay Laxmi Surji*** MANU/MH/1106/2007 and ***The State Trading Corporation of India Limited Vs. Vijaya Bank*** MANU/WB/0188/2016.

8. We have enquired from the counsel for the appellant/plaintiff that if RTCPL was not a defendant in the suit from which this appeal arises, how could an order in a suit against the respondent/defendant Pankaj Dayal, even if a director and shareholder of RTCPL, restrain RTCPL from dealing with its properties. The same is contrary to the principle, of a company being a distinct juristic person from its shareholders and directors.

9. No answer is forthcoming.

10. We have next enquired that if the interim order was with respect to the property of RTCPL which was not a party to the suit and thus not bound by the interim order dated 16th June, 2020, what difference does it make even if the said order has been vacated.

11. The counsel for the appellant/plaintiff states that still the legal question urged by him arises.

12. This Court decides legal questions in the facts of the case and if arising from the said facts, and not in vacuum. Once we find that the legal question is not required to be answered, we are not compelled to, as an

academic exercise, entertain the appeal and answer the same, when the effect of the answer to the legal question would not vary the outcome of the appeal. It was so held, as far back as in ***Sheoshankar Vs. The State*** AIR 1951 Nag 68 (FB) and since has been recently held in ***Central Bank of India Vs. Workmen, ETC*** AIR 1960 SC 12, ***M.L. Binjolkar Vs. State of M.P.*** (2005) 6 SCC 224, ***P.H. Pandian Vs. P. Veldurai*** (2013) 14 SCC 685, ***Federation of Indian Mineral Industries (Fimi) Vs. Union of India*** 2014 SCC OnLine Del 6979 (DB), ***The Delhi Network of Positive People Vs. Union of India*** MANU/DE/1401/2015 and ***Surinder Nayyar Vs. South Delhi Municipal Corporation*** MANU/DE/0606/2018.

13. We have further enquired from the counsel for the appellant/plaintiff, what was the right of RTCPL also in the property qua which the interim stay dated 16th June, 2020 was obtained. There is not an iota of averment or document to show that any rights in the CEM had been transferred in favour of RTCPL, in the manner prescribed by law, from intervener MIPL, which according to the records was the owner of the land. Unless RTCPL itself had any rights in the property, which rights could have been dealt with by it, no purpose would be served by any interim order, even if against RTCPL, though not a party to the suit.

14. The proper course of action for the appellant/plaintiff thus would be to, if so desire, implead RTCPL as well as MIPL as a party to the suit, if so entitled in law and to further, if able to, establish a case for piercing of the corporate veil and to then obtain an interim order with respect to the right, if any of RTCPL in the CEM.

15. The counsel for the appellant withdraws the appeal with liberty to take appropriate steps for impleadment etc.

16. The appeal is dismissed as withdrawn with liberty aforesaid.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

DECEMBER 9, 2020
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