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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 05th July, 2021

+ **LPA 292/2020 & C.M.25368/2020**

SHRI SATYAWAN Appellant
Through Ms.Meghna De, Advocate.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR.
..... Respondents
Through Mr.Arun Arun Birbal with
Mr.Sanjay Singh, Advocates for
SDMC.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. The appeal has been heard by way of video conferencing.
2. Present appeal has been filed challenging the order dated 28th August 2020 in W.P.(C) No.7933/2014. Appellant also seeks dismissal of the said writ petition on the ground that the same is infructuous.
3. Learned Counsel for the Appellant submits that the impugned order erroneously proceeds by treating the pendency of a restoration application as a stay of execution of the Recovery Certificate dated 16th September 2014. She submits that the learned Single Judge has wrongly held that the Recovery Certificate cannot be executed even though the writ petition quashing the same had been dismissed. She

states that the order embarks on a roving and fishing enquiry by seeking affidavits from the Appellant, the SDM and State Bank of India in absence of any writ petition or stay order, which is against the procedure established by law.

4. Having heard learned counsel for the appellant, this Court is of the view that the appeal in essence challenges the learned Single Judge's order directing the appellant and Labour Commissioner to reply to certain factual queries as to how the amount under the Recovery Certificate was released. It is pertinent to mention that in the writ petition filed by the SDMC, there was stay of the execution of the Recovery Certificate in favour of the appellant. However, as the writ petition was dismissed in default, the amount was released under the Recovery Certificate despite an application for restoration of the writ petition being pending before the learned Single Judge. Subsequently, as the writ petition was restored, the learned Single Judge vide the impugned order asked certain factual queries as to how the said amount was released.

5. This Court is of the view that the learned Single Judge vide impugned order has not treated the pendency of the restoration application as stay of execution of the Recovery Certificate dated 16th September, 2014. Further, the learned Single Judge has not held that the Recovery Certificate cannot be executed even though the writ petition quashing the same had been dismissed. Also the impugned order does not embark on a roving and fishing enquiry.

6. This Court is of the view that even though the amount has been released under the Recovery Certificate, the writ petition is not

infructuous. In our view, the learned Single Judge was entitled to raise the queries that she has done in paragraph 9 of the impugned order. Moreover, the learned Single Judge has not arrived at any firm conclusion in the impugned order. Consequently, the impugned order calls for no interference. Accordingly the present appeal along with pending application is dismissed.

7. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

JULY 05, 2021
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