

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

INTERIM APPLICATION NO.14445 OF 2023

IN

WRIT PETITION NO.4323 OF 2023

MEP Infrastructure Developers Ltd., Mumbai .. Applicant-Intervener

In the matter between

Municipal Corporation of Delhi .. Petitioner

Vs.

State of Maharashtra,

Through the Chief Secretary and Ors. .. Respondents

Mr. S.U. Kamdar, Sr. Advocate, with Mr. Deepak Deshmukh, Mr. Deepak Chitnis, Mr. Vivek Dwivedi and Mr. Hrishikesh Nadkarni, i/by Naik Naik & Co., for the Applicant-Intervenor.

Mr. Gaurav Joshi, Sr. Advocate, with Mr. Sanjay Vashishtha and Mr. Shreyas Shrivastava, for the Petitioner in WP/4323/2023.

Mr. A.I. Patel, Addl. G.P., with Ms. A.A. Purav, AGP, for Respondent No.1-State.

Mr. Nikhil Rajani, i/by V. Deshpande & Co., for Respondent No.3.

**CORAM : SUNIL B. SHUKRE &
FIRDOSH P. POONIWALLA, JJ**

DATE : 21ST AUGUST, 2023.

P.C. :

1. Heard learned counsel for the respective parties.
2. Mr. Kamdar, learned Senior Advocate appearing for the applicant-intervener states that the applicant, whose property is being attached in the present case in pursuance of the Recovery Certificate issued in the matter, being in the capacity as a Judgment-Debtor, has a right to participate in the execution proceedings like the present proceedings. He also submits that the

applicant has also got further right to question the manner in which property of the applicant is being attached inasmuch as the provision under which the attachment warrant has been issued itself has been wrongly relied upon by learned counsel for the petitioner.

3. Strongly opposing the application, learned Senior Advocate for the petitioner-Municipal Corporation of Delhi submits that execution of an attachment warrant is clearly a ministerial act and, therefore, the applicant-intervener can never be said to be a necessary party to these proceedings. He further submits that the applicant-intervener has lost everywhere whenever it made an attempt to question the legality and correctness or otherwise of the Recovery Certificate. He further submits that even the attempt of the applicant-intervener to challenge the warrant of attachment has met with failure. In these circumstances, the applicant-intervener should not be allowed to intervene in the matter as party-respondent. He relies upon the view taken by learned Senior Judge of the Delhi High Court in *Callipers Naigai Ltd. Vs. Government of NCT of Delhi and Ors.*, *ILR (2004) 1 Delhi 74*, and also the Coordinate Bench of this court in its judgment dated 1st February 2023 delivered in Writ Petition No.10304 of 2022, wherein it is observed that enforcement of execution of an attachment warrant is a ministerial act.

4. There can be no second opinion about the proposition of law that execution of warrant of attachment is a mere ministerial act. But, even in execution proceedings, whenever a decree of civil court is sought to be executed, judgment-debtor is always made a party-respondent and that is for

simple reason that no mistake occurs in carrying out execution of a civil court decree. Same principle of law would also apply here and it is only for the purpose of ensuring that the warrant of attachment is executed appropriately and duly by the concerned authority, with the assistance of the owner whose property is sought to be attached which may be required in the matter.

5. As regards the submission of learned Senior Advocate for the applicant-intervener that the applicant-intervener is also seeking to question the manner in which attachment order has been passed, we would say that it would be considered appropriately by this court on its own merits.

6. In this view of the matter, we allow the intervention application. We direct the applicant-intervener joined as party-respondent for the purpose as indicated above. Amendment to the cause-title be carried out forthwith. Copy of the amended petition be placed on record and also furnished to the other side. Newly added respondent is permitted to file reply to the limited extent as indicated above.

7. The respondent-State is granted leave to file its physical reply in the office. Compilation of documents tendered by learned Senior Advocate for the petitioner is taken on record.

8. Stand over to 30th August 2023 “High on Board”.

[FIRDOSH P. POONTIWALLA, J.]

[SUNIL B. SHUKRE, J.]