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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **C.R.P. 223/2023, CM APPL. 41960/2023 (stay), CM APPL. 61883/2024 (for taking on record the additional documents)**

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Date of decision: 5th December, 2024

1. NAVBHARAT INFRASTRUCTURE CO.
 Through its Partners
 233, Vardhaman Tower
 Commercial Complex,
 Preet Vihar, Near CBSE Building,
 New Delhi 110092

ALSO AT:

Adjoining Global Impex,
 OPP. GS Fastners,
 Industrial Area-C,
 Dhandari Kalan, Ludhiana,
 Punjab-141014

...Petitioner No. 1

2. SHARANJIT KAUR
 Partner of M/s Navbharat
 Infrastructure Co.
 233, Vardhaman Tower
 Commercial Complex,
 Preet Vihar, Near CBSE Building,
 New Delhi 110092

...Petitioner No. 2

3. K.K. BHALLA
 Ex-partner of M/s Navbharat
 Infrastructure Co.
 233, Vardhaman Tower,
 Commercial Complex,
 Preet Vihar, Near CBSE Building,
 New Delhi 110092

...Petitioner No. 3

Through: Mr. Rahul Malik, Advocate.



versus

VKR ESHWARAN
S/o Late VR Rajagopalan,
R/o Flat No. A204, Mapsko Mount Ville
Sector 79, Gurugram 122004

ALSO AT:

R/o Flat No. A603,
Sadbhavna Apartments,
HIM HIT CGHS Ltd. Plot No. 8,
Sector-22, Dwarka Phase-I,
New Delhi 110077

.....Respondent

Through: Mr. Moni Cinmoy, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

1. A Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) read with Article 227 of the Constitution of India, has been filed to challenge the impugned Order dated 09.06.2023, wherein the *objections on behalf of the Petitioner (Judgment Debtors)* in Execution (Comm.) No.206/2022 titled "*Mr. VKR Eshwaran vs. M/s Navbharat Infrastructure Co. and Ors.*", has been dismissed.
2. *The learned counsel for the Revisionist/Judgment Debtor submits that the Civil Suit, CS (Comm) No.298/2019 titled "Mr. VKR Eshwaran vs. M/s Navbharat Infrastructure Co. & Ors." was filed by the Respondent/Decree Holder which was decreed vide Judgment dated*



30.05.2022. It is asserted that the nature of the Contract between the Judgment Debtor and Decree Holder was that of an Employer - Employee and the Suit had been filed by the Decree Holder for recovery of arrears of Salary. Hence, it did not fall within any of the Clauses of 'commercial transactions' as defined under the Commercial Courts Act, 2015. The Commercial Court, thus, lacked inherent jurisdiction to decide the dispute; therefore, the Judgment and the Decree is a nullity in law, the execution of which cannot be undertaken.

3. A reference has been made to the judgments of S.P. Chengalvaraya Naidu (Dead) by LRs vs. Jagannath (Dead) by LRs and Ors. SCC (1994) 1 SCC; Hasham Abbas Sayyad vs. Usman Abbas Sayyad and Ors. (2007) 2 SCC 355 2006 SCC OnLine SC 1386; Chiranjilal Sheilal Goenka (Deceased) vs. Jasjit Singh and Ors. (1993) 2 SCC 507; Sushil Kumar Mehta vs. Govind Ram Bohra (Dead) Through LRs (1990) 1 SCC 193; Harshad Chiman Lal Modi vs. DLF Universal Ltd. and Anr. (2005) 7 SCC 791; and Qatar Airways Q.C.S.C vs. Airports Authority of India and Anr. (2005) 7 SCC 791, to argue that where the judgment is a nullity on account of inherent jurisdiction, this objection even if the Appeal against the impugned judgment has been dismissed, can still be taken at any stage and even in the Execution proceedings. The learned Judge fell in error in not considering the lack of inherent jurisdiction and the nullity of the judgment, execution of which was sought. It is contended that the impugned Order is liable to be set aside.

4. *Learned counsel on behalf of the Revisionist* further argued that the impugned Judgment is vitiated by fraud in so much as in the pre-litigation Form filed by the Decree Holder, he himself had made an adjustment of



Rs.10 lakh, though he failed to disclose the same in his plaint and the same has not been considered while decreeing the Suit.

5. *Learned counsel on behalf of the Respondent* who has appeared on advance Notice, points out that an Application under *Order VII Rule 11 of CPC, 1908* had been filed before the learned Commercial Court, which was dismissed. The final judgment was challenged by way of RFA in this Court, but the same was dismissed as withdrawn. Thereafter, a Review Application was filed, but the same was also dismissed. The matter even went further to the Supreme Court, though it was again withdrawn on behalf of the Petitioners.

6. It is submitted that the Judgment and Decree has become final and cannot be assailed in the manner sought to be done on behalf of the Revisionist. It is submitted that there is no merit in the present Revision Petition and the same is liable to be dismissed.

7. Submissions heard.

8. To appreciate the assertions made in the present Revision Petition, it would be pertinent to refer to the facts as alleged in the Plaint. It was asserted that the Plaintiff/Decree Holder, Mr. VRK Eshwaran (*the Respondent herein*) was appointed under an Employment contract dated 06.07.2017 by the Defendant No. 1/Judgment Debtor, M/s Navbharat Infrastructure Company (*the Revisionist herein*), on a fixed salary of Rs.31,41,804/- p.a. i.e. Rs.2,61,817/- per month, after the necessary applicable deductions, but was entitled to re-imbusement of the expenses incurred by him in carrying out the official duties. He worked in the capacity of *Director Operations* and was to report to the Defendant No. 1/M/s Navbharat Infrastructure Company.



9. The employment of the Decree Holder with the Judgment Debtor came to end on 30.09.2018. The Decree Holder claimed that the agreed remuneration was not paid by the Defendant and thus, sought recovery of Rs.22,66,398/- along with the interest @15% p.a *vide* Civil Suit CS (Comm) 298/2019.

10. The *Judgment Debtor explained in his Written Statement* that the Decree Holder was given an appointment as Director Operations on the condition that he, on behalf of the Hill & Smith Infrastructure Products India Pvt. Ltd., would get the business license of road safety and road solution in India, for the Judgment Debtors. It was assured by the Plaintiff/Decree Holder that the amount towards C-Form for Rs.13,06,398/ pending against Hill & Smith Infrastructure Products India Pvt. Ltd., from October, 2013 to March, 2017, shall be adjusted against the gross-emoluments of the Decree Holder, payable by the Defendant Nos. 2 and 3, the Directors of Defendant No. 1, as the Plaintiff had certain dues to be paid by him to Hill & Smith Infrastructure Products India Pvt. Ltd. However, it was asserted that the Decree Holder failed to fulfill his duties towards the Defendants as the Purchase Order dated 27.10.2017 for 26,000 meters wire rope for safety barriers, was cancelled by M/s Ramky Infrastructure Ltd., due to mis-representation made by the Plaintiff. Instead, the Order was given for only 2,000 meters on 20.12.2017 against which the Defendants had paid Rs.10,00,000/- as advance to M/s Ramky Infrastructure Ltd.

11. It was further asserted that the Plaintiff/Decree Holder had already adjusted a sum of Rs.13,06,398/ from the Defendants, which was the amount of C-Form for the period October 2013 to March, 2017. It was



claimed that the Decree Holder had worked for himself as well as for his Company i.e. the Hill & Smith Infrastructure Products India Pvt. Ltd. and had also adjusted Rs.9,99,989/- out of Rs.10,00,000/-, which were due from M/s Ramky Infrastructure Ltd. and invested the same in the Hill & Smith Infrastructure Products India Pvt. Ltd. Admittedly, an amount of Rs.8,31,685/- was paid by Defendant No. 1. The Defendant No. 1 however, denied that after adjusting all the amounts, a sum of Rs.22,66,398/- was due, as claimed by the Plaintiff/Decree Holder.

12. Pertinently, an Application under *Order VII Rule 11 CPC, 1908* dated 07.04.2022 was filed on behalf of the Plaintiff/Judgment Debtor on the ground that this was a Commercial Suit and the Court lacks inherent jurisdiction. The Application was dismissed *vide* Order dated 16.04.2022 wherein it was observed that it was a Management Contract Agreement and therefore, was covered under *Section 2(1)(c)(x) of the Commercial Court Act, 2015*. Pertinently, no Appeal against the said Order was filed.

13. ***The learned District Judge*** after considering the evidence of the parties, decreed the Suit for a sum of Rs.22,66,398/- along with the interest @ 8% p.a.

14. The Decree was challenged by the Judgement Debtors by way of a RFA filed in this Court which was dismissed as withdrawn. The Review Application was filed but that also got dismissed. An SLP was also filed against the Judgment and the Decree, which was also withdrawn.

It is thus evident that the Application under *Order VII Rule 11 CPC, 1908* that this was a transaction covered under the Contract Agreement and was a commercial transaction attained finality. The Judgment Debtor has again sought to agitate the same ground, which has been specifically determined



and has attained finality.

15. The Revisionist/Judgment Debtor has placed reliance on Chiranjilal Shrilal Goenka vs. Jasjit Singh, (1993) 2 SCC 507; Sushil Kumar Mehta vs. Gobind Ram Bohra, (1990) 1 SCC 193 and Harshad Chiman Lal Modi vs. DLF Universal Ltd., (2005) 7 SCC 791, to argue that the inherent lack of jurisdiction can even be agitated in the execution proceedings.

16. It may be observed that it was not an employee-employer relationship that was created between the Decree Holder and the Judgment Debtor, but he had been engaged as a Director Operations on a consolidated salary with the specific covenant that he would be getting the work from Hill and Smith, and other Companies. Therefore, it has been rightly held that this is not an employee-employer Agreement but a *Management Contract Agreement, which is a commercial transaction*. The Commercial Court, therefore, had the inherent jurisdiction to decide the Suit.

17. Thus, the Judgment Debtor has not been able to establish that this was not a commercial transaction and therefore, this defense now taken is not tenable.

18. The Revisionist/Judgment Debtor had next claimed that the Plaintiff/Decree Holder himself had discounted the sum of Rs.10,00,000/- from the claimed amount in the Pre-Mediation Form submitted by him under Section 12A of the Commercial Courts Act, 2015 before the Delhi High Court Legal Services Authority, for Mediation. Further, a sum of Rs.8,31,635/- (through RTGS) was paid on 16.05.2019. Therefore, a balance amount of Rs.13,10,169/- only was payable by the Judgment Debtor to the Decree Holder.



19. This argument is pertinently not tenable as Mediation is essentially a mechanism for settlement. Decree Holder may have been agreeable to settle the Suit for a lesser amount or to give a discount of Rs.10,00,000/-, but that does not bind him when the Suit is tried on merits. The offers made during the Mediation, cannot be held binding on the Decree Holder when the Suit is decided on merits.

20. The Objections taken on behalf of the Respondent/Judgment Debtor, about the lack of inherent jurisdiction, is not only tenable but had been specifically overruled in the Application under *Order VII Rule 11 CPC, 1908* and the Suit thereafter decreed. The Judgment had sought to be challenged right up to the Hon'ble Supreme Court of India, though it was withdrawn at every stage.

21. The learned District Judge has rightly dismissed the Objections filed by the Judgment Debtor, as having no merits. The present Revision Petition is accordingly, dismissed.

22. The present Revision Petition is disposed of accordingly along with the pending Applications.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 5, 2024/RS