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

\+ EX.P. 72/2021

M/S. SUNRISE PROPERTY DEVELOPERS PVT. LTD.

.....Decree Holder

Through: Mr. Anand Shankar Jha, Mr. Sachin Mintri, Mr. Abhilesh Kumar Tiwari and Mr. Divya Pratap Singh Parmar, Advs.

versus

M/S. SKIPPER PROPERTIES PVT. LTD. & ANR.

.....Judgement Debtors

Through: Mr. Suraj Prakash and Ms. Pooja, Advs.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

O R D E R

% 01.08.2024

1. The suit for recovery filed by the Decree Holder was decreed *vide* judgment and decree dated 19.12.2019 (modified *vide* order dated 22.01.2020) whereby the suit was decreed for an amount of Rs. 46,47,394/- along with interest amounting to Rs. 25 Lakhs (approx.).

2. The learned counsel appearing on behalf of the Decree Holder submits that remaining amount to be paid by the Judgment Debtor towards the satisfaction of decree was Rs. 6 Lakhs, out of which an amount of Rs. 3.5 lakhs were paid as recorded in order dated 11.07.2024.

3. However, an amount of Rs. 2.5 lakhs has been withheld for the reason that the said amount needs to be deducted as TDS on the interest amount of Rs. 25 Lakhs that has accrued on the principal amount.

4. He contends that the amount payable under the decree is a judgment debt and TDS cannot be deducted on the same.

5. To buttress his contention he has invited the attention of the Court to the decision of the Hon'ble Supreme Court in ***All India Reporter Ltd. vs. Ramchandra D. Datar, 1960 SCC OnLine SC 34***, wherein it was observed that at the time of paying the judgment debt, no tax can be deducted at source. The relevant para of the said decision reads thus:

> ***"5.*** *The House of Lords in that case by a majority held that £10,028 awarded under the judgment represented not capital but interest and was liable to tax. In our view, this case has no application to the facts of the present case.* ***In the case before us, there is a decree passed in favour of the respondent; under the scheme of the Civil Procedure Code, that decree has to be executed as it stands, subject to such deductions or adjustments as are permissible under the Code. There was no tax liability which the respondent was assessed to pay in respect of this amount till the date on which the appellant company sought to satisfy the alleged tax liability of the respondent. As between the appellant company and the respondent, the amount did not represent salary; it represented a judgment-debt and for payment of income tax thereon, no provision was made in the decree.*** *The Civil Procedure Code bars an action of the nature which was filed in Westminster Bank case [18 Tax Cases 159] . The defence to the execution if any must be raised in the execution proceeding and not by a separate action.* ***The amount payable by the appellant company to the respondent was not salary but a judgment-debt, and before paying that debt the appellant company could not claim to deduct at source tax payable by the respondent.*** *Nor could the appellant company seek to justify its plea on the ground that the judgment-creditor was indebted to a third person.*
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> (emphasis supplied)

6. Reliance has also been placed on the decision of the Bombay High Court in ***Sainath Rajkumar Sarode and Others vs. State of Maharashtra and Others, 2021 SCC OnLine Bom 2198***, wherein the Bombay High Court dealing with a somewhat similar situation had observed as under:

> *"27.* ***From a consideration of the case law cited before us, we are of the view that the amount so payable is in the nature of a judgment debt or akin to a judgment debt, the payment of which cannot establish a debtor-creditor relationship between the parties. As such, the said sum or any part thereof cannot be liable to tax deducted at source under the relevant provisions of the IT Act.*** *This is in line with the decision of the Supreme Court in All India Reporter Ltd. v. Ramchandra D. Datar [All India Reporter Ltd. v. Ramchandra D. Datar, 1960 SCC OnLine SC 34 : AIR 1961 SC 943] as also the judgment of our Court in Madhusudan Shrikrishna v. Emkay Exports [Madhusudan Shrikrishna v. Emkay Exports, 2010 SCC OnLine Bom 80 : (2010) 2 Bom CR 38].............."*
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> (emphasis supplied)

7. The High Court of Bombay in an earlier decision in ***Madhusudan Shrikrishna vs. Emkay Exports, 2010 SCC OnLine Bom 80,*** had also observed that the payment to be made under a decree is a judgment debt and no deduction of tax at source can be made. It was also observed that the judgment debtor paying amount due under the decree cannot be held liable for penal consequences for non-deduction of tax at source and if any tax is payable the same may be paid by the plaintiff/Decree Holder. The relevant part of the said decision reads thus:

> ***"5.*** *In my view, ratio of the judgment in Lt. Col. K.D. Gupta (supra) would not apply to the facts of the present case. In the said case, decree was passed and the Court had directed that member of Defence Forces should be paid*

certain amount. Part of the amount, however, was withheld towards deduction of tax at source. Contempt Proceedings, therefore, were initiated. The Apex Court held that no contempt of court was committed since intention of the payer was not mala fide. The Apex Court, however, observed that the tax due left, was to be decided by the Income-tax Officer. ***Therefore, in my view, once a decree is passed, it is a judgment and order of the court which culminates into final decree being passed which has to be discharged only on payment of the amount due under the said decree. The judgment debtor, therefore, cannot, in my view, deduct tax at source since it is an order and direction of the court and, as such, would not be liable for penal consequences for non-deduction of the tax due. Tax, if payable, can be decided by the Income-tax Officer after the amount is paid to the decree holder. Defendants, therefore, in my view, are not entitled to withhold the payment on the pretext that it has to be deducted as tax at source. Defendants may, therefore, pay the said amount to the plaintiff and for that purpose they would not be liable for non-deduction of tax at source as that issue has to be decided by the Income-tax authorities and if tax is payable the same may be paid by the plaintiff."***

(emphasis supplied)

8. The learned counsel for Judgment Debtor submits that the Judgment Debtor has no objection to pay the balance amount withheld on account of TDS, in case a direction is given by this Court.

9. In view of the *dicta* of the aforesaid judgments and regard being had to the facts of the case, this Court is of the view that the payment which is due from the Judgment Debtor to the Decree Holder is a judgment debt and no tax at source can be deducted from the same, nor the Judgment Debtor can be held liable for non-deduction of tax at source on the element of interest which is part of the judgment-debt.

10. Accordingly, it is directed that the Judgment Debtor shall release balance amount of Rs. 2.5 Lakhs to the Decree Holder within a period of four weeks which is payable under the judgment and decree dated 19.12.2019 (as modified *vide* order dated 22.01.2020).

11. With the aforesaid directions, the Execution Petition is disposed of.

VIKAS MAHAJAN, J

AUGUST 1, 2024

N.S. ASWAL