(2013) 12 DEL CK 0273

In the Delhi High Court

Case No : CM (M) 914 of 2010 and C.M. No. 12550 of 2010

Delhi Power Company Ltd. APPELLANT

Vs

K.L. Sharma and Others RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2013) 12 DEL CK 0273

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Sumeet Pushkarna and Mr. Kartikeya Bhargava, for the Appellant; B.B. Gupta and Mr. Sarthak Ghonkrokta for R-1, Mr. Anjan Sinha, Proxy Counsel for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—By way of the present petition under Article 227 of the Constitution of India, the petitioner/judgment debtor has assailed order dated 26th February, 2010 passed by the learned Executing Court in an execution petition whereby the objections raised by the petitioner were dismissed. Brief facts for the purpose of adjudication of the present petition are that the respondent No. 1/decree holder had filed a suit for declaration, permanent and mandatory injunction against Delhi Vidyut Board (DVB) and three employees of the DVB. At the time of filing the said suit, even the respondent No. 1 was an employee in DVB, however, during the pendency of the said suit, the respondent No. 1 retired on 31st March, 2001 i.e. before the privatization of DVB.

2. After the privatization of DVB, Delhi Power Company Limited (DPCL) and Delhi Vidyut Board Employees Terminal Benefit Fund (DVB-ETBF) were impleaded as parties replacing DVB, on an application of respondent No. 1. After closure of evidence of respondent No. 1, the matter was put up for petitioner''s evidence, but even after grant of many opportunities, the petitioner failed to lead any evidence. Accordingly, the petitioner''s evidence was closed and after final

arguments, a judgment and decree dated 19th November, 2005 partly decreeing the suit of the respondent No. 1 was passed.

3. When the respondent no. 1 filed an execution petition thereafter on 8th October, 2007, the petitioner took an objection vide its reply that the said execution petition was not maintainable against the petitioner. It was stated that the area where the respondent was working before his retirement, fell within the jurisdiction of BSES-YPL and therefore, BSES-YPL was liable to satisfy the decree of the respondent no. 1. The decree was not passed against DVB. The petitioner did not take any objections during the proceedings of the case nor was any appeal filed by the petitioner against the judgment and decree dated 19th November, 2005. It was stated by respondent No. 1 that even otherwise BSES was a successor company of DVB and not the petitioner i.e. DPCL, hence it could not be impleaded as a Judgment Debtor in the matter. It was further submitted that had BSES been impleaded as a party in the main suit, it could have defended and contested the suit but since it was not made a party.

4. The respondent No. 1 has also filed a copy of the office order dated 30th September, 2002 issued by DPSCL, according to which it had been stated that payment of arrears of pay and allowances to the retirees on account of revision of pay/court orders etc. for the period upto 30th June, 2002 i.e. prior to unbundling of DVB, were to be borne and paid by the holding company. It was submitted by respondent No. 1, the holding company was the petitioner, DPCL, as per the Rules of Delhi Electricity Reform (Transfer Scheme) Rules, 2001 and since he had retired from DVB before unbundling of DVB and that his arrears pertained to a period prior to 30th June, 2002, as per the office order dated 30th September, 2002, the petitioner was liable to pay the said arrears.

5. On the contrary, the petitioner relying on certain letters issued by Govt. of NCT, Delhi (Department of Power) contended that BSES-YPL could have been the Controlling Authority of the respondent no. 1 in the matter had he not retired before unbundling of DVB, hence BSES-YPL was responsible for processing the case of the respondent No. 1.

6. In view of the learned Executing Court, the said letter issued by Govt. of NCT, Delhi could have been produced before the learned Trial Court in the petitioner''s evidence, however, the petitioner failed to lead any evidence despite grant of opportunities, therefore, now the petitioner DPCL, could not evade his liability by relying upon the said letter. The orders of this Court in another litigation relied upon by the petitioner were distinguished from the facts in the present matter by the learned Executing Court.

7. The learned Executing Court observed that it was clear from the facts that the case was filed by the respondent No. 1 before the unbundling of DVB and thereafter DPCL and DVB-ETBF were duly impleaded as parties, however, both DPCL and DVB-ETBF remained conspicuously silent throughout the proceedings, and failed to lead any evidence, or even inform the learned Trial Court that BSES-

YPL was the proper party in the case, hence, both of them suffered a decree against themselves by their own casual conduct, and also deprived the BSES-YPL from exercising their valuable right of defence or appeal, by withholding crucial information from the learned Trial Court.

8. It was further observed by the learned Executing Court that in execution proceedings the court has limited power only to execute the decree as it is, and cannot implead any new party as a Judgment Debtor, who was never in the picture during the trial proceedings. It was opined that BSES had rightly contended that it was a successor company of DVB and not a successor of petitioner, DPCL, hence BSES could not be forced to satisfy the decree that was passed specifically against the petitioner after giving the petitioner due opportunity of hearing.

9. Accordingly, the objections raised by the petitioner were dismissed by the impugned order of the learned Executing Court and the petitioner was directed to pay the arrears of dues to the respondent No. 1. Aggrieved by the impugned order of the learned Executing Court, the petitioner filed the present petition before this Court.

10. I have heard both parties.

11. It is settled law that executing court cannot go beyond the decree which has been passed against the judgment debtor in the execution proceedings.

12. The decree in the present suit of which execution is being sought before the Ld. Trial Court was passed against the Judgment Debtor, M/s. Delhi Power Co. Ltd. the petitioner herein. The respondent No. 2/BSES Yamuna Power Ltd. was never a party in the main suit for which the execution was being sought in the execution petition. The respondent is not even the successor of M/s. Delhi Power Co. Ltd. The petitioner herein and BSES, the respondent herein are result of the unbundling of DVB. On such unbundling of DVB, when plaintiff/respondent No. 1 herein sought to implead the petitioner herein as successor of DVB, in the main suit, there was no objection from the petitioner herein and it went on to contest the suit as successor of DVB. No application was ever moved before learned Trial Court in the main suit to implead the respondent no. 2/BSES Yamuna Power Ltd. In fact it is the petitioner herein viz. M/s. DPCL who became a necessary party in the said suit.

13. The suit was decreed against the judgment debtor M/s. DPCL on 19th November, 2005. The respondent No. 2 is not the successor of M/s. DPCL. During the whole of the proceedings in original suit, at no point of time was it ever averred either by the Decree Holder, the respondent No. 1 herein or M/s. DPCL the petitioner herein, that the liability in the said suit is that of answering respondent/BSES Yamuna Power Ltd.

The decree has been passed against petitioner herein. No appeal was filed by the petitioner against the judgment passed by the learned Trial Court. The same is thus final and binding on M/s. DPCL and is executable only against M/s. DPCL. The learned Trial Court is thus rightly proceeding against the petitioner herein.

14. In case the respondent No. 2/BSES Yamuna Power Ltd. would have been party in the main suit it would be having all rights to defend and contest the same in its own possible manner. It would have also taken its remedy of filing an appeal. Now in case the averment of petitioner herein are accepted the answering respondent/BSES Yamuna Power Ltd. would be deprived of their right to contest a suit and/or to file appeal against the impugned judgment. The same cannot be permitted in law. Even in the execution petition pending before the learned Trial Court the execution petition was not filed against the respondent No. 2/BSES Yamuna Power Ltd. There is no application in the execution proceedings filed before the Ld. Trial Court to implead the respondent No. 2/ BSES Yamuna Power Ltd. by any of the parties.

15. The petitioner relied heavily on a letter dated 21st February, 2004, which according to them some clarifications have been allegedly issued as to who would be liable to pay the dues of the erstwhile Delhi Vidyut Board. The original suit of the decree holder was still pending disposal when the above referred letter had come into existence and to their knowledge. Even after the said letter having come into existence and in the knowledge of the decree holder/petitioner herein they accepted the liability in the suit and contest the suit admitting their liability for dues of the respondent no. 1 herein. No application was moved by either the petitioner herein or the respondent No. 1 herein to implead the respondent No. 2 as party to the main suit. After the decree has been passed against the petitioner herein as an afterthought, the petitioner is passing the liability on the respondent No. 2/BSES Yamuna Power Ltd. who is not liable to pay any amount to the decree holder.

16. The respondent No. 2 challenged the summoning orders by which it was sought to be impleaded as a party in the execution petition which was accepted by the learned Trial Court and the respondent No. 2/BSES Yamuna Power Ltd. is discharged from the execution petition.

17. In view of the abovesaid reasons, the petition has no merit and the same is dismissed. Pending application also stands dismissed. No costs.