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

% *Judgment Reserved on: 18.01.2012*
Judgment Delivered on: 31.01.2012

+ **CM(M) 848/2010 & CM No.18831/2011**

M/S SHRI SAI AIR CONDITIONING Petitioner
Through: Mr. Prag Chawla, Adv.

versus

M/S VIDEOCON INTERNATIONAL LTD & ANR Respondents
Through: Mr. M.L. Sharma, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

For judgment see CM(M) No.80/2010.

INDERMEET KAUR, J

JANUARY 31, 2012
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(13)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 18.01.2012
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CM(M) 80/2010 & CM No.18840/2011

M/S SAI AIR CONDITIONONG Petitioner
Through: Mr. Prag Chawla, Adv.

versus

M/S VIDEOCON INTERNATIONAL LTD & ANR. Respondents
Through: Mr. M.L. Sharma, Adv.

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M/S SHRI SAI AIR CONDITIONING Petitioner
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1. Two orders have been impugned before this Court vide two separate petitions; first order is dated 13.10.2009 and the second order is dated 29.3.2010. Vide order dated 13.10.2009 the

CM(M) Nos. 80/2010 & 848/2010

Page 1 of 7

(14)

application filed by the decree holder under Order VI Rule 17 of the Code of Civil Procedure (hereinafter referred to as the Code) (in the course of the execution proceedings) to bring on record M/s Videocon Industries Ltd. as the judgment debtor had been declined. Vide the second impugned order the application filed by M/s Videocon Industries Ltd. seeking a direction from the executing court not to issue warrants of attachment at the address of M/s Videocon Industries Ltd. had been allowed. Both these orders are the subject matter of the present two petitions.

2. The record shows that a suit had been filed by M/s Shri Sai Air Conditioning against M/s Videocon International. This suit was a suit for recovery which was decreed ex parte on 15.5.2007 as none had appeared on behalf of the defendant. An application under Order IX Rule 13 of the Code had been filed on 02.7.2007 by M/s Videocon Industries seeking setting aside of this ex parte decree dated 15.5.2007. Contention in this application was that M/s Videocon International has since been amalgamated with M/s Videocon Industries Ltd. w.e.f. 07.12.2005; M/s Videocon International has lost its character as a separate company having amalgamated in the M/s Videocon Industries Ltd. and as such no suit could have been filed or was maintainable against M/s

15

Videocon International which was a non-existent company on the date of the filing of the suit (suit filed in 2006); further the fact of this amalgamation was well known to the plaintiff as a public notice had been effected pursuant to which this scheme has been sanctioned; contention being that no summons had been served upon M/s Videocon Industries Ltd; ex parte decree had come to the knowledge of M/s Videocon Industries only when the Chairman of M/s Videocon International informed them which was much later. The decree had been obtained by fraud. Accordingly the prayer made in the application was that the said ex parte decree dated 15.5.2007 be set aside.

3. The application under Order IX Rule 13 of the Code was dismissed on 03.9.2007. Contention of the applicant therein that M/s Videocon Industries Ltd. and M/s Videocon International Ltd. are two separate entities was noted. Court was of the view that M/s Videocon Industries has no locus standi to move the present application as the ex parte decree had been passed against M/s Videocon International Ltd. This application was dismissed on 03.9.2007; this order has since attained a finality. No appeal has been filed against the said order.

4. Vehement arguments have been addressed on behalf of the

(16)

petitioner/plaintiff; his contention is that the factum of the amalgamation of the two companies was brought to the knowledge of the plaintiff only at the time when an application under Order IX Rule 13 of the Code had been filed by M/s Videocon Industries which was in 2007; this factum was never in the knowledge of the plaintiff and as such the contention that the decree has been obtained by the plaintiff against a non-existent company is an illegality. Further contention being that it was in these circumstances that the plaintiff/decreed holder had moved an application under Order 6 Rule 17 of the Code seeking impleadment of M/s Videocon Industries as a necessary party but this has been erroneously declined.

5. It is not in dispute that the ex parte decree had been obtained against M/s Videocon International Ltd. and not M/s Videocon Industries; even presuming that this came to be known to the decree holder/plaintiff only on 02.7.2007 (when the application under Order IX Rule 17 of the Code was filed), nothing prevented the decree holder/plaintiff at that time to move an appropriate application seeking impleadment of M/s Videocon Industries Ltd; that was not done; the application under Order VI Rule 17 of the Code has been filed only on 18.7.2009 after an

(17)

unexplainable delay; ex parte decree dated 15.5.2007 stood confirmed on 02.9.2007 when the application under Order IX Rule 13 of the Code of M/s Videocon Industries had been dismissed. Application filed under Order 6 Rule 17 of the Code on 18.07.2009 was highly belated; no explanation for the delay was also given.

6. The law is clear that once a company amalgamates with another under a Scheme sanctioned by the court which in this case was in the year 2005, the transferor company loses its existence; it becomes non-existent; it is a dead entity.

7. In MANU/DE/9011/2007 Bank Kreiss Ag. Vs. Mr. Ashok K. Chauhan & Ors. decided on 23.10.2007 a Bench of this Court in the context of a merger between two companies had noted that on such a merger the transferor company loses its identity; in such a case the transferee company could file an application under Order 22 Rule 10 of the Code which application would have to be filed before the suit stood abated. In this case even as per the petitioner the two companies i.e. M/s. Videocon International Ltd. and M/s Videocon Industries stood merged on 07.12.2005; decree had been passed in favour of the plaintiff and against M/s. Videocon International Ltd. prior thereto i.e. on 15.05.2005. This fact even as per the petitioner came to his knowledge on

18

02.03.2007 (when the application under Order 9 Rule 13 of the Code was filed); appropriate application was not filed even at that stage; application under Order 6 Rule 17 of the Code was filed two years later i.e. on 18.07.2009 without any explanation for the delay. In these circumstances the application under Order VI Rule 17 of the Code seeking impleadment of M/s Videocon Industries in the course of the execution proceedings was rightly declined.

8. The judgments relied upon by the learned counsel for the petitioner in this context reported as AIR 1964 Madras 236 C.T.A. CT. Nachiappa Chettiar Vs. M.G.Ramaswami Pillai and 1992 3 AWC 1281 Someshwar Nath Bhargava Vs. Smt. Kusum Kumari are misplaced. There is no dispute that an application under Order VI Rule 17 of the Code can be preferred even at the state of execution proceedings but the prayer has to be evaluated in the factual context of its case. The amendments sought for in the present proceedings were that M/s Videocon Industries Ltd. be substituted for M/s Videocon International Ltd. against whom a decree stood confirmed (by the dismissal of the application under Order IX Rule 13 of the Code) on 03.9.2007; application for amendment filed in the year 2009 by M/s. Videocon Industries

(19)

was even otherwise not the proper remedy as the parameters of Order VI Rule 17 of the Code specify that an amendment is for the purpose of determining real question in the dispute or controversy which is existing between the parties; in this case M/s Videocon Industries Ltd. was admittedly not a party. In this scenario the application under Order VI Rule 17 of the Code was rightly dismissed; the impugned order dated 13.10.2009 thus calls for no interference.

9. The necessary corollary is that the second impugned order dated 29.3.2010 also suffers from no infirmity. The decree was against M/s Videocon International; the warrants of attachment could not be addressed at the address of M/s Videocon Industries Ltd. Thus this prayer of M/s Videocon Industries was rightly allowed by the second impugned order.

10. Petitions are without any merits. Dismissed.

INDERMEET KAUR, J

JANUARY 31, 2012
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