

7
\$~30.

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 788/2010.

SUSHIL SEKHRI

..... Petitioner

Through: Mr. Rajesh Pathak, Adv.

versus

M.C.D. AND ORS.

..... Respondents

Through: Mr. Nawal Kishore Jha, Adv. for
MCD.

Mr. S.K. Tyagi, Adv. for R-4.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

O R D E R

% 11.11.2011

1. Amended memo of parties has not been filed by the petitioner in terms of the order dated 29.11.2010. The same be filed within a week.
2. The present petition is filed by the petitioner praying *inter alia* for quashing of the order dated 09.09.2009 passed by the respondent/MCD rejecting the application of the petitioner for approval of construction of an additional floor at premises No.114, Chitra Vihar, Delhi.
3. Considering the fact that an equally efficacious alternate remedy by way of an appeal is available to the petitioner under the DMC Act,

W.P.(C) 788/2010.

Page 1 of 3.

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

there is no good reason for the petitioner to have directly approached this Court for the reliefs as sought in the present petition, more so, when disputed questions of facts have been raised by the petitioner with regard to the assessment of the structural strength of the building, which factor is necessary to determine as to whether the building would be able to take the load of an additional floor. Such issues ought to have been agitated by the petitioner before the Appellate Authority, in the first instance, before approaching this Court.

4. Be that as it may, the present petition is disposed of with liberty granted to the petitioner to approach the Appellate Tribunal, MCD for being granted the relief as sought in the present petition. Needless to state that the petitioner shall be at liberty to point out the fact that he had filed the present proceedings in his application before the Appellate Tribunal for seeking condonation of delay in filing the appeal, which shall be taken into consideration by the Tribunal while considering the said application. Counsel for the respondent No.4/owner of the ground floor of the subject premises states that he shall not raise any objection on the maintainability of the appeal, if filed by the petitioner before the Appellate Tribunal, MCD within a reasonable time and subject to the condition that the petitioner shall

take necessary steps to ensure the impleadment of respondent No.4 in the said appeal.

5. Counsel for the petitioner states that he shall ensure the impleadment of respondent No.4 in the appeal, which he proposes to file before the Appellate Tribunal, MCD and that the same shall be filed within two weeks.

6. In view of the above, the petition is disposed of, with liberty granted to the petitioner as noted above.



HIMA KOHLI,J

NOVEMBER 11, 2011
'anb'