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

+ **FAO 460/2011**

ANIL GOEL

Through: Appellant
Mr. A.K. Trivedi and Mr. Avinash K.
Trivedi, Advocates.

versus

MCD & ORS

Through: Respondents
Nemo.

+ **FAO 461/2011**

VINAY GOEL

Through: Appellant
Mr. A.K. Trivedi and Mr. Avinash K.
Trivedi, Advocates.

versus

MCD & ORS

Through: Respondents
Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **31.10.2011**

CM No. 19831/2011 (exemption)

Exemption allowed subject to just exceptions.

FAO 460/2011 and CM No. 19832/2011 (stay)

The order impugned before this court is the order dated 07.09.2011 vide which the application filed by the plaintiff under Order 39 Rules 1 & 2 of the Code of Civil Procedure (hereinafter referred to as 'the Code') had been dismissed.

Record shows that the present suit has been filed for declaration, permanent and

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mandatory injunction against the MCD; plaintiff is a contractor working under the MCD; work orders had been issued in respect of 12 works to the petitioner; the petitioner could not commence his work because of certain encroachments on the site; the physical handing over of the sited has not been granted; the defence taken by the defendant was that extension of time had provisionally granted to the petitioner right up to 31.12.2010 but the petitioner did not adhere to this schedule; the petitioner is himself at fault. Learned counsel for the petitioner has drawn attention of the court to two circulars of the Department dated 02.06.2003 and 7.05.2010 to substantiate his submission that if work is not started within the stipulated period, the work shall be deemed as closed; contention is that in his case the work has not been deemed to be closed; he is apprehending coercive action at the hands of the respondent; his contention is that a show cause notice had been issued to him and there is every possibility that he shall be removed from the list of contractors; further penalty can also be imposed on him.

Contentions urged by the petitioner have been examined by the Trial Court. The clauses on the basis of which work order had to be executed by the defendant had also been tested. The court has examined the documentary evidence produced by the respective parties and had noted that although, certain encroachments had been noted in the photographs and it was the responsibility of the MCD probably to remove the said encroachments but action has also not been taken by the petitioner informing the respondent about the said encroachments; the petitioner himself was also at fault. In these circumstances, the plaintiff not having made out any prima facie case in his favour; balance of convenience was also not his favour; equitable relief of grant of a temporary injunction had rightly been declined.

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Needless to state that this application is only an interim order; the suit on the merits of the controversy between the parties and rights of the parties are yet to be adjudicated.

Impugned order suffers from no infirmity: petition is dismissed.



INDERMEET KAUR, J

OCTOBER 31, 2011/rb