

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.180/2014**

Decided on : 16th April, 2015

NORTH DELHI MUNICIPAL CORPORATION Appellant

Through: Ms. Prabhsahay Kaur with
Ms. Divya Pandey, Advocates.

versus

ASHOK KUMA JAIN Respondent

Through: Mr. Rahul Sharma with Ms. Jyoti
Dutt Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

C.M.No.11836/2014 (condonation of delay)

1. This is an application seeking condonation of delay of 67 days.
2. The learned counsel for the appellant has contended that the delay has occasioned on account of the fact that the respondent had filed an appeal challenging the order of demolition and sealing before the MCDAT and the papers were sent to the counsel.
3. The learned counsel for the respondent has contested the delay application and said that the appellants have not given any reasonable explanation which can be termed to be constituting sufficient cause

within the definition of Section 5 of the Limitation Act. It has been stated that the appeal was filed much later after passing of the judgment dated 29.01.2014 and, therefore, there was no impediment on the part of the appellant to prefer the regular second appeal.

4. I have carefully considered the submissions made by the respective sides and gone through the averments. I am inclined to condone the delay and consider the appeal rather than ousting the appellants on technicalities. This is more so when the appellant is a statutory body and is entitled to retrieve the possession of its valuable property which is admittedly stated to be in the possession of the respondent.

5. For the reasons mentioned above as sufficient cause is shown, the delay of 67 days, which is stated to be 85 days by the respondent, is condoned.

6. The application is allowed.

RSA 180/2014 & C.M. Nos.11835/2014 & 11837/2014

1. This is a regular second appeal filed by the appellant against the judgment dated 29.01.2014 passed by Mr. Ajay Goel, the learned Additional District Judge-12 (Central), Tis Hazari Courts, Delhi in first

appeal bearing R.CA. No.05/13 titled *Ashok Kumar Jain v. MCD (North)* setting aside part of the judgment and decree passed by the learned Additional Senior Civil Judge (North), Delhi, dated 17.12.2012.

2. Before dealing with the contention of the learned counsel for the appellant, it will be pertinent here to give brief background of the case. The respondent *Ashok Kumar Jain* filed a suit for declaration claiming himself to be owner by way of adverse possession of suit property.

3. It was alleged in the plaint that the aforesaid suit property which is called by the respondent/plaintiff as 89, Bagichi Madho Dass and 16, Phoolwali Road by the appellant, was originally allotted to late Shri Chandgi Ram, whose lease is purported to have expired on 31.3.1979, after which his son Ashok Kumar Jain, the respondent/plaintiff, continued to be in possession, which he claimed to be adverse and hostile to the appellant. Therefore, he claimed to have become owner by way of adverse possession. Simultaneously, consequential relief of permanent injunction was also prayed for by the appellant.

4. The appellant/defendant filed their written statement contesting the claim on merits as well as raised the objection with regard to the

maintainability of the suit on the ground that no statutory notice under Section 478 of DMC Act has been given to the appellant.

5. The learned trial court framed the following issues:-

“(1) Whether the plaintiff is entitled for the decree of declaration that plaintiff has become the absolute owner by adverse possession and rightful owner in the lawful possession of the suit premises? OPP.

(2) Whether plaintiff is entitled to the decree of perpetual injunction against defendant? OPP.

(3) Whether the suit of the plaintiff is barred under Section 477/478 of the DMC Act 1957? OPD

(4) That plaintiff has no locus standi to file the present suit, as the defendant MCD is the owner of the suit premises and the plaintiff was the lessee of the defendant MCD? OPD.

(5) Relief.”

6. The parties adduced their respective evidence.

7. The learned trial court vide its judgment dated 17.12.2012 decided all the four issues against the respondent/plaintiff and in favour of the appellant/defendant and dismissed the suit.

8. The respondent/plaintiff feeling aggrieved by the judgment dated 17.12.2012 preferred an appeal bearing RCA No.05/13 titled *Ashok*

Kumar Jain v. MCD (North) which was disposed of vide impugned order dated 20.01.2014.

9. Vide the aforesaid order, although the dismissal of the suit so far as the declaration of ownership by way of adverse possession was upheld, however, the learned appellate court granted permanent injunction in favour of the respondent/plaintiff that he shall not be dispossessed from the suit property except in accordance with due process of law. There would have been no occasion for the appellant to file the present appeal but for the fact that the first appellate court in the operative portion of the judgment has observed as under:-

“14. In view of the above observation, the appeal is partly allowed with proportionate costs. Decree of perpetual injunction is hereby passed in favour of plaintiff and against the defendant and defendant including Land & Estate Department’s officials, agents, servants etc. are restrained from forcibly or illegally tampering, damaging, demolishing the suit property or interfering in the peaceful possession of plaintiff over the suit property or interfering in carrying on his lawful business therein or from creating or recognizing third party interest in its records in respect of suit property detrimental to the rights and title of the plaintiff in suit property. The appeal stands dismissed qua rest of the relief. Copy of this judgment be sent to concerned trial court alongwith trial court record. Copy of this judgment be sent to concerned Judicial Officer. Decree

sheet be prepared. Appeal file be consigned to record room.”

10. The appellant/defendant feeling aggrieved by the aforesaid judgment and decree has preferred the present second appeal. It has been contended by the learned counsel for the appellant that the first appellate court although has rightly observed while disposing of issue No.2 that the respondent/plaintiff may not be dispossessed except with due process of law, but while passing final relief it seems to have fallen into a serious error in observing that the respondent/plaintiff shall not be forcibly or illegally dispossessed from the suit property or that the appellant shall not interfere with the lawful carrying on of the business therein or from creating or recognizing any third party interest in respect of the suit property to the detriment of the respondent/plaintiff. It has been contended by the learned counsel for the appellant that the operative portion of the judgment gives an impression as if there is a blanket restraint order passed against the appellant from carrying out dispossession or demolition of the unauthorized structure raised by the respondent/plaintiff. It has also been contended by the learned counsel that, as a matter of fact, the appellants have already passed an order of

demolition and sealing in respect of the suit property which was assailed by the respondent/plaintiff before the MCDAT and in which he was unsuccessful and the Tribunal had upheld the validity and the correctness of the order of demolition as well as order of sealing. It had also permitted the retrieval of possession from the respondent/plaintiff.

11. The learned counsel has contended that the Apex court in case titled *Maria Margarida Sequeira Fernandes v. Erasmo Jack De Sequeira*, (2012) 5 SCC 370 at paragraph 79 has observed that due process of law means that a person must be given a right to contest by filing written statement, a right of hearing etc. so that he is able to present his side of the story and since in the instant case, the order of demolition and the order of sealing was challenged by the respondent/plaintiff before the MCDAT, therefore, that tantamounted to compliance with due process of law so far as the appellant is concerned and the appellants having complied with due process of law be permitted to bring the order of demolition and sealing to its logical conclusion. It has also been pointed out that the order dated 7.7.2014 passed by MCDAT has been assailed by the respondent/plaintiff before the learned District Judge under the statute but no stay has been granted by the learned District Judge, therefore, but

for the restraint order passed by the learned ADJ in RCA No.5/2013, the appellant would be free to retrieve the possession after bringing the order of demolition and sealing to its logical conclusion. It is accordingly contended that the order of the learned ADJ suffers from perversity in this regard as the blanket stay order could not and ought not have been given.

12. The learned counsel for the respondent has contested the submissions made by the appellant. It has been contended by him that the case which has been relied upon by the learned counsel for the appellant has no application because the facts of the case in hand are totally different than the facts of the case which has been cited. It has also been contended that there is no infirmity in the order of the learned ADJ passed on 29.01.2014 in as much as when that order dated 29.01.2014 was passed, the order of the MCDAT was not in existence. The order of the MCDAT had been passed on 7.7.2014 and, therefore, if at all due process of law is to be followed, it is by seeking eviction of the respondent/plaintiff in an appropriate forum.

13. I have carefully considered the submissions made by the learned counsel for the parties and gone through the record. I find substance in the contention of the learned counsel for the appellant that the order of

the learned ADJ dated 29.01.2014, in the operative portion suffers from perversity in as much as the learned ADJ had upheld the judgment and the decree passed by the trial court dismissing the suit for declaration of ownership by way of adverse possession against the respondent/plaintiff. Having done so, even if the respondent/plaintiff was in a settled peaceful possession of the suit property, the learned ADJ had rightly protected him by grant of a permanent injunction but with a condition that he shall not be dispossessed except in accordance with due process of law. But in the operative portion of the judgment, the learned ADJ seems to have fallen into a serious error, rather illegality, by passing a restraint order which is in the nature of a blanket restraint order against the appellant who are admitted established owners of the property by a concurrent finding returned by the courts below. The judgment to that extent cannot be sustained. So far as due process of law is concerned, the contention of the learned counsel for the respondent does not have any merit that the appellant must necessarily now resort to eviction of the appellant in some legal forum. The legal forum, everybody knows, takes its time and the respondent, who is a rank trespasser and is established by the two courts concurrently, cannot be permitted to take advantage of dilatory process of

law. So far as the appellant are concerned, they have already done an exercise to retrieve the possession by passing an order of demolition and order of sealing which has been tested by the respondent before an appropriate forum and that rightly constitutes sufficient compliance with due process of law. Therefore, the judgment of the trial court deserves to be modified to the extent that the appellant shall not dispossess the respondent/plaintiff from the suit property except in accordance with due process of law and that due process of law having been complied with, the appellant is free to take such appropriate action for sealing/demolition or retrieval of possession of the suit premises as may be permissible in accordance with law. However, a caveat is added here since the respondent has preferred an appeal against the order dated 7.7.2014, unless and until the respondent obtains an appropriate stay order against the appellant, the appellant shall be free to act in accordance with law.

14. The appeal is allowed and disposed of.

15. Trial court record be sent back.

V.K. SHALI, J.

APRIL 16, 2015

‘srb’