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HIGH COURT OF DELHI AT NEW DELHI

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C.R.P. No.125/2015 & C.M. No.15310-311/2015

Decided on: 1st September, 2015

B.P. SHUKLA

..... Appellant

Through: Mr. B.K Pal, Advocate.

Versus

ATAM VISHAL CHADHA & ORS.

..... Respondents

Through: Ms. Mini Pushkarna, Standing Counsel
for R-2/EDMC
Mr. Santosh Kumar Tripathi, ASC (Civil)
GNCTD/R-3

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. By virtue of the present civil revision petition, the petitioner has challenged the order dated 06.7.2015 passed by the court of the Additional Senior Civil Judge, JSCC, Guardian Judge, Karkardooma Courts (East), New Delhi in suit No.277/2010.

2. Briefly stated the facts of the case are that in May, 2010 the respondent herein filed a suit for permanent and mandatory injunction against the present petitioner who is the neighbour of the respondent herein and had allegedly raised illegal and unauthorized construction in

the form of a four feet balcony (chajja) in the gali/street over the property bearing no. A-1176, Indra Gali (Durga Gali) Mandwali Fazalpur, Delhi-110092 (hereinafter referred to as suit property) without prior sanction due to which respondent/plaintiff's window was blocked restricting the ventilation of the respondent/plaintiff's house.

3. Vide order dated 06.07.2015 the Ld. Trial Court passed an order directing the defendant no.1 (petitioner herein) to remove the entire unauthorized construction done in the suit property and enjoined him permanently from raising any further construction therein without prior permission of the EDMC. Aggrieved, the defendant no.1 filed the present petition seeking revision of the aforesaid order.

4. The case of the petitioner rests on a short point that the building of the respondent is unauthorized and the window has been illegally opened towards the side of the petitioner. It has been contented by the learned counsel for the petitioner that the petitioner has constructed the first floor like his other neighbors and his act cannot be seen in isolation.

5. The learned counsel for the petitioner has further challenged the maintainability of the original suit bearing no. 277/2010 for want of notice u/s 477/478 of the DMC Act and has stated that the learned trial

court failed to appreciate that the respondent (petitioner therein) had no cause of action.

5. The learned counsel for the petitioner has averred that the learned trial court on an erroneous application of the judgment of the Honorable Supreme Court in the case titled Deepak Kumar Mukharjee vs Kolkatta Municipal Corporation and Ors. 2012 SCALE 29, passed an order granting injunction in favor of the respondent, as the same is factually distinguishable and has no application to the instant case.

6. I have heard the learned counsel and perused the impugned order. I am of the considered opinion that the arguments advanced by the learned counsel for the petitioner hold no water. It is settled law that the case of the petitioner must stand or fall on its own legs and it cannot derive any strength from the weakness in the stand of the respondent. The petitioner has claimed his right of construction of the balcony on the premise that every other person in the area has also done so. Without going in the merits of the petitioner's assertion as the same is not the issue in the present matter it is important to understand that two wrongs shall not make a right and the petitioner cannot act in violation of the laws merely on the pretext that certain others also chose to do so. The same does not

make the act of the petitioner legal. On the same note if that is the grievance of the petitioner that others have also acted in violation of the laws than he has legal remedies available to him under the law and as a responsible citizen he may chose to invoke the same.

7. The arguments advanced by the learned counsel for the petitioner are frivolous and are bereft of any merit. When once it was established that the construction is unauthorized and is in gross violation of the laws then the court is well within its rights to order the demolition of the same.

8. On an analysis of the impugned order and in the light of the aforesaid, I am of the view that the findings arrived at by the learned trial court are absolutely correct. I do not find any material irregularity or any patent illegality so as to warrant any interference from this court. For the reasons mentioned above, I feel that the present revision petition filed by the petitioner is totally misconceived

9. Accordingly the petition stands dismissed. Resultantly pending applications are also dismissed.

V.K. SHALI, J.

SEPTEMBER 01, 2015
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