

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

RSA No.69/2016

%

14th September, 2016

SH. GULSHAN LAL NARANG

..... Appellant

Through: Mr. Sumit Rana, Advocate with appellant
in person.

Versus

MRS. SHASHI DINGRA & ORS.

.... Respondents

Through: Mr. Suresh Sharma and Mr. Nitin Arora,
Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This matter is taken up today as 13.9.2016 was declared a holiday on account of Id-ul-Zuha (Baqried) vide Notification No.2092/G-4/Genl./DHC dated 9.9.2016.

2. On 29.7.2016, the following Order was passed:-

“C.M. No.8563/2016 (exemption)

1. Exemption allowed subject to just exceptions.
C.M. stands disposed of.

C.M. No.8564/2016 (condonation of delay in filing)

2. For the reasons stated in the application, delay of 41 days in filing the appeal is condoned subject to just exceptions.
C.M. stands disposed of.

C.M. No.8565/2016 (condonation of delay in rejoinder-filing)

3. For the reasons stated in the application, delay of 26 days in re-filing the appeal is condoned.

C.M. stands disposed of.

4. Counsel for the appellant, on instructions from the appellant, states that notice be only issued in this appeal so that the appellant/plaintiff actually wants to withdraw his suit and also consequently that both the judgments can be set aside with consent of the respondent no.1 and who was the main contesting defendant in the trial court.

5. Limited to the above, let notice be issued to the respondent no.1, on filing of process fee, both in the ordinary method as well as by registered post AD, returnable on 13th September, 2016. (underlining added)

3(i) The position, as stated in the Order dated 29.7.2016, is acceptable to counsel for respondent no.1.

(ii) The aforesaid order was passed because the judgments of the courts below show that appellant/plaintiff himself had made illegal construction and which illegal construction as per the judgments of the courts below would also have to be demolished by the local authority i.e the Municipal Corporation of Delhi. This is so stated in para 27 of the Judgment of the Trial Court dated 22.11.2012 and which reads as under:-

“27. In view of my findings on issues no. 3 and 4, the suit of the plaintiff is dismissed with costs. For removal of doubt, it is made clear that dismissal of the suit shall not in any manner prejudice the powers of North Delhi Municipal Corporation to take action against the suit property as per the building by-laws. Decree sheet be prepared accordingly.”

4. The subject suit was filed by the appellant/plaintiff for perpetual and mandatory injunction with respect to illegal construction being made by respondent nos. 1 to 6/defendant nos.1 to 6. It was however found that

whatever illegal construction was made by respondent nos.1 to 6/defendant nos.1 to 6 was effectively demolished and removed as per action taken report of the MCD which was filed. The illegal construction alleged by the appellant/plaintiff was with respect to the second floor and barsati floor of the property bearing no.21/26, Old Rajender Nagar, New Delhi. I may note that in demolition process, demolition is not done in such a manner that the last brick has to be removed, because, the object is to make the illegal construction unusable by demolition.

5. The courts below have also held that there is no alleged danger to the stability of the building and that more importantly the appellant/plaintiff has filed the present litigation because the appellant/plaintiff is himself guilty of illegal construction. In regard to the lack of *bonafides* of the appellant/plaintiff who himself has made illegal construction, the trial court has so noted accordingly in paragraphs 20 to 23 of its judgment, and which paragraphs read as under:-

“20. The plaintiff has relied upon Action Taken Report in respect of the suit property which is Ex.PW3/F5. A perusal of Ex.PW3/F-5 reveals that JE(Bldg.) and AE(Bldg.) of MCD had reported that there is a deviation against the sanction building plan at the ground floor, first floor and second floor and the deviation/excess coverage of ground floor, first floor and second floor has been booked vide File No. B/UC/KBZ/09/274 dated 16.11.2009. Ground and first floor of the suit property has been occupied by the plaintiff. From the report Ex.PW3/F-5, it is revealed that the plaintiff himself has made deviation against the sanctioned building plan at the floors occupied by him i.e. ground floor and first floor. There is no evidence on behalf of the plaintiff that he is not made any deviation from the sanction building plan.

21. In view of the above, the conduct of the plaintiff, as he has himself made deviation in the portion under his occupation against the sanctioned building plan, has been such as to disentitle him to the assistance of the Court, as per the provisions of Section 41(1) of the Specific Relief Act 1963.

22. There is another disturbing feature in the present case, namely, the plaintiff has based his claim on the allegations that the suit property is in dangerous condition but he has not proved the same. The plaintiff during his cross examination himself admitted that he has not placed on record any opinion of the Architect to show that the suit property is in dangerous condition. PW-1 has also deposed in his cross examination that he shall make an application to the MCD for inspection of the premises whether it is dangerous or not. In these circumstances, there is no material on record to prove that the building is in dangerous condition. The law is well settled that the plaintiff has to plead material facts in the plaint and also plead those facts which are necessary to establish those material facts. In the present case, the plaintiff has merely stated that the property is in dangerous condition. But, he has not pleaded in the plaint what are those facts which can establish that property is in dangerous condition. In these circumstances, it is not proved that the suit property is in dangerous condition.

23. Further, the contention of the defendant no. 7/MCD that the present suit has been filed for the purpose of settling personal scores with the other defendants. The plaintiff has also admitted in his cross examination if reasonable rate is offered then he can purchase the portion at second and Barsati floor of the suit property. From the testimony of PW-5, it is proved that the plaintiff had agreed to purchase the second and third floor of the suit property at Rs.60 lacs while the defendant no.1 wanted to dispose of it at Rs.70 lacs. From these testimonies, it is revealed that the plaintiff wanted to purchase the second and third floor of the suit property but the defendants no. 5 and 6 sold the same to the defendant no. 1.”

(underlining added)

6(i) A limited notice was issued by this Court as recorded in Order dated 29.7.2016 and which was only to benefit the appellant/plaintiff because otherwise the illegal construction of the appellant/plaintiff was itself in danger of being demolished by the MCD. Otherwise, there was no merit in the second appeal and hence only a limited notice was issued.

(ii) Today however the counsel for the appellant/plaintiff, and who is the same counsel who appeared on 29.7.2016 states that appellant/plaintiff, who is also present in Court today, does not want to abide by the statement made on 29.7.2016.

7. In view of the aforesaid discussion, it is clear that the appellant/plaintiff does not believe in sanctity of what he states in Court and as is recorded in the Order dated 29.7.2016. This Court also deprecates the conduct of the appellant/plaintiff because otherwise on 29.7.2016 itself this second appeal being without any merit would have been dismissed.

8. In view of the above, there is no merit in the Regular Second Appeal. No substantial question of law arises. In view of the conduct of the appellant/plaintiff, the appeal is dismissed with costs of Rs.25,000/- and which costs shall be paid to the Prime Minister National Relief Fund, within a period of four weeks from today. Registry will list the matter before the Registrar General after four weeks, in case the order with respect to deposit of costs is not complied with so that Registrar General can enforce the order with respect to costs.

SEPTEMBER 14, 2016
Aj

VALMIKI J. MEHTA, J