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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 146/2016
KISHORE KUMAR

Through Mr S. Janani and Ms Madhu
Moolchandani, Advs. Appellant

versus
RAKESH KUMAR & ORS

Through Mr Ajjay Aroraa with Mr Kapil
Dutta, Advs. for SDMC Respondent
Mr Deepak Pathak, Adv. for R3 –
BSES
Mr Siddhartha Nagpal and Mr Sumeet
Pushkarna with Mr Chandan Yadav
(JE), for R4 – DJB

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER
30.09.2016

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CMs 8091 – 8092 /2016 (exemption)

Exemption allowed subject to all just exceptions.

The applications are disposed of.

CM 8090/2016 (delay)

This is an application for condonation of delay of 270 days in filing this Intra Court Appeal.

The appellant, it is stated, is an illiterate person who cannot speak or write English, and that the appellant was not duly informed by his counsel. In December, 2015, the appellant learnt that the writ petition had been disposed of. He had then retrieved the papers from the earlier lawyer and had approached another lawyer for filing of the present appeal. However,

before the appeal could be filed, the Court file had to be inspected. Thus, there was delay.

No reply to the application has been filed by the respondents, controverting the aforesaid averments.

In view of the averments made in the application, we condone the delay in filing this Intra Court Appeal.

The application is allowed.

LPA 146/2016

This Intra Court appeal impugns the order dated 16.04.2015 whereby the writ petition filed by the appellant was dismissed in view of the protection granted under National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011. However, the appellant had alleged that his residential unit had become unsafe due to the neighbouring construction, which was unauthorized, it was directed:-

“The petitioner also alleges that the aforesaid construction has rendered his residential unit, which is adjacent thereto, unsafe. Respondent no.2 shall examine the said building and if the petitioner’s allegation that his building/residential unit has been rendered unsafe due to sub-standard construction of the neighbouring property, is found to be correct the corporation shall take necessary action in accordance with law.”

The unauthorised construction had taken place in the year 2004, whereas the writ petition in question was filed in the year 2014. The respondent no.2 – South Delhi Municipal Corporation had issued notices etc but they could not take any action in view of the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011.

Learned counsel for the appellant has submitted that the said enactment would not apply in the present case as the premises in question is located in Savitri Nagar, which is a regularized village. We do not find any merit in the said

contention, for Section 3(1) (C) of the aforesaid Act states that it would apply to unauthorized colonies, village abadi area (including urban villages) and its extension, as existed on the 31st day of March, 2002, and where construction took place even beyond that date and up to the 8th day of 8th February, 2007.

This being the position, we do not find infirmity or error in the impugned order. It is, however, clarified that our order would not mean that the unauthorized construction has been regularized. The respondent corporation is duty bound to act as per law and will comply with the provisions of law. In case the appellant would have any grievance with the respondent corporation in future and in terms of this order and the order of the single judge, it will be open to the appellant to take recourse to legal remedies that may be available to him as per law.

With the aforesaid observations, the appeal is dismissed.

No orders as to costs.

SANJIV KHANNA, J

SUNITA GUPTA, J

SEPTEMBER 30, 2016/rd