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HIGH COURT OF DELHI AT NEW DELHI

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R.F.A. 469/2006

Pronounced on: 19th April, 2016

M.C.D.

.....Appellant

Through: Ms. Amita Gupta, Advocate

Versus

MOHIT GOEL

.....Respondent

Through: Mr. A.K. Bhattacharya, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is an appeal filed by the appellant Municipal Corporation of Delhi (MCD) against the judgment and decree dated 5th July, 2005 by virtue of which the learned Additional District Judge (ADJ) has awarded a sum of Rs.1 lac as damages to the respondent/Mohit Goel along with interest @ 6% per annum from the date of filing of the suit till realization of the decretal amount. The aforesaid amount of Rs.1 lac has been awarded as damages/compensation to the respondent/plaintiff on account of demolition of the shop of the respondent/plaintiff on the third floor on the basis of an alleged illegal demolition order.
2. Briefly stated the case set up by the respondent/plaintiff is that he had filed a suit for damages of Rs.10 lacs against the present

appellant/defendant on the ground that he had purchased a shop on third floor of freehold property bearing Municipal No.3226, Ward No.VI, situated at Gali Chaumukha Mandir, Hauz Qazi, Delhi with common stairs and passages from the ground floor to the third floor from one Smt. Saroj Jain wife of Shri Vinay Kumar Jain, resident of 2688-91, Kinari Bazar, Delhi on 2nd August, 1994 vide a registered Sale Deed. It is alleged by him that the shop was mutated in his name in the municipal corporation record of the city zone on 14.10.1995 and the respondent/plaintiff has been regularly paying the house tax of the said shop from the date of mutation. The respondent/plaintiff was using the said shop on the third floor, more particularly shown in the site plan attached to the plaint for the purpose of storage and dealing with welding machines and welding materials for which he had a head office at 154, DSIDC Sheds, Okhla Industrial Area-I, New Delhi. It was alleged by him that apart from using the suit premises for storage, he was also running his office from a part of the suit premises. He denied having raised any construction on the said shop of his own. It is alleged by him that in the month of November, 1998, respondent/plaintiff could not visit the suit property as he was out of station and when he came back on 07.12.1998, he was shocked to see that the roof and the shutter of the suit property were demolished and his articles including furniture, documents, etc. were missing. It was alleged by him that his shop was demolished illegally and mischievously without any rhyme or reason because

of which his articles worth Rs.4 lacs which were kept in the suit property and furniture worth Rs.1,50,000/- suffered damages. It was also stated by him that there are in all seven shops on the third floor while as he alone was targeted which has resulted damages to the tune of Rs.5,50,000/- to him.

3. The respondent/plaintiff allegedly issued a notice dated 10.12.1998 to the appellant/defendant calling them to pay damages of Rs.10 lacs and since he did not respond to the same, he filed the suit for damages.
4. The appellant/defendant filed its written statement and took number of preliminary objections with regard to maintainability of the suit. It was stated by them that the process of law as enjoined under Section 343 and Section 344 of the Delhi Municipal Corporation Act, 1957 were duly complied with and notices were issued to one Mukesh and since he failed to respond to the notice consequently an order of demolition was passed on 04.02.1994. They contested the suit on the ground that the statutory notice under Section 477 and 478 of the Act was required to be given before filing of the suit. On merits also they challenged the averments made to the effect that damages to the tune of Rs.4 lacs of the stock and trade and furniture to the extent of Rs.1, 50,000/- be suffered by the respondent/plaintiff.
5. On the pleadings of the parties, the learned ADJ framed as many as 13 issues which are as under:-

- “1. Whether the suit is properly valued for the purpose of jurisdiction and court fee? OPP.*
- 2. Whether the suit is barred by provision of Section 477/478 of the Delhi Municipal Corporation Act, 1957 for want of service of statutory notice? OPD.*
- 3. Whether any notice under Section 343/344 of the DMC Act was issued prior to demolition and, if so, whether the said notice was legal? OPD.*
- 4. Whether there is any suppression of material facts by the plaintiff and, if so, whether the suit is liable to be dismissed on that count? OPD.*
- 5. Whether the plaintiff has carried out any unauthorised construction in the suit premises either prior to or even after part demolition of suit property and if so, its effect? OPD.*
- 6. Whether the plaintiff has any locus to file the present suit and the present suit is maintainable? OPP.*
- 7. Whether a registered sale deed has been executed in favour of the plaintiff and his name is mutated in the revenue records of the defendant/MCD and, if so, its effect? OPD.*
- 8. Whether the plaintiff has been misusing the suit property and whether there is additional unauthorised construction and alterations in the suit premises and if so, its effect? OPD.*
- 9. Whether the plaintiff has kept articles worth Rs.4,00,000/- and furniture worth Rs.1,50,000/- in suit property and if so, its effect? OPP.*

10. *Whether the plaintiff is entitled to compensation for a sum of Rs.10 lacs as damages, if any, caused to his property and person? OPD.*
11. *Whether the plaintiff is also entitled to payment of interest on the aforesaid amount and if so, for which period and at what rate? OPP.*
12. *Whether the alleged legal notice dated 10.12.1998 was issued and served on the defendant? OPP.*
13. *Relief.”*

6. Both the appellant/defendant and the respondent/plaintiff examined one witness each in support of their respective case. The respondent/plaintiff filed his Affidavit as PW-1 and permitted himself to be cross examined while as appellant/defendant examined one S.R. Hassan, Assistant Engineer as DW-1 who filed his Affidavit Ex.D-1 and was also cross-examined.
7. All the issues except issue Nos. 5 and 8 were decided in favour of the respondent/plaintiff. So far as issues No.5 and 8 are concerned they were partially decided in favour of both the parties. Both these issues pertain to raising of unauthorised construction after the demolition and some other aspect. I am purposely not referring to the same in detail for the time being.
8. I have heard the learned counsel for the parties. I have also gone through the record. However, after perusal of the record, I am of the view that the learned ADJ has unnecessarily framed 13 issues

and one of the main issues with regard to the maintainability of the suit itself which ought to have been framed has skipped the notice of the learned ADJ and this issue was with regard to the maintainability of the suit itself. This can be understood only when it is noticed that the entire crux of the suit of the respondent/plaintiff claiming damages to the tune of Rs.10 lacs is premised on the ground that his shop was demolished in pursuant to an illegal order of demolition. This is an averment made by him not only in the plaint but also sought to be proved by him by filing his Affidavit. This order of demolition is being called illegal is on account of the fact that no notice under Section 343/344 of the Delhi Municipal Corporation Act, 1957 is purported to have been given either to the respondent/plaintiff or shown to have been given to the owner, occupier or the person at whose instance the alleged unauthorized construction has been carried out. It was the case of the appellant/respondent that the notice was served on one Mukesh but the Court has held that it has not been established that Mukesh was the owner, occupier or the person who raised alleged unauthorized and illegal construction. It is on the basis of this evidence that the issue numbers 2,3 and 12 have been decided by the learned ADJ in favour of the respondent/plaintiff and against the appellant/defendant, holding that the order of demolition was not sustainable in the eyes of law as provision of Section 343 of the Act were not complied with.

9. This observation of the learned ADJ that the order of demolition is illegal and *non est* in law, could not have been given in view of the fact that as per Delhi municipal Corporation Act, 1957 the jurisdiction of a Civil Court has been completely barred to rule on the demolition order. A reference in this regard is drawn to Section 343(2) of the Delhi Municipal Corporation Act, 1957, which reads as under:-

“343 Order of demolition and stoppage of buildings and works in certain cases and appeal

(2) Any person aggrieved by an order of the Commissioner made under sub-section (1) may prefer an appeal against the order to [the Appellate Tribunal] within the period specified in the order for the demolition of the erection or work to which it relates.”

10. Section 343 sub-rule (1) provides for passing of an order of demolition and stoppage of buildings and works in certain cases and appeal while as sub-rule (2) clearly lays down as any person aggrieved by an order of the Commissioner made under sub-rule (1) which is including the order of demolition can file an appeal before a specialized Tribunal which is known as MCD Appellate Tribunal. Further, any person aggrieved by the order of demolition can file the appeal. It may be also pertinent here to mention that according to the respondent/plaintiff he had purchased the property in the month of August, 1994 while as property was booked in January, 1994 and the demolition order is passed on 04.02.1994.

Therefore, he could have challenged the order of demolition only as an ‘aggrieved person’ before a MCD Appellate Tribunal and not before a civil court.

11. Similarly, in sub-rule (4) it has been clearly laid down that no Court shall entertain any suit, application or order proceeding for injunction or other relief against the Commissioner to restrain him from taking any action or making any order in pursuance of the provisions of this Section.
12. The provision of filing an appeal against other orders under the MCD Act is also taken care of by the legislature by incorporating Section 347-E which bars the jurisdiction of Courts, which reads as under:-

“Section 347E Bar of jurisdiction of courts

(1) After the commencement of Section 7 of the Delhi Municipal Corporation (Amendment) Act, 1984, no court shall entertain any suit, application or other proceedings in respect of any order or notice appealable under Section 343 or Section 347-B and no such order or notice shall be called in question otherwise than by preferring an appeal under those sections.

(2) Notwithstanding anything contained in sub-section (1), every suit, application or other proceeding pending in any court immediately before the commencement of Section 7 of the Delhi Municipal Corporation (Amendment) Act, 1984, in respect of any order or notice appealable under Section 343 or Section 347-B, shall continue to be dealt with and disposed of by that court as if the said section had not been brought into force.”

13. A perusal of the aforesaid provisions of law clearly bars the jurisdiction of the Civil Court from entertaining any suit with regard to order of demolition. If that be so, the fact that the respondent/plaintiff is making the order of demolition as substratum of his case to claim damages then he ought to have first got the order of demolition set aside from the Appellate Tribunal, MCD which has not been done by him till date. If that be so, then in my considered opinion, the suit as framed by the respondent/plaintiff which has been decreed by the learned ADJ could not have been entertained at all and was in fact liable to be rejected under Order 7 Rule 11 sub-Clause (d) of the CPC. These facts seem to have gone unnoticed on the part of the learned ADJ.
14. In addition to this, the question of show-cause notice being served on the respondent/plaintiff did not arise and the observation of the learned ADJ that the principle of natural justice deserves to be followed afresh is also totally unwarranted. This is because of the fact that admittedly, the respondent/plaintiff has purportedly purchased the suit property on 02.08.1994 while as the suit property was booked for unauthorized construction seven months prior to that on 19.01.1994 and the order of demolition was passed on 04.02.1994, therefore, there was absolutely no question of notice being served on the respondent/plaintiff who was nowhere in existence at that point of time.
15. Keeping in view the aforesaid totality of circumstances, I feel instead of going into the merits of the appeal on the basis of the

issues which have been framed by the learned ADJ, it is evident that entertaining of the suit by the learned ADJ in the Court below was illegal and unwarranted in view of specific bar contained under Section 343, sub-rule (2) and (4) and Section 347-E of the Delhi Municipal Corporation Act, 1957.

16. I therefore, set aside the judgment and decree passed by the learned ADJ awarding damages to the tune of Rs.1 lac along with interest @ 6% per annum to the respondent/plaintiff from the date of decree till the date of realization. However, it shall be open to the respondent/plaintiff that in case he still feels aggrieved from the order of demolition, he shall be free to have such recourse as may be permissible to him in law. With these observations, the appeal of the appellant stands allowed and the impugned judgment and decree is set aside.
17. Pending applications also stand disposed of.

V.K. SHALI, J.

APRIL 19, 2016

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