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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 816/2016

SHAHID SIDDIQUI Petitioner

Through Md.Mobin Akhtar, Advocate

versus

MOHD MEHMOOD & ORS Respondents

Through Mr.Varu K.Chopra, Advocate
Mr.D.G.Mishra, Standing Counsel for
R-2/East Delhi Municipal
Corporation with Sh.Chandan Singh,
Assistant Engineer (Building),
Shahdara South Zone, EDMC
Mr.Manish Srivastava & Mr.Aditya
Gupta, Advocates for R-3/BSES

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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23.08.2016

CM No. 30626/2016 (exemption)

Allowed subject to all just exceptions.

CM(M) 816/2016 & CM No. 30625/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 05.08.2016 whereby the application of the petitioner under Order XXI Rule 26 CPC was dismissed.
2. The decree holder/respondent No.1 had filed a suit for permanent and mandatory injunction claiming that the petitioner herein has raised unauthorised construction without prior sanction and approval from the concerned authorities on the property bearing No.J-3/115, Kishan Kunj

Extension, Laxmi Nagar, Delhi – 110092. The suit was decreed vide order dated 25.05.2015. As per the decree, the petitioner is restrained by way of permanent injunction from raising any unauthorised construction in the suit property without obtaining prior sanction from EDMC. Defendant No.1/petitioner was directed to remove the entire unauthorised construction in the suit property within three months from the date of the decree. The present execution petition has been filed accordingly.

3. It is the contention of the petitioner that in terms of the Section 3(2) of the National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, 2014 (*in short the 'Act, 2014'*), no punitive action is liable to be taken against the present property till 31.12.2017. The executing court noted that the provisions would be applicable only to unauthorised colony and village abadi area. Based on the facts on record the executing court concluded that the area in question is not an unauthorised colony and hence the suit property is not covered under the said special provision of the Act, 2014. Based on this, the appeal of the petitioner was dismissed.

4. I have heard the learned counsel for the petitioner and the learned counsel appearing for the East Delhi Municipal Corporation.

5. The learned counsel for the petitioner strenuously urged that the appellate court has erroneously concluded that the said provisions of the Act, 2014 would not be applicable to the property in question. He submits that the petitioner's property is in an urban area and relies on the list of unauthorised colonies to substantiate his contention. It is his contention that the property in question falls under the urban village as the property is located in village Khurjee Khas and is declared by DDA as an urban village.

6. The learned counsel appearing for the Municipal Corporation of East

Delhi, on instructions from Sh.Chandan Singh, Assistant Engineer (Building), Shahdara South Zone, EDMC, has stated that the property of the petitioner is located in an unauthorised regularised colony and is not in unauthorised or village abadi area. He submits that reliance of the petitioner on the list which is attached to the present petition is misplaced as the said list is an old list.

7. Admittedly, in the proceeding before the trial court adjudicating the suit this plea was never raised by the petitioner. Now after a decree has been passed against the petitioner, the petitioner seeks to plead applicability of the said special provisions of the Act, 2014. The concerned court has recorded a finding that the property of the petitioner is not located in an unauthorised colony.

8. The learned counsel for the Municipal Corporation of East Delhi confirms that location of the property is in an unauthorised regularised colony to which the special provisions of the Act, 2014 are not applicable.

9. It was for the petitioner to have raised the issue about applicability of the Act before the trial court. The disputed fact as to applicability of the Act could to be adjudicated upon by the said court. As per material now available, it is clear that the petitioner is not entitled to the protection of the Act.

10. I do not see any infirmity in the impugned order. The petition is dismissed.

JAYANT NATH, J.

AUGUST 23, 2016/v

