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

+ CM(M) 1068/2016

SOM DUTT BHANDARI

..... Petitioner

Through Mr.Ajay Jain, Mr.Shashwat Bhardwaj
and Mr.Vibhav Mishra, Advocates

versus

SUMAN MALHOTRA & ANR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

24.10.2016

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1. By the present petition the petitioner seeks to impugn order dated 8.8.2016 by which an application under Order 26 Rule 9 CPC filed by the petitioner was dismissed and order dated 26.8.2016 by which an application under Order VI Rule 17 CPC was dismissed. The petitioner has filed the present suit for permanent and mandatory injunction seeking to restrain the respondents from raising unauthorised and illegal construction/alteration on the ground floor of property No.B-27, LIC Colony, Paschim Vihar, New Delhi or to convert the residential property into commercial property.

2. Alongwith the plaint the petitioner filed an application under Order 39 Rules 1 and 2 CPC which was dismissed on 16.3.2016.

3. Now, the petitioner has filed three applications, first, under Order 26 Rule 9 CPC for appointment of Local Commissioner. Second, under Order 39 Rule 1 and 2 CPC and third under Order 6 Rule 17 CPC seeking amendment of the plaint.

4. I will first deal with the order dated 8.8.2016 by which application

under Order 26 Rule 9 CPC was dismissed. A perusal of the order shows that the trial court noted that the Local Commissioner can be appointed for the purpose of local investigation where the court feels the matter requires elucidation. It is not the object of Order 26 Rule 9 CPC to assist a party to collect evidence where the party can get evidence itself. Noting that the whole object of the application was to gather evidence about unauthorised construction said to being carried out, the trial court dismissed the application inasmuch as the petitioner can prove the unauthorised construction by other means including summoning of concerned officials from the Municipal Corporation.

5. After some arguments on legality of the order dated 8.8.2016 learned counsel for the petitioner submits that direction may be given to the trial court to expeditiously dispose of the fresh application under Order 39 Rules 1 and 2 CPC filed by the petitioner.

6. As far as the second order is concerned, namely, order dated 26.8.2016 by which order the trial court dismissed the application under Order 6 Rule 17 CPC holding that by the present application the petitioner is seeking review of the order whereby his application under Order 39 Rules 1 and 2 CPC was dismissed.

7. A perusal of the application under Order 6 Rule 17 CPC for amendment of the plaint shows that it is ad verbatim merely reproducing the averments which have already been made in the other two applications, namely, application under Order 26 Rule 9 CPC and application under Order 39 Rules 1 and 2 CPC. What additional facts are sought to be incorporated or modified in the plaint are nowhere mentioned in the entire application. The application is merely labelled as under Order 6 Rule 17 CPC for

amendment of the plaint. It does not contain any averments which are sought to be added/modified in the plaint. It is obviously a frivolous application and was rightly dismissed by the trial court.

8. The present petition is clearly without any merits. However, keeping in view the fact that the petitioner has already filed an application under Order 39 Rule 1 and 2 CPC and his grievance is that after dismissal of the last application for stay additional construction is being carried out by the respondents which are unauthorised and illegal and which are likely to take away the valuable rights of the petitioners, it is in the interest of justice that the trial court expeditiously disposes of the fresh application under Order 39 Rules 1 and 2 CPC. The trial court is accordingly requested to expeditiously dispose of the said application preferably within one month from the date the present order is brought to the notice of the trial court. Subject to the above direction, the present petition is dismissed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

OCTOBER 24, 2016

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