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

% *Judgment reserved on : 07.04.2016*

Judgment delivered on : 19.04.2016

+ CM(M) 874/2015
MANVENDER BABBAR

..... Petitioner

Through Mr. Yash Anand, Mr. Yash Singhal
and Mr. David A, Advs.

versus

LAXMAN AHUJA

..... Respondent

Through Mr. Amar Khera, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioners are aggrieved by the impugned order dated 08.07.2015 wherein the application filed by them under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'Code') had been dismissed. The Court was of the view that the averments contained in the plaint did not make out a case for rejection of the plaint. The petitioners are aggrieved by this finding.

2 Record shows that the present suit is a suit for declaration, permanent, mandatory and prohibitory injunction restraining the defendants from raising any unauthorised construction over the 2nd floor roof-top with a further prayer that the illegal constructions already raised there be permitted to be

demolished. The three defendants before the Trial Court are parties who are living on the first and second floor of the property (namely defendants No. 1 & 2). The municipal body i.e. East Delhi Municipal Corporation has been arrayed as defendant No. 3. The averments in the plaint disclose that the two plaintiffs are owners and in occupation of the first and the second floors of the suit property i.e. property bearing No.A-1, Anand Vihar, Delhi. These are undisputed facts. They have been living there peacefully since the year 2007 and there has been no tension whatsoever in this period of their inhabiting this property. Defendants No. 1 & 2 in connivance with defendant No. 3 have illegally attempted to raise construction on the third floor; defendant No. 2 claims herself to be the owner of the suit property; whether defendant No. 1 is the owner or defendant No. 2 is the owner of that third floor/terrace right is not clear; be that as it may, the contention of the plaintiffs is that defendant No. 3 in connivance with defendants No. 1 & 2 has permitted the illegal constructions in the suit property which is without a valid sanctioned plan; necessary permissions of the Municipal body have not been obtained; the rights of the plaintiffs who are owner of the first and second floor gets affected; on repeated queries from the defendants, they have stated that they have got the sanctioned plan but they have failed to produce this plan. The

complaints lodged by the plaintiffs before the Police Station have met with no success. Defendant No. 1 is influential and he has put his locks on the entrance of the second floor preventing access of the plaintiffs to the third floor where their water tanks have been fixed and they are unable to check these water tanks. Suit with a prayer directing defendants No. 1 & 2 to demolish the illegal constructions already raised upon the terrace floor with a further prayer that the defendants be restrained from carrying on any further illegal construction has been made.

3 In the course of the proceedings, the present application under Order VII Rule 11 of the CPC came to be filed. Contention of the defendants is that no cause of action has been shown by the plaintiffs. Submission is that the plaintiffs are trying to blackmail the defendants; attention has been drawn to a show cause notice dated 21.11.2013 sent to defendants No. 1 & 2 qua the first and second floors of the aforementioned property. A perusal of this notice shows that this show cause notice issued by the EDMC is for the third floor as well. By virtue of this notice, the DMC has asked the parties to show cause as to why their sanctioned plan be not cancelled as they have made false representations. Submission of the defendants is that there is a sanctioned plan qua the property but the plaintiffs are not permitting the

defendants for ulterior purpose to carry out this construction. The suit in fact discloses no cause of action. It is liable to be dismissed. Attention has also been drawn to a Notification dated 05.12.2006 issued by the MCD (pursuant to a judgment of a Bench of this Court) that wherever the property is freehold, each individual owner is an owner in his own right and no permission is required from other co-owners for any construction.

4 Arguments have been heard. Record has been perused.

5 The factual matrix has been noted afore. In this pending suit filed by the plaintiffs, they had also filed an application seeking status quo of the suit property which had been allowed on 22.04.2014. It was thereafter that the present application under Order VII Rule 11 of the CPC came to be filed by the defendants i.e. on 28.01.2015. They had sought rejection of the plaint.

6 Needless to reiterate that while dealing with an application under Order VII Rule 11 of the CPC, it is only the averments which are made in the plaint which have to be adhered to and not the defence sought to be raised by the defendant. A detailed order had been passed by the Trial Court. The Court has correctly noted that the averments as contained in the plaint, right or wrong, do make out a cause of action and the submission of the defendants, at this stage, that the plaint is liable to be rejected is an argument

worthy of no merit and the Trial Judge had thus rightly declined the prayer made in the aforementioned application.

7 This Court endorses this view. The show cause notice sent by the Department noted supra clearly gives a show cause to the parties including the defendants as to why the regularization of existing structure be not withdrawn and as to why this sanctioned plan be not withdrawn as it is based on a fraud. Thus the sanctioned plan is in jeopardy. The additional submission of the defendants that the plaintiffs are guilty of concealment of facts, which make out a case of rejection of the plaint, is again only a defence which cannot be examined at this stage.

8 The impugned order, in this background, suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

APRIL 19, 2016

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