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

Decided on: 4th December, 2017

+ CM(M) 374/2016 and CM 14528/2016

SOUTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Ms. Mini Pushkarna, Ms.
Varundhara Nayyar and Ms. Anushanti,
Advocates

Versus

PARMANAND (DECEASED) THROUGH
LRs & ORS Respondents
Through: None

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The petition at hand challenges the order dated 17.02.2016 of the Commercial Civil Judge on the file of civil suit 106/08 whereby the application of the petitioner under Order VIII Rule 1A read with Section 151 of the Code of Civil Procedure, 1908 was dismissed.
2. In spite of the matter being passed over twice since morning, there is no appearance from the side of the respondents. It is 2.30 p.m. No good ground to keep the matter in wait further.
3. The civil suit in which the impugned order was passed was filed by the first and second respondents (collectively, the claimants), *inter alia*, against the petitioner impleaded as per its then status of a unified

Municipal Corporation for entire Delhi, and showing in the array the third respondent herein as the second defendant, the relief claimed being in the nature of mandatory injunction for restoration of subject premises to the condition in which it was prior to 03.07.1982, referring in this context to the judgment and decree in an earlier litigation. It appears from the copy of the pleadings that there is also a conflict of interest between the plaintiffs of the suit (i.e. the first and second respondents herein) on one hand and, the second defendant in the suit (i.e. the third respondent herein) on the other, the petitioner having put in contest, *inter alia*, claiming the plaintiffs and the other parties have been squatting as encroachers on public land.

4. The suit was at the stage of defendant's evidence, when the petitioner had presented the affidavit of Ajay Kumar, Assistant Director (Horticulture) in which documents in the nature of a Lay-out plan (Ex. DW1/1), Handing over/Taking over Memo (Ex. DW1/2), Lay-out plan (Ex. DW1/3) and an extract of immovable property register (Ex. DW1/4) were referred. It was in such context that objection was taken to the non-inclusion of such documents in the material submitted earlier. The application in question was submitted referring to a confusion that had prevailed on account of similar litigation in other connected matters. The trial judge declined to accept the documents on record observing, *inter alia*, that the move had come belatedly and that acceptance of such documents would cause "irreparable" loss and hardship to the plaintiff.

5. It is pointed out that reference to the effect of these very documents had already come up at the stage when the plaintiff's witness was being examined. The observation that taking on record these documents belatedly would result in irreparable loss, cannot be appreciated. The documents are relevant and since the same have a bearing on the interest of a municipal authority over what is described by it as public land, disallowing such documents to be brought on record is rather likely to cause irreparable harm to public interest.

6. Consequently, the petition is allowed. The impugned order is set aside. The documents in question are taken on record. The trial judge, however, in all fairness, must offer an opportunity to the plaintiff of the case to lead additional evidence, if any, in light of such material before proceeding further.

7. The petition and the pending application are disposed of in above terms.

DECEMBER 04, 2017

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R.K.GAUBA, J.