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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1135/2013, CM No.16718/2013 (for stay) & CM
No.647/2014 (u/S 151 CPC)
ANKUR MUTREJA Petitioner

Through: Petitioner-in-person.

Versus

AECHBS AND ORS Respondent

Through: None.

AND

CM(M) 799/2017 & CM No.26928/2017 (for stay)
ANKUR MUTREJA Petitioner

Through: Petitioner-in-person.

Versus

AVIATION EMPLOYEES CO-OP HOUSE
BUILDING SOCIETY Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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01.08.2017

CM Nos.26929/2017, 26930/2017, 26931/2017 & 26932/2017 (all for exemption) in CM (M)No.799/2017.

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

CM(M) 1135/2013 & CM(M) 799/2017

3. CM (M) No.1135/2013 was filed impugning the order [dated 8th July, 2013 in suit No.202/2012 of the Court of Senior Civil Judge (SCJ), Karkardooma Courts, Delhi] of dismissal of the application under Order VI Rule 17 of the CPC of the petitioner / defendant no.3.

4. Notice of CM (M) No.1135/2013 was ordered to be issued to the respondent no.1 / plaintiff and the respondents no.2 and 3 / defendants. The counsel for the respondent no.1 / plaintiff appeared in response to the notice. However on 29th October, 2014, CM(M) No.1135/2013 as also CM(M) No.85/2014, also filed by the petitioner and also listed on that date, were dismissed in default of appearance of the petitioner. The petitioner applied for restoration of CM(M) No.1135/2013 and which was allowed and fresh notice ordered to be issued to the respondent no.1 / plaintiff. The respondent no.1 / plaintiff again appeared in response to the notice. However on the last two dates i.e. 24th March, 2017 and 21st July, 2017, none appeared for the respondent no.1 / plaintiff. None appears for the respondent no.1 / plaintiff today also. It is not deemed necessary to await the respondent no.1 / plaintiff any further who is proceeded against *ex parte*. The respondent nos. 2 and 3 are the parents of the petitioner. Petitioner in person states that vide order dated 19th January, 2016 they are proforma parties whose presence is not necessary.

5. I have enquired from the petitioner, the fate of CM(M) No.85/2014 which was also dismissed in default on 29th October, 2014 and have further enquired whether that would have any bearing on the hearing of CM(M) No.1135/2013.

6. The petitioner states that application for waiver of cost for applying for restoration of CM(M) No.85/2014 has been filed but the CM(M) No.1135/2013 though arising from the same suit from which CM(M) No.85/2014 had arisen, is distinct.

7. The petitioner has been heard.

8. The suit from which CM(M) No.1135/2013 arises has been filed by the respondent no.1 / plaintiff to restrain the petitioner / defendant and the respondents no.2&3 / defendants from interfering in the construction work by the respondent no.1 / plaintiff of raising a wall at points 'A' and 'B' shown in the site plan filed by the respondent no.1 / plaintiff. The said site plan is at page 36 of paper book of CM(M) No.1135/2013 and shows the wall between points 'A' and 'B' to be between the property No.156, Gagan Vihar Extension, Delhi described therein as of the defendants and 'Gagan Vihar Community Hall' purportedly of the respondent no.1 / plaintiff.

9. The petitioner / defendant no.3 applied for amendment of his written statement, pleading that the respondent No.1 / plaintiff, in the plaint, had used the phrases 'Community Centre' and 'Community Hall' interchangeably; though the petitioner / defendant no.3 at the time of filing his written statement did not know but had subsequently learnt that the two carry different meaning in Delhi Development Authority (DDA) parlance which is the land owning authority with a 'Community Centre' being a commercial land use and 'Community Hall' being an institutional land use; that the respondent no.1 / plaintiff made a statement on 16th March, 2017 before the suit Court that the two phrases were being used synonymously; that the petitioner / defendant had filed his written statement with the understanding that Community Centre is a commercial land use; however the land had not been allotted for community centre; thus the written statement was required to be amended to determine the real issue in controversy.

10. I may record that in the application for amendment, no paragraphs sought to be deleted or sought to be added were set out. However a

proposed amended written statement was filed along with the application for amendment.

11. I have enquired from the petitioner as to what is the need for adjudication of the question, inasmuch as the suit of the respondent no.1 / plaintiff is only to restrain the petitioner and respondents no.2&3 / defendants from interfering in the construction of the wall and for determination of the question, whether the respondent no.1/plaintiff is entitled to construct the wall or not, it is irrelevant whether the wall is of Community Centre or of Community Hall.

12. The petitioner has drawn attention to para no.16 of the amended plaint where it is pleaded that the cause of action for filing the suit arose when the petitioner and respondents no.2&3 started harassing “the persons to whom the Community Centre was given for function etc.” The petitioner argues that once it is proved that the land is for Community Hall and not for Community Centre, the cause of action would disappear.

13. There is no merit in the said contention. In a suit for injunction simpliciter, restraining the defendants from interfering with construction of wall, the only issue to be decided is, whether the plaintiff is entitled to construct the wall or the defendants have any right to interfere in the construction of the wall. The nature of the property, whether it be Community Hall or Community Centre, is irrelevant and is not to be adjudicated in a suit for injunction simpliciter. The only question *inter alia* would be whether the land on which the wall is being constructed is of the respondent no.1 / plaintiff or not or interferes with the right if any of the petitioner and respondents no.2&3 / defendants.

14. Rather, I have enquired as to why the suit is pending. The dispute relates to the Colony of Gagan Vihar and there must be a layout plan of the said colony and the issue, it appears can be resolved by summoning of the said layout plan and determining whether the wall is within the layout plan of the said colony.

15. There is no merit in CM(M) No.1135/2013 which is dismissed.

16. CM No.799/2017 which has come up today for the first time has been preferred against the order dated 9th May, 2017 in Suit No.7717/2016 of the Court of ASCJ/JSCC/Guardian Judge (East), Karkardooma Courts, Delhi.

17. Besides the suit from which CM (M) No.1135/2013 aforesaid has arisen, in the same Court, another suit filed by the petitioner against the respondent No.1 in CM (M) No.1135/2013, for the relief of declaration that the petitioner has easementary rights “from the south direction” to his property and to restrain the respondent from carrying out any construction, is pending consideration.

18. The petitioner applied for consolidation of the two suits.

19. Consolidation has been refused vide the impugned order dated 9th May, 2017, reasoning i) that though the subject matter of both suits is the same but the parties are different; ii) that the status of the parties in the two suits is also different affecting the onus; iii) that it will not be convenient for the Court to club the two suits; and, iv) that the two suits are at different stages; while arguments on the preliminary issue were being heard in the suit filed by the petitioner, arguments on miscellaneous application were being heard in the suit filed by the respondent no.1.

20. The petitioner has cited a number of judgments to contend that the

reasoning given by the learned Civil Judge is incorrect. It is argued that the status of the parties or some of the parties being different does not make any difference. It is yet further argued that the convenience of the Court has to be in accordance with well settled principles and as per the settled principles, the petitioner cannot be compelled to lead evidence twice over. It is also argued that the witnesses, if called a second time, would be prejudiced and can be biased.

21. I have considered the aforesaid contentions.

22. In my view, the question subject matter of consideration in both the suits are such which are to be decided on the basis of documents to be summoned from the various land owning and municipal authorities and there appears to be no need for a long trial.

23. The learned SCJ having observed that it would not be convenient to club these two suits, particularly commenting on the conduct of the petitioner and since both the suits are pending before the same learned Judge, need to interfere with the order refusing consolidation is not felt.

24. The petitioner on enquiry states that in the suit filed by him, the respondent no.1 has made a statement that the wall will not be constructed during the pendency of the suit.

25. It appears that consolidation is sought with the intent only of perpetuating the said statement.

26. There is no merit also in CM (M)No.799/2017 which is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 01, 2017/‘gsr’..

CM(M) 1135/2013 & CM(M) 799/2017

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