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

+ CM(M) 1313/2013

RAMA ALIAS REEMA GOGIA

..... Petitioner

Through: Petitioner-in-person.

Versus

MUNICIPAL CORPORATION OF DELHI & ORS Respondents

Through: Mr. Kapil Dutta, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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08.09.2017

1. This petition under Article 227 of the Constitution of India impugns the order [dated 22nd August, 2013 in MCA No.05/2012 of the Court of Additional District Judge (West), Tis Hazari Courts, Delhi], though allowing the appeal preferred by the petitioner against the order dated 8th September, 2011 of the Civil Judge on an application under Section 151 of the Code of Civil Procedure, 1908 (CPC) filed by the petitioner/plaintiff and directing the learned Civil Judge to decide the said application under Section 151 CPC afresh in accordance with law, also directing the learned Civil Judge to examine:

“1. Whether appellant is presently in occupation of Flat No.18/276, (First Floor), New Moti Nagar, New Delhi and whether the defendant No.3 is presently in occupation of Flat No.18/275 as on date?

2. Whether there is any illegal construction in the back portion of Flat No.18/275 resulting into injury to personal rights of the appellant like blockage of the water connection and blockage of the sewer connection to and fro from the house of the appellant?

3. *Whether the construction in the back portion of Flat No.18/275 has resulted into an injury to the rights of privacy of the appellant in her own Flat No.18/276?*
4. *Whether there is any new water connection passing from the outside of the Flat No.18/275 upto Flat No.18/276?*
5. *To obtain photographs from appellant/plaintiff showing the status as on spot regarding above aspects mainly highlighting water connection pipes and the sewer connection to the Flat No.18/276.”*

while so deciding the application under Section 151 CPC.

2. This petition has been pending in this Court since 6th December, 2013, though has been listed on at least a dozen occasions but till date even notice thereof has not been issued. The petitioner/plaintiff has been appearing in person and has filed the petition also in person and in earlier orders, it has been recorded that though endeavour was made to hear the petitioner/plaintiff but the petitioner/plaintiff was unable to inform of all the facts and had also not filed copies of the Trial Court record. Though the counsel for the respondent No.1 has been appearing on advance notice and has appeared today also but notice as aforesaid has not been issued to respondents No.2 to 7 till now.
3. The petitioner/plaintiff today has argued that the impugned order dated 22nd August, 2013 is entirely in favour of the petitioner/plaintiff but she contends that the questions, whether she is in occupation of her first floor flat or not and whether the respondent/defendant No.3 Sanjay Sharma is in occupation/possession of Flat No.18/275 back portion are irrelevant to the decision of the application under Section 151 CPC which has been remanded by the impugned order to the Civil Judge for consideration afresh.

4. The order which was the subject matter of appeal vide impugned order dated 22nd August, 2013 has also not been placed on record, as noted in one of the earlier orders also.

5. I am of the view that rather than keeping this petition pending in this Court and owing whereto, the petitioner/plaintiff, on enquiry, informs that notwithstanding there being no interim order in this petition restraining decision on the remanded application under Section 151 CPC, the said application is pending till now, it is deemed appropriate to dispose of this petition by clarifying that all the arguments which the petitioner/plaintiff wants to make and has made in this proceeding regarding the irrelevancy of the questions aforesaid framed in the impugned order, the petitioner/plaintiff will be entitled to make/raise before the Civil Judge and it will be open to the petitioner/plaintiff to, before the Civil Judge, contend that the said questions are not relevant to the decision of the application under Section 151 CPC or to the decision of the suit and by directing that the learned Civil Judge, without considering itself to be bound by the direction of the Trial Court, would be entitled to, while deciding the application under Section 151 CPC, decide whether the questions aforesaid are relevant or not.

6. With the aforesaid clarification/direction, the petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 08, 2017

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