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

+ **CM(M) 894/2017**

PARITOSH CHANDIOK

..... Petitioner

Through: Mr. Davinder Hora & Mr. Sikandar
Khan, Advs.

Versus

RAJIV ARORA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **22.08.2017**

CM No.29953/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM No.29954/2017 (for condonation of 20 days delay in re-filing the petition)

3. For the reasons stated in the application, the delay is condoned.
4. The application is disposed of.

CM(M) 894/2017

5. This petition under Article 227 of the Constitution of India impugns the order dated [30th March, 2017 in Civil Suit No.176/2013 of the Court of Additional Civil Judge (ACJ)-Commercial Civil Judge (CCJ)-Additional Rent Controller (ARC), District Shahdara, Karkardooma Courts, Delhi] allowing the application of the respondent / defendant under Section 151 of the Code of Civil Procedure, 1908 (CPC) by permitting the respondent / defendant to, during the pendency of the suit repair the roof and to place water tanks on the roof of the first floor of property No.342, Gagan Vihar,

Delhi and to build a ramp on the main entrance of the said property.

6. The impugned order is in the nature of an order on an application under Order XXXIX Rules 1&2 of the CPC and the remedy whereagainst is under Order XLIII Rule 1(r) of the CPC and not by way of petition under Article 227 of the Constitution of India.

7. The counsel for the petitioner / plaintiff states that the petition under Article 227 has been preferred since the application was titled as one under Section 151 CPC and not under Order XXXIX Rules 1&2 CPC.

8. Nomenclature is irrelevant.

9. The counsel for the petitioner / plaintiff has himself argued that on application of the petitioner / plaintiff under Order XXXIX Rules 1&2 CPC filed along with the suit, earlier, a direction to the parties to maintain *status quo* was issued. It is evident therefrom that the impugned order is by way of modification of the earlier order under Order XXXIX Rules 1&2 CPC.

10. However to obviate technicalities, the counsel for the petitioner / plaintiff has been heard on merits.

11. The first contention of the counsel for the petitioner / plaintiff is that the respondent / defendant is in arrears of rent.

12. Having not found any discussion in the impugned order on any such argument if any made by the petitioner / plaintiff before the suit Court, it has been enquired from the counsel for the petitioner / plaintiff whether the petitioner / plaintiff filed any application for direction to the respondent / defendant to pay the rent.

13. The counsel for the petitioner / plaintiff replies in the affirmative and states that a separate order was passed thereon.

14. Thus, the said aspect cannot be a consideration for determining whether the interim relief granted to the respondent / defendant should have been granted or not.

15. Else, the learned ACJ has given cogent reasons in the impugned order for granting the interim relief to the respondent / defendant.

16. The only other argument of the counsel for the petitioner / plaintiff is that the respondent / defendant has filed a separate suit against the Municipality for seeking the same permission and in which suit no relief has been granted to the respondent / defendant as yet. It is argued that now, in the garb of the impugned order in the suit in which the Municipality is not a party and after obtaining the order, unauthorized construction of a room has been raised above the first floor. It is also argued that earlier also the respondent / defendant had constructed a ramp and which had been demolished by the respondent Municipal Corporation of Delhi (MCD).

17. The learned ACJ, in the impugned order, has clarified that the permission granted thereby to the respondent / defendant shall not be deemed to be an expression qua the legality of the ramp to be constructed and that if it is found illegal, the MCD or other statutory authorities shall be well within their rights to demolish the said ramp and take action against the respondent / defendant.

18. The counsel for the petitioner / plaintiff admits that the petitioner / plaintiff has also filed a complaint to the MCD of the illegal construction having been done.

19. Once that is so, the MCD shall be within its rights to, if finds any of the constructions on the property or outside the property to be illegal or unauthorized or actionable, to take appropriate action with respect thereto.

20. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 22, 2017

‘gsr’..