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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 918/2017**
B MOHANAKUMAR Petitioner

Through: Mr. C.V. Francis, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY & ORS Respondents

Through: Ms. Shobhana Takiar, Adv. for DDA.

Ms. Ridhima Gaur, Adv. for R-3 to 8.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **28.08.2017**

CM No.30788/2017 (for exemption)

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

CM(M) 918/2017 & CM No.30787/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 10th July, 2017 in Suit No.612942/2016 of the Court of Additional District Judge (ADJ)-02, West District, Tis Hazari Courts, Delhi] framing issues in the suit filed by the petitioner against the respondents (“for direction for a thorough investigation into the charges against the respondents / defendants by a competent authority to identify the persons responsible for causing trouble and mental harassment, physical strain, financial loss and loss of reputation etc. to the plaintiff and award him adequate compensation for his suffering in the first instance. Alternatively in the event the Hon’ble Court is not inclined to grant him the relief, award him monetary compensation for the loss suffered by him on various counts”)

and refusing to frame issues pertaining the question of unauthorized construction, demolition and other processes thereof for the reason of the Special Tribunal having been constituted and the jurisdiction of the Civil Courts being barred.

4. The counsel for the petitioner / plaintiff, on enquiry states that the petitioner / plaintiff is primarily interested in enforcement of laws of construction and of Delhi Development Authority (DDA) and not in recovering damages.

5. Attention of the counsel for the petitioner / plaintiff is drawn to Section 4 of the Specific Relief Act, 1963 which *inter alia* provides that specific relief can be granted only for the purpose of enforcing individual civil rights and not for mere purpose of enforcing a penal law.

6. Be that as it may, the contention of the petitioner / plaintiff being, of the DDA / South Delhi Municipal Corporation (SDMC) having not taken any action against unauthorized construction, I have enquired from Ms. Ridhima, Advocate appearing on advance notice for SDMC as to why no action is being taken. Ms. Ridhima, Advocate for SDMC states that she is the proxy counsel and the main counsel Ms. Archana Gaur is not available.

7. Panel lawyers cannot, after accepting the panel, fail to appear or send a proxy counsel without instructions and knowledge of the case and thereby bring functioning of the Courts to a standstill. If the counsel cannot appear, there is no obligation to retain the panel.

8. The counsel for the respondent DDA states that the jurisdiction for taking action against unauthorized construction is of the SDMC.

9. Ms. Archana Gaur, Advocate for the SDMC to be careful in future. Else, a copy of this order be sent to the Commissioner, SDMC.

10. After some hearing, the counsel for the petitioner / plaintiff states that since the pleadings have been completed and a large number of documents have been admitted, the petitioner / plaintiff will be seeking to withdraw the suit with liberty to file the writ petition.

11. In view of the aforesaid, this petition has become infructuous and the counsel for the petitioner / plaintiff may, in accordance with law, so apply to the learned ADJ.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 28, 2017
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