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

+ CM(M) 951/2017

PROMILA GUPTA

..... Petitioner

Through: Ms. Kanika Agnihotri & Mr. Rudresh
Jagdale, Advs.

Versus

SHOBHA SANWALKHA & ANR

..... Respondents

Through: Mr. Jitendra Kumar Tripathi, Adv. for
R-2 SDMC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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01.09.2017

CM No.31881/2017 (for exemption)

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

CM(M) 951/2017 & CM No.31880/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the orders dated 2nd May, 2017, 11th May, 2017 and 30th May, 2017 in MCA No.14/2017 of the Court of Additional District Judge-02 (ADJ), South East District, Saket Courts, New Delhi.
4. The counsel for the petitioner has been heard.
5. The counsel for the petitioner has informed i) that the petitioner had instituted the suit from which this petition arises, *inter alia* to restrain the respondent no.1 from raising unauthorized construction in property No.38, Anand Lok, New Delhi; ii) that along with the suit, an application under Order XXXIX Rules 1&2 of Code of Civil Procedure, 1908 (CPC) was filed; iii) that though initially an order directing *status quo* was made

(in appeal then preferred) but subsequently upon the respondent no.2 South Delhi Municipal Corporation (SDMC) stating that the plans for construction had been sanctioned, though there were deviations, the application under Order XXXIX Rules 1&2 of the CPC was dismissed; iv) that MCA No.14/2017, orders wherein are impugned in this petition, has been filed by the petitioner under Order XLIII Rule 1(r) of the CPC; and, v) that the proceedings therein are being delayed.

6. I have enquired from the counsel for the petitioner, whether not the remedy against wrongful sanction of plans is under Section 347B(1)(f) of the Delhi Municipal Corporation Act, 1957.

7. The counsel for the petitioner agrees and states that the petitioner has also applied to the Appellate Tribunal Municipal Corporation of Delhi (ATMCD).

8. After some hearing, the counsel for the petitioner withdraws this petition with liberty to move the appropriate application before the ATMCD and / or to approach this Court independently under Article 226 of the Constitution of India with respect to the inaction of the SDMC.

9. Dismissed as withdrawn with liberty aforesaid.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 01, 2017

‘gsr’..