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

+ C.R.P. 223/2017

ARVIND KUMAR SHARMA

..... Petitioner

Through: Mr. Abhimanyu Gupta, Adv. for Ms.
Guneet Khehar, Adv.

Versus

COMMISSIONER SDMC & ORS

..... Respondents

Through: Mr. Ajay Arora, Adv. for SDMC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **13.10.2017**

CM No.36739-40/2017 (both for exemption)

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

C.R.P. 223/2017 & CM No.36738/2017 (for stay)

3. This Revision Petition under Section 115 of the CPC impugns the order [dated 12th September, 2017 in CS No.5984/2016 of the Court of Additional District Judge (ADJ)-01, District South, Saket Courts, New Delhi] of dismissal of the application of the petitioner / defendant no.6 under Order VII Rule 11 of the CPC.
4. Though the petitioner / defendant, in this Revision Petition, in an apparent attempt to confuse the Court and have the notice of the petition issued, pleaded a lot of irrelevant facts and contentions which were not even subject matter of the application under Order VII Rule 11 of the CPC and not urged before the Suit Court but on a reading of the entire paper book, it is found that the only ground urged in the application was of non-service of notice under Section 80 of the CPC on the petitioner / defendant no.6.

5. The respondent no.6 / plaintiff has instituted the suit from which this petition arises, as far back as in the year 2010, for recovery of damages from the petitioner / defendant no.6 and other defendants in the suit for illegally demolishing the property of the respondent no.6 / plaintiff at Sainik Farms, New Delhi. The petitioner / defendant no.6, after seven years of the institution of the suit, filed the application aforesaid under Order VII Rule 11 of the CPC. It is not as if there is no plea in the plaint of service of notice under Section 80 of the CPC. It is indeed so pleaded in the plaint and copy of the notice along with proof of dispatch thereof by registered post AD has also been filed by the respondent no.6 / plaintiff.

6. However, the petitioner / defendant no.6 contends that the notice was not served on him and that his address given in the notice is of the office earlier occupied by him as Chief Legal Officer of the Municipal Corporation of Delhi (MCD). It is also argued that the petitioner / defendant no.6 otherwise is an employee of the Government of India and working as Advocate on Record of Union of India and was only on deputation as Chief Legal Officer of MCD.

7. The learned ADJ in the impugned order has reasoned i) that the petitioner / defendant no.6 and other defendants have been causing delay in the suit; ii) that objection of non-service of notice has been taken after seven years of the institution of the suit and no premium can be given to the petitioner / defendant no.6 for his own idleness; and, iii) that the petitioner / defendant no.6 had not taken any objection about the service of notice for the past seven years.

8. The counsel for the petitioner / defendant no.6 argues that a plea in this regard was taken in the written statement as well.

9. Once as per the averments in the plaint, the notice had been served, for the purposes of Order VII Rule 11 of the CPC, the said averments have to be believed and the ground on which rejection was sought was in any case not a ground for rejection of the plaint. The remedy of petitioner/defendant No.6 is to, if no issue in this respect has been framed, have an issue framed on plea if any in this respect in the written statement.

10. The application as well as this petition are misconceived.

Dismissed.

No costs.

Copy of this order be given *dasti* under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J

OCTOBER 13, 2017

‘gsr’..