

\$~46

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1310/2017 & CM No.42093/2017 (for stay).
KISHORE KUMAR Petitioner

Through: Mr. Keshav V. Hegde, Adv.

Versus

SOUTH DELHI MUNICIPAL CORPORATION
THROUGH ITS COMMISSIONER & ORS. Respondents

Through: Mr. Rajeshwar Dagar, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

21.11.2017

%

1. This petition under Article 227 of the Constitution of India impugns the order (dated 18th November, 2017 of the Court of Senior Civil Judge (South-East), District Courts, Saket, New Delhi in Ex.No.37/2015) of dismissal of the application of the petitioner under Order XXI read with Sections 47 and 151 of the Code of Civil Procedure, 1908 (CPC).
2. This petition was received yesterday, post lunch, on listing on urgent mentioning and was taken up at 1655 hours. It was the contention of the counsel for the petitioner that his house was about to be demolished at any time. The counsel for the respondent South Delhi Municipal Corporation (SDMC) appearing on advance notice stated that there was no demolition scheduled at least till today morning. The petition was thus ordered to be taken up today.
3. The counsel for the petitioner and the counsel for the respondent No.1 SDMC have been heard.
4. Execution Petition no.37/2015 supra was filed for execution of

judgment and decree dated 31st January, 2015 in CS No.532/2013 (Unique ID No.02406C0250782013) of the Court of Senior Civil Judge (South-East), District Courts, Saket, New Delhi in a suit filed by the respondents no.2&3 along with one Manjeet Singh (who is not a party to this petition) against the petitioner and the respondent no.1 SDMC, directing the petitioner and the respondent no.1 SDMC to demolish unauthorised construction in property no.29, (rear side), Jangpura Lane, Bhogal, New Delhi – 110 014 in accordance with law. The petitioner preferred RCA No.20236/16 against the said judgment and decree and in which the judgment and decree aforesaid was modified to the extent that the respondent no.1 SDMC was held to be at liberty to enforce the demolition order if not modified or stayed by the Appellate Tribunal.

5. The respondents no.2&3 herein along with Manjeet Singh aforesaid filed Execution Petition from which this petition arises, for execution of the decree. The petitioner filed objections aforesaid under Order XXI read with Sections 47 and 151 of the CPC, contending that in the light of the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Second (Amendment) Act, 2014, demolition could not be effected.

6. The learned Senior Civil Judge has vide the impugned order dismissed the said objections, reasoning that the Executing Court could not go behind the decree. It was further held that the Appellate Tribunal, MCD had not granted any stay of the order of demolition.

7. No error is found in the reasoning of the learned Senior Civil Judge. The National Capital Territory of Delhi Laws (Special Provisions) Second

(Amendment) Act, 2014 does not come in the way of execution of a decree in a suit directing demolition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 21, 2017

pp

(corrected & released on 29th January, 2018)