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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 83/2016 & CM No.20627/2016 (for stay)
SUNIL KUMAR Petitioner

Through: Mr. Arvind Chaudhary, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Ms. Manika Tripathy Pandey & Mr.
Ashutosh Kaushik, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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26.07.2017

1. This petition under Article 227 of the Constitution of India impugns the orders dated 3rd July, 2015, 20th July, 2015 and 19th August, 2015 in Civil Suit No.56/2015, filed by the petitioner / plaintiff, of the Court of JSCC-ASCJ-GJ, South East District, Saket Courts, New Delhi.
2. The petition was entertained and notice thereof issued and vide *ex parte* order dated 27th May, 2016, the effect and operation of the impugned orders was stayed.
3. The matter has been thereafter adjourned from time to time.
4. The matter was listed yesterday when also the counsel for the petitioner / plaintiff did not appear. Finding that the petitioner / plaintiff is enjoying interim order, the matter was posted for today.
5. The counsels have been heard.
6. The suit from which this petition arises was filed by the petitioner / plaintiff for permanent injunction to restrain the respondent / defendant Delhi Development Authority (DDA) from cancelling the allotment of LIG

Flat No.703, Floor 0, Sector 28, Pocket GH-3, Block 0, Rohini, Delhi and for mandatory injunction directing the respondent / defendant DDA to disclose the criteria for fixing the cost of the flat at Rs.17,80,634/- for which demand was made from the petitioner.

7. The suit was accompanied with an application for interim relief and it appears that vide *ad interim* order dated 5th February, 2015, the operation of the demand made from the petitioner / plaintiff was stayed.

8. Vide subsequent impugned order dated 3rd July, 2015 in the suit, the application of the petitioner / plaintiff for interim relief was dismissed and the *ex pte* stay order dated 5th February, 2015 vacated. However, finding that the last date for payment of the demanded amount was 8th February, 2015 and the operation of the demand had been stayed on 5th February, 2015, three working days time from 3rd July, 2015 was granted to the petitioner / plaintiff to pay the demanded amount.

9. The petitioner / plaintiff did not pay the demanded amount within three working days and filed an application for extension of time and which was dismissed vide impugned order dated 20th July, 2015 *inter alia* observing that the application for extension of time itself was filed after five days of the time granted on 3rd July, 2015 for deposit.

10. The order dated 19th August, 2015, also impugned in the petition, has got nothing to do on the aforesaid aspect and imposes costs of Rs.1,000/- on the petitioner / plaintiff for adjournment for leading evidence.

11. The counsel for the petitioner / plaintiff today also only states that the petitioner / plaintiff be granted four weeks further time to make the payment.

12. I have asked from the counsel for the respondent / defendant DDA, whether the said flat has been allotted to anybody else.
13. The counsel for the respondent / defendant DDA is unaware of the same and states that the same is not relevant.
14. It is not understandable as to how the said question is not relevant.
15. Though not expressly but vide *ex parte* order dated 27th May, 2016 in this petition the operation of the impugned order was stayed.
16. It is not known how the respondent / defendant DDA has understood the stay order i.e. whether by refraining from allotting the said flat to anyone else or by going ahead with the allotment inasmuch as there was no stay in that regard.
17. Vide order dated 19th August, 2015, the suit of the petitioner / plaintiff was adjourned to 5th October, 2015 for evidence of the petitioner / plaintiff.
18. The counsel for the petitioner / plaintiff states that the petitioner / plaintiff has not led any evidence till now.
19. The order dated 3rd July, 2015 is on an application under Order XXXIX Rules 1 and 2 of the CPC and which is appealable under Order XLIII Rule 1(r) of the CPC and this petition under Article 227 thereagainst in any case would not be maintainable.
20. Be that as it may, the counsel for the petitioner / plaintiff also is not impugning the order on the application under Order XXXIX Rules 1 and 2 CPC on merits and from the grievance against the order dated 20th July, 2015 also it appears that the only grievance is of non extension of time for deposit.

21. The counsel for the petitioner / plaintiff has not disclosed any ground as to why the petitioner / plaintiff did not comply with the demand subject to fulfilment of which by the petitioner / plaintiff, the allotment was made in favour of the petitioner / plaintiff. The petitioner / plaintiff for the purpose of knowing the basis of cost computation could not have delayed the fulfilment of the demand. I find the learned Additional Senior Civil Judge, in the order dated 3rd July, 2015 to have given cogent reasons for dismissal of the application and which are not challenged before this Court.

22. No ground for granting any further extension of time to the petitioner / plaintiff, to the prejudice of hundreds of others who are waiting for allotment of DDA flat, is made out.

Dismissed.

RAJIV SAHAI ENDLAW, J

JULY 26, 2017

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