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

+ W.P.(C) 8123/2018

RAM KUMAR

..... Petitioner

Through Mr. Saif Islam Israili with Mr. M.  
Mohsin Israili, Advocate.

versus

THE COMMISSIONER, NORTH DELHI MUNICIPAL  
CORPORATION AND ANR.

..... Respondents

Through Mr. Ramkumar, Advocate for R-1.  
Mr. Hari Kishan, Advocate for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**ORDER**

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**10.09.2018**

1. By the present writ petition, the petitioner seeks a direction to quash the order dated 29.01.2018 passed by learned District Judge, by which, an appeal filed against the order of the Appellate Tribunal, MCD (hereinafter referred to as 'AT:MCD') was dismissed.
2. The necessary facts to be noticed which has given rise to filing of the present writ petition are that the petitioner herein had preferred an appeal against the order dated 29.08.2016 passed by AT:MCD, by which, the appeal filed by respondent no.2 herein (Naresh Trehan) was allowed. It was held by the Tribunal that permission was not required by respondent no.2 for fixing a shutter in his shop towards Library Road and that the *Tehbazari* rights of the present petitioner should not curtail the rights of the owner (Naresh Trehan) to open the door of his shop towards the Library Road.
3. As per the petitioner, he has *Tehbazari* right at the backside of the shop of

Naresh Trehan (respondent no.2) on Library Road. Since the landlord carried out alteration without getting any permission and sanction from the MCD before opening the wall, the rights of the petitioner herein had been adversely affected. The counsel for the petitioner has strongly urged before this Court that the landlord has intentionally put a shutter on the Library Road side of the shop to disturb the working of the petitioner and with a view to dispossess him.

4. Against an order of demolition passed by the MCD, respondent no.2 had approached the AT:MCD. During the pendency of the matter before AT:MCD, the petitioner herein made an application under Order I Rule 10 C.P.C. However, the petitioner herein was only permitted to file documents and address his arguments. On 29.08.2016, the appeal filed by respondent no.2 was allowed, which led to filing of a writ petition by the petitioner herein, which was dismissed by an order dated 07.02.2016 granting liberty to the petitioner to approach the District Judge. Reliance is placed on para 11 of order dated 29.08.2016 passed by AT:MCD, which reads as under :

“11. In view of the above facts and circumstances, I allow the present appeal and set aside the impugned order of demolition dated 22.07.2014. It is, however, clarified that allowing this appeal does not mean the right to the appellant to remove the applicant from the footpath. Appellant can take action for removal of applicant from footpath as per law and this Tribunal order shall have no bearing on sitting or not sitting of applicant at footpath to run his Barbour shop.”

5. By the impugned order dated 29.01.2018, the learned District Judge has dismissed the appeal, which has led to filing of the present writ petition.
6. We have examined the order dated 29.01.2018 passed by the District Judge. In our view, there is no infirmity in the impugned order. The Court

has carefully analysed the facts and has rightly held that there is no illegality in the order passed by the AT:MCD. Even otherwise, the petitioner herein would not be a proper and necessary party pertaining to a dispute between the owner of the shop and MCD and merely because the petitioner herein is running a shop outside on the Library Road or outside the shop of respondent no.2 that alone cannot be a ground to implead him as a party. It is however, make clear that in case the petitioner has an independent right, he would be at liberty to seek such remedy as available in accordance with law.

7. No ground is made out. The petition is dismissed accordingly.

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8. The application is dismissed.

**G.S.SISTANI, J**

**SANGITA DHINGRA SEHGAL, J**

**SEPTEMBER 10, 2018/ck/**

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