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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA 113/2018**
SHEETAL CHAUHAN

..... Appellant

Through: Mr Yogesh Kumar Dahiya and Mr
Joymoti Mize, Advocates.

Versus

**SOUTH DELHI MUNICIPAL
CORPORATION & ANR**

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.08.2018**

CM No.31726-27/2018(exemption)

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

RSA 113/2018 & C.M. Nos.31725/2018 (for condonation of 80 days delay in filing the appeal)

3. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment [dated 31st January, 2018 in RCA No.77/2017, CNR No.DLST01-007644-2017 of the Court of the Additional District Judge (South District) Saket Court Complex] of dismissal of the First Appeal under Section 96 of the CPC filed by the appellant against the judgment and decree [dated 1st August, 2017 in CS SCJ No.84336/2016 of the Court of the Senior Civil Judge (South)] of dismissal as not maintainable, of the suit filed by the appellant/plaintiff for declaration that the demolition

carried out by the respondent No.1- South Delhi Municipal Corporation with the assistance of respondent No.2 – SHO, Police Station Mehrauli, was illegal and for permanent injunction restraining them from carrying out demolition of any other construction on the property of the appellant/ plaintiff, reasoning that the suit was barred by Section 343(4) and Section 347A of the Delhi Municipal Corporation Act, 1957 (DMC Act).

4. I have enquired from the counsel for the appellant/plaintiff whether not the exclusive remedy of the appellant/plaintiff was to approach the Appellate Tribunal, MCD and what is wrong with the judgment of the Suit Court as affirmed by the First Appellate Court.

5. The counsel for the appellant/plaintiff states that leave be granted to the appellant/plaintiff to approach the Appellate Tribunal, MCD. It is contended that though the appellant/plaintiff has already preferred two appeals before the Appellate Tribunal, MCD but not with respect to the subject matter of the suit.

6. However, counsel is unable to state as to what is the subject matter of the suit qua which no appeal has been preferred.

7. I have further enquired from the counsel for the appellant/plaintiff as to under which provision of law, the appellant/plaintiff requires liberty of this Court to approach the Appellate Tribunal, MCD.

8. Counsel for the appellant/plaintiff is unable to cite any provision also.

9. Counsel for the appellant/plaintiff states that his challenge to the order of demolition is on the ground of demolition being contrary to the provisions of the National Capital Territory of Delhi Laws (Special Provisions) Second Act, 2011 (NCT) Act and on other grounds.

10. However, on enquiry whether not it is open to the appellant/plaintiff to take the said plea before the Appellate Tribunal, MCD, again no answer is forthcoming. It is, however, contended that Section 347B of the DMC Act which lays down the orders under the Act which have been made appealable, does not provide for an appeal against an order in violation of the provisions of the NCT Act.

11. Once the order of demolition has been made appealable, Section 347B of the Act does not require the grounds of illegality to be specified and it is in the domain and jurisdiction of the Appellate Tribunal, MCD to adjudge the illegality urged with respect to the order.

12. This appeal is entirely misconceived, lest raised any substantial question of law.

13. The appellant/plaintiff, if entitled in law to approach the Appellate Tribunal, MCD, shall be entitled to.

14. Dismissed.

RAJIV SAHAI ENDLAW, J.

AUGUST 08, 2018

‘Sd’..

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