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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO(OS) 467/2014 & CM No.3763/2015

ARVIND SINGHAL & ORS

..... Appellants

Through : Mr Raman Duggal with
Mr Shivanshu Kumar, Advocates.

versus

MAX THERAPIYA LIMITED & ORS

..... Respondents

Through : Mr Nimanniyu Sharma, Adv. for R-1.
Ms Biji Rajesh and Mr Gaurang Kanth,
Advocates for SDMC.
Ms Shipra Shukla for Mr Jaswinder
Singh, Advocates for R-4.
Mr Dinesh Dahiya, Adv. for R-11.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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18.07.2018

The appellants are aggrieved by an order of 15.10.2014, which rejected the several applications – notably; seeking interim injunction, rejection of the plaint, appointment of Local Commissioner and a direction to the South Delhi Municipal Corporation to take action in respect of alleged unauthorized construction.

The plaintiff/appellant is a neighbour, who owns and resides in Padmini Enclave, Aurobindo Marg, New Delhi-110016. The suit property was occupied by the first defendant, a tenant. The second defendant is the owner of the property bearing No.2, Padmini Enclave, Aurobindo Marg, New Delhi-110016. The suit proceeded on the allegations that a fresh construction was being carried out by the respondent No.1 in the suit property and that, the construction being raised was unauthorized in as much as, no sanction could be granted, as

it was located within the prohibited area in terms of the Archaeological Survey Act.

The learned Single Judge, after considering the submissions of the parties and the materials on record, rejected the plaintiff's request for interim injunction and directions to demolish; the defendant's applications for rejection of the suit was also dismissed.

During pendency of this Appeal, the Court directed appointment of a Local Commissioner on the basis of the plaintiff's allegations that the impugned order notices a report by the Corporation, copy of which was never furnished to him and was concededly placed on record after orders were reserved. Taking note of these developments, this Court had directed appointment of Local Commissioner, whose report is part of the record. Other significant development which occurred is that the tenant/ first defendant, who occupied the property has since vacated the premises. The substantive suit in which the applications were preferred and which resulted in the impugned order, was transferred pursuant to the reorganization of the pecuniary and territorial jurisdiction of the Court to the District Court at Saket. It is stated that it is now pending completion of admission/denial of documents and further proceedings.

After hearing counsel for the parties and given the facts of this case, especially that the first defendant has since vacated the suit property, the Court is of the opinion that the plaintiff's grievance with respect to the observations made, viz-a-viz the premises being unauthorized and being in accordance with the Byelaws (Byelaw No. 6.4.1) of the Delhi Building Byelaws (as existing then) or not, cannot be gone into in the instant appeal. The appellant/plaintiff may be justified

in his grievance that the report which did not exist but was subsequently made available ought not to have been taken on record. Nevertheless, it is a matter of record that the Local Commissioner's report has now been placed before this Court. In these circumstances, having regard to these facts, if this Court were to accept the plaintiff's plea, it would result in virtually pre-judging the issues and result in granting the final relief, which cannot be granted ordinarily.

Having regard to above, this Court is of the opinion that all issues, which the plaintiff wishes to raise and urge before the Court during the trial, should be and are kept open. The rights and contentions of the parties to urge all available submissions and rely on such materials as they would wish to, including the Local Commissioner's report, are reserved.

The Appeal is disposed of in the above terms.

The Additional District Judge, Saket Court is requested to expedite the trial and conclude the proceedings, as early as possible.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 18, 2018/§n'