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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1214/2016 & CM No.43987/2016**

RANJANA RANI SINGHAL Petitioner
Through: Mr. Shyam Moorjani with
Mr. Sanjeev Kumar, Advocates.

versus

PRAM LATA KHANNA & ORS Respondents
Through: Mr. Dinesh Goyal, Advocate for R-1
to 3.
Ms. Mansi Gupta, Advocate for-4.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER
% **06.03.2018**

1. The petition at hand has been preferred by the party which instituted a civil suit (S-264/2008) against the respondents on 30.01.2008 seeking a decree in the nature of permanent injunction so as to restrain them from carrying out unauthorized and illegal construction at the ground floor of property bearing no. A-76, Phase-II, Ashok Vihar, Delhi. The order under challenge is the one passed on 25.04.2016 by the Additional Senior Civil Judge dismissing the application of the petitioner (plaintiff) seeking to amend the plaint invoking the provision contained in Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) so as to add to the prayer clause a relief in the nature of declaration that the order dated 06.08.2009 passed by the Appellate Tribunal Municipal Corporation of Delhi (ATMCD) in appeal no. 122/80/NC/09 was null and void and *non est* in the eye of law.

2. A brief reference to the background facts would be in order.
3. It appears the petitioner (plaintiff) claims to be the owner of first floor of the aforementioned property, she having statedly purchased it by registered sale deed dated 17.04.2003. The first to third respondents (first to third defendants before the trial court) similarly are owners in occupation of the ground floor of the said property, they having acquired the right, title and interest in its respect on the basis of another registered sale deed.
4. In the suit, the petitioner had alleged that the defendants were carrying out unauthorized and illegal construction in the ground floor portion which was causing damage to and affecting her rights qua her portion in the first floor. The said defendants while contesting the suit also filed counter claim, *inter alia*, stating that the plaintiff was also guilty of certain unauthorized construction in her portion, prayer for requisite relief in that regard being sought.
5. While the suit was pending, the defendants applied to the fourth respondent (North Delhi Municipal Corporation) for regularisation of the works carried out in the ground floor portion. The municipal authority granted the regularisation, as requested, on 18.02.2008. It appears on representations being made, presumably by the plaintiff of the suit, essentially on the ground that such regularisation could not have been accorded by the municipal authority at a stage when the issue was subject matter of a pending litigation, the municipal authority, by subsequent order, revoked the said regularisation.

6. The defendants then filed an appeal before Appellate Tribunal Municipal Corporation of Delhi (ATMCD) invoking its appellate jurisdiction under Section 347B of Delhi Municipal Corporation Act, 1957. The ATMCD having heard the defendants and the fourth respondent (NDMC) in the said appeal (no. 122/ATMCD/2009) granted the relief by its order dated 06.08.2009 holding, *inter alia*, the revocation of the regularisation order to be bad in law. Consequently, the regularisation order dated 18.02.2008 stood revived.

7. It is against the above-said backdrop that the plaintiff of the suit moved the aforesaid amendment application to bring on record the additional facts and contentions and make the prayer for additional relief in the nature of declaration qua the validity of the order of ATMCD. The trial court has found such amendment to be impermissible and, therefore, dismissed the application by order dated 25.04.2016 which is under challenge.

8. In the considered view of this Court, the said order of ATMCD or the order of Municipal Corporation of Delhi granting the regularisation cannot be challenged by a civil suit in view of the bar to the jurisdiction of the courts other than the forums prescribed by Delhi Municipal Corporation Act, 1957 in terms of Section 347E. The plaintiff of the case, however, has an independent right of appeal before the Appellate Tribunal Municipal Corporation of Delhi (ATMCD) under Section 347B of Delhi Municipal Corporation Act, 1957 qua the regularisation order dated 18.02.2008, by the grant of which she is “*aggrieved*” within the meaning of said statutory provision.

9. After some hearing, the learned counsel for the petitioner, submitted on instructions, that he may be allowed to withdraw the present petition and the application filed therewith and be given liberty to approach the ATMCD or the writ court to pursue the appropriate remedies against the regularisation order dated 18.02.2008.

10. The petition and the application filed therewith are dismissed as withdrawn with liberty as prayed granted.

R.K.GAUBA, J

MARCH 06, 2018

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