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

Decided on: 5th February, 2018

+ CM(M) 865/2015

MOHAN LAL

..... Petitioner

Through: Mr. Santosh Chourihaa, Advocate
with Mr. Miraj Khan & Mr. Vinod,
Advocates.

versus

HARI SINGH & ANR

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The order under challenge by the petition at hand was passed by the senior civil judge in first appeal (MCA No.08/2014), decided on 12.05.2015, affirming the decision of the trial court (civil judge), whereby the application of the petitioner-plaintiff of the civil suit (Suit No.50/2014) seeking *ad interim* injunction against the respondents was dismissed by order dated 16.07.2014. The civil suit in which the said interim relief was claimed invoking provisions contained in Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 (CPC) was instituted in 2014 claiming cause of action to have arisen in February/March, 2014 when the respondents allegedly made attempts to forcibly dispossess the petitioner from the suit premises described as property bearing No. C-540/1, J.J. Colony, Inderpuri, New Delhi. The respondents have been impleaded as first and second defendants

in the said civil suit. The civil judge declined to grant any relief by order dated 16.07.2014, *inter alia*, observing that the petitioner is guilty of suppression of facts. This view was affirmed by the first appellate court.

2. In (para 7 of) the plaint of the suit in question the petitioner had, *inter alia*, pleaded that on the cause of action that had earlier arisen he had previously filed a similar suit against erstwhile Municipal Corporation of Delhi (before its trifurcation giving birth, *inter alia*, to the second respondent) which suit, he pleaded, had been “*disposed of*” by the additional senior civil judge, stating that it was a simple suit for permanent injunction. The result of the said suit was not clarified. It turned out, upon detailed scrutiny, that the said civil suit had been dismissed by the additional senior civil Judge on the basis of finding returned that the documents on the basis of which the petitioner claims right, title and interest in the suit property are forged and fabricated.

3. On being asked, the counsel for the petitioner submitted that though appeal had been filed against the dismissal of the first suit, the said appeal had come to be dismissed in default but the application for its restoration is still pending.

4. The petitioner relies on the result of another civil suit to which there was a reference made in (para 8 of) the plaint, it being a civil suit filed against Delhi Urban Shelter Improvement Board (DUSIB), it having been decreed by the court of senior civil judge on 26.09.2011 whereby restraint order was granted in his favour against forcible dispossession, sealing, demolition, or obstruction in doing business

therefrom, etc. against the DUSIB. It is the submission of the counsel for the petitioner that the said judgment has become final, no appeal having been preferred there against. But then, the said judgment rendered against DUSIB, noticeably on a suit filed for declaration, did not result in any decree in the nature of declaration. Moreover, it was a suit filed not against Municipal Corporation of Delhi, the petitioner himself having clarified in context of an issue on the question of *non-joinder* that he was not seeking any relief against Municipal Corporation of Delhi.

5. In the given facts and circumstances, the present suit from which these proceedings arise is against the same party against whom the first suit had been filed which was dismissed by the trial court with findings to the effect that the document on which the petitioner relies are forged and fabricated. Concededly, there is no stay against the operation of the said judgment by any court till date. The said finding, given the factual matrix, binds not only the second respondent but more so, the petitioner who was the plaintiff of the said suit. From this perspective, the observations of the civil judge in the suit and of the first appellate court in appeal by the impugned orders about the petitioner being guilty of suppression of facts are not incorrect.

6. Thus, the impugned orders do not call for any interference. The interim order granted in these proceedings is vacated.

7. The petition stands disposed of in above terms.

R.K.GAUBA, J.

FEBRUARY 05, 2018/vk