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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 896/2018 and CM No. 31817/2018**

RADHEY SHYAM KATARIYA Petitioner
Through: Mr.Aakash Naval, Advocate

versus

SHAMBHU PRASHAD GUPTA & ORS Respondents
Through: Ms.Vijaya Tyagi, Advocate for R-1.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **07.03.2019**

None for the respondent No.2, who was represented previously.

Vide the present petition, the petitioner assails the order dated 17.07.2018 of the learned Additional District Judge-01 (Shahdara), Karkardooma, in CS No. 951/2017 vide which an application under Section 151 of the CPC filed by the defendant No.1 of the said suit arrayed as respondent No.1 to the present petition seeking a status report from the EDMC in relation to the stated alleged illegal construction allegedly raised by the plaintiff i.e., the petitioner herein at Property No. 57, Pocket-D, LIG Flats, GTB Enclave, Delhi was allowed to be called.

The observation in the impugned order indicate that the suit filed by the plaintiff i.e. the petitioner herein was one for mandatory and permanent injunction and for award of damages on the assertions that the defendant No.1 i.e., the respondent No.1 to the present

petition, had raised unauthorized construction near the window of the drawing room on the floor of the plaintiff, i.e., the petitioner herein, depriving him of natural air and sunlight and that the plaintiff thus sought a permanent injunction to restrain the defendant No.1 i.e., the respondent No.1 from raising further illegal construction on the suit property and through the mandatory injunction seeking that the defendant No.1 i.e., the respondent No. 1 be directed to remove the illegal construction in the suit property.

The respondent No.1 herein i.e. the defendant No.1 to the said suit is indicated to have filed an application under Section 151 CPC seeking a direction to the EDMC arrayed as respondent No. 2 to the present petition to file a status report in relation to the said unauthorized construction raised by the plaintiff, i.e., the petitioner herein in property no. 57, Pocket D, LIG Flats, GTB Enclave, Delhi which prayer as observed herein above was granted by the learned Trial Court observing to the effect that it was essential for that Court to consider as to whether the plaintiff had come to the Court with unclean hands. The observations in para 10 of the impugned order also reflect to the effect that the learned Trial Court had taken into account the aspect as to whether the plaintiff had approached the Court with clean hands or not which was considered to be of paramount importance.

It has been submitted on behalf of the respondent No.1 as also brought forth through the copy of the status report dated 7.9.2018, submitted by the EDMC before the learned Trial Court to the effect that the said status report has already been submitted with remarks

inter alia to the effect:

“4. That there is unauthorized construction in the flat no. 57, Pocket -D, LIG Flat, GTB Enclave, Delhi seen from outside and photographs of the same are taken from outside attached as Annexure-‘A’.”

Apparently, the petition is infructuous and apart from the same, there is no infirmity in the impugned order nor does there exist any reason to exercise the jurisdiction in terms of Article 227 of the Constitution of India in the facts and circumstances of the case.

The petition and the accompanying application are declined.

ANU MALHOTRA, J

MARCH 07, 2019/SV