

\$~15

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 350/2019 and CM APPL. 9302/2019**

GIRISH MALHOTRA Petitioner

Through: Ms. Manisha Parmar, Advocate (M:
9999699762).

versus

EAST DELHI MUNICIPAL CORPORATION & ORS.. Respondents

Through: Mr. Gaurav Rohilla, Advocate for R-1
(M: 9810229222).

Mr. Kushagra Pandey, Panel Counsel
for GNCTD (M-9999266111)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

%

14.02.2020

1. The Petitioner/Plaintiff (*hereinafter, "Plaintiff"*) is aggrieved by the impugned order dated 6th September, 2018 by which the Plaintiff's application seeking review of order dated 2nd March, 2017 was dismissed. Vide order dated 2nd March, 2017, the evidence of the Plaintiff was closed despite the evidence being on record, as an adjournment was sought on the ground that the witness was not available. Adjournment request was opposed by ld. counsel for the Defendant and following order was passed:-

"Matter is fixed for PE as last opportunity to plaintiff. Evidence by way of affidavit of plaintiff alongwith application for summoning the witnesses has been filed by counsel for plaintiff. Copy supplied. Adjournment is sought by counsel for plaintiff on the ground that witness is not available which is strongly opposed by counsel for defendants. Heard and perused the file. The plaintiff was given last opportunity on the last date for leading PE. Further, plaintiff has not examined any witness till date. PE is hereby closed.

Put up for DE on 10.04.2017. Advance copy of affidavit be supplied to the opposite party atleast one week before the next date.'

2. The Plaintiff then sought review of the above order, which was also rejected by the Trial Court on 6th September, 2018.
3. The petition arises out of a suit seeking permanent and mandatory injunction in respect of the alleged unauthorised construction in property No. FF-8, Mangal Bazar Road, Laxmi Nagar, Delhi- 110092. The Government of NCT Delhi and the EDMC are also impleaded as parties. The Plaintiff is the occupant and owner of the second floor. Defendant Nos. 3 and 4 are the occupants and owners of the ground and first floor. The allegation of the Plaintiff is that there is unauthorised construction by the occupants of the ground floor and first floor i.e. the Defendant Nos. 3 and 4. On this aspect, the EDMC has also filed its written statement. Considering the fact that the evidence was already on record on the date when the PE was closed, one last opportunity is granted to the Plaintiff to lead evidence subject to payment of Rs. 10,000/- as costs to the Defendant Nos. 3 and 4. The costs shall be paid on or before the next date in the Trial Court. The Plaintiff's witnesses shall remain present for cross examination. After the conclusion of the cross examination of the Plaintiff's witnesses, the Defendants' evidence shall be recorded. Any outstanding costs, as imposed by the Trial Court, shall also be paid.
4. The petition, with all pending applications, is disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 14, 2020
MR