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

Date of Decision: 24.03.2021

+ CM(M) 265/2021

OM PRAKASH

..... Petitioner

Through Mr.Sharavan Dev, Adv.

versus

SUMITRA DEVI

..... Respondent

**Through Mr.Rahul Shukla, Mr.Bhuvan,
Adv.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

CM 11779/2021(exemption)

Allowed, subject to all just exceptions.

CM(M) 265/2021 & CM 11778/2021

1. This petition has been filed by the petitioner challenging the orders dated 18.10.2019 and 07.03.2020 passed by the learned Civil Judge-07, Central, Tis Hazari Courts, New Delhi in suit, being CS SCJ No.94260/2016, *Om Prakash v. Sumitra Devi*.

2. By the Impugned Order dated 18.10.2019, the learned Trial Court was pleased to dismiss the application filed by the petitioner,

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who is the plaintiff in the suit, seeking a direction to the MCD to file on record various documents as was earlier directed by the learned Trial Court in the order dated 07.12.2002. By the subsequent order dated 07.03.2020, the application of the petitioner seeking review of the order dated 18.10.2019 has been dismissed.

3. The suit has a chequered history inasmuch as the same has been filed by the petitioner claiming unauthorized construction being carried out by the defendant nos.1 to 3 in the suit as also claiming easementary rights.

4. As far as the plea of the unauthorized construction is concerned, the same stands finally adjudicated by an order dated 19.07.2011 passed by this Court in RSA No.184/2010, *inter alia* observing as under:

“5. Accordingly, the impugned orders cannot stand. They are accordingly set aside. Rejection of the plaint under Order 7 Rule 11 CPC is set aside. The Trial Court will proceed to hear and dispose of the suit in accordance with law with respect to the cause of action of easementary rights to light and air as stated in the plaint and the reliefs claimed thereupon.

6. I may note that the learned counsel for the appellants also sought to argue that the suit must also continue with regard to the unauthorized construction. I completely disagree. The reason is the following observations of the First Court in the order dated 24.03.2004:-

“MCD also filed WS and raised preliminary objection that the suit of the plaintiff is barred under Section 347(E) of the DMC Act and jurisdiction of this Court is barred and this Court has no jurisdiction to try the present suit. It has been further stated that unauthorized construction carried out in the property No.E-20, Bhagwan Dass Nagar, New Delhi was booked vide file No.451/B/UC/WZ/98 dt. 8.9.98. It has been further submitted that in view of the resolution of Standing Committee, MCD No.1648 dt. 24.5.79 the owner/builder of the suit property was processed for regularization as per BBL and policy and guidelines contained in OO No.7/Building/HQ/86 dt.29.8.86 and other circulars No.9/EE(B)/HQ/89 dt. 23.6.89 and 11/Bldg/HQ/86 dt. 27.10.86. It has been further stated that after completing requisite formalities and procedure as laid down in the aforesaid circulars, the unauthorized construction on GF and FF have been regularized and building plan has been sanctioned in respect of SF also as on 12.1.1999 as per details depicted in the chart filed as annexure “A” with the WS of MCD.”

No doubt the issue could not have been decided under Order 7 Rule 11 CPC, but, the issue could well have been considered under Order 12 Rule 6 CPC because MCD has given detailed particulars of allowing of the sanction and the completion of the requisite formalities by the respondents no.1 to 3. Therefore, there remains no illegal and unauthorized construction for the suit to continue with respect to that cause of action and relief related thereto. I may however, note that the appellants/plaintiffs are seeking that certain documents be directed to be produced as directed by the Trial Court vide its order dated

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7.12.2002. Accordingly, MCD should for the sake of completion of the record, comply with the directions as contained in the Order dated 7.12.2002.

7. With the aforesaid observations, the appeal is partly allowed to the extent that the suit will continue with respect to the cause of action and the reliefs claimed qua the easementary rights. Appeal is disposed of accordingly.”

(Emphasis supplied)

5. As is evident, the only issue remaining before the learned Trial Court was with respect to the claim of easementary rights made by the petitioner. However, the petitioner is right in contending that the direction passed to the MCD to produce documents as contained in the order dated 07.12.2002 remained operative with the confirmation of the order in that regard by this Court.

6. Thereafter issues were framed in the suit on 12.01.2015 and the parties led their respective evidence. The petitioner closed his evidence on 10.01.2019.

7. By an order dated 07.12.2017, the learned Trial Court directed the MCD to file a Status Report regarding the extent of construction in the property belonging to the petitioner as also defendant nos.1 to 3.

8. This order was challenged by the respondent nos.1 to 3 before this Court in form of CM(M) No.813/2018. This Court by its order dated 04.12.2019, was pleased to dispose of the said petition directing as under:

“4. Insofar as the second petition, i.e. CM(M) 813/2018 is concerned, the ld. Trial Court has directed that notice be issued to the Deputy Commissioner of the concerned zone to examine any unauthorized construction and file a detailed status report in respect of the same. The impugned order was passed on 7th December, 2017. If the status report has been filed, the same shall be considered at the stage of final hearing. No further orders are called for in both these petitions. The submissions of the Plaintiff shall be heard on 12th December, 2019. Within a period of four months, the final judgment shall be passed. The costs of Rs.1 lakh are reduced to Rs.25,000/-. The same shall be paid on or before the next date to the Plaintiff.”

(Emphasis supplied)

9. In the meantime, the first Impugned Order had been passed by the learned Trial Court relying upon the interim stay granted during the pendency of the above petition before the High Court.

10. Upon passing of the order of the High Court, the review petition filed by the petitioner has also been dismissed by the order dated 07.03.2020.

11. The petitioner has thereafter filed an application praying for permission to lead additional evidence. The said application has been dismissed by the learned Trial Court vide its order dated 08.02.2021 relying upon the order dated 04.12.2019 of this Court. This order is not in challenge in the present petition. This Court has therefore, not expressed any opinion on the merit of the said order.

12. As far as the orders impugned in the present petition are concerned, the fact remains that the petitioner took no steps for ensuring compliance with the order dated 07.12.2002 after the passing of the order in the second appeal by this court on 19.07.2011. As noted hereinabove, thereafter issues were framed on 12.01.2015 and the parties have led their evidence. The petitioner had not taken any steps at that stage for having the documents produced before the learned Trial Court.

13. As far as the order dated 07.12.2017 is concerned, this Court in its order dated 04.12.2019 directed the learned Trial Court to expedite the hearing of the suit without insisting on the status report to be filed before the Trial Court. This order has also attained finality.

14. In view of the above, I find no infirmity in the orders impugned in the present petition.

15. It is made clear that this Court has not expressed any opinion on the relevance of documents which are sought to be produced by the petitioner through MCD and the effect of non-production of the same shall be considered by the learned Trial Court while considering the suit on merit.

16. With the above observation, the present petition is disposed of.

Dasti.

NAVIN CHAWLA, J

MARCH 24, 2021

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