

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: May 05, 2022

+ RFA 238/2019, CM APPL. 13094/2019, 17203/2020 & 7310/2021
ASHOK SIKKA Appellant

Through: Mr. Rishabh Bansal and
Ms. Himanshi Malhotra, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION
& ORS. Respondents

Through: Mr. Sanjay Jain, ASG with
Mr. Sriharsha Peechara, Adv. for R-1
& R-7 to R-10
Mr. Aditya Vikram Singh, Adv. for
R-3

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T
V. KAMESWAR RAO, J

CM APPL. 13094/2019

This is an application filed by the appellant for placing on
record additional documents.

For the reasons stated in the application, the same is allowed
and the application is disposed of.

RFA 238/2019

1. This appeal has been filed by the appellant with the following
prayers:-

*“In view of the submissions made above, it is most
respectfully prayed that this Hon'ble Court may be
pleased to: -*

- a.) Call for the records of Civil Suit No. 516 of 2018, titled as “Sh. Ashok Sikka v. South Delhi Municipal Corporation & Ors.” before the Court of Sh. Munish Markan, Ld. ADJ-01, South, District Courts, Saket, New Delhi;*
- b.) allow the present appeal and set aside the final order, judgment dated 10.12.2018 passed by the Court of Sh. Munish Markan, Ld. ADJ-01, South, District Courts, Saket, New Delhi in Civil Suit No. 516 of 2018, titled as “Sh. Ashok Sikka v. South Delhi Municipal Corporation & Ors.”.*
- c.) Remand back Civil Suit No. 516 of 2018, titled as “Sh. Ashok Sikka v. South Delhi Municipal Corporation & Ors.” to the Court of Sh. Munish Markan, Ld. ADJ-01, South, District Courts, Saket, New Delhi for adjudication after evidence is led by the parties;*
- d.) a decree of costs in favour of the Appellant and against the Respondents thereby awarding costs of the present appeal; and*
- e.) pass any other as the Hon'ble Court may deem fit.”*

2. Before going into the merits of the issue, it would be apposite to give a brief factual background from which this present appeal emanates. The appellant / plaintiff filed a suit before the learned Trial Court for declaration, mandatory injunction and damages against the defendant No.1 / respondent No.1 South Delhi Municipal Corporation (‘SDMC’, hereinafter), current and erstwhile officials of the SDMC and the Chief Secretary, GNCTD. The appellant, his son and wife are the joint owners of the property no. B-5, Lane-14, Western Avenue, Ekta Marg, Sainik Farm, New Delhi-62 (‘suit property’ for short).

3. According to the appellant, the respondent Nos. 8, 9 and 10 visited the house of the appellant on May 20, 2007 and demanded ₹5,00,000/- as a bribe and threatened the appellant that if the said

amount was not paid then the suit property of the appellant shall be completely demolished. The appellant refused and took a stand that the suit property was protected from the punitive actions under the Delhi Municipal Act, 1957 ('DMC Act', hereinafter) and Section 3 of the Delhi Laws (Special Provisions) Act, 2006 ('DLSP Act', for short). The case of the appellant before the Trial Court was that the suit property was constructed prior to the year 2000. The defence of the respondents before the Trial Court was that, they had acted upon the order dated May, 09, 2007 in ***Rajeev Malhotra v. UOI & Ors. W.P.(C) No. 6374/2000*** whereas the appellant argued that the said order was not enforceable in view of the DLSP Act which was extended from time-to-time upto 2014. Despite the existing law, according to the appellant, the respondents without giving any prior notice or warning went on to demolish the entire house between May 23, 2007 to May 26, 2007 and also on May 30, 2007.

4. It was the case of the appellant that the order dated May 09, 2007 and the four-member lawyer's committee stated that only the front canopy and the structure beneath, the suit property needed to be demolished. It was the case of the appellant that the respondents themselves violated the provisions of the DLSP Act and that the respondents singled out only one house for demolition and spared the houses of those people who had paid money to the respondent officials. It was the case of the appellant that the respondent and its officials exceeded their authority and for the sake of personal gratification took the impugned actions only as a smokescreen. As per the appellant in the writ petition titled as ***Rajeev Malhotra (supra)*** a

four member lawyers' committee was appointed to visit Sanik Farm and verify certain facts regarding existence / demolition of properties in the Sainik Farm colony. The SDMC in the meeting held prior to the demolition on May 22, 2007 had recorded that the report of the four-member committee would be the basis of the action it had *suo moto* proposed. As per the appellant, Rajeev Malhotra the petitioner in the aforesaid petition had filed the said petition as a vendetta, since his own property had been demolished in the year 2000 and only to blackmail people. Rajeev Malhotra had in his petition made allegations regarding the reconstruction of certain demolished properties during the years 2000-2001 and the SDMC on May 09, 2007 assured the Court through its counsel to take action for demolishing the reconstruction within three weeks. The same can be seen from the Order dated May 09, 2007, that the SDMC did not get any directions from this Court but being fearful of Rajeev Malhotra, immediately started a series of illegal actions to create a pretence, as if they were genuinely concerned with eliminating reconstruction of demolished properties and thereby ignored the statutory provisions and only the house of the appellant along with one or two other houses were demolished whereas the other properties on the said list were left untouched.

5. It was the case of the appellant that he was evicted from the suit property and the suit property was demolished as he had not paid the bribe, since the order dated May 09, 2007 was not enforceable with respect to the suit property, as the same was protected under the DLSP Act and even more so when the appellant had not been served with a

statutory notice. As per the appellant there was also no Court order mandating demolition of the suit property and on these grounds the appellant claimed damages to the extent of ₹1 Crore. According to the appellant the act of demolition was rife with *malafide* as only his house was demolished whereas the houses of those people who had paid the bribe, their houses were not demolished. Another point of contention as raised by the appellant before the Trial Court was that the respondents not only demolished the property of the appellant but also damaged and exposed the valuable articles of the appellant, which were then taken away by thieves and the damages caused to the appellant were aggravated. He claimed that he was entitled to restoration of the suit property as it existed prior to May 22, 2007.

6. It was thereafter that the respondent No.4 / defendant No.4 Naresh Kumar moved an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC', short) for rejection of plaint on the ground that the suit was barred and hit by Section 478 of DMC Act as the suit was filed on May 25, 2010 before this Court (which was later transferred to the District Courts on account of change in the pecuniary jurisdiction) whereas the cause of action is stated to have accrued between the periods of May 23, 2007 to May 30, 2007 and Section 478(2) of the DMC Act provides for a limitation of 6 months whereas the suit was filed almost 3 years after the cause of action. It was the stand of the respondent No.4 / defendant No.4 that not only was the suit barred by limitation but also barred under the principles of *res judicata* since the son of the appellant / plaintiff who is the joint owner of the suit property had also filed a writ petition *Amit Sikka v.*

Union of India, W.P.(C) 479/2001 which was taken up along with the *Rajeev Malhotra (supra)* and the said demolition was upheld by this Court vide order dated July 11, 2007 and the request of the appellant / plaintiff to file a separate writ petition was declined vide order dated October 28, 2009. It was also stated before the learned Trial Court that there are no specific allegations against the respondent No.4 / defendant No.4 nor with regard to the cause of action and that no *mala fide* has been specifically imputed to the respondent No.4 / defendant No.4 nor that the said respondent had demanded any bribe from the plaintiff and further argued that the respondent No.4 / defendant No.4 was the Municipal Commissioner at the relevant time.

7. It was the stand of the appellant before the learned Trial Court that the question of applicability of Order VII Rule 11 CPC has to be seen strictly on the basis of the plaint and the documents relied upon by the plaintiff and nothing more. It was argued that none of the documents which essentially consisted of copies of the proceedings / various orders passed in the writ petitions being W.P.(C) 6734/2000, W.P.(C) 4771/1993 and W.P.(C) 479/2001 could have been looked into at that stage. It was further argued by the appellant/plaintiff that the suit was filed as a result of the actions arising out of personal biases/*mala fides* of the respondents/defendants. It was also the case of the appellant/plaintiff that the acts done by the respondent/defendants were in their personal capacity and cannot be stretched to mean that the same get covered under the statutory provisions of the DMC Act. According to him, the action of demolishing the house of the appellant/plaintiff was without sanction and was illegal; furthermore,

no order was ever passed under Section 343 of the DMC Act and the waiver as claimed by the respondents/defendants was illegal.

8. The learned Trial Court agreed with the contention that for the purpose of deciding an application under Order VII Rule 11 CPC, only the averments made in the plaint and the documents relied upon by the plaintiff are to be examined. The Trial Court went on to record that the essence of the plaint reflected that the suit property of which the appellant/plaintiff is the joint owner along with his wife and son, had been illegally demolished by the Officials of the Municipal Corporation of Delhi ('MCD', for short) being defendant Nos.4 to 11, since, the appellant/plaintiff refused to accede to the demands for illegal gratification of ₹5,00,000/-. Further, the appellant/plaintiff had alleged *mala fides* on the part of all the defendants in the suit and had made categorical averments in paragraph 19 of the plaint regarding the demand for bribery against defendant Nos.9 to 11 therein. The plaint in paragraph 48 mentions that the officials of the defendant No.2 i.e., defendant Nos.4 to 11 abused their power and demanded a bribe from the appellant/plaintiff. The appellant/plaintiff refused to agree to their demands as a result of which the respondents/defendants trespassed into the suit property and demolished the entire house on May 23, 2007. The Trial Court opined that these averments of the appellant/plaintiff would have been useful for the purposes of going ahead with the suit had the appellant/plaintiff relied only on Section 477 of the DMC Act which provides for protection of the Municipal Officers/Employees for actions done in good faith. However, since the appellant/plaintiff had stated in the plaint that the

respondents/defendants attempted to justify their illegal actions under the garb of the orders passed by this Court dated May 09, 2007 in ***Rajeev Malhotra (supra)***, which order shows that a statement had been made on behalf of the MCD that the action was being taken against 21 properties and the property of the appellant/plaintiff was one amongst those 21 properties. The order dated May 09, 2007 also reflects that a proper action for demolition of any reconstruction shall be done within three weeks and directions were issued to the MCD to file an Action Taken Report against all observations and directions recorded in the said order.

9. The appellant/plaintiff had in the plaint also challenged the order dated May 09, 2007 in ***Rajeev Malhotra (supra)*** stating that the said order was not enforceable as per the provisions of the DLSP Act. The appellant/plaintiff also relied on certain documents obtained through an RTI application especially the noting dated May 22, 2007 which refers to the action taken by the MCD regarding the demolition of the entire structure of the suit property. Thereafter, the proceedings done on May 23, 2007, May 24, 2007, May 25, 2007 and May 30, 2007 concerning the suit property had been filed on record by the appellant plaintiff himself. The Trial Court went on to state that once specific directions have been issued by this Court the respondents being the MCD were bound to comply with the same. The demolition of the suit property by the respondents/defendants as per the averments of the appellant/plaintiff allegedly took place on May 23, 2007 to May 26, 2007 and also on May 30, 2007. The learned Trial Court opined that the acts of the respondents/defendants in carrying out the

demolition and documenting the same in their official record cannot be stated to be an act done by the officials of the MCD in their personal capacity but rather as a part of their official duties. The learned Trial Court while adjudicating the application under Order VII Rule 11 CPC, stated that the question of good faith cannot be considered as the ambit of Section 477 of the DMC Act. The only question which the Trial Court thought it fit to be considered was whether the defendants had carried out the demolition action in their personal capacity with ulterior motives and thereby not in discharge of their official duties. The Trial Court observed that the plaint itself reflected that the defendants carried out the demolition action in discharge of their official duties. It was recorded that the defendant Nos.3 to 10 are MCD officials right from the level of MCD Commissioner to the Assistant Engineer (Building) and even more so the appellant/plaintiff had stated that the MCD meeting held on May 22, 2007 had recorded that the report of the Four Member Committee would form the basis of the *suo moto* action taken. The plaint further reflected that a show cause notice dated February 22, 2007 under Section 343/344 of the DMC Act was served upon the appellant's/plaintiff's son by the MCD which was replied to and the hearings were also held by the Assistant Engineer (Building) of the said area. Another notice under Section 345(A) of the DMC Act dated February 22, 2007 was issued by the Deputy Commissioner South Zone. The question of *mala fide* would have to be assessed as per Section 477 of the DMC Act, whereas Section 478 of the said Act does not prescribe this requirement. The Trial Court in the impugned judgment stated that while considering the plaint *in toto*

would reveal that the appellant/plaintiff had in fact filed the suit against all the MCD officials that too for acts done in discharge of their official duties.

10. After considering the rival submissions of the parties, the Trial Court held that since the acts of the respondents/defendants had in fact been done as a part of their official duties, which duties are squarely covered by Section 478(1) of the DMC Act. As per the said Section, the suit ought to have been filed within six months from the date when the cause of action arose, as prescribed under Section 478(2) of the DMC Act. The demolition action took place between the periods of May 23, 2007 to May 30, 2007, whereas the suit was only filed on May 25, 2010 and as per the conclusion of the Trial Court the same is barred by limitation.

11. On the issue of the suit being barred by the principles of *res judicata* inasmuch as the son of the appellant/plaintiff having had filed **Amit Sikka (supra)** which was taken up along with **Rajeev Malhotra (supra)** and as such the issue being agitated therein being the same as the one being agitated in the suit; the learned Trial Court has stated that the appellant/plaintiff himself had filed a writ petition being W.P.(C) 2802/2015 which was disposed of vide order dated July 06, 2017 with the directions that the proceedings in the suit be expedited. The learned Trial Court, however, kept the issue of *res judicata* open and dismissed the suit of the appellant/plaintiff as being barred by limitation as per the provisions of Section 478 of DMC Act and proceeded to reject the plaint under Order VII Rule 11(d) CPC, which I reproduce below:

“24. The acts of the defendants have been done in pursuance of The Act and in discharge of their official duties and is squarely covered by Section 478(1) of DMC Act. Therefore, the suit ought to have been filed within six months from the date when the cause of action arose as mandated by Section 478(2) DMC Act. The demolition action took place during the period 23.05.2007 to 30.05.2007 whereas the suit was filed on 25.05.2010 and is therefore, barred by limitation

25. The judgments relied upon by the plaintiff do not support the case of the plaintiff. In Well Protect (supra) the suit for recovery was filed towards the balance amount payable under the three agreement. In Sushila Devi (supra) the suit for damages was filed on account of falling of a branch of a dead road side tree resulting into the death of a person which was not attributed to any act done or purported to be done in pursuance of the Act or Rules or Regulations made thereunder. In Niagara Hotels (supra) the suit for recovery was filed for recovery of the excess amount paid after about two years.

26. In my considered opinion, the allegations in the plaint are plain and simple and plaintiff is aggrieved by the acts of the defendants demolishing the house of the plaintiff. Therefore, the case of the plaintiff is squarely covered by Section 478 of DMC Act and is therefore, time barred.

27. Another stand taken by the defendants is that the suit is hit by principle of resjudicata. It was argued by Ld. Counsel for defendants that son of plaintiff had filed the writ petition in WP (C) No.479/2001 and that writ petition was taken up with WP (C) 6734/2000 therefore, the orders passed by Hon'ble High Court in those writ petitions bar the filing of the present suit.

28. In this regard, it is worthwhile to note that plaintiff himself had filed the writ petition WP (C) 2802/2015 which was disposed off vide order dated 06.07.2017 by the Hon'ble High Court whereby the Hon'ble High Court had directed to expedite the of the; present suit. Further, for the purposes of deciding the application under Order 7 Rule 11 CPC, the averments in the paint and the documents relied upon by the

plaintiff only are germane and it has been held by Hon'ble Supreme Court in V. Rajeshwari Vs. T. C. Saravanabava (2004) 1 SCC 551, that the plea of res-judicata has to be substantiated by the pleadings, issues and judgment in the previous case and then it has to be found out, what has been decided in the judgment which operates as res-judicata. Therefore, in my considered opinion, the question of res-judicata cannot be decided at this stage.

29. However, in view of the provisions of Section 478 of DMC Act, the suit is barred by limitation and therefore, the plaint is rejected under Order 7 Rule 11 (d) CPC. ”

SUBMISSIONS:-

12. Mr. Rishabh Bansal, learned counsel appearing on behalf of the appellant has at the outset stated that no doubt the Court adjudicating an application under Order VII Rule 11 CPC only looks at the pleadings in the plaint, however, he stated that a perusal of paragraphs 1, 1A, 1C, 1E, 9-11, 44, 48, 50, 51, 51A, 51B, 59 and 63 of the amended plaint would reveal that it is the case of the appellant / plaintiff that the actions of the respondents are *ex facie* beyond the scope of their duties provided under the DMC Act and are in fact a means of personal vendetta against the appellant, who did not accede to their demand for bribe. Mr. Bansal stated that the writ petition titled ***Rajeev Malhotra (supra)*** was filed seeking action against unauthorised constructions in Sainik Farm. Consequently, the front canopy and the structure beneath the property of the appellant was demolished on December 09, 2000 and December 21, 2000, but the rest of the suit property was left untouched. The demolition of the suit property as per the case of the appellant was recorded in an Order of this Court dated January 12, 2001. The Four Member Committee

constituted by this Court filed its Report observing that only the front canopy and the structure beneath the property of the Appellant was demolished. This Court in *Rajeev Malhotra (supra)* and *Amit Sikka (supra)* passed an order directing the respondent No.3 to verify and inspect unauthorised properties in Sainik Farm and prepare an Action Taken Report. It is the case of Mr. Bansal that the respondents have specifically noted in their internal notings that the property of the appellant consisted of ground floor and first floor which are old and occupied. It was then the respondent No.5 issued a Show Cause Notice to the appellant for sealing while the property was as per the averment of Mr. Bansal protected by the DLSP Act and that no notices could have been issued under the DMC Act. Mr. Bansal stated that the said notice had been replied to by the appellant's son on February 26, 2007. An Action Taken Report was filed by way of an affidavit dated February 27, 2007 in *Rajeev Malhotra (supra)*. Mr. Bansal stated that this report clearly mentions without ambiguity that the house of the appellant at B5 W-14 Lane has been termed as an 'old and occupied' house. Further, the Action Taken Report also noted that 'neither any sort of construction work has been seen in progress nor any building material was found stacked there.

13. According to Mr. Bansal the orders passed by this Court directed the members of the Committee to only inspect all the premises against which the allegations had been made. The said statutory proceedings which commenced with the issuance of Notice dated February 22, 2007 continued till April 16, 2007 when the respondent No.5 reserved his orders in the matter. He stated that, it is

an undisputed matter of record that the respondent No.5 never pronounced any orders in the said proceedings initiated with the Show Cause Notice. It was vide order dated May 09, 2007 in ***Rajeev Malhotra (supra)*** that the respondents were directed to demolish all boundary walls in Sainik Farm and to bring them within the prescribed limits. There was no order by the High Court to demolish any of the houses in the area. The Order only directed the advocates one Mr. Rajiv Awasthi and the other Mr. Anoop Bagai to submit a joint inspection report after inspecting all the properties where unauthorised construction has taken place after the order dated January 12, 2001 was passed. However, no orders had been passed directing demolition. He argued that the respondents have admitted in an internal noting that as per the order dated May 09, 2007, they were only supposed to demolish boundary walls. In the said noting the respondents have admitted that action against the 21 properties will only be taken after ‘completing legal formalities, and passing the demolition and sealing orders’. No such orders were passed against the suit property (of the appellant). The respondent Nos. 8-10 visited the house of the appellant and demanded a bribe of ₹5,00,000/-. As per the case of the appellant, the respondents threatened the appellant by stating that if the amount as demanded is not handed over then his house shall be demolished. Meetings were held between the respondents and the *Amicus Curiae*, Mr. Awasthi and Mr. Anoop Bagai and it was agreed to waive of the procedure under the DMC Act. Mr. Bansal argued that the DMC Act, especially Sections 343, 344 and 345A cannot be waived, that too by the counsels advising the respondents. It is his case that the

respondents without authority or even an order sanctioning such an act barged into the house of the appellant on May 23, 2007 and started to demolish the suit property. Mr. Bansal argued that it is an undisputed position of fact that the respondents did not give any prior warning / notice for the appellant and his family to leave the house and / or remove their belongings especially when the women and children of the family were also residing there. He argued that there was no order for demolition by the Commissioner of the MCD and the entire demolition process undertaken on May 23, 2007 to May 26, 2007 and on May 30, 2007 for the house of the appellant numbered B-5, W-14 Lane, Sainik Farm and the same is currently lying-in ruins. Mr. Bansal argued that the respondents were fully aware of the illegal demolition of the suit property, however, it was portrayed during the meeting as if the demolition of the house had not taken place and the same was yet to take place only after the identification of the properties was done. Mr. Bansal has argued that this report was signed by Mr. Awasthi, Mr. Bagai and the respondents with *malafide*. He goes on to state that a false Joint Inspection Report was filed before this High Court and the fact that the appellant's house had been completely demolished in the month of May 2007 was concealed and it was claimed that the action on the suit property was taken by the MCD Officials as per the Four Member Committee Report dated January 23, 2001. Mr. Bansal has also stated that the order dated July 11, 2007 also goes to show that the previous order dated May 09, 2007 only mandated a joint inspection and not a demolition of the suit property. It was in the year 2009 the appellant instituted the writ petition numbered as W.P. (C) 13907/2009

seeking restoration of the demolished suit property. It was his case that the suit from which this appeal arises being CS(OS) No. 1099/2010 was instituted by the appellant for seeking declaration, mandatory injunction, damages and compensation. He states that the writ petition W.P.(C) 13907/2009 was disposed of vide order dated October 06, 2010 wherein the appellant was given liberty to pursue his remedies before the appropriate Forum and the appellant then filed the present suit.

14. It is the case of the appellant that after the admission and denial of documents the Court proceeded to frame issues, a specific issue was framed on May 14, 2013 by the Court requiring proper evidence to be led by the parties to prove whether the suit was barred under Section 477 / 478 of the DMC Act. The appellant then filed an application under Order XII Rule 6 CPC wherein a decree was passed in favour of the appellant vide judgement dated October 23, 2017 based on the pleadings and the documents obtained by the appellant with the help of RTI applications. The Trial Court in that case refused to grant protection of Section 478 of the DMC Act to the respondents. The respondents being aggrieved by the said judgment and decree filed an appeal before this Court being RFA No. 970/2017. Mr. Bansal stated that the appeal was disposed of on the basis of a consent order and the matter was then remanded back to the Trial Court for framing of additional issues with respect to the reliefs sought and further while remanding the matter back to the Trial Court it was clarified that the parties would lead evidence during the trial. As per Mr. Bansal, the respondent No.4 with the intent to delay the proceedings filed an

application under Order VII Rule 11 CPC. He argued that the Trial Court while deciding the said application went beyond the scope of the remand order dated March 01, 2018 and proceeded to reject the plaint without framing additional issues nor recording evidence of the parties and the Trial Court also failed to consider the arguments of the appellant in the reply to the application under Order VII Rule 11 CPC.

15. Mr. Bansal has argued that once it was recorded in the Order of this Court while remanding the matter back to the Trial Court, the Court was required to frame additional issues and record evidence of the parties. The Trial Court has disregarded the scope of the remand order dated March 01, 2018. Mr. Bansal has rebutted the contention of the respondents that the demolition of the appellant's house was carried out in furtherance of order dated May 09, 2007, he stated a reading of the said order would reveal that no directions have been passed with respect to demolition of the appellant's house. It is his case that the Minutes of the Meeting dated June 12, 2007 show that the respondents knew that only the reconstructed portion of the appellant's house was to be demolished and nothing more. It has also been shown that the respondents during the meeting had portrayed as though the demolition had not yet taken place and would be done once the properties are identified. Mr. Bansal has argued that the actions of the respondents were *mala fide* in nature and not in furtherance of any statutory duties or in line with the provisions of the DMC Act.

16. As per Mr. Bansal it becomes amply clear from the perusal of the Action Taken Report which has been filed by the respondent No.1 in ***Rajeev Malhotra (supra)*** that the property belonging to the

appellant was old and occupied and there was no new construction which was ongoing and therefore, the said property was protected from any kind of demolition actions. He emphasised on the fact that the property belonging to the appellant is protected under the DLSP Act read with Section 6 of the General Clauses Act, 1897 and hence the property of the appellant was protected from any action by the local authority. It is his case that the provisions of section 478 (2) of the DMC Act does not apply to the present suit. In order for the provision of Section 478 (2) to apply it would be mandatory that the act done by the respondent must fall under the purview of section 478 (1) of the DMC Act which means that the act must be done or purported to be done in pursuance of the DMC Act or any rule made thereunder. According to Mr. Bansal none of the acts done by the respondents fall under this category. He has referred to the amended plaint to state that the acts done by the respondents are beyond any sanction of law. He also referred to the judgment of this Court in *M/s Niagara Hotels and Builders (P) Ltd. v. UOI 1997 (40) DRJ 39*.

17. Mr. Bansal argued that no order for demolition has ever been passed by the respondents under the Sections 343, 344 and 345A and the same was waived off illegally which in itself is a mandatory requirement for initiating action against of demolition. He relied on the judgement of the Supreme Court in the case of *M.C. Mehta vs. Union of India W.P.(C) 4677/1985* to clarify the limited jurisdiction of the Court appointed committees and to state that the Joint Committee could not have waived off the mandatory provisions of the DMC Act and Articles 14, 21 and 300A of the Constitution stand violated. Mr.

Bansal has also submitted that as per the counter affidavit dated May 16, 2014 filed by the SDMC in W.P.(C) 1145/2014 that any construction even the ones that are considered to be illegal up to February 07, 2007 are protected under the provisions of the DLSP Act and that no punitive action can be taken by the South Delhi Municipal Corporation against structures existing prior to February 07, 2007. He also stated that the impugned judgement rejecting the plaint of the appellant is in contravention of the remand order dated March 01, 2018. He seeks the prayers as made in the present appeal.

18. Mr. Sanjay Jain, learned ASG appearing along with Mr. Sriharsha Peechara for the respondents stated that the suit was instituted in the High Court by the appellant and later transferred to the Court of the learned ADJ, Saket Courts pursuant to enhancement of the pecuniary jurisdiction. The said suit was dismissed by the learned Trial Court vide the impugned judgement dated December 10, 2018 in terms of Section 478 of the DMC Act. Mr. Jain has argued that the appellant has filed the present proceedings as a smokescreen to cover up his own wrongdoings. Mr. Jain has taken a preliminary objection to state that the appellant has gone into the merits of the case in this appeal as if this Court were a Court of first instance. He stated that this approach is unwarranted since the present appeal arises out of a judgment passed under Order VII Rule 11.

19. Mr. Jain then proceeded to give a brief factual background regarding the actions taken by the respondent against unauthorised constructions. He stated that a restraining order dated November 03, 1997 in *Common Cause v. Union of India & Ors.*, W.P.(C)

4771/1993, was passed by this Court regarding construction activities in unauthorised colonies including Sainik Farm. He stated that the plot numbered as B-5, Lane 14, Vinod Complex, Sainik Farm which is the suit property was purchased in the names of the appellant's wife, father and son on July 20, 2000 when the appellant was serving as Assistant Commissioner of Police (ACP), Delhi Police, Greater Kailash. It is the submission of Mr. Jain that without any sanctioned plans, a superstructure was raised on the said property which is unauthorised and illegal. This structure was partially demolished by the then Municipal Corporation of Delhi (MCD) (which body is succeeded by the SDMC) on December 09, 2000 and December 21, 2000, which was the first round of demolition. The demolition of the said property was taken note by the Division Bench of this Court which was seized of the matter being **Rajeev Malhotra (supra)** vide order dated January 12, 2001. It was a few days later i.e., on January 20, 2001, that the son of the appellant/co-owner of the suit property filed a writ petition being **Amit Sikka (supra)** seeking directions to regularise Sainik Farm and to restrain the respondents (MCD) from further demolitions. He argued that the appellant's son himself admitted that the demolition action had already taken place and he had not challenged the same but rather only sought directions to restrain the respondents (MCD) and its officials from carrying out further demolitions. Mr. Jain has relied upon ground (G) and paragraph 14 of the said petition to state that the said demolition was not challenged and that no further construction took place in the suit property.

20. Mr. Jain argued that it was during the hearing on January 12, 2001 in the petition titled ***Rajeev Malhotra (supra)*** a committee of four lawyers was constituted by this Court for ascertaining as to whether the affidavit filed on behalf of the MCD claiming that certain properties were demolished by the MCD was correct or not. In the report dated January 23, 2001 the committee mentioned status of the suit property as, "*The front canopy and structure beneath have been demolished*", a copy of the report has confirmed the partial demolition of the suit property which has been enclosed by the respondents. It is the case of the respondents that the son of the appellant never challenged the validity/*vires* of the first round of demolition of the suit property which had made the said property inhabitable as per their own admissions. This property was again raised against the directions of this Court. He argued that despite the restraining order dated November 03, 1997 in ***Common Cause (supra)*** and order dated January 12, 2001 in ***Rajeev Malhotra (supra)*** and also contrary to the averments made by the son of the appellant to this Court in ***Amit Sikka (supra)***, the appellant again carried out fresh construction on the said property. Mr. Jain has pointed out to the records of the suit from which the present appeal arises to show that the appellant has filed a document which shows that the appellant's son/co-owner of the suit property applied for a telephone connection at the suit property in November, 2001. This, Mr. Jain stated goes to show that unauthorised construction was again raised on the said property which was made habitable to the extent that a telephone connection could be taken for such a property. Mr. Jain argued that unauthorised re-construction was

undertaken by the appellant as a result of the abuse of power by the appellant given his rank and position in the Delhi Police.

21. Mr. Jain stated that the following events took place between the period of February 14, 2007 and May 09, 2007:

i. This Court while hearing the matter in ***Rajeev Malhotra (supra)*** recorded vide order dated February 14, 2007 that the Commissioner, MCD was to be personally present in Court on February 28, 2007 along with the Action Taken Report.

ii. An inspection of 21 properties as mentioned in the order dated January 12, 2001 in ***Rajeev Malhotra (supra)*** was undertaken by the MCD officials on February 17, 2007. Thereafter, notices were issued under Section 345A and Sections 343/344 of the DMC Act, on February 22, 2007 with respect to the 21 properties including the suit property herein where the habitable constructed portion was observed/examined. Notices were not issued in respect of properties that were lying either vacant or demolished or were non traceable during the inspection carried out on February 17, 2007.

iii. An affidavit dated February 27, 2007 was filed during the proceedings in the case of ***Rajeev Malhotra (supra)*** wherein the findings of the inspection carried out on February 17, 2007 and notices dated February 22, 2007 which were issued to the habitable properties from the list of the 21 properties (including the suit property) in terms of Section 343 of the DMC Act were brought to the notice of this Court.

iv. Thereafter, the writ petition titled ***Rajeev Malhotra (supra)*** was listed for hearing on May 09, 2007 after taking note of the earlier order regarding unauthorised construction, further directions were also passed for compliance of the order dated February 14, 2007 by the MCD.

v. An affidavit was filed by the MCD in ***Rajeev Malhotra (supra)*** on May 09, 2007 wherein it was recorded that appropriate orders would be passed as per the relevant provisions of DMC Act.

vi. The said affidavit dated May 09, 2007 as per the accompanying Annexure-A mentioned that hearings in the matter related to notices under Sections 343, 344 and 345A with respect to the suit property had been completed and the matter was pending orders.

vii. The writ petition ***Rajeev Malhotra (supra)*** and ***Amit Sikka (supra)*** (filed on behalf of the appellant's son) were listed on May 09, 2007. On the said date of hearing one of the committee members namely Mr. Awasthi informed the Court that around 21 properties which were earlier demolished on December 09, 2000 and December 21, 2000 by the MCD on the ground of unauthorised construction had been reconstructed and reoccupied including the suit property.

viii. In response to the said allegation of the committee member, the counsel appearing on behalf of the MCD then submitted that demolition action was being taken against these 21 properties the categorical statement was "... he states that

appropriate action for demolition of such reconstruction shall be taken within 3 weeks".

ix. The Court wished to enquire from the Commissioner of the MCD as to how such unauthorised re-construction had taken place when the same was earlier demolished. Directions were also passed for the MCD to file an Action Taken Report in the context of this matter.

22. Mr. Jain stated that Mr. Awasthi who was one of the members of the committee in **Rajeev Malhotra (supra)** was incidentally also the counsel for the petitioner therein (i.e., appellant's son) in **Amit Sikka (supra)** and the same is evident from the order sheets dated May 09, 2007.

23. According to Mr. Jain, the counsel for the MCD had undertaken to take action against the reconstructed properties within three weeks when Mr. Awasthi had made a statement that the unauthorised construction demolished in the year 2000 had been reconstructed. It was pursuant to the order dated May 09, 2007 wherein directions were issued to the MCD to demolish the illegally reconstructed portions of the said properties, that the MCD proceeded to demolish the reconstructed properties. It was on May 21, 2007 that a meeting was conducted by the then Commissioner, MCD in which the Additional Commissioner (Engineering), Chief Law Officer, Deputy Commissioner (South Zone), Chief Vigilance Officer, DOV, Superintendent Engineer (Building - Headquarters), Superintendent Engineers (South Zone) and Mr. Sanjeev Sabharwal had taken part

when; the issue of demolition action against the 21 reconstructed properties was discussed and it was decided that effective action has to be taken against these properties. It is for this purpose that the report of demolition action taken during the year 2000, the status report of committee of lawyers dated January 23, 2001, current level of construction etc., was taken into consideration before taking the demolition action. It was also decided that the demolition action has to be taken as early as possible.

24. On May 22, 2022 a note was prepared at the level of the Assistant Engineer (Building) to identify the properties in which the demolition exercise was to be carried out in terms of the order dated May 09, 2007. The suit property was also identified in the said process of undertaking the demolition action. He stated a meeting was convened on the same date between the Chief Law Officer, MCD, Mr. Sanjeev Sabharwal, Standing Counsel MCD and the two Court Commissioners (namely, Mr. Awasthi and Mr. Anoop Bagai); and it was decided that the demolition action was required to be taken, pursuant to the Court Orders. Although a request was made by the Chief Law Officer, MCD to the Court Commissioners to conduct a survey, however they stated that the MCD should take actions as per the order of this Court which has to be complied with and after a period of 4 weeks they will go and inspect the properties and will submit their report to this Court. As per Mr. Jain, Mr. Awasthi who was effectively representing the appellant's son i.e., petitioner in ***Amit Sikka (supra)*** did not express any reservation nor he had pointed out any infirmity regarding the demolition plan with respect to the suit

property in the said meeting dated May 22, 2007. In compliance of the Orders of this Court, dated January 12, 2001, May 09, 2007 and November 14, 2007 in ***Rajeev Malhotra (supra)*** the details of the action taken has been submitted for the perusal of this Court as appended at Annexure R-5. The officials of the MCD conducted a demolition drive between May 23-May 30, 2007 in five properties including the suit property and the same was partially demolished to the extent it had been rebuilt. The other four properties were also partially demolished to the extent that they had been rebuilt as well.

25. Mr. Jain rebutted the argument advanced on behalf of the appellant that the suit property is covered under the provisions of the DLSP Act, inasmuch as the said act had lapsed on May 18, 2007 and subsequently repromulgated through an Ordinance dated July 04, 2007. He stated that the second round of demolition of the suit property took place during the gap period that is between May 19, 2007 to July 03, 2007 i.e., from May 23, 2007 to May 26, 2007 and May 30, 2007 when the DLSP Act was not in force. Mr. Jain argued that *de hors* this aspect the DLSP Act did not apply to properties located in Sainik Farm because the DLSP Act extended relief only to certain properties falling under the following category:

- a. Mixed land use not confirming to Master Plan; or
- b. Construction beyond sanctioned plans; or
- c. Encroachments by slum dwellers and JJ clusters, hawkers and street vendors.

26. Mr. Jain stated that the Court clearly ordered demolition vide its order dated May 09, 2007 in **Rajeev Malhotra (supra)** and the same order was also clarified on May 30, 2007 wherein it was recorded that the unauthorised constructions in 21 properties specifically mentioned in the order dated May 09, 2007 should be demolished. It is the case of Mr. Jain that no application had been filed on behalf of the appellant in **Rajeev Malhotra (supra)**, given the fact that the matter of **Amit Sikka (supra)** was also pending on the same date before this Court, even then the appellant did not agitate his grievance on account of partial demolition carried out by the respondents during the period of May 23-May 30, 2007 in either of the petitions. He stated, the Order dated May 30, 2007 clearly mentions in no uncertain terms that the unauthorised constructions with respect to the said properties was to be demolished.

27. On the issue of the meeting held on June 12, 2007 for identification of remaining properties, Mr. Jain submitted that while conducting the demolition drive the MCD officials were facing certain problems related to the identification of the properties as there were no municipal numbers of the addresses since the area was an unauthorised colony. He submitted that the residents/RWAs constantly and abruptly changed the number of the properties post the first round of demolition and in this regard the officials of the MCD moved a note on June 01, 2007 in order to seek the assistance of the *Amicus Curiae* to identify the properties. Subsequently, Mr. Anoop Bagai and Mr. Rajeev Awasthi conducted a joint inspection of the properties in question on June 07, 2007 to identify the properties and provided photographs of

the same while seeking a meeting with the officials of the MCD to identify the extent of demolition to be carried out. In the said meeting dated June 12, 2007 Mr. Awasthi who was the counsel for the petitioner in *Amit Sikka (supra)* represented the interests on behalf of the appellant and Mr. Jain has drawn my attention to the minutes of the said meeting wherein the presence of Mr. Awasthi was noted. Since, there was no difficulty in identifying the suit property as it had been already demolished during the period May 23-May 30, 2007 the suit property was not discussed during the said meeting and the respondent continued with the demolition drive for the other reconstructed properties and the same is reflected in the report of the Court Commissioner dated July 10, 2007.

28. The report of the Court Commissioners, Mr. Awasthi and Mr. Bagai dated July 10, 2007 informed the Court about the demolition drive undertaken in terms of the order dated May 09, 2007. Even on the date i.e., on July 11, 2007 the appellant did not raise any issue/grievance regarding the demolition or any irregularity thereof with respect to the suit property. The appearance of Mr. Awasthi has been recorded in the order dated July 11, 2007 wherein he was representing the petitioner in *Amit Sikka (supra)*. Mr. Jain argued that despite repeated opportunities in the said writ petition the appellant's son did not raise any objection regarding the demolition action, *mala fide* of the MCD officials, violation of Court orders, Action Taken Report or the report of the Court Commissioners (one the Court Commissioner representing the appellant's son). It is his case that the appellant waited for dismissal of his son's writ petition, i.e., *Amit*

Sikka (supra) and disposal of *Rajiv Malhotra (supra)* before he allegedly served the notice dated February 24, 2010 for filing a time barred suit in terms of Section 478(2) of the DMC Act.

29. Mr. Jain argued that the appellant did not disclose in the writ petition filed by him being W.P.(C) 13907/2009, plaint or in the amended plaint most of the facts which have been narrated by the appellant now. Mr. Jain argued that the appellant has concealed the following facts:-

- i. The appellant son had filed a writ petition i.e., *Amit Sikka (supra)* which was listed with *Rajiv Malhotra (supra)* for most of the hearings during the 9 year period between January, 2001 to January, 2010. After April 16, 2007 the appellant was given the Power of Attorney by his son to represent him in relation to the suit property.
- ii. The appellant did not challenge the demolition action undertaken in the year 2000 and in the year 2007 despite being continuously represented in *Amit Sikka (supra)* which was heard with *Rajiv Malhotra (supra)* and both these petitions were pending hearing during the demolition drive conducted in 2007.
- iii. The appellant failed to disclose the dismissal of the application being CM APPL. No. 12735/2009 in *Amit Sikka (supra)* vide the judgment dated October 28, 2009. It has also not been disclosed that the appellant's son sought permission to withdraw the petition being *Amit Sikka (supra)* to file a fresh petition

with liberty to bring on record subsequent developments/violations.

- iv. The appellant has only now admitted the fact that the writ petition being *Amit Sikka (supra)* was filed before this Court. The concealment of material facts in the original plaint/amended plaint was deliberate and done with full knowledge to mislead the Court which was the reason for the suit being admitted.

30. Mr. Jain has argued that the appellant had not filed any criminal complaint till the year 2010 against the allegation of the respondent officials demanding bribe i.e., for a period of three years despite himself being a senior police official. Further, no mention of such allegation has been made in the original claim, this allegation is clearly an afterthought on the part of the appellant. Even the criminal complaint filed by the appellant in the Court for seeking directions regarding registration of FIR in the matter has been dismissed and has also attained finality, i.e., the appellant failed to establish the veracity of the allegation of the respondent officials seeking bribe.

31. The argument of Mr. Bansal that the action of the MCD does not fall under the purview of the DMC Act, Mr. Jain has rebutted the submission by stating that after carrying out the partial demolition of the suit property in compliance of order dated May 09, 2007 along with the order dated May 30, 2007 in *Rajiv Malhotra (supra)*, the Commissioners' report dated July 10, 2007 the demolition of the suit property was duly taken on record by this Court vide order dated July 11, 2007. Mr. Jain has further argued that this Court may determine

whether the compliance of the directions dated May 09, 2007 fulfill the criteria recorded in Section 478 of the DMC Act i.e., “*must be done or purported to be done*”, he stated, it is incumbent on the officials of the MCD who are bound to implement the orders passed by this Court. Mr. Jain argued that the appellant who retired from the post of ACP, filed the suit in respect of a property which was built by his family members in Sainik Farm within the jurisdiction of the appellant and the fact that the entire colony was an unauthorised colony was in the knowledge of the appellant. Mr. Jain has also referred to the order dated November 03, 1997 in the case of ***Common Cause (supra)***.

32. Mr. Jain has argued that another aspect that needs consideration is the fact that this Court has already distinguished the provisions of Section 477 and Section 478 of the DMC Act. He also stated that the ambit of Section 478 DMC Act is very wide and that there is no requirement of good faith as stipulated in Section 477 of the DMC Act. In this regard he has relied upon the following judgments:-

- i. ***Municipal Corporation of Delhi v. Kundan Lal Sharma, (1969) ILR 0 Delhi 715;***
- ii. ***GC Sharma v. Municipal Corporation of Delhi, (1979) ILR 2 Delhi 771;***
- iii. ***Shiv Kumar v. Municipal Corporation of Delhi, 2013 XAD (Delhi) 379.***

33. On the aspect of Order VII Rule 11 CPC, Mr. Jain has argued that the Trial Court has the power under the said provision wherein at any stage before the registration of the plaint, or after issuing summons to the defendant, or any time before the conclusion of the trial, decide an application under Order VII Rule 11(a) & (d) CPC. In this regard,

he has relied upon a judgment of the Supreme Court in ***Saleem Bhai & Ors. v. State of Maharashtra & Ors., Appeal (Civil) 8518/2002***. He argued that if the Trial Court without deciding the application under Order VII Rule 11 CPC takes an action, the said action would be considered as a procedural irregularity. Mr. Jain has also placed reliance on the judgment of ***Sopan Sukhdeo Sable & Ors. v. Assistant Charity Commissioner & Ors., Appeal (Civil) No. 448 of 2004***. It is his argument that the Trial Court has to only consider the plaint/amended plaint as a whole and in case the entire plaint is covered by Order VII Rule 11 CPC, the same has to be rejected. He stated that the Supreme Court has clearly laid down the law in the case of ***Sopan Sukhdeo Sable (supra)*** holding that there is no point in proceeding with a trial in a case where the plaint/amended plaint has to be rejected at the threshold and it is for this reason that the Court cannot proceed with the trial in a matter without disposing of the application under Order VII Rule 11. Mr. Jain has also relied on the judgment of ***R. K. Roja v. U. S. Rayadu & Anr. Civil Appeal No. 5540 of 2016***, to state that it is mandatory to reject a plaint if the same is barred under Order VII Rule 11 CPC even when there is no intervention/request from the defendant. It was also held that it is the duty of the Court to see whether the plaint is barred under any law, and when the power vests with to the Court to act at the threshold then such powers must be exercised at the threshold itself.

34. Mr. Jain has also relied upon the judgment of ***Dahiben v. Arvindbhai Kalyanji Bhanusali, Civil Appeal No. 9519 of 2019***, to state that the appellant has claimed that without a trial in the present

matter which involves mixed questions of facts and law, the Trial Court has decided the matter under Order VII Rule 11 CPC, however, Mr. Jain has stated that the Supreme Court has clearly laid down the law to establish that there is no estoppel against a statute. Further, Mr. Jain submitted that in terms of Section 478 of the DMC Act the suit cannot be filed against the MCD or its officials after six months.

35. It is the case of Mr. Jain that the appellant in paragraph 48, 49, 51, 53, etc., of his original plaint dated May 25, 2010 as well as the amended plaint dated August 06, 2012 has categorically accepted that the cause of action pertains to the illegal demolition of the suit property which has been done between the period of May 23 – May 30, 2007 and not thereafter. He has also pointed to paragraph 75 of the original plaint as well as the amended plaint to state that the appellant had mentioned that he served a notice to the respondent in terms of Section 478 of the DMC Act on February 24, 2010 which establishes that the appellant was well aware of the applicability of provisions of Section 478 of the DMC Act, under which the appellant was required to file the suit within the prescribed time period of six months from the date of cause of action which is on or before November 30, 2007. Mr. Jain stated that Section 478 of the DMC Act cannot be stated to be inapplicable to the present case and hence the present suit is barred by limitation under Section 478 of the DMC Act. He submitted, in the facts of this case and after reading the law as laid down by the Supreme Court and this Court it is clear that Section 478 of the DMC Act is applicable to the present appeal and the Trial Court has rightly dismissed the present suit vide its impugned judgment dated December

10, 2013 based on the application dated May 18, 2018 under Order VII Rule 11 CPC.

36. It is the case of Mr. Jain that the reliance on the judgement of *M/s Niagara Hotels Builders (P) Ltd. v. Union of India & Ors, 65 (1997) DLT 826* is misplaced. According to him, this Court had held that even if notice under Section 478 of the DMC Act has been given, the limitation period stipulated under Section 478 would not apply to the facts of this case and as such appellant is relying on the same to contend that even though the appellant had given notice under Section 478 of the DMC Act, the limitation period provided therein would not apply. Mr. Jain stated that the observations made in the judgement in that case were made in the peculiar facts of that case, the plaintiff therein had filed a suit for recovery for an amount which was charged as duty on transfer of property in excess of amount payable under the Act and there was no statutory duty involved.

37. The appellant has argued that the Trial Court has exceeded its mandate as provided for in the remand order dated March 01, 2018 with the directions that the Trial Court was to frame additional issues with respect to the quantum of damages and thereafter allow the parties to lead evidence. Mr. Jain argued that this plea of the appellant is totally misplaced since the said directions were given against the previous order pertaining to the application under Order XII Rule 6 CPC, however this order does not bar the respondents from availing their statutory remedies.

38. Mr. Jain has submitted that the following issues arise for consideration before this Court:-

- I. Whether there can be any estoppel against a statutory law i.e., the timelines prescribed under Section 478 of the DMC Act to file a suit against the MCD and its officials?
- II. Whether an appeal can be entertained when the suit is patently barred by a statutory law being Section 478 DMC Act i.e., the limitation period of six months from the cause of action?
- III. Whether it is legally correct to entertain an appeal arising from a suit which has been filed against public authority discharging their official functions that too when the appellant has not approached the Court with clean hands?
- IV. Whether the appellant can be permitted to reap benefits of his illegal acts i.e., flouting the order dated November 03, 1997 and thereafter undertaking further illegal construction?
- V. Whether the appellant can be allowed to relitigate the matter when the appellant never challenged the Court Commissioners' report dated July 10, 2007 wherein the demolition action against his property was recorded and accepted by this Court and the interest of the appellant also stood represented through his son?

39. Mr. Bansal in his rejoinder arguments stated that the arguments advanced by the respondents are in the nature of defence and it is trite law that while deciding an application under Order VII Rule 11 CPC the Court needs to be guided by the averments in the plaint and not defence taken by the defendants. He argued that Order VII Rule 11(d)

of CPC provides for rejection of the plaint “*where the suit appears from the statement in the plaint to be barred by any law*”, and therefore in order to decide whether the suit is barred by law it is the averments in the plaint which have to be examined. It is for these reasons that Mr. Bansal has argued that the defence of the respondents / defendants cannot be taken into account while deciding an application under Order VII Rule 11.

40. Mr. Bansal has maintained that the respondents have failed to address the arguments on the issue that the mandate of the remand order dated March 01, 2018 in ***South Delhi Municipal Corporation & Ors. v. Ashok Sikka & Ors. RFA 970/2017*** has been exceeded by the Trial Court, wherein it was specifically ordered that the Trial Court has to frame additional issues with regard to quantum of damages and thereafter allow the parties to lead evidence. He argued that the question of limitation is itself a mixed question of fact and law and the same cannot be adjudicated while hearing an application under Order VII Rule 11 CPC. He has drawn my attention to the issue that has been framed by the Trial Court on this aspect, “*Whether the present suit is barred under Section 477/478 of the DMC Act?*”

41. He argued that the respondents have also not rebutted the contention of the appellant that the respondents cannot waive the provisions of the DMC Act and he argued that no law or judgement has been shown to justify their actions. Such a waiver cannot be justified as it has resulted in closure of the right of the appellant/plaintiff to appeal against the said order as per Section 343(2) of the DMC Act.

42. Mr. Bansal stated that the only explanation that has been tendered by the respondents for their illegal actions is that there had been directions passed by this Court in *Rajeev Malhotra (supra)*. A reading of the said order dated May 09, 2007 would reveal that no directions pertaining to the demolition were given to the respondents. He argued that vide the said order this Court only sought a joint inspection report from Mr. Awasthi and Mr. Bagai. In fact, the respondents also had the same understanding, as is evident from the minutes of the meeting dated May 18, 2007. Mr. Bansal rebutted the argument that Sainik Farm is not protected under the DLSP Act and stated that a novel stand is being taken by the respondents at this stage and has also argued that the DLSP Act has been extended from time to time. This stand, he argued is contrary to the pleadings in the affidavit of the SDMC in *Paardarshita Public welfare foundation (N.G.O) vs. Commissioner, SDMC & Anr. W.P.(C) 1145/2014*, wherein it was admitted that the construction existing prior to February 07, 2007 is protected under the previous provisions of the National Capital Territory Of Delhi Laws (Special Provisions) Second Act, 2011 ('DLSP Second Act', for short) and that no punitive action could have been taken against the suit property. He argued that this aspect was also mentioned in the reply filed by the defendant No.4 to the application under Order XII Rule 6 CPC. He has pointed to the fact that the respondents have not argued that the suit property at Sainik Farm is not protected by the of the DLSP Act, but rather their argument is that the suit property at the time of demolition (in the last week of May 2007) was not protected by the by the DLSP Act, since

at that point in time the said Act ceased to exist. As per Mr. Bansal this argument on behalf of the respondents is an afterthought and not backed by pleadings. Even otherwise the rights of the appellant were saved under Section 6 of the General Clauses Act, 1897, which has been clarified in Section 1(3) of the DLSP Act.

43. The Respondents have also argued that the suit property was not demolished in its entirety but rather only the front portion of the suit property. He argued that such questions of fact cannot be gone into without the parties having led evidence, moreover the valuation report filed before the Trial Court shows that the entire structure has been demolished and the same is evident from the photographs attached with it. The minutes of the meeting held on May 22, 2007 show that the respondent corporation sought demolition of the entire structure of the appellant's house. The arguments advanced by the respondents are contrary to the record.

44. The Respondents have also argued that the appellant had sent a notice under Section 478 of the DMC Act and hence he is estopped from arguing that Section 478 of the DMC Act does not apply to the present case. He has drawn my attention to the judgment in the case of *M/s. Niagra Hotels & Builders (P) Ltd. (supra)* and submitted that despite service of notice under Section 478 of the DMC Act the limitation period as stipulated under this section would not apply to the facts of this case. He argued that the Division Bench of this Court has permitted the appellant to pursue the suit before the Trial Court vide order dated October 06, 2010.

ANALYSIS AND FINDINGS:-

45. Having heard the learned counsel for the parties, the only issue which arises for consideration is whether the Trial Court is justified vide impugned order dated December 12, 2018, in allowing the application filed by the respondent No. 4 under Order VII Rule 11 CPC and rejecting the plaint filed by the appellant on the ground that the same is barred by the provisions of Section 478 of the DMC Act. To answer this issue, it is necessary to examine Section 478 of the DMC Act which is reproduced as under:

“478. Notice to be given of suits.—(1) No suit shall be instituted against the Corporation or against any municipal authority or against any municipal officer or other municipal employee or against any person acting under the order or direction of any municipal authority or any municipal officer or other municipal employee, in respect of any act done, or purporting to have been done, in pursuance of this Act or any rule, regulation or bye-law made thereunder until the expiration of two months after notice in writing has been left at the municipal office and, in the case of such officer, employee or person, unless notice in writing has also been delivered to him or left at his office or place of residence, and unless such notice states explicitly the cause of action, the nature of the relief sought, the amount of compensation claimed, and the name and place of residence of the intending plaintiff, and unless the plaint contains a statement that such notice has been so left or delivered.

(2) No suit, such as is described in sub-section (1), shall, unless it is a suit for the recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.

(3) Nothing in sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit.”

46. From a reading of Section 478 it is noted that no suit can be instituted against any municipal authority, or against any municipal officer, or other municipal employee, or against any person acting under the order, or a direction of any municipal authority, or municipal officer, or other municipal employee in respect of any act done, or purported to have been done, in pursuance of the Act or any Rule / Regulation or bye-law made therein unless it is a suit for recovery of immoveable property, or for declaration of title thereto after the expiry of six months from the date on which cause of action has arisen.

47. The application filed by the respondent No.4 under Order VII Rule 11 CPC was on the ground that suit for damages filed by the appellant is barred by limitation in view of the provisions of Section 478 of the DMC Act. The application filed by the respondent No. 4 under Order VII Rule 11 CPC was primarily on the ground that the demolition between May 23, 2007 to May 26, 2007 and May 30, 2007, which has been effected on the suit property was done in pursuance of DMC Act and the suit having been filed beyond six months from the date of cause of action, the same is barred by limitation.

48. The plea on behalf of the appellant is primarily that the demolition action that the respondents had undertaken was in violation and outside the boundary of the DMC Act. The respondents completely and maliciously destroyed the home of the appellant and

rendering the appellant and his family homeless and as such Section 478 of the Act has no applicability.

49. The plea of Mr. Jain is primarily that the demolition has been carried out as per the directions of this Court dated May 9, 2007 in ***Rajeev Malhotra (supra)*** that too after giving show cause notice to the appellant.

50. For deciding an application under Order VII Rule 11 CPC as noted by the learned Trial Court as well, only the plaint and the connected documents have to be looked into. I have also reproduced above (at paragraph 11) the findings of the Trial Court while accepting the application of the respondent No. 4 under Order VII Rule 11 CPC and rejecting the plaint.

51. It was the submission of Mr. Bansal that perusal of paragraphs 1, 1A, 1C, 1E, 9-11, 44, 48, 50, 51, 51A, 51B, 59 and 63 would reveal that the action of demolition of the suit property by the respondent was beyond the scope of the DMC Act and in fact actuated by personal vendetta against the appellant who did not accede to their demand for payment of bribe. He also stated that the defence of the respondent / defendant cannot be taken into account while deciding an application under Order VII Rule 11 CPC. It was also his submission that the Trial Court has exceeded the mandate of the order passed by this Court dated March 01, 2018 in ***South Delhi Municipal Corporation and Ors. v. Ashok Sikka, RFA 970/2017***, which was an appeal filed by the SDMC against an order passed on an application under Order XII Rule 6 CPC filed by respondent on April 16, 2007 whereby this Court had directed the Trial Court to frame additional issues with regard to

quantum of damages and thereafter allow the parties to lead the evidence. Hence, the Trial Court could not have considered the application of respondent No.4 under Order VII Rule 11 CPC whereby it had rejected the plaint.

52. He also stated that the issue of limitation is a mixed question of law, which requires evidence to be lead before forming an opinion that the suit is barred by limitation. He has also laid stress on the fact that an issue having been framed that “*whether the present suit is barred under Sections 477 / 478 of the DMC Act*”, the Trial Court could not have rejected the plaint on the application filed by the respondent No.4.

53. On the other hand, Mr. Jain had stated that (i) the Trial Court has the power under the said provisions to decide the same at the time of registration of the plaint or after issuing summons till the conclusion of the trial; (ii) if the Trial Court without deciding the application under Order VII Rule 11 CPC first takes an action, the same shall be considered as a procedural irregularity; (iii) it is mandatory to reject the plaint even when there is no interlocutory request from the defendant as it is the duty of the Court to see whether the plaint is barred under any law.

54. I agree with the submissions made by Mr. Jain. The Supreme Court in the case of *Saleem Bhai (supra)* has held as under:-

“A perusal of Order VII Rule 11 C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 C.P.C. at any stage of the suit-before

registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII C.P.C. the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects. We are, therefore, of the view that for the afore-mentioned reasons, the common order under challenge is liable to be set aside and we, accordingly, do so. We remit the cases to the trial court for deciding the application under Order VII Rule 11 C.P.C. on the basis of the averments in the plaint, after affording an opportunity of being heard to the parties in accordance with law. The civil appeals are, accordingly, allowed.”

55. Similarly, the Supreme Court in **Sopan Sukhdeo Sable** (*supra*), has in paragraph 21 held as under:-

“21. According to Mr Mohta appearing for the appellants, as noted above, the reliefs are separable and merely because some of the reliefs cannot be granted by the civil court, it would entail an automatic rejection of the old plaint. In fact he submitted that some of the reliefs would be given up by the plaintiffs in the suit itself. It is true as contended by Mr Savant, learned counsel appearing for the respondent Trust that by ingenious drafting a cause of action in the nature of red herrings cannot be brought into the judicial arena. But a reading of the reliefs shows that some of them can only be considered by the civil court.”

56. In **R.K. Roja** (*supra*), on which reliance has been placed by Mr.Jain, the Supreme Court held that without disposing of an application under Order VII Rule 11 CPC, the Court cannot proceed with the trial. Further, in **Dahiben** (*supra*), the Supreme Court has held as under:-

“23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :

“12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9

SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.”

57. Having noted the law on Order VII Rule 11 CPC, now coming to the plea of Mr. Bansal who had relied upon the order of this Court in *SDMC (supra)* in RFA No.970/2017 is not appealing. The order of this Court setting aside the order of the Trial Court on an application under Order XII Rule 6 CPC and remanding the matter to the Trial Court for framing additional issues on damages does not bar filing of an application under Order VII Rule 11 CPC and its consideration by the Trial Court.

58. Having said that it has to be seen whether the Trial Court has rightly rejected the plaint in view of the provisions of Section 478 of the DMC Act being barred by limitation by only considering the plaint and documents. Mr. Bansal has referred to the averments made by the appellant in paragraphs 1, 1A, 1C, 1E, 9-11, 44, 48, 50, 51, 51A, 51B, 59 and 63 of the amended plaint and the same can be summed up as under:-

- (i) Demolition of suit property was in gross violation of law as well as without authority / sanction of law;
- (ii) The respondents were acting out of corrupt and *mala fide* motives due to non-payment of illegal gratification demanded from the appellant;
- (iii) On May 20, 2007, respondent Nos. 8 to 10 visited the house of the appellant and demanded ₹ 5,00,000/- as bribe. They further threatened the appellant that if the appellant does not pay the

aforesaid amount to them, then his house shall be demolished in entirety;

- (iv) Despite clear knowledge of the aforesaid provisions of law, protecting the house of the appellant, respondents barged into the house of the appellant on May 23, 2007 and without any prior notice, demolished the entire house of the appellant on May 23-May 26, 2007 and on May 30, 2007;
- (v) Even from the order dated May 9, 2017 and Four Member Lawyers' Committee Report, only front canopy and beneath structure of the suit property which was reconstructed was only to be demolished;
- (vi) The Sainik Farm was legal or at least about to be regularised. The name of the colony was itself given by Post and Telegraph Department and Municipal Authorities. The telephone and electricity lines had been laid by the authorities and the area was also covered by assessment of property tax from the very beginning;
- (vii) The documents emanating from the government functionaries at the highest level recommend / announce the regularisation of Sainik Farm Colony. The drinking water facility by Delhi Jal Board is stated to have been at an advance stage of sanction;
- (viii) BSES had the approval of statutory authorities for laying down the high-tension cables and to install transformers. Sewage lines had been laid down from Khanpur up to Central Avenue of

Sainik Farm. It is the most green colony as compared to the rest of Delhi.

59. The plaint also mentions that this Court had in its order dated May 9, 2007 in **Rajeev Malhotra (supra)** not given any direction / verdict of its own. It was only MCD officials who had hundreds of skeletons in their cupboard, in the form of hundreds of properties, construction of which had been allowed, over last 7-8 years, they were apprehensive of Rajeev Malhotra blowing the lid, which may result in the imprisonment of the MCD officials. As such the MCD immediately started a new drive, rife with *malafide* and illegal actions to create a pretence as if they were genuinely concerned with eliminating reconstruction for demolished properties.

60. That due to illegal and unauthorised activities of the respondents, family members of the appellant including the lady members of the family as well as a new born baby were made to remain exposed to the scorching summer sun. All the family members were left with no choice but to compromise with dignity under the open sun without any shelter, as the respondents started demolition of the house without giving them any opportunity to move elsewhere, either in person or to remove their valuable belongings to a place of security.

61. The respondents have also ignored statutory proceedings pending inasmuch as show cause notice under Section 343/344 of the Act dated February 22, 2007, has been served on the son of the appellant, to which a reply has been filed. Three hearings were held

in the matter. No orders have been received, proposing demolition or separate proceedings under Section 345A of the Act. Thus, the action of the respondents was *mala fide*. No notice to vacate the premises for demolition action was issued by the respondent or served upon the appellant or anyone else. Though issuance of such notice under Section 349 of the DMC Act is a standard procedure adopted by the MCD, the respondents could not have violated the said Section. A pick and choose policy was adopted by the respondents in demolishing the suit property whereas thousands of other illegal houses in the neighbourhood were left undisturbed.

62. The plaint also states, the property of the appellant consists of ground floor and first floor which were old and occupied and no construction was seen in progress when the inspection was carried out.

63. Having noted the broad averments made in the plaint to contend that the action of the respondents was actuated by *malafide*, without sanction of law and the respondents cannot take shield of Section 478 of the DMC Act; the respondents justified the action by relying on the order passed by this Court on May 9, 2007 in **Rajeev Malhotra (supra)** (of which a reference is made in the plaint). The relevant paragraphs of the same are reproduced as under:

“4. We would also like to know from the Commissioner, Municipal Corporation of Delhi as to how such unauthorised constructions have been raised, once the said constructions were demolished. The Inspectors, Engineers and staff of the Municipal Corporation of Delhi were required to keep a vigil in Sainik Farms to ensure that no unauthorised constructions take place. It, therefore, appears to us that there was dereliction

of duty on the part of the officers who are posted in the aforesaid area. We would like to know what action is proposed to be taken against such erring officials and staff. The Commissioner will examine log book with regard to construction and identify the officers responsible and state what action has been taken. The Inspectors and Engineers must maintain proper log books of dates when they carried out inspection, the area inspected and whether any construction was being done. Details of all existing construction must be catalogued.

5. The Municipal Corporation of Delhi is directed to file an action taken report within four weeks from today as against all the observations and directions recorded herein before.

6. We would like to have a joint inspection report of Mr. Rajiv Awasthy and Mr. Anoop Bagai, who is the counsel for the Corporation, after they inspect all the properties where unauthorised constructions have been made after order dated 12th January, 2001 or where unauthorised constructions is continuing. The said joint inspection report shall also be filed within four weeks. In order to enable them to make joint inspection, police assistance is sought for and will be provided by the SHO of the area concerned.”

64. From the above, it is noted that the Court wanted to know from the MCD as to how unauthorised construction has been raised again, once the said construction was demolished. This reference of the Court was with regard to the demolitions that had been effected by the MCD in the month of December, 2000, which includes the property of the appellant. In fact, this aspect is conceded by Mr. Bansal who had stated that the front canopy and structure beneath the property of the

appellant was demolished on December 9, 2000 and December 21, 2000, leaving rest of the property untouched.

65. It is also noted from the above order that this Court directed the respondent No.1 herein to verify and inspect the unauthorised properties in Sainik Farm and prepare an Action Taken Report. Though it was submitted by Mr. Bansal that in the Action Taken Report, the respondents have specifically noted in their internal notings that the property of the appellant consisted of ground floor and first floor which are old and occupied, but the fact remains that a show cause notice dated February 22, 2007 (a reference to which is made in the plaint) was issued to the appellant under the heading 'unauthorized construction of ground floor and first floor', which were earlier demolished on December 9, 2000. A reply has been filed by the appellant stating that the construction was old and protected and no unauthorised construction has been carried out.

66. In this regard, a reference is made to the action taken report filed by the MCD in February 2007 of which a reference is made in the plaint, where with regard to the suit property, it is stated that the property consisting of ground floor and first floor, which are old and occupied. Despite inspection, neither any sort of construction work was seen nor building material was found stacked. But the same report also refers to the issuance of notice under Section 343 of the DMC Act for demolition and sealing of the properties wherein unauthorised construction in the shape of reconstructions have been carried out by the occupants. So, it is clear that after the demolition

taken place in the suit property, reconstruction has taken place. In fact, this position is not disputed by Mr. Bansal.

67. The submission of Mr. Bansal is, the MCD could not have demolished the appellant's property in view of the DLSP Act. This plea, though looks appealing on a first blush, but the fact of the matter is that, this Court was seized of a petition in the nature of a Public Interest Litigation in which order dated May 09, 2007 has been passed with regard to unauthorised construction in Sainik Farm and had directed the respondent No.1 herein to inspect and verify unauthorised properties in Sainik Farm and to file the Action Taken Report. Surely, the order to file an Action Taken Report shall encompass in it the action to be taken on unauthorised construction. In any case, as per the National Capital Territory of Delhi Law (Special Provision) Ordinance 2007, as notified on July 04, 2007, (on the lapsing of DLSP Act), given effect from May 18, 2007 but by that date, the demolition had already taken place. In that sense, Mr. Jain is right, that during the period of demolition the protection from demolition of unauthorised construction was not available.

68. A reference has also been made in the plaint about the report dated July 10, 2007 submitted by the Court Commissioner in **Rajeev Malhotra (supra)**. In the said report, paragraphs 2 to 4 reads as under:-

"2. That it may be pointed out that after passing of the orders dated 12.1.2001 a Committee comprising of 4 Advocates had visited 21 properties on 14.1.2001/20.1.2001 and had submitted its

report/photographs on 23.1.2001 before this Hon'ble Court with respect to the status of the said properties.

3. *That in terms of the order of the Hon'ble Court, on 7.6.07, our Committee, along with officials of MCD, visited/inspected certain properties in respect of which "identification" was to be made and accordingly the properties were identified and MCD officials were informed about the same.*

4. *That thereafter, on 7.7.07, our Committee along with officials of MCD and Delhi Police again visited/inspected all the properties in question including the properties in which re-constructions had been carried out by its owners/occupants, after passing of the orders dated 12.1.2001. The extent of re-constructions were compared with the Photographs alongwith the earlier Report of the Committee dated 23.1.2001. On inspection of all the properties in question, it was observed that the MCD had taken demolition action against the following 9 reconstructed properties:-*

- (i) J-12, Sainik Farms, New Delhi*
- (ii) 501/12A, Sainik Farms, New Delhi*
- (iii) B-5, Sainik Farms, New Delhi*
- (iv) 79-A, Sainik Farms, New Delhi*
- (v) 12-C, Sainik Farms, New Delhi*
- (vi) J-238, Sainik Farms, New Delhi*
- (vii) B-75B, Sainik Farms, New Delhi*
- (viii) 163-A, Sainik Farms, New Delhi*
- (ix) J-208B, Sainik Farms, New Delhi."*

69. The report (of which a reference has been made in the plaint) was considered by the Court on July 11, 2007 when the Court with regard to demolition action taken in respect of nine properties including the suit property has stated as under:-

"A joint inspection report has been submitted by Mr. Rajeev Awasthi, Amicus Curiae and Mr. Anoop Bagai, Standing Counsel for the MCD. We had passed an

order, directing both of them to inspect 21 properties at Sainik Farms.

It is stated in the said report that the Municipal Corporation of Delhi has taken demolition action against 9 reconstructed properties. Photographs taken after the demolition action by the Municipal Corporation of Delhi have been placed on record along with the said joint inspection report. It is stated in the said report that in 9 other properties no action is required for the reasons stated in paras 5 and 6 of the report. It is stated that there are three other properties which have not been identified. Particulars of these properties have been given in para 7 of the report. It is stated that these three properties could not identified due to change/alteration of the property numbers. The Committee shall make fresh steps to ascertain the location of the three properties and verify as to whether or not any reconstruction has been made in the said properties.

A separate report in respect of the three properties shall be submitted before the next date.

The Committee is also directed to make further inspection with regard to the ongoing construction in any of the properties at Sainik Farms and, if detected, action in accordance with law shall be taken for the demolition of the unauthorized construction being made.”

70. This Court is of the view, the order of the Court in **Rajeev Malhotra (supra)**, dated July 11, 2007 is conclusive insofar as the demolition of the suit property is concerned, as the Court had put its stamp of approval on its demolition, which is clear from the observation of the Court directing the Committee to make further inspection with regard to ongoing construction in any of the properties at Sainik Farm and if detected action in accordance with law shall be taken. So, it follows, the action of the respondents was not actuated with ulterior motive as sought to be urged by Mr. Bansal.

71. The stand of the appellant that respondent Nos.8 to 10 had on May 20, 2007 come to his residence and demanded ₹5,00,000/- as bribe, which he had refused is not convincing for the reason when such a representation was made to the appellant, who himself is a retired police officer, he should have made a complaint to the MCD or to the police authorities. But nothing has been placed on record in that regard except stating in the plaint that a notice under Section 80 of the CPC dated February 24, 2010 was sent to the respondents before filing of the suit in May 2010 i.e., after almost two years of the alleged incident. Even the complaint for filing of the FIR was dismissed. Hence, the Trial Court has rightly held that the suit filed by the appellant seeking damages shall be barred, as per the provisions of Section 478 of DMC Act as being beyond limitation. In this regard, I may refer to paragraphs 24 to 26 of the impugned Judgment (reproduced at paragraph 11 above).

72. Additionally, this Court is of the view that the following submissions made by Mr. Jain are also appealing which makes this Court not to interfere with the impugned order :-

- (i) that the appellant's son had filed a writ petition i.e., **Amit Sikka (supra)** which was listed with **Rajiv Malhotra (supra)** for most of the hearings during the 9 year period between January, 2001 to January, 2010;
- (ii) The writ petition of **Rajeev Malhotra (supra)** and **Amit Sikka (supra)** (filed by the appellant's son) were listed on May 09 2007. On the said date of hearing one of the committee members namely Mr. Awasthi informed the Court that around

21 properties which were earlier demolished on December 09, 2000 and December 21, 2000 by the MCD on the ground of unauthorised construction had been reconstructed and reoccupied including the suit property;

(iii) In response to the said allegation of the committee member, the counsel appearing on behalf of the MCD then submitted that demolition action was being taken against these 21 properties and a categorical statement was made that appropriate action for demolition of such reconstruction shall be taken within 3 weeks;

(iv) The appellant did not challenge the demolition action undertaken in the year 2000 and in the year 2007 despite being continuously represented in *Amit Sikka (supra)* which was heard with *Rajiv Malhotra (supra)* and both these petitions were pending hearing during the demolition drive conducted in 2007;

(v) The appellant failed to disclose the dismissal of the application being CM No. 12735/2009 in *Amit Sikka (supra)* vide the judgment dated October 28, 2009. It has also not been disclosed that the appellant's son sought permission to withdraw the petition being *Amit Sikka (supra)* with liberty to file a fresh petition with liberty to bring on record subsequent developments / violations;

(vi) The appellant has only now admitted the fact that the writ petition being *Amit Sikka (supra)* was filed before this Court. This concealment of material facts in the original plaint /

amended plaint was deliberate and done with full knowledge to mislead the Court which was the reason for the suit being admitted.

73. This Court is of the considered opinion that the appellant shall not be entitled to any relief as sought for in the present appeal.

74. Insofar as the judgment relied upon by Mr. Bansal in the case of *M/s Niagara Hotels and Builders (P) Ltd. (supra)* is concerned, the claim of the plaintiff in that suit was for ₹1,61,098/-, which according to the plaintiff was paid in excess as only an amount of ₹1,01,920.93/- was payable in terms of Section 147(2)(b)(v) of the DMC Act. The Court has in paragraph 10.2 held as under:-

“10.2 The above contention of the defendant MCD, in my opinion, is not tenable on the short ground that the limitation of six months, prescribed in Section 478(2) of the Act, is applicable only in respect of those suits which fall within the ambit and scope of Section 478(1) of the Act, namely, filed in respect of any act done, or purported to have been done in pursuance of the Act or any rule, regulation or bye-law made thereunder. The nature of the present suit, filed by the plaintiff, is decidedly not such so as to fall within the ambit and scope of Section 478(1) of the Act because the present suit filed by the plaintiff is for the recovery of the amount which has been charged as duty on transfer of property in excess of the amount payable under the provisions of Section 147(2)(b)(v) of the Act.”

75. Suffice to state, this Court in the above paragraphs clearly held that the suit by the plaintiff is for recovery of the amount, which has been charged as duty on transfer of property in excess of the amount payable under the provisions of Section 147(2)(b) of the DMC Act.

This Court by considering a question as to what would be the period of limitation for recovery of excess amount, while relying upon the judgment of the Supreme Court in the case of *A. Venkata Subba Rao v. State of Andhra Pradesh (1965) 2 SCR 577*, has *inter-alia* held that where a claim for recovery of a tax illegally collected is concerned, the authorities are fairly uniform, that the period of limitation for a suit making such a claim is governed by Article 62, to mean that the period of limitation shall be of three years. Suffice to state, the judgment has no applicability in the facts of this case, as this Court has held that the action of demolition taken by the respondents was in terms of the orders of this Court in *Rajeev Malhotra (supra)*. In other words, it had the sanction of law and hence, the limitation as prescribed under Section 478 of the DMC Act shall be applicable.

76. I do not see any merit in the appeal. The same is dismissed. No costs.

CM APPLs. 17203/2020 & 7310/2021

In view of the fact that I have heard and decided this appeal, these two applications have become infructuous and are disposed of as such.

V. KAMESWAR RAO, J

MAY 05, 2022/jg/aky/ak