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

% Judgment delivered on: 22.05.2023

+ CM(M) 734/2023

JATIN DHAWAN

..... Petitioner

versus

PRAVESH DHAWAN AND OTHERS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Padma Priya, Advocate along with
Petitioner-in-person.

For the Respondents : None.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 23103/2023 (for exemption)

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 23105/2023 (for delay in refiling)

3. This is an application seeking condonation of delay in refiling the petition.
4. For the reasons stated in the application, the application is allowed. The delay of 8 days in refiling the present petition is condoned.

5. The application stands disposed of.

CM APPL. 23104/2023 (for summoning Trial Court Record)

6. This is an application seeks summoning of Trial Court Record.

7. As and when the situation necessitates, the Trial Court Record may be summoned. As of now there is no requirement.

8. Accordingly, the application stands disposed of.

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9. Petitioner challenges the order dated 21.12.2022 in CS DJ No. 10822/2016 titled as "*Rajinder Nath Dhawan & Anr. vs. Pravesh Dhawan & Ors.*", whereby an application under Section 94 r/w Order 40 Rule 1 of the Code of Civil Procedure, 1908, filed on behalf of petitioner seeking interim direction for protection of the property i.e., first, second and third floor of the property No. K-38A, Lajpat Nagar-2, New Delhi-24, was dismissed.

10. Ms. Padma Priya learned counsel appearing for the petitioner submits that despite the submissions made before the learned Trial Court about the fact that the MCD had noticed that there was large scale demolition and un-authorised construction being raised in the subject suit property in the months of November, December 2016, as also the issuance of notice of Delhi Police under Section 344 (2), MCD Act, 1957, the learned Trial Court, after having agreed with the submissions of the learned counsel, dismissed the same without passing any orders for preservation of the property or even for appointment of the Local Commissioner.

11. Ms. Priya submits that the only protection the petitioner was permitted was by way of the order dated 01.08.2012 passed by this

Court in the suit whereby, the respondents/ defendants were directed not to create any third party rights.

12. Ms. Priya, learned counsel submits that despite that order, the respondent No.4/ tenant had handed over the possession of the subject suit property to respondent Nos. 2 and 3 on 31.01.2014.

13. Ms. Priya submits that the observations made by the learned Trial Court in the impugned order would prejudicially affect the case of the petitioner in trial as also during the final hearing, inasmuch as the learned Trial Court has almost concluded that the construction is only for renovation and there is no large scale un-authorised, illegal construction.

14. This Court has heard the learned counsel as also perused the impugned order.

15. At the outset, this Court is not inclined to interfere with the order for the reason that the possession has already been delivered to the respondent Nos.2 and 3, rightly or wrongly, which is yet to be considered by the learned Trial Court.

16. Secondly, the issue with respect to the unauthorized construction which have taken place, there appears to be *prima facie* reason for the petitioner to be concerned, inasmuch as it is the Municipal Corporation of Delhi, who is authorized to keep in check the unauthorized construction, if any.

17. In this particular case, apparently there has been a notice issued by the MCD as also by the Delhi Police and, therefore, to the extent that the impugned order takes it into account and makes an observation that the construction appears only for the purpose of renovation may be uncalled for.

18. Accordingly, this Court expunges the aforesaid observations made by the learned Trial Court in the impugned order and grants permission to the plaintiff to raise all issues in respect of such constructions, whether authorized or un-authorised, before the learned Trial Court during trial as also at the time of final arguments.

19. The aforesaid observations are, obviously, without prejudice to the rights and contentions of the respondents, if any, in support of the construction, whether legal or illegal, made by them during the interregnum.

20. This Court has also observed the *prima facie* noting of the learned Trial Court in para 12 of the impugned order, whereby the Trial Court has taken note of the fact that through the analysis of audio recordings, it appears that the respondents are attempting to lease out the suit property to a third party.

21. This Court is of the considered opinion that the order passed by this Court on 01.08.2012 would have to be considered while the parties are attempting to lease out the property.

22. The same may be considered by the learned Trial Court in accordance with law, before any such steps are undertaken.

23. The petitioner is permitted to take appropriate steps in accordance with law, for such purpose.

24. With the aforesaid observations, the petition is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J.

MAY 22, 2023/nd