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

% Judgment delivered on: 08.05.2023

+ CM(M) 745/2023

SUNDER

..... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Ankit Jain, Advocate with Mr. Vishal Saxena, Ms. Meenakshi Garg, Ms. Seemab Ali Fatima, Ms. Aayushi and Mr. Sanyog, Advocates.

For the Respondent : Mr. Rakesh Mishra, Standing Counsel for MCD.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 23161/2023 (for exemption)

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

CM(M) 745/2023 & CM APPL. 23160/2023 (for stay)

3. Petitioner has approached this Court against the order dated 02.05.2023 in RCA No. 47/2023 titled as “*Sh. Sunder vs. Municipal Corporation of Delhi*”, whereby a fresh appeal under Section 347-D of

the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as “DMC Act”) was received and registered.

4. The First Appellate Court after considering the appeal has issued notice, though an application under Section 347 C (3) of the DMC Act, seeking urgent interim orders, is stated to have been filed, however, only notice was issued without passing any orders thereon.

5. On a cursory consideration of the impugned order, it is clear that the Appellate Court has not granted any interim orders either for or against the petitioner and has listed the matter for consideration on 27.05.2023.

6. The non-passing of any order on the application under Section 347 C (3) of the DMC Act, may become prejudicial to the petitioner for the reason that once the demolition is carried out, the entire appeal itself would become infructuous. That possibly cannot be countenanced.

7. In view of the aforesaid, as also to maintain the balance of equities between the parties, this Court, without commenting or observing any issue of fact or law, only to preserve the property, directs the respondent not to take any coercive action for demolition of the subject suit premises only till 27.05.2023 when the learned First Appellate Court would take up the appeal along with the application under Section 347 C (3) of the DMC Act for consideration.

8. It is directed that the learned First Appellate Court considers the application under Section 347 C (3) of the DMC Act and passes appropriate orders thereon after hearing both the parties on 27.05.2023.

9. Needless to state that all rights and contentions of the parties are reserved, which may be taken up before the learned First Appellate

Court.

10. With the aforesaid directions, the present petition along with pending application is disposed of.

TUSHAR RAO GEDELA, J .

MAY 8, 2023*nd*

