

\$~50

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

% Judgment delivered on: 09.05.2023.

+ CM(M) 753/2023

SH JAGDISH SINGH

..... Petitioner

versus

SH UDAYVIR SINGH AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Swastik Singh and Mr. Atul Singh,
Advocates.

For the Respondent : Ms. Khushboo Nahar, Panel Counsel for
MCD for MCD/ R-3.
Ms. Manika Tripathy, Standing Counsel
for DDA with Mr. Manish Vashist and
Mr. Rishabh, Advocates for DDA/ R-4.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 23730/2023 (for exemption)

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

CM(M) 753/2023 & CM APPL. 23731/2023 (for stay)

3. Petitioner challenges the order dated 29.04.2023 in CS No. 1111/22 titled as "Jagdish Singh vs. Udayvir Singh & Ors." whereby the learned Trial Court on an application seeking early hearing of the

application under Order XXXIX Rules 1 and 2 had instead of taking up the said application, has preponed the date to 23.05.2023.

4. Learned counsel appearing for the petitioner submits that the urgency in the application was that the petitioner had made a specific assertion that illegal construction is being carried out by the defendant Nos. 1 and 2 despite the status report of MCD stating that the construction was not in accordance with law.

5. Learned counsel submits that in case such construction is allowed to be continued and completed, the entire reason for having filed the application under Order XXXIX Rules 1 and 2 would be defeated.

6. Learned counsel submits that though the learned Trial Court had been kind enough to prepone the date of hearing to 23.05.2023, however, the same would not sub-serve the purpose of having filed such an application.

7. Learned counsel requests that the learned Trial Court be directed to take up the application at the earliest and dispose it of expeditiously.

8. Issue notice. Notice is accepted by Ms. Khushboo Nahar, learned Panel Counsel for respondent No.3/ MCD and Mr. Manish Vashist, learned counsel appearing for respondent No.4/ DDA.

9. Ms. Khushboo Nahar, learned Panel Counsel appearing for respondent No.3/ MCD submits that the status report as filed before the learned Trial Court indeed states that there are some renovations etc. being carried out and she further submits that a work stop notice dated 21.04.2023 has also been issued, despite which the construction activity is being carried out. Though Ms. Nahar submits that the same is to be correctly verified during trial.

10. Be that as it may.

11. Learned counsel for the petitioner submits that the respondent Nos. 1 and 2 have already been served in advance, as per the Practice Directions/ Notification No.69/Rules/DHC/2019 dated 05.12.2019 of this Court.

12. In view of the aforesaid, since this Court is only directing the learned Trial Court to take up the matter at the earliest, no response on that account may be called for from the respondent Nos. 1 and 2.

13. In view of the same, the learned Trial Court is requested to take up the application under Order XXXIX Rules 1 and 2 of the CPC, 1908 filed on behalf of petitioner/plaintiff on 12.05.2023 in case, it is convenient or soon thereafter after putting all the parties to notice, specially respondent Nos. 1 and 2.

14. With the aforesaid direction, the present petition along with pending application is disposed of.

15. Order *Dasti* under the signatures of the Court Master.

TUSHAR RAO GEDELA, J .

MAY 9, 2023/nd