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

+ C.R.P. 33/2024

DINESH KUMAR VERMA Petitioner

Through: Mr. Yashaswi S.K. Chocksey
and Mr. Ankit Singh, Advs.

versus

SACHIN GHAI AND ANR Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

% **ORDER**
29.01.2024

CM APPL. 5142/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application shall stand disposed of.

CM APPL. 5144/2024 (Delay of 101 days in filing)

3. For the reasons stated in the application, the delay of 101 days in filing the present appeal, is condoned.
4. The application stands disposed of.

CM APPL. 5143/2024

5. This is an application moved for seeking permission to place on record certain photographs which are annexure P-7 (Colly) on the record of this case. However, this application is bereft of any merits and without any legal foundation. In the present revision petition filed under Section 115 of the CPC, the petitioner is assailing the impugned



order dated 08.07.2023, whereby, his application under Order VII Rule 11 CPC has been dismissed.

6. Shorn of unnecessary details, the respondent No.1/plaintiff is admittedly in possession of the premises in question and in the pending civil suit between the parties, he is seeking a relief for declaration, permanent injunction and mandatory injunction with regard to the property in question primarily assailing the order dated 31.08.2021 passed by defendant No.2/MCD declaring the property to be dangerous under Section 348 of the Delhi Municipal Corporation (DMC) Act, 1957.

7. The petitioner/defendant moved an application in the pending suit under Order VII Rule 11 CPC seeking rejection of the plaint under Order VII Rule 11 (a),(b) & (d) of the CPC, which came to be dismissed *vide* impugned order dated 08.07.2023. It would be expedient to reproduce the operative portion of the order, which goes as under :

“4. Under Order VII Rule 11 CPC, rejection of plaint can only be on the basis of what is stated in the plaint. There can be no extraneous consideration.

5. As regards non-compliance of Order VII Rule 1 (i) is concerned; perusal of plaint reveals that the plaint contains statement as to the valuation of the suit for purpose of court fee and jurisdiction. Hence, contention of defendant no.2 that plaint does not contain a statement as to value of subject matter of the suit for purpose of pecuniary jurisdiction and court fee appears to be incorrect.

6. As regards non-disclosure of cause of action, plaintiff has made specific averments regarding defendant no.2. Non-disclosure of cause of action is distinct from absence of cause of action. To arrive at the conclusion that cause of action is absent, evidence is required to be led and hence, plaint cannot be rejected on the ground of absence of cause of action which is a matter of trial. Since averments made in the plaint disclose cause of action against defendant no.2, plaint cannot be rejected on this ground.

7. As regards the contention that present suit is in violation of principles enumerated by Hon'ble Supreme Court in



Anathula Sudhakar v. P. Buchi Reddy (2008); the fact that plaintiff is in possession of the suit property is admitted by defendant no.2. The right of the plaintiff is stated to be effected by virtue of being in possession of the property. The title of the plaintiff is not a question that is directly and substantially in issue in present case. Hence, the judgment of Hon'ble Supreme Court in *Anathula Sudhakar v. P. Buchi Reddy (2008)* is not applicable.

8. In view of the above discussion, application under consideration is dismissed.”

8. Leaned counsel for the petitioner has vehemently urged that the suit filed by the respondent/plaintiff is barred by law since no statutory notice has been served upon respondent No. 2/MCD under Section 477 & 478 of the DMC Act.

9. At the outset, the said plea is not tenable in law as respondent No.1/plaintiff is evidently the ‘occupant’ of the premises in question and apparently, he has every legal right to assail the impugned order calling the building to be dangerous and to be demolished as he claims that neither any notice has been issued upon him nor he has been heard.

10. The provisions of Sections 477 and 478 the DMC Act are not attracted since the relief sought is of urgent nature and the requirement of serving statutory notice stands dispensed with. It was admitted during the course of arguments that respondent No.1/plaintiff is enjoying an interim order against the impugned decision taken by the respondent No.2/MCD as well.

11. It is well settled that while considering an application under Order VII Rule 11 CPC, the Court cannot travel beyond the pleadings or averments in the plaint. The plaint as a whole discloses cause of action and the plea that the suit is barred under Section 477 & 478 of the DMC is not sustainable in law.

12. Hence as the present revision is dismissed. Nothing contained in



this order shall tantamount to an expression of opinion on the merits of the case.

13. Copy of this order be sent to the learned Trial Court for information and the record.

DHARMESH SHARMA, J.

JANUARY 29, 2024/sa