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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 97/2024 & CM APPL. 14850/2024, CM APPL. 14851/2024

DR MAHABIR PRASAD YADAV Petitioner

Through: Mr. Rishabh Kapur and Mr. Tanmay Gupta, Adv. alongwith petitioner in person

versus

BALDEV SALUJA & ORS. Respondents

Through: None for R-1
Mr. Shivangi Kumar, Adv. for R-2/MCD
Mr. Karan Bhardwaj, ASC with Mr. Shubham Singh and Mr. Rajat Gaba, Advs. for R-3

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER
% **12.03.2024**

CM APPL. 14852/2024 (Exemption from filing certified copies)

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

CM APPL. 14853/2024 (Exemption from filing entire record)

3. Allowed, subject to all just exceptions.
4. The application stands disposed of.

CM APPL. 14850/2024 (Delay of 62 days in filing the present petition)

5. This application has been moved on behalf of the petitioner



seeking condonation of delay of 62 days in filing the present petition.

6. For the reasons stated in the application, the present application is allowed and the delay of 62 days in filing the present petition is condoned.

7. The application stands disposed of.

C.R.P. 97/2024 and CM APPL. 14851/2024 (Stay)

8. The petitioner herein, who is the defendant in the suit instituted by the respondent/plaintiff, assails the impugned order dated 05.10.2023 passed by learned Additional Civil Judge, North-West District, Delhi, whereby his application under Order VII Rule 11(a) CPC has been dismissed.

9. Shorn of unnecessary details, the plaintiff has filed a suit for permanent and mandatory injunction and also for damages claiming that he is running a shop in the name of Haryana Dairy from the ground floor of the property bearing No.354, Pocket D-6, Sector-6, Rohini and the petitioner/defendant is the owner of flat bearing No.D-67354-A, first floor, just above the shop of the plaintiff, which was constructed and allotted by Delhi Development Authority (DDA) only upto the first floor.

10. The grievance of the plaintiff is that defendant No.1 has illegally constructed the second floor. It is the case of the plaintiff that the unauthorised construction carried out by the petitioner/defendant No.1 has resulted in extra load upon the foundation of the property in question, endangering its structural integrity so much so that due to the pillars raised at the site, to support the second floor access to his shop has been restricted. It is also the grievance of the plaintiff that in the garb of renovation, petitioner/defendant No.1 carried out such unauthorised construction. The petitioner/defendant No.1 moved an



application under Order VII Rule 11 CPC, which came to be dismissed by the learned Trial Court assigning the following reasons.

“8. In the present case, the defendant no.1 has put forth two primary grounds for the rejection of the plaint. The first ground is that the plaintiff has not disclosed cause of action and he has no locus standi to file the present case. Secondly, the plaintiff has claimed damages but he has not paid the requisite court fees.

9. A bare perusal of the plaint shows that the present case pertains to the damages as well as permanent and mandatory injunction in respect of the illegal construction raised on the first floor of the suit property i.e. bearing no. D-6/354, Sector-6, Rohini, Delhi.

10. The plaintiff alleges that he is running a shop on the ground floor of the suit property under the name and style of Haryana Dairy. Defendant no. 1 is stated to be the owner of the first floor of the suit property. It is asserted that no construction of a second floor is permitted on suit property. However, 07.06.2022, defendant no. 1 allegedly began unauthorized construction on the first floor, which, according to the plaintiff, has led to an excessive load on the ground floor, posing a risk to the entire structure. The plaintiff contends that he had requested defendant no. 1 to refrain from doing illegal construction, but his requests were ignored. Furthermore, the plaintiff claims that the installation of pillars by defendant no. 1 in front of his shop has prevented customers from accessing his shop, resulting in a financial loss of Rs. 50,000. Thus, the plaintiff has filed the instant suit seeking permanent and mandatory injunction in respect of illegal construction done on the suit property as well as for damages.

11. It is evident from the plaint that the plaintiff is the resident of the suit property and thus, he has locus to file the instant suit. Further, the plaintiff has effectively demonstrated the cause of action in the plaint. The plaintiff has explicitly stated that the property in question is not permitted to have a second floor. The plaintiff also alleges that the construction of the second floor by defendant no. 1 has resulted in an excessive load on the ground floor, posing a risk to the structural integrity of the entire suit property. The plaintiff has thus explained the cause of action and highlighted the potential harm and damage caused due to the unauthorized construction done by the defendant no. 1. Thus, the contention of defendant no. 1 that the plaintiff has not disclosed cause of action lack merits and is rejected.

12. As regards court fees is concerned, it is noteworthy that the plaintiff has not paid requisite court fees for the relief of damages sought in the plaint. Thus, the court hereby grants 30 days time



period, commencing from today, to the plaintiff to pay the deficit court fees

13. Ld. Counsel for defendant no. 1 has relied upon numerous judgments in support of his application. I have gone through the same and I find the judgments relied upon by the defendant no. 1 are distinguishable on the facts and circumstances of the present case and not applicable to the case at hand.

14. The application of the defendant no. 1 is disposed off accordingly.”

11. On a careful perusal of the aforesaid reasoning, this Court finds that the learned Trial Court has neither committed any illegality or perversity, nor has it adopted any incorrect approach in law. No jurisdictional error has been committed by the learned Trial Court as evidently, the plaint read as whole discloses a certain cause of action. Whether or not eventually such relief would be granted to the plaintiff is another matter. The Municipal Corporation of Delhi (MCD) is already a party to the proceedings and while deciding an application under Order VII Rule 11 CPC, this Court cannot travel beyond the pleadings/averments made by the plaintiff and look into the defence put forth by the petitioner/defendant No.1 or decide the issues on merits. There is nothing to show that the cause of action espoused by the plaintiff at this stage is illusory or a sham and in view of foregoing discussion, the present civil revision petition is dismissed.

12. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

MARCH 12, 2024/ck