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

% ***Date of Decision: 07th October, 2024***

+ CM(M) 3553/2024 & CM APPL. 58921/2024 & CM APPL.
58922-58923/2024

MOHD HAROON

.....Petitioner

Through:

versus

NORTH MUNICIPAL CORPORATION OF DELHI & ORS.

.....Respondent

Through: Ms. Sadiya Rohma Khan, Advocate
for R-1/MCD.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is plaintiff before the learned Trial Court.
2. The case is at the stage of plaintiff's evidence.
3. The plaintiff moved an application under Order XXVI Rule 9 CPC seeking appointment of Local Commissioner to inspect the suit property for ascertaining the extent of construction and the status of the building.
4. Such application has been dismissed by the learned Trial Court and this is how the present petition has been moved.
5. This Court is very much conscious of the fact that the present petition has been filed under Article 227 of the Constitution of India whereby the Court is required to exercise its supervisory powers. The scope of interference in such kind of matters by invoking supervisory powers under Article 227 of Constitution of India is very narrow and limited. The duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous



on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be made to *Puri Investments Versus Young Friends and Co. and Others*: 2022 SCC OnLine SC 283.

6. The petitioner has, however, relied upon *Rajiv Sikka and Anr. vs. Ashok Kumar Jain* 2022 SCC OnLine Del 2816. In the above case, though the petition under Article 227 of Constitution of India had been filed challenging the order of appointment of Local Commissioner but the observations go against the petitioner herein as this court, in the abovesaid case, had observed that the impugned order was plainly discretionary in nature, and the jurisdiction vested with the Trial Court under Order XXVI Rule 9 CPC was a discretionary jurisdiction and such discretion exercised by any such Court could not be challenged under Article 227 of Constitution of India, except where the exercise of discretion was manifestly perverse. It was also observed that, ordinarily, an order appointing a Local Commissioner would not be perverse and, therefore, such an order could hardly constitute the basis of proceedings under Article 227 of Constitution of India, and while relying on *Estralla Rubber v. Dass Estate (P) Ltd.* (2001) 8 SCC 97, *Garment Craft v. Prakash Chand Goel* 2022 SCC OnLine SC 29, *Puri Investments v. Young Friends & Co.* 2022 SCC OnLine SC 283, *Sadhana Lodh v. National Insurance Co. Ltd.* (2003) 3 SCC 524 and *Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.* 2022 SCC OnLine SC 620, the abovesaid petition was dismissed.

7. The sole difference in the present case is that herein, the Court has rather declined the appointment of any Local Commissioner. It has given two reasons, firstly, a similar application was earlier moved in the year 2016 which was dismissed on 5th September, 2016. Secondly, the Court could not



be used as a tool for the purposes of collection of evidence.

8. The learned Trial Court also noted that the case was already at the stage of plaintiff's evidence since 5th May, 2016 and the plaintiff had not even begun his evidence, till date.

9. It is also noticed that in the suit in question, MCD is also one of the defendants and naturally, with respect to the alleged construction, the learned Trial Court would certainly have the benefit of the stand taken by MCD.

10. Be that as it may, there is nothing in the impugned order which may warrant this Court to interfere by invoking its supervisory jurisdiction under Article 227 of Constitution of India.

11. The petition stands dismissed.

(MANOJ JAIN)
JUDGE

OCTOBER 7, 2024/ss