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

% ***Date of Decision: 05th May, 2025***

+ **CM(M) 837/2025 & CM APPL. 27139-27140/2025**

SURENDER JINDAL

.....Petitioner

Through: **Ms. Jyoti Shokeen, Advocate**

versus

OM PRAKASH AND ORS

.....Respondent

Through: **Mr. Karan Kapur, ASC for MCD for R-2 & R-4**
Mr. Shashank Dixit, CGSC with Mr. Kunal Raj, Mr. Sumit Khokar and Mr. Vineet Aawana, Advocates for R-3

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 27139/2025 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 837/2025 & CM APPL. 27140/2025

1. Plaintiff Om Prakash (respondent No.1 herein) had filed a suit seeking declaration and injunction.
2. It seems that, without issuing notice to other side, learned Trial Court came to the conclusion that there was nothing on record to show that the plaintiff had any immediate connection with the suit property and also that as to how the construction, being raised on suit property by the opposite side would impede upon his legal entitlement, easmentry rights or egress/ingress. Holding that the plaintiff had no personal interest in the matter, learned Trial Court came to the conclusion that injunction could not have been granted. It also observed that the essential elements were not even existing to provide any relief of declaration.
3. Suit was, accordingly, rejected.
4. Plaintiff has challenged the aforesaid rejection by filing an appeal and the



learned Appellate Court, while considering the aforesaid appeal, has directed the Municipal Corporation of Delhi (MCD) to file present status of the action being taken or already taken, with respect to the unauthorized construction in question.

5. Learned counsel for petitioner submits that on the very point of maintainability, the suit had been rejected and the learned Appellate Court should have confined itself to the aforesaid aspect only and, merely, because the appeal is pending consideration, it should not have sought any *action taken report* from MCD. It is also submitted that the plaintiff is habitual litigant and is in habit of filing similar kind of suits with respect to many others and, perhaps, his intent and object is to extort money and to blackmail others.

6. Learned counsel for MCD appears on advance notice and submits that they would abide by any direction to be passed in this regard by this Court.

7. The Appellate Court is testing the veracity and correctness of order dated 28.08.2023 passed by learned Trial Court whereby the suit has been rejected. As already noticed above, the rejection of the suit is on the point of maintainability as, according to learned Trial Court, there is no personal interest involved and plaintiff has not even specified in the plaint as to how his any legal or fundamental right was going to be infringed by the alleged construction activities being carried out by defendant no. 4 (petitioner herein). The relief of declaration has also been declined, observing that it is equitable remedy and the Court has discretion to grant and refuse such relief, depending on the facts and circumstances of the case and, therefore, very clearly, the learned Trial Court was of the view that plaintiff had failed to elucidate his specific legal character and it was in the aforesaid backdrop that suit was rejected under Section VII Rule 11 (a) CPC and Order VII Rule 11 (d) CPC.

8. The scope of appreciation for the learned Appellate Court is, therefore, confined to the aforesaid aspect only and it seems that plaintiff/appellate is going



much beyond the scope of appreciation of such appeal.

9. The aspect of unauthorized construction raised by defendant no. 4, if any, can be gone into only when the aforesaid rejection order is set aside and the suit is directed to be tried. Therefore, the present petition is disposed of with direction to the learned Trial Court to consider the aforesaid appeal within the aforesaid confines and not to insist for any such status report from MCD.

10. Before parting, this Court would also note that it is also quite puzzling as to how the petitioner herein has moved an application under Order VII Rule 11 CPC before the Appellate Court when the learned Trial Court, itself, has rejected the suit. If the petitioner wants to raise any objection with respect to the appeal, it can always file short reply or synopsis but there is no requirement of moving any application under Order VII Rule 11 CPC, particularly considering the fact that the suit in question has already been rejected by the learned Trial Court.

11. Learned counsel for petitioner submits that she would not press aforesaid application and would make appropriate statement in this regard before the learned First Appellate Court and would also, with the permission of learned Appellate Court, file her written arguments.

12. Be that as it may, the present petition stands disposed of in the aforesaid terms and the impugned order, to the extent, it seeks status report from MCD, is set aside.

13. All the pending applications also stand disposed of.

(MANOJ JAIN)
JUDGE

MAY 5, 2025/dr/js