

Sanjeev vs Renu & Ors on 25 November, 2020

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

C.R.P. 140/2019 & CM APPLs. 29261/2019, 15549-50
SANJEEV

Through: Mr. Praveen Suri,
(M:9810928188)

versus

RENU & ORS.

Through: Mr. Neeraj Kumar B
for R-1 (M: 931167
Mr. Akhil Mittal,
and R-3 (M: 989118

CORAM:

JUSTICE PRATHIBA M. SINGH
ORDER

% 25.11.2020

1. This hearing has been done by video conferencing.

2. The present petition has been filed challenging the impugned order dated 23rd May, 2019 by which the application under Order VII Rule 11 CPC filed by the Petitioner/Defendant (hereinafter "Defendant") has been dismissed by the Trial Court. The suit was filed by Smt. Renu against Mr. Sanjeev seeking removal of unauthorised construction on the Defendant's property. The Plaintiff is a neighbour of the Defendant. The written statement has been filed by the Defendant. Along with the said written statement an application under Order VII Rule 11 CPC was also filed. The MCD has also filed its written statement wherein the stand of MCD is that the property has already been booked and a show cause notice has been issued. It is submitted by Mr. Bansal, ld. counsel for the Respondent No. 2 that three status reports have also been filed

3. The short question in the present case is whether the application under Order VII Rule 11 CPC has been rightly dismissed or not. A perusal of the application shows that the only ground taken in the application is that the Plaintiff has no personal interest in the matter. There is no dispute to the fact that the Plaintiff is a neighbour of the Defendant and hence, the question of personal interest has

been rightly rejected by the Trial Court.

4. Further in addition, Mr. Praveen Suri, Id. counsel for the Petitioner/Defendant, relies upon the judgement of the Id. Division Bench in Devender vs. Government of NCT of Delhi & Ors. (and connected matters) [Writ Petition (Civil) No. 1807/2018, decided on 20th September, 2018] to argue that these issues of unauthorised construction ought to be dealt with by the Special Task Force/governmental authority, and a civil suit ought not be entertained. This ground has not been raised in the application under Order VII Rule 11 CPC and hence the Trial Court has rightly not considered the same. Needless to add, the judgement of the Supreme Court in M.C. Mehta vs. Union of India & Ors. [Writ Petition (Civil) No. 4677/1985] and the judgement of the Division Bench in Devender (supra) are clear and categorical to the effect that issues of unauthorised construction, illegal construction, etc. can be referred to the STF.

5. Further in the present case, Mr. Bansal points out that the MCD is also stated to have booked the property for unauthorised construction. Accordingly, the Petitioner is permitted to move an application taking the above grounds, before the Trial Court or make its submissions on the basis of the judgements cited above, as also the status reports of the MCD. The Trial Court is directed to take a comprehensive view of the matter as to whether the suit be proceeded with, or the authorities should be directed to take action in accordance with law, or whether the matter be referred to the STF. The said issue shall be considered by the Trial Court on the next date. An order in the matter shall be passed by the Trial Court within a period of three months from today.

6. The petition is disposed of in these terms. All pending applications also stand disposed of.

PRATHIBA M. SINGH, J.

NOVEMBER 25, 2020/dk/Ak