



2026:DHC:2503



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

% ***Date of decision: 16th March 2026***

+ **C.R.P. 56/2026, CM APPL. 15133/2026, CM APPL.**

15134/2026

ASHISH KUMAR & ORS.

.....Petitioners

Through: Mr. Sujeet Kumar Mishra, Mr.
Harsh Kumar Pandey, Advocates.

versus

CAPT AVINASH CHANDER MALHOTRA ...Respondent

Through: Mr. Ashim Vachher, Sr.
Advocate, Mr. Vinayak Uniyal,
Ms. Saiba M Rajpal, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J (ORAL)

1. This Revision Petition is filed by the petitioner/defendant assailing the impugned order dated 24th January 2026, passed by the Trial Court, South East District, Saket Courts, New Delhi in CS (SCJ) 1077/2025, whereby the Trial Court dismissed petitioner's application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC').

Background facts as averred in the plaint are as under:

2. The dispute relates to the plot situated at 35 Anand Lok, New Delhi which was purchased by late *Sh.Ved Mitra*. After his death, the



2026:DHC:2503



property was inherited by late *Sh. Arun Kumar* and late *Sh. Sushil Kumar* and subsequently partitioned through a deed of partition. The respondent/plaintiff entered into two separate agreements to sell with late *Sh. Arun Kumar* and late *Sh. Sushil Kumar* for sale of the entire second-floor along with front terrace, as stated by the plaintiff.

3. Two separate sale deeds were executed between late *Sh. Sushil Kumar* and plaintiff/respondent; it was decided that there shall be no construction over the rear portion of the terrace of the second-floor without the written consent of the respondent/plaintiff. Construction of the house at *35 Anand Lok* was completed with the funds provided by the respondent/plaintiff.

4. As per the arrangement, the rear part of the second-floor terrace was used as a common property of the entire building, housing AC compressor units, dish antennas, geysers, water motors along with five servant quarters for all the residents of the building since construction was completed in 2001.

5. As per the plaint, in September 2025, the petitioner started constructing an illegal structure through fabrication at the rear portion of the second-floor terrace, despite repeated protests by the respondent. A complaint was also made with the police regarding this construction, but after the police officials were gone, construction started again. Accordingly, respondent/plaintiff filed a suit being CS SCJ 1077/2025 in which notice was issued to the petitioner/defendants.

6. A restraint order was passed by the Trial Court on 15th September 2025 from creating any further construction on the rear part of the second-floor terrace. On 25th September 2025, respondent/plaintiff filed



2026:DHC:2503



an application under Order XXXIX Rule 2A of CPC, alleging that the petitioner had violated the order dated 15th September 2025; proceedings in this application are *sub judice*.

7. On a query by the court, the counsel for the parties admitted that the front portion of the ground floor is with one *Mr. Jayant Dang*, the rear portion of the ground floor is with the petitioner/ defendant along with the front and rear portion of the first floor. The second-floor is with the respondent/plaintiff along with the front portion of the second-floor terrace, while the rear portion of the second-floor terrace was common for usage and facilities as noted above.

8. There is some dispute regarding the petitioner/defendant's statement about the front portion of the second-floor terrace. It is contended that the front portion of the terrace was not provided exclusively to the respondent/plaintiff. However, this claim is disputed by *Mr. Ashim Vachher*, Senior Counsel for the respondent/plaintiff, on the basis of the sale deeds; therefore, at best, it is a disputed question of fact.

9. *Mr. Sujeet Kumar Mishra*, counsel for petitioner, has agitated the issue that the respondent/plaintiff had the rear portion of the property and also that plea for removal of any structure been constructed was barred under *Section 41(h) and (i) of the Specific Relief Act, 1963* read with *Section 343, 347E, 477, 478* of the Delhi Municipal Corporation Act, 1957 (*'DMC Act'*). It was stated that whether the construction was legal or illegal could only be determined by the Municipal Corporation of Delhi (*'MCD'*) and demolition of any unauthorized construction was squarely within the domain of such authority. Therefore, it was



contended that jurisdiction was barred *under 343 (4) of the DMC Act as well as Section 9 of the CPC.*

Analysis

10. As per the Supreme Court's decision in ***Dahiben v. Arvinbhai Kalyanji Bhanusali***, (2020) 7 SCC 366, the Court while assessing an application under Order VII Rule 11 of CPC is bound to advert only to bare averments made in the plaint in order to assess that whether any cause of action is made out or not and whether the suit is not barred by any law. The relevant extracts of the aforesaid judgment is as under:

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)

“12. ... The whole purpose of conferment of such



powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] , read in conjunction with the documents relied upon, or whether the suit is barred by any law.”

(emphasis supplied)

11. A perusal of the plaint would show that the plaintiff has averred that in the sale deed with late *Shri Arun Kumar*, the front portion of the second-floor along with the front terrace over the second-floor had been sold, while the rear portion of the second-floor had been sold. The plaintiff admits that the rear portion of the terrace is a common utility area and they have not claimed any exclusive rights to that portion.

12. It is further admitted by the parties that that the rear portion of the terrace over the second-floor has five servant quarters, toilets, bathrooms and water tanks, and the quarters are occupied by the domestic help of each occupant of the floors. One quarter, therefore, is allocated to the respondent/plaintiff. It is also stated in the plaint that the water tanks of



2026:DHC:2503



the entire building are installed on the rear portion of the second-floor terrace, besides the inverter, the batteries, geysers, water pressure pump of the plaintiff as well. The site plan has been attached as *Annexure A* along with the plaint. It was averred that the rear portion of the second-floor terrace is used by all the residents of the building and is common to all the residents.

13. Various disputes arose between the parties, particularly with respect to the landing of the spiral staircase on the second floor. The rear portion of the second-floor terrace is accessed by a spiral staircase originating from the driveway outside the building and is used by all domestic help. The rear portion of the terrace is also accessible through the main staircase. Respondent/plaintiff alleged that the petitioner/defendants were consistently attempting to occupy the rear portion of the terrace, claiming ownership thereof. Defendant no. 1 filed a suit, being CS (SCJ) 1507/2023, seeking a mandatory injunction to restrain the plaintiff from creating any hindrance in the use of the main staircase and the lift operating from the ground floor to the third floor.

14. The Trial Court declined the grant of *ad interim* injunction. Subsequent proceedings culminated in an order dated 14th November 2024, wherein the Trial Court held that the lift area/staircase/lift lobby is under the lock and key of plaintiff, that a duplicate key could be provided to defendant no. 1 for his own use and that of his family members.

15. However, it is alleged that when the plaintiffs were away in November 2024, defendant no. 1, along with his son (defendant no. 2), came to the second-floor landing with an ironsmith and an electric cutter



2026:DHC:2503



and attempted to cut and damage the iron grill.

16. Since September 2025, defendant nos.1 & 2 were constantly going to the rear portion of the property with the construction equipment and despite heavy rains and the objections raised by the plaintiff, and were constructing the illegal structure in order to usurp the rear portion of the terrace. The plaintiff, therefore, alleged that the issue of ownership of the rear portion at best being *sub judice* due to the pending suit (CS (SCJ) 1507/2023), and that the construction being carried out by the defendants is illegal and ought not to be permitted. Accordingly, the present suit was filed.

17. In these facts and circumstances, the cause of action as espoused by the respondent/ plaintiff clearly relates to asserting the right of common usage of the rear portion of the second-floor terrace and restraining the defendants from usurping the space of the second-floor terrace for their own exclusive use without any consent from the other members of the building. This is a legitimate cause of action and does not, in the opinion of the Court, relate simply and solely to a civic or building regulation matter which would require an exclusive intervention of the MCD. Even though an application has apparently been filed before the MCD by the respondent; however, it does not preclude them from asserting the right to common usage of the rear portion of the second-floor terrace along with the other occupants of the building.

18. The plea which has been taken by the counsel for the petitioner that the respondents have no right over the rear portion of the building, or that the suit is barred under Section 343(4) of the DMC Act, was considered in the impugned order. It has been rightly held by the



2026:DHC:2503



impugned order/judgment that Section 343(4) of the DMC Act simply provides that no court shall entertain any suit or application or proceeding for injunction of the relief against the Commissioner to restrain him from taking any action. The provision does not serve as any impediment to the filing of this Suit.

19. Reliance has been placed by petitioner's counsel on *Shiv Kumar Chadha v. Municipal Corporation of Delhi & Ors.* (1993) 3 SCC 161, where appeals were filed against an order of the Delhi High Court directing the MCD to issue appropriate notices to owners/occupiers of buildings where illegal constructions were made. Liberty was given to the owners/occupiers to file a fresh building plan, the same to be examined by the Corporation, and if beyond compoundable limits, then to seal the same and demolish thereafter. The appellants came before the Supreme Court challenging another part of the order where the High Court had stated that no civil suit would be entertained by the Court in respect of any action taken or proposed to be taken. It was in this context that Section 343 of DMC Act along with Section 9 of the CPC was cited.

20. It was noted by the Supreme Court that the enforcement remedy had been provided under the Act itself. The Supreme Court, therefore, noted that it is up to the court to examine whether the dispute falls within the ambit of the Act, and if the court is satisfied that the provisions of the Act are not applicable, the basic procedural requirements have not been followed, it shall have the jurisdiction to enquire and investigate protecting the common law rights of the citizen.

21. This decision by the Supreme Court does not, by any stretch of interpretation, come to the support of what is being argued by



2026:DHC:2503



petitioner's counsel. The context is totally distinct and different.

22. On the other hand, *Mr. Ashim Vachher*, Senior Counsel for respondent/plaintiff has adverted to decision by the Division Bench of this Court in *Asha Johri v. Neerja Rajput & Anr*, 2014:DHC:2442-DB where the Division Bench held that the ownership of a property would automatically entail that the roof above it would form part of the flat which is allotted. However, this should not engage the attention of this Court since these are all questions of trial and, therefore, do not need to be adverted to.

23. It is settled law that the mandate of a revision Court is limited to issues of jurisdictional exercise by the Trial Court and not act as an appellate Court for re-appreciation of issues of fact.

24. In light of the above, no interference with the impugned order is warranted. Accordingly, the petition stands dismissed.

25. Pending applications, if any, are rendered infructuous.

26. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

MARCH 16, 2026/ak/zb