



2025:DHC:9080



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

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Date of Decision: 13.10.2025

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CM(M) 1975/2025, CM APPL. 64046/2025 & CM APPL. 64045/2025

SH DINESH SINGHAL ALIAS SINDHAL

.....Petitioner

Through: Mr. Rakesh Chander Agrawal,
Advocate.

versus

DEEPAK JAIN & ANR.

.....Respondents

Through: Mr. Bhavishya Makhija, Advocate.

CORAM: JUSTICE GIRISH KATHPALIA

ORDER (ORAL)

1. The petitioner (*defendant no.1 in the suit*) has assailed order dated 30.08.2025, whereby his application under Order VII Rule 11 CPC was dismissed.
2. Having heard learned counsel for petitioner/defendant no.1, I do not find it a fit case to even issue notice.
3. Broadly speaking, the circumstances relevant for present purposes are as follows. The present respondent no.1/plaintiff filed a suit against the present petitioner (*as defendant no.1*) as well as the East Delhi Municipal Corporation (*now, MCD*) and the local police station, seeking permanent



2025:DHC:9080



and mandatory injunction to restrain the present petitioner/defendant no.1 from carrying out further structural construction activity in his premises (*the subject premises*), which are adjacent to the premises of the present respondent no.1/plaintiff; the present respondent no.1/plaintiff also sought mandatory injunction to the municipal and police authorities to remove the illegal and unlawful construction carried out in the subject premises. The present respondent no.1/plaintiff laid foundation of his suit on the allegation that the unauthorized construction being carried out in the subject premises had resulted in damage to his premises. The present petitioner/defendant no.1 filed an application under Order VII Rule 11 CPC, contending that the subject suit is barred by the provisions under Sections 347B and 347E of the Delhi Municipal Corporation Act since, the subject premises have already been booked by the MCD on the grounds of illegal construction and the consequent sealing/demolition order also stands passed. The learned trial court, by way of the impugned order took a view that the provisions under Sections 347B and Section 347E of the Act do not create an embargo on the subject suit, so the application was dismissed.

4. Learned counsel for petitioner/defendant no.1 contends that the impugned order is not sustainable in the eyes of law because the subject premises having already been booked by the MCD, it is only the Appellate Tribunal, MCD (ATMCD) which has the jurisdiction to decide the dispute and the present petitioner/defendant no.1 has already approached ATMCD in that regard. It is also contended by learned counsel for petitioner/defendant no.1 that the petitioner/defendant no.1 has not carried



2025:DHC:9080



out any unauthorized construction in the subject property. It is further contended that the property booked by the MCD is House No. A-25, Durgapuri Extension whereas, the subject premises are House No. 26, Gali No. 1-A, Durgapuri Extension, which premises are not adjacent to the premises of the present respondent no.1, therefore, the present respondent no.1/plaintiff had no occasion to file the subject suit. No other argument has been advanced.

5. To begin with, it is trite and also not disputed by learned counsel for petitioner/defendant no.1 that while examining an application under Order VII Rule 11 CPC, the court has to confine itself to the plaint, and the court cannot traverse into the pleadings of the defendant. In the present case, the respondent no.1/plaintiff in his plaint has categorically pleaded that the petitioner/defendant no.1 is carrying on unauthorized, illegal and unsanctioned construction in the subject premises, which has led to cracks in the premises of respondent no.1/plaintiff. The plea advanced today on behalf of petitioner/defendant no.1 that he has not carried out any unauthorized construction is a defence plea, which is yet to be tested through trial and cannot be kept in mind while considering the application under Order VII Rule 11 CPC. The underlying principle is that by accepting the pleaded and yet to be proved defence of the defendant at the threshold and rejecting the plaint, the court would be depriving the plaintiff an opportunity to prove his case. It is because of this reason that the court has to confine itself to the case setup by the plaintiff while examining an application under Order VII Rule 11 CPC.



2025:DHC:9080



6. So far as the bar of Sections 347B and 347E of the DMC Act, as raised by learned counsel for petitioner/defendant no.1, the scope of those provisions is completely distinct. The provision under Section 347E of the Act stipulates that after commencement of Section 7 of the DMC (Amendment) Act, 1984, no court shall entertain any suit, application or other proceedings in respect of any order or notice appealable under Section 343 or Section 347B and no such order or notice shall be called in question otherwise than by preferring an appeal under those sections. What is barred vide Section 347E of the Act is the challenge to the notice/order issued by the MCD and not a civil suit by a person claiming himself to be aggrieved on account of unauthorized construction of the defendant. It is the addressee of the notice/order issued by the MCD who is prohibited from filing a civil suit to challenge the notice/order, insofar as he has a remedy of filing an appeal before the ATMCD.

7. In the present case, the scope of the proceedings pending before the ATMCD is related to the notice issued to the present petitioner/defendant no.1 by MCD and the nature of construction. On the other hand, the scope of the subject suit is the damage allegedly suffered by the respondent no.1/plaintiff on account of the allegedly unauthorized construction carried out by the present petitioner/defendant no.1.

8. There is another aspect. As reflected from record, it appears that the petitioner/defendant no.1 is deliberately protracting the proceedings of the suit in order to frustrate the present respondent no.1/plaintiff into giving up the litigation. It appears that the petitioner/defendant no.1 initially moved an



2025:DHC:9080



application under Order VII Rule 10 CPC on same grounds, which was dismissed and thereafter, the petitioner/defendant no.1 approached the Court of District Judge, which upheld the dismissal of application under Order VII Rule 10 CPC and thereafter, the petitioner/defendant no.1 came to even this Court under Civil Revision, which also could not succeed, so on grant of leave, petition under Article 227 of the Constitution of India was filed, which also could not succeed and was withdrawn with liberty to file application under Order VII Rule 11 CPC. Thereafter, the petitioner/defendant no.1 filed application under Order VII Rule 11 CPC and has now approached this Court through this petition.

9. In view of the aforesaid, I find no infirmity in the impugned order, so the same is upheld. The present petition is devoid of merit and completely frivolous, so dismissed with costs of Rs. 10,000/- to be deposited by petitioner with DHCLSC within one week.

10. The accompanying applications also are dismissed.

**GIRISH KATHPALIA
(JUDGE)**

OCTOBER 13, 2025/dr