

(2022) 06 DEL CK 0016

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 586 Of 2022

Rajeev Tomar

APPELLANT

Vs

EDMC

RESPONDENT

Date of Decision : 03-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2022) 06 DEL CK 0016

Hon'ble Judges : C.Hari Shankar, J

Bench : Single Bench

Advocate : Arjun Singh Khurana, Sanjeev Sagar, Nazia Parveen

Final Decision : Disposed Of

Judgement

C.Hari Shankar, J

CM APPL. 28116/2022 (exemption) and CM APPL. 28117/2022 (exemption)

1. Allowed, subject to all just exceptions.

2. The applications stand disposed of.

CM(M) 586/2022 & CM APPL. 28115/2022 (stay)

3. The petitioner, in this petition under Section 227 of the Constitution of India is aggrieved by the fact that the learned Additional Senior Civil Judge ("the learned ASCJ") has adjourned an application, filed by the petitioner with Civil Suit 255/2022 (Rajeev Tomar v. EDMC) seeking stay of the proposed demolition of the petitioner's premises on as many as seven occasions, without taking up the application for decision. In fact, on one occasion, i.e. 28th February, 2022, the earlier learned ASCJ passed the following order:

"28.02.2022

In terms of Hon'ble High Court Order, all the cases listed today are to be taken up through physical mode.

Present: Ms. Shachi Jain., Ld. Counsel for plaintiff.

Ms. Reena, JLO on behalf of EDMC.

Ms. Reena, JLO, on behalf of EDMC submits that summons of the suit has received through Whatsapp. A Spare copy of the plaint and documents is supplied to the JLO in the court today against acknowledgement.

An urgent prayer is made on behalf of plaintiff for passing orders against the defendant restraining them from undertaking demolition activity. However, today only the JLO has appeared on behalf of the EDMC, and on query of the court she submits that there is no separate authorization in her favour to appear on behalf of the EDMC and to pursue the present case, neither any counsel has been engaged to represent the EDMC.

In such scenario, the court is of the opinion that the JLO is not the proper authorized person to represent the EDMC especially in such matters where public policy and interest of private persons on such a large scale are involved. The EDMC or its concern officer thereof is directed to engage an empaneled counsel in these matters who shall appear and file his vakalatnama on NDOH.

In these circumstances, the urgent prayer made on behalf of plaintiff is kept pending at this stage.

Let WS be filed by the NDOH with advance copy to the plaintiff Counsel against acknowledgement.

Be put up for completion of pleading/arguments on 23.03.2022.

Dasti be given to the JLO for compliance.”

4. Applications for stay of demolition are required to be taken up expeditiously. In the event that the Court is inhibited from doing so for any valid reason, interim protection ordinarily ought to be granted to the applicant as, once demolition takes place, the situation cannot be reversed and the damage is irreparable.

5. At least in the order dated 28th February, 2022, the learned ASCJ is completely unjustified in “keeping pending” the prayer for stay of demolition, as made by the petitioner, even while acknowledging that the prayer was urgent, merely because the Junior Law Officer (JLO), who appeared for the EDMC, was not an authorised officer.

6. Mr. Sanjeev Sagar, learned Standing Counsel who was present in the Court, appeared in the matter after taking instructions from the Law Officer of the EDMC. He is agreeable to disposal of this petition in the terms that follow.

7. In view of the limited nature of the aforesaid dispute, instead of keeping this petition pending, which may necessitate staying the proceedings before the Court below, the interests of justice would best be subserved if the petition is disposed of with a direction to the learned ASCJ to decide the application for stay

of demolition, filed by the petitioner, along with Suit 255/2022 (Rajeev Tomar v. EDMC), in a time bound manner.

8. The parties are, accordingly, directed to appear before the learned ASCJ on 7th July, 2022, being the next date fixed before the learned ASCJ, on which date the learned ASCJ would proceed to hear arguments on the petitioner's application for stay of demolition, following which appropriate orders would be passed thereon, either on the same day or shortly thereafter.

9. Till the passing of the order on the petitioner's application for stay of demolition, any proposed action for demolition of the petitioner's property would stand stayed.

10. Needless to say, this Court has not expressed any opinion on merits either on the present petition or on the application of the petitioner for stay of demolition and the learned ASCJ would decide the said application in accordance with law uninfluenced by any observation contained in this order.

11. The petition is disposed of in the aforesaid terms. Miscellaneous applications also stand disposed of.

12. Copy of this order be given dasti under the signature of Court Master to learned Counsel for the petitioner.