

**Sushil Kumar Vs. Sanjay**

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**Court :** Delhi

**Decided On :** Jan-28-2013

**Judge :** Pratibha Rani

**Appellant :** Sushil Kumar

**Respondent :** Sanjay

**Judgement :**

\$~ \* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of order:- 28.01.2013 CM(M) 104/2013 SUSHIL KUMAR ..... Petitioner Through: Mr.Manoj Kumar, Advocate. versus SANJAY ..... Respondent Through CORAM: HON'BLE MS. JUSTICE PRATIBHA RANI % PRATIBHA RANI, J.

(Oral) C.M.No.1367/2013 (Exemption) Allowed, subject to all just exceptions. Application stands disposed of. CM(M) 104/2013 and C.M.No.1366/2013 (interim relief) 1. By this petition filed under Article 227 of the Constitution of India, the petitioner impugns the order dated 06.10.2012 passed by the learned District Judge-III (North East), Karkardooma Courts, Delhi in MCA No.1/12 vide which the order dated 26.05.2012 passed by the learned Civil Judge was affirmed and the appeal filed by the petitioner was dismissed.

2. In brief the facts of the case are that the plaintiff/respondent herein filed a suit for permanent and mandatory injunction claiming himself to be the owner and in possession of House not D-598, Gali No.1, Ashok Nagar, Shahdara, Delhi. The house of the present petitioner is adjacent to the house of respondent/plaintiff, The

petitioner/defendant in Suit No.29/2012 was allegedly raising unauthorized construction with mala fide intention to fix a gate towards the street side to occupy it illegally and forcibly.

3. In the written statement filed by the petitioner/defendant before the learned Civil Judge, the plea taken was that the drain water enters in the house of the defendant and the construction of the house of the defendant is very old and as such, the defendant has no option but to reconstruct his property. In the written statement, the petitioner/defendant did not specify as to whether he has got any site plan sanctioned for re-constructing the property. In the given circumstances, while disposing of the application under Order XXXIX Rules 1 & 2 CPC, the learned Civil Judge injuncted the petitioner/defendant till the disposal of the suit from raising any illegal and unauthorized construction towards street as shown in red colour in the site plan annexed with the plaint without obtaining the sanctioned plan from the MCD.

4. Feeling aggrieved, the petitioner/defendant filed an appeal bearing MCA No.01/12 and finding no merit in the appeal, the same was dismissed by the learned Appellate Court vide the impugned order, thereby affirming the order passed by the learned Civil Judge restraining the petitioner/defendant from raising any unauthorized construction towards street without getting any plan sanctioned from MCD.

5. Learned counsel for the petitioner has impugned the order on the ground that the portion where the construction is proposed to be raised is hazardous. It is further submitted by him that the petitioner wants to just carry out repairs for which no plan is required to be sanctioned from MCD. Hence the impugned order, which is creating hurdle in the way of the petitioner, is liable to be set aside.

6. As per the plea taken by the petitioner in the written statement filed before the learned Civil Judge, it is not the case of repair but reconstruction. Certain repairs may not require any building plan to be sanctioned, but in case of reconstruction, the same cannot be carried out without getting the plan sanctioned from the MCD. Learned counsel for the petitioner was asked to point out in his plea taken in the written statement that the nature of the repair being carried out in the property

does not amount to reconstruction and as to where such repairs requiring no sanction by MCD have been specified. He could point out none. The averments made in the written statement itself indicate that in the garb of alleged repairs/reconstruction, the petitioner appears to be carrying out unauthorized construction. In the circumstances, he has been rightly injuncted by both the Courts below from carrying out reconstruction activity without getting the necessary building plan sanctioned from MCD.

7. It is settled legal position that power of this Court under Article 227 of the Constitution is not to act as a Court of appeal, but this is only to ensure that the procedure followed by the learned Trial Court and the first appellate Court were within their authority and jurisdiction. No interference is warranted by this Court, if there is no infirmity or perversity in the impugned order.

8. The impugned order does not restrict the right of the petitioner to carry out any construction in his property on getting the necessary building plan sanctioned from the MCD.

9. Finding no illegality or perversity in the impugned order, the present petition is hereby dismissed. PRATIBHA RANI, J JANUARY 28 2013 dc

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