

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

+ **RFA No. 353/2017**

% **Reserved on : 31<sup>st</sup> August, 2018**  
**Pronounced on: 19th September, 2018**

MAJOR RAJINDER SINGH CHIMNI (DECEASED) THR LR

..... Appellants

Through: Mr. Amarjeet Singh, LR of the  
appellant in person (Mobile No.  
9810914597).

versus

JAGMOHAN DILWARI & ORS.

..... Respondents

Through: None.

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J**

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 22.11.2016 by which the trial court has dismissed the suit filed by the appellant/plaintiff

seeking the relief of damages of Rs.10 lakhs against the Municipal Corporation of Delhi and his neighbour//respondent no.2/defendant no.2 on the cause of action that illegal constructions have been made by the respondent no.2/defendant no.2 on her plot alongwith the builder/respondent no. 1/defendant no.1. Trial court has dismissed the suit by *inter alia* holding that the appellant/plaintiff has failed to prove any damages caused to his property, and therefore, the suit was liable to be dismissed.

2. The facts of the case are that the appellant/plaintiff is the owner of plot no.C-68, East of Kailash, New Delhi. As per the plaintiff, the respondents no.1 and 2/defendants no.1 and 2, in connivance with the respondent no.3/defendant no.3/municipal corporation, built a basement and structure in plot no. C-67, East of Kailash, New Delhi, in gross violation of the building Bye Laws. As per the appellant/plaintiff, respondents no. 1 and 2/defendants no. 1 and 2 did not take adequate fire precautions as required under the Bye Laws and also did not make the basement water proof. Respondents no.1 and 2/Defendants no.1 and 2 are also alleged to have built a verandah or a raised platform in violation of the building Bye Laws,

therefore taking away the privacy of the appellant/plaintiff. It was pleaded by the appellant/plaintiff that the structure constructed by the respondents no.1 and 2/defendants no. 1 and 2 was highly dangerous and there is a threat to the appellant's/plaintiff's building as construction of respondents no.1 and 2/defendants no. 1 and 2 was adjoining to the house of the appellant/plaintiff. Appellant/plaintiff is pleaded to have filed a criminal case for damages against the defendants which was pending in the concerned criminal court. Suit was therefore prayed for being decreed for a sum of Rs.10 lakhs as damages.

3. The suit was contested by respondent no.1/ defendant no.1 and respondent no.3/defendant no.3. Respondent no.2/ Defendant no.2 was proceeded *ex parte*. It was the case of the contesting defendants that due sanctions were obtained and only thereafter the building was constructed. Further, any minor deviations were also rectified and brought in conformity with the Bye Laws, and therefore, proceedings against the respondents no.1 and 2/defendants no.1 and 2 were dropped by the Municipal Corporation vide Order dated 22.05.1995. Building plans were sanctioned vide File No. 647/B/92

dated 03.01.1992. For rectifying the defects in the building construction and to bring the building in conformity with the Bye Laws, the compounding fee of Rs.59,502/- was deposited by the owner/builder. Suit was therefore prayed to be dismissed.

4. After the pleadings were complete, the trial court framed issues and parties led evidence. These aspects are recorded in paras 7 to 9 of the impugned judgment and these paras read as under:-

“7. On the pleadings of the parties, following issues were framed vide order dated 15.02.2010:

1. Whether the plaintiff is entitled to damages of Rs.10 lakhs as alleged? OPP
2. Whether the suit is not maintainable as no notice u/s 477 and 478 of DMC Act has been issued? OPD3
3. Whether the suit is not maintainable as the plaintiff has not approached this court with clean hands and has suppressed material fact from this court? OPD
4. Whether there is no cause of action against defendants as alleged? OPD
5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
6. Relief.

8. In order to prove plaintiffs' case, plaintiffs examined Sh. Amarjeet Singh as PW-1 who tendered his evidence by way of affidavit Ex. PW1/1 wherein he relied upon documents i.e. site plan Ex. PW-1/A, certified copy of lease deed Ex. PW1/B, certified copy of order dated 25.06.1993 Ex. PW1/C, certified copy of order dated 27.11.1992 Ex. PW1/D, certified copy of written statement of Additional Deputy

Commissioner MCD dated 09.09.1993 in Civil Suit No. 1144 of 1992, certified copy of report of Junior Engineer (building) Mr. Vajinder Dahiya dated 09.08.1994 Ex. PW1/F, certified copy of Sh. M.A. Khan, Presiding Officer, Appellate Tribunal MCD dated 25.06.1993 Ex. PW1/G, certified copies of orders dated 29.03.2003 Ex. PW1/H and Ex. PW1/I, photographs annexed with the plaint Ex. PW1/J, certified copy of report of local commission Ex. PW1/K, certified copy of order dated 05.01.1994 Ex. PW1/L, original copy of Government Approved Valuer SLA No. 18210/1998 dated 03.12.1993 Ex. PW1/M, certified copies of orders dated 11.09.1996, 24.03.2000 and 22.05.2000 Ex. PW1/N to PW1/P, List of unauthorized construction submitted in CCP 220 of 1994 Ex. PW1/Q and Affidavit of MCD in CCP 220 of 1994 Ex. PW1/R. His examination in chief was not concluded as it was deferred to the extent of exhibiting documents kept in sealed cover. PW1, thereafter, never appeared in the witness box either to complete the exhibition of documents or to get himself cross examined.

9. Defendant No. 3 examined Sh. Naresh Yadav, Assistant Engineer (Building) as D3W1 who tendered his evidence by way of affidavit Ex. D3W1/A wherein he relied upon documents i.e. photocopy of FIR dated 31.03.1993 Ex. D3W1/1, photocopy of show cause notice dated 31.03.1993 Ex. D3W1/2, photocopy of demolition order u/s 343 (1) of DMC Act dated 13.04.1993 Ex. D3W1/3, photocopy of demolition notice dated 13.04.1993 Ex. D3W1/4, original status report dated 15.12.2010 Ex. X-1 and photocopy of area chart of the suit property Mark A-1. He was cross-examined by the plaintiff.”

5. Before I proceed to discuss these issues, it must be noted that the suit was filed in 1995 and the same was decided by the trial court vide Impugned Judgment on 22.11.2016 i.e. the suit continued for about 21 years. This long delay is mostly on account of the appellant/plaintiff filing some or the other applications. The orders of the trial court are replete with facts as to delay being caused by the appellant/plaintiff to his own suit. In the suit filed in May, 1995 issues were only framed after around 15 years vide order dated 15.02.2010. I

may also note that it is on the record of the trial court file, and so confirmed to this Court by the appellant/plaintiff who appeared in person and argued his case, that he is engaged in around 36 litigations with his neighbours. The appellant/plaintiff also admitted that he threatened to commit immolation before the Chief Justice of this Court at one point of time.

6. Issue no. 1 in my opinion has been rightly decided by the trial court against the appellant/plaintiff since the appellant/plaintiff has failed to prove any damage to his property or any loss caused to his property because no other evidence has been led besides the self-serving statement of the appellant/plaintiff. The trial court has held that the allegation that construction carried out by the respondents no. 1 and 2/defendants no. 1 and 2 within their premises was likely to cause damage to the property of the appellant/plaintiff by the slightest tremor of the earthquake and rainfall is misconceived because though the suit was filed on 22.05.1995, since then, Delhi has experienced a number of earthquakes but the appellant's/plaintiff's property is still standing. The factum with respect to appellant/plaintiff stalling the suit proceedings are noted in para 14 of the impugned judgment. The

trial court has further rightly held that mere deviation in some construction made by the respondent nos. 1 and 2/ defendant nos. 1 and 2 in their property would not mean that there is any threat or damage to the property of the appellant/plaintiff. Also, as already noted above, the deviation has been compounded by paying the necessary compounding fee. The trial court has noted that the appellant/plaintiff has not examined any expert witness to show any probable threat to the existence of the house of the appellant/plaintiff. Therefore, the trial court held that the appellant/plaintiff has failed to prove his case and consequently issue no. 1 was decided against the appellant/plaintiff, and with which I agree, by observing as under:-

“ISSUE No. 1: Whether the plaintiff is entitled to damages of Rs.10 lakhs as alleged? OPP

12. Onus to prove this issue is upon the plaintiff. Plaintiff examined PW-1 Sh. Amarjeet Singh who was brought on record as legal heir of the plaintiff after the death of the plaintiff. PW-1 filed his affidavit Ex.PW1/1. In his examination-in-chief he had almost verbatim repeated the averment made in the plaint and relied upon the documents which he in his affidavit referred to as Ex. PW1/A to Ex. PW1/R. He partly tendered his examination-in-chief on 29.03.2010 and his examination-in-chief was deferred to the extent of exhibition of documents in sealed cover. Thereafter PW-1 never turned up either for completion of his chief examination or for his cross-examination, for the reason best known to him. Thereafter plaintiff sought time to examine Sh. S.K. Wadhwa, the government approved valuer and after repeated attempts to secure his presence, plaintiff dropped the said witness as noted in daily order dated 11.08.2010. Thereafter plaintiff has not wished to examine any other witness nor has offered himself for his cross-

examination. Therefore, plaintiff by his own conduct has closed his evidence by necessary implication. Defendant No.3 has examined one witness D3W1 who was cross-examined by the plaintiff.

The main grievance of the plaintiff is that because of unauthorized construction and digging of basement in property bearing no. C-67, East of Kailash, New Delhi under gross violation of building bye laws, defendants have overloaded the soil with excessive coverage on the basement, ground floor, first floor, second floor and barsati and defendants have not taken proper precautions to make the walls and floor of the basement water tight as per the building by laws. The defendants no. 1 and 2 had not taken adequate precautions as prescribed by building bye laws and have therefore created the fire hazard in the neighbourhood of the plaintiff. The structure constructed by the defendants no. 1 and 2 in connivance with defendant no. 3 is stated to be highly dangerous for the adjoining house of the plaintiff and poses a perpetual threat to its very existence. The house of the plaintiff is stated to be in precarious condition and was likely to collapse on the slightest tremor of the earth quake or seepage of water below the walls and floor of the house of plaintiff during heavy rainfall due to the illegal and unauthorized construction raised by the defendants no. 1 and 2 in C-67, East of Kailash. For the aforesaid perpetual threat and likelihood that plaintiff's house would be collapsed in the event of minor earth quake and rainfall, plaintiff has sought Rs.10,00,000/- as damages.

13. It is admitted case of the plaintiff that no illegal act or wrongful act has been committed by the defendants in the property of the plaintiff. The defendants No.1 and 2 have done threatful construction within their premises. The present suit has been filed by the plaintiff in anticipation that the construction carried out by the defendants No.1 and 2 within their premises was likely to cause damage to the property of the plaintiff on the slightest tremor of the earth quake and rainfall. The present suit has been filed on 22.05.1995 and since then Delhi has experienced number of earth quakes, plaintiff's property is still standing.

14. Under the law damages can be granted on breach of contract or upon wrongful tortuous act causing harm. Admittedly present claim of damages is not covered under the head of "breach of contract". Thus the present suit is based on tortuous act. Admittedly till date no loss has occurred to the plaintiff and there is no law under which one can be compensated for unforeseen loss which is still in anticipation. Since the alleged tortuous act of the defendant has not resulted into any loss to the plaintiff so far, the plaintiff cannot claim damages as no cause of action has accrued so far in favour of plaintiff and against defendants. Surprisingly in the present suit, plaintiff is claiming only damages but



has not sought any relief against the defendant by asking for removal of the probable threat to the life and property in the adjoining area. Since 1995 till the framing of issues in 2010, plaintiff left no stone unturned in stalling the further proceeding in the matter and has not spared any substantial provisions of Civil Procedure Code for moving application after application. As noted above, the onus was upon the plaintiff to prove that construction raised by the defendant causes perpetual threat to the existence of the house of the plaintiff or that the house of the plaintiff was in precarious condition or was likely to be collapsed on the slightest tremor of earth quake and seepage of water but plaintiff has failed to prove the same such precarious condition of the property of the plaintiff, apart from failing to show any law which allows grant of damages in anticipation of loss.

Even if there was some deviation in the construction of the property that ipso-facto does not prove that construction so raised poses threat to the property of plaintiff. Moreover even if it is accepted that such construction poses threat to the property of the plaintiff then appropriate remedy would have been to ask for removal of threat either by way of demolition or by rectification as the case may be. In the circumstance of the present case damages cannot be appropriate relief.

15. Defendant no. 3 has pleaded that defendant carried out construction in the suit property after obtaining sanction of construction. When defendant deviated from sanctioned plan, show cause notice was issued and property was sealed. Defendant rectified the same and compoundable deviations were compounded on the payment of charges. Plaintiff has not examined any expert witness to measure the probable threat to the existence of the house of the plaintiff and adjoining houses. In these circumstances, where plaintiff has not been able to prove the probable threat to his house, claim is not sustainable. Even otherwise there is no law for grant of damages for loss in anticipation.

In view thereof, issue no. 1 is decided against the plaintiff and against the defendants.”

7. The appellant/plaintiff, who appeared and argued his case in person, stated that the trial court has wrongly held that appellant's/plaintiff's evidence cannot be looked into as he was not

cross-examined, and even if I agree with this argument urged by the appellant/plaintiff, however, it is seen that merely making a self-serving statement will not entitle the appellant/plaintiff for a court to hold that there is any threat to the stability of the appellant's/plaintiff's building or that any damages can be granted to the appellant/plaintiff as prayed. As already noted above, self-serving averments cannot prove any factum of any illegal construction by the respondents no. 1 and 2/defendants no. 1 and 2, once they are made in accordance with the sanctioned plan and deviations if any have been compounded by payment of the compounding charges.

8. In view of the aforesaid facts, I do not find any merit in the appeal. Dismissed.

SEPTEMBER 19,2018/ib

VALMIKI J. MEHTA, J