

IN THE COURT OF AASHISH GUPTA,
DISTRICT JUDGE-01, NORTH EAST, KARKARDOOMA COURTS:
DELHI

RCA DJ 48/25

CNR No.: DLNE010029662025

1. Haji Mohd Hanif
S/O Haji Sarfuddin,
R/O H.No. CS 91/1348, Gali No.-8A,
Vijay Park, Mauzpur, Delhi-53
2. Sh. S. S. Shadman
S/O Sh. Abdus Sami
R/O D-148, Street No. 3, Noor Elahi Colony.
New Delhi-110053
3. Md. Zahid
S/O Sh. Iqbal Ahmed
R/O CS-91/1348, Street No. 8 A, Vijay Park, Maujpur,
New Delhi-110053
4. Naeemudin
S/O Md. Yameen
R/O D-1346, Street No. 8 A, Vijay Park, Maujpur,
New Delhi-110053
5. Raees Ahmed
S/O Sh. Abdul Azeez
R/O D-1394, Street No. 8 A, Vijay Park, Maujpur,
New Delhi-110053
6. Waseem Ahmed
S/O Sh. Rahmat Ali
R/O D-150, Street No. 3, Noor Elahi Colony.
New Delhi-110053
7. Sayeed Ahmed
S/O Sh. Imamuddin

R/O D-150, Street No. 3,
Noor Elahi Colony, New Delhi-110053

.....Appellants

VERSUS

1. Delhi Development Authority
Through its Chairman, Vikas Minar.
ITO New Delhi

Also at

Vikas Sadan, INA New Delhi.

2. EAST Delhi Municipal Corporation
Patparganj, DELHI.
(Through its Commissioner)

3. COMMISSIONER OF POLICE
POLICE HEAD QUARTERS,
ITO, NEW DELHI

4. GOVT. OF NCT OF DELHI
DELHI SECRETARAT,
NEW DELHI.
(Through its Secretary)

5. Sh. Haseen siddiqui
R/O C-10/132, Yamuna Vihar, Delhi,

6. Saleem Siddiqui
R/O C-10/132, Yamuna Vihar, Delhi.

7. Sh. R.R.Verma
C-10/88, Yamuna Vihar, Delhi

.....Respondents

Date of institution	:	08.10.2025
Arguments heard on	:	10.08.2026
Date of Judgment	:	10.08.2026

JUDGMENT

1. Plaintiff in CS No. 405/19 came to be rejected U/O VII Rule 11(a) CPC vide order dated 02.08.2025. The said order is under challenge in this appeal.
2. For the sake of convenience, parties shall be referred to by the nomenclature used before the Ld. Trial Court.
3. Plaintiffs (9 in number) had filed the original plaintiff. But, out of the said 9 plaintiffs, only 7 are before this Court in appeal against the impugned order. P-3 and P-7 have not preferred the present appeal.
4. In brief, plaintiffs had approached the Trial Court claiming that they are residents of area of Vijay Park and Yamuna Vihar. They claim that the said two areas are *inter alia* connected by a public passage measuring about 10 feet (in width) and by 50-60 feet (in length), which the defendants (including DDA, MCD and police officials) are trying to close illegally.
5. They further allege that the said public passage opens on a huge land belonging to DDA at the side of Yamuna Vihar, Block C-10 and a portion of the said land measuring about 300 sq yards has been encroached upon by D-5 to D-7 and despite complaints made to government bodies (D-1 to D-4), no action has been taken. Thus, plaintiffs sued the defendants for the following reliefs:-
 - a) *Pass a decree of permanent injunction restraining the defendant No. 1 from raising the wall at point A (as shown in site plan) with illegal intention to close the public passage as depicted in red color in lines.*

- b) *Pass a decree of Mandatory injunction whereby directing the concerned departments of defendants to take action against the erring officials of their department who are involved in the illegal attempt to close the public passage.*
- c) *Pass a decree of Mandatory injunction directing the defendants No. 1 and 2 and 3 and 4 to get demolished the illegal construction raised by Hasseen Siddiqui, Salim Siddiqui, and one Sh. R. R. Verma (defendants No. 5 to 7), on the government land / DDA Land by encroaching upon 300 sq. yards., and to demolish it. The Site plan showing the position of the passage, the two openings, the huge chunk of vacant DDA land a part of which has been encroached upon by the defendant No. 5 to 7; and illegal construction raised by defendant No. 5 to 7 as shown in Annexure-P5.*
- d) *Pass a decree of permanent injunction restraining the defendants No. 1 and 2 from making any further attempt to close the public passage.*

6. Now, before coming to the merits of the present appeal, I may note that there is a delay of about 36 days in filing of the present appeal. Even though the plaintiffs, in IA No. 2/26 claim that the said delay is of 62 days, if one discounts for the period of limitation of 30 days for filing in appeal, the actual delay in filing of the present appeal is 36 days. It is claimed in the application that **appellant was not well and thus, he could not contact the Counsel for preparation of the appeal.**
7. There are 7 appellants before this Court and the application is completely silent as to which of the 7 appellants was unwell which prevented the filing of the present appeal in time. No document qua illness of any of the appellants is annexed with the paper book.
8. Counsel for appellants argued that a liberal view should be taken qua the delay in filing of appeal and the appeal should be decided on merits.
9. It is settled law that each day of delay should be explained by the

appellant(s). But, in the present case, it is not even clear as to which of the 7 appellants had suffered an unspecified illness which prevented them to file the present appeal within time. The ground of ill health is not supported by any document.

10. Thus, in my humble opinion, in the absence of any cogent reasons, the delay in this matter cannot be condoned at the mere asking of the appellants. Even though, a liberal view is generally taken for condoning the delay in filing of appeal, the said view can be pressed in service only if appellants give sufficient reasons explaining the delay. Section 5 of Limitation Act, 1963 allows the Court to condone the delay only if sufficient cause is shown by the appellants. In the present case, the plea of the appellants is bald and vague and that cannot be treated as sufficient cause to condone the delay in this case.
11. Thus, the present appeal is liable to fail on this short ground itself.
12. Even if I overlook the delay and consider the merits of the appeal, still, in my humble opinion, it is liable to fail.
13. The appellants/plaintiffs aver in the plaint that a public passage was purportedly sought to be closed by the defendants. This essentially means that plaintiffs are alleging public nuisance by the defendants by the alleged closing of a public passage. Now, before any suit for public nuisance or other wrongful act affecting the public could be instituted in a Civil Court, it was necessary for the plaintiffs to seek leave of the Court U/S 91(1)(b) CPC. Evidently, no such leave was sought or taken by the plaintiffs in the suit in question.
14. Counsel for the plaintiffs argued that the right of plaintiffs in their

own capacity was affected by the attempted closure of public passage and thus, the plaintiffs could maintain the suit *dehors* of the above provision of law.

15. Even if the above argument is accepted, still, in my humble opinion, the plaint in this case was liable to be rejected on the ground of non-disclosure of any cause of action accruing in favour of the plaintiffs.
16. As per the site plan filed with the plaint (annexure-5), the purported public passage opens on a DDA/D-1 land. If I take the site plan on its face value, it is apparent that as per the case set up by the plaintiffs, the public passage opens on the property of DDA/D-1 and once plaintiffs themselves pleaded and placed on record documents to show that the passage in dispute opens on DDA land, they cannot cry hoarse or complain about it if DDA chooses to secure its land by closing the said passage.
17. In other words, if DDA wants to close any passage which opens on its land, it is within its rights to do so and plaintiffs cannot be said to have a vested right either in law or in equity to continue using the opening of the said passage which opens on the DDA land.
18. Even if I take the case of the plaintiffs on its face value, DDA/D-1 has only secured its own property by closing the opening of the passage into its land. DDA/D-1 is admitted as the owner of the land and any owner of the land can secure its property by taking steps as it may deem appropriate. I may note that no pleadings have been made in the plaint to suggest that plaintiffs had got any easementary or other legal right to use the opening of the passage through the said DDA land. Thus, in the absence of any such pleadings, apparently,

plaint does not disclose any cause of action in favour of the plaintiffs.

19. If DDA/D-1 is taken to be legally closing the opening of the disputed passage, then in law, no direction can be given to DDA or other government functionaries (arrayed as D-1 to D-4) to take any action against any of the officials who are acting as per law. This shall mean that neither of the prayers (a), (b) or (d), as prayed by the plaintiffs, could have been granted to the plaintiffs.
20. Plaintiffs, with respect to prayer (c) have alleged that purportedly some land of DDA/D-1 has been encroached upon by D-5 to D-7 and no action has been taken by DDA/D-1 in this regard. Suffice is to say that DDA/D-1 is a statutory body and if any land of DDA/D-1 has been encroached upon by D-5 to D-7, DDA/D-1 is more than competent to take care of its rights as per law. Any such encroachment on DDA land would not give any right to the plaintiffs to sue DDA/D-1 or other defendants qua the said encroachment and thus, prayer (c) of the plaintiffs is neither maintainable nor any cause of action has been disclosed qua the said prayer in the plaint.
21. I may note that plaintiffs themselves claim that they are residents of the area falling in Yamuna Vihar and Vijay Park. Even if I presume that plaintiffs live in the said areas and were using the disputed passage, they can still continue to use the said passage even after the opening of the said passage into Yamuna Vihar Block C-10 is closed. This means that even if DDA/D-1 closes the disputed opening (which DDA/D-1 can do to protect its land), still, the area falling in the passage (which is stated to measure 10 feet X 60 feet) can still be

used by the residents as public passage though with the exception that the said passage may not open into Yamuna Vihar Block C-10 and that opening would be closed after DDA/D-1 chooses to close it. But, that restriction shall be a natural consequence of the exercise of rights by DDA/D-1 to safeguard its own land and plaintiffs cannot complain on that count.

22. Counsel for the appellants/plaintiffs had argued that the Ld. Trial Court had relied upon a judgment passed by Hon'ble High Court of Delhi in the matter of 'Rajendra Motwani and anr Vs. MCD and Ors', by holding that plaintiffs have not claimed that they are residing adjacent to illegal construction in the form of wall or that it is adversely affected by the alleged illegal construction by the defendants/government bodies. Counsel argued that in the plaint, it was specifically alleged that by the acts of defendants, disputed passage was blocked from the side of Yamuna Vihar Block C-10 and that would affect the rights of the plaintiffs. He argued that the said finding of Ld. Trial Court is *dehors* the pleadings.
23. I cannot persuade myself to accept the said argument raised on behalf of appellants/plaintiffs. This is because, as per the memo of parties filed on record, each of the appellants herein claim to be residents of a different gali/street than the one which is in dispute. Thus, the Ld. Trial Court has correctly held that the closure of the opening of the gali is not adjacent to the residence of any of the plaintiffs (including P-3 and P-7 who are not appellants before this Court) and thus, the said closure of the opening of the disputed passage would essentially not affect any easementary rights of the plaintiffs *per se*.

24. In my humble opinion, if one reads the plaint alongwith the annexed map, plaintiffs do not disclose any cause of action in their favour. Thus, the Ld. Trial Court has rightly rejected the plaint U/O VII Rule 11(a) CPC.
25. Thus, not only the present appeal is liable to fail on the grounds of limitation, it is also liable to fail on merits. It is ordered accordingly.
26. Let a decree sheet be prepared.
27. TCR be sent back.
28. Let copy of this order alongwith decree sheet be also sent to the Ld. Trial Court.
29. Appeal file be consigned to Record Room.

Aashish Gupta
DJ-01/NE/KKD/DELHI
10.08.2026