

IN THE COURT OF SH AKBAR SIDDIQUE,
DISTRICT JUDGE 04, NORTH DISTRICT
ROHINI COURTS : DELHI

MCA DJ 2/26

1. SHIVAM GUPTA
S/O LATE SH. MOHIT GUPTA
2. KESHAV GUPTA
S/O LATE SH. MOHIT GUPTA
BOTH R/O H. NO. 2418, 01ST FLOOR,
HUDSON LANE, G.T.B. NAGAR,
NORTH, DELHI-110009
MOB. NO. 8130098034

....APPELLANTS

VERSUS

1. M/S KUNDAN CONSTRUCTION COMPANY
THROUGH ITS PROP. MR. KUNDAN CHITKARA
S/O LATE SH. GHANSHYAM DASS
2ND & 3RD FLOOR, H. NO. 2418, HUDSON LANE, G.T.B.
NAGAR, DELHI-110009
2. MUNICIPAL CORPORATION OF DELHI,
THROUGH ITS COMMISSIONER,
04TH FLOOR, CIVIC CENTRE, MINTO ROAD, NEAR ZAKIR
HUSSAIN COLLEGE, NEW DELHI-110002
3. THE SHO
P.S. MUKHERJEE NAGAR, DELHI

.....RESPONDENTS

Date of Institution	12.01.2026
Date of Final Arguments Heard	03.06.2026
Date of Pronouncement of Order	08.07.2026

ORDER

1. Vide the present order, I, shall dispose of the present appeal filed by the Appellants. The present appeal is filed by the Appellants seeking following reliefs:
 - a. It is, therefore, most respectfully prayed before this Hon'ble Court that this Hon'ble Court may be pleased to set aside / quash the Impugned Order dated 31.10.2025, by which the restrained order passed against the appellants on the application U/o 39 rule 1 & 2 CPC of the respondent no. 1 from raising any further construction on the first floor of the property bearing no. 2418, Hudson Lines, Kingsway Camp, Delhi, passed by the Hon'ble Court of Sh. Nitish Kumar Sharma, JSCC/ASCJ/Gudn. Judge, North, Rohini Courts, Delhi, in CS SCJ No.971/2025 titled as "M/s Kundan Construction Company Vs. Delhi Municipal Corporation & Ors. and also, be pleased to dismiss the application of the respondent no. 1 under order 39 rule 1 and 2 read with section 151 of CPC, in the interest of justice.
 - b. Any other further orders which this Hon'ble court may deem fit and proper in the facts and circumstances of the case be passed in favor of the Appellant and against the Respondents.

2. CASE OF APPELLANTS

- 2.1. The Appellants are aggrieved by the impugned order dated 31.10.2025, passed by Ld. JSCC/ASCJ/Gudn. Judge, North, Rohini Court, CS SCJ NO 971/2025, titled as "M/s Kundan Construction Company Vs Delhi Municipal Corporation & Ors, whereby the Ld. Trial Court was pleased restrain the Appellants from raising any further construction on the first floor of the property bearing no 2418, Hudson Lines, Kingsway Camp, Delhi.
- 2.2. It is the case of the Appellants that the Plaintiff/respondent no 1 is the owner/occupier of the second and third floor of the suit

property. Pertinently, the relief sought in the plaint by the Plaintiff is qua the second and third floor. It is the case of the Plaintiff/respondent no. 1 himself that the Defendant no. 2 & 3/Appellant have no concern with the second and third floor of the suit property and they had placed on record the documents qua the same. It is there that the plaintiff/respondent no. 1 himself stated that the defendant no. 2 & 3 are concerned to the first floor. It is true that the second and third floor is having the unauthorized construction and the same has been booked by the MCD; which is the admitted case of the plaintiff/respondent no. 1. thus, in view of the same the present suit is liable to be dismissed with imposing heavy cost as it is filed against the wrong person and without any cause of action in any form.

2.3. Further, it is the case of the Appellant that the mandate of Section 478(1) of Municipal Corporation Act is not complied with, thus the suit is liable to be dismissed.

2.4. The Appellant has challenged the Impugned Order dated 31.10.2025, on the ground that the respondent no 1 is himself carrying out illegal construction in the premises occupied by him, thus, the Ld. Trial Court erred in restraining the Appellant in carrying out any construction further.

2.5. Accordingly, the present appeal deserves to be allowed and the Impugned Order dated 31.10.2025, is liable to be set aside.

3. IMPUGNED ORDER DATED 31.10.2025

3.1. The Ld. Trial Court, vide Impugned Order dated 31.10.2025, held as follows:

Considering the circumstances of the case as well as in view of the report by the MCD, the Defendant no 2 & 3 is directed not raise any further construction on the First floor of property bearing No 2418, Hudson Lines, Kingsway Camp, till NDOH.

3.2. The Ld. Trial Court was please to restrain the Appellants not to raise any further construction on the First floor of the suit property.

4. ANALYSIS & CONCLUSION

4.1. I, have heard Sh. Anuj Kumar Garg, Ld. Counsel for Appellant, Sh. Ravi Kumar, Ld. Counsel for Respondent no 1 & Ms. Vasu Singh, Ld. Counsel for Respondent no 2, Municipal Corporation of Delhi.

4.2. The present appeal is preferred by the Appellants praying to set aside the Order dated 31.10.2025, passed by Ld. JSCC/ASCJ/Gudn. Judge, North, Rohini Court, CS SCJ NO 971/2025, titled as “M/s Kundan Construction Company Vs Delhi Municipal Corporation & Ors, whereby the Ld. Trial Court was pleased restrain the Appellants from raising any further construction on the first floor of the property bearing no 2418, Hudson Lines, Kingsway Camp, Delhi.

4.3. The Appellants has argued that the present suit has been filed by respondent no 1, seeking reliefs against the Appellant. Further, it is the case of the Appellants that the Appellants have no concern with the second and third floor of the suit property. The second and third floor of the suit property are unauthorized and admittedly it have been booked by the Municipal Corporation of Delhi for unauthorized construction, thus, the First Floor belonging to Appellants have been erroneously brought under the picture of unauthorized construction, vide the Impugned Order dated 31.10.2025, by the Ld. Trial Court.

4.4. Pertinently, the Appellants also raises a technical argument that the mandate of Section 478(1) of Municipal Corporation Act is not complied with, thus the suit is liable to be dismissed.

- 4.5. On scrupulous examination of Impugned Order dated 31.10.2025, it is clear that the Ld. Trial Court has based its finding, restraining the Defendant no 2 & 3 (Appellants), on the basis of report submitted by Respondent no 2, Municipal Corporation of Delhi.
- 4.6. Before advertizing further, I, find it propitious to discuss the status report filed by Respondent no 2, Municipal Corporation of Delhi. The respondent no 2, Municipal Corporation of Delhi has filed its status report dated 18.04.2026, wherein following findings has been brought to notice of this court:

It is submitted that suit property bearing no. 2417 & 2418, Hudson Lane, GTB Nagar, Delhi was inspected on 01.09.2025 and upon inspection it was noticed that property bearing no. 2417 & 2418, Hudson Lane, GTB Nagar amalgamated. The properties are consists of basement, entire ground floor, first floor, second floor & third floor. As per record, there is no sanction building plan of the property. The basement was already booked vide file no. 105/C-12/B-I/UC/CLZ/2017 dt. 11.05.2017. Further unauthorized construction in the shape of entire ground floor, first floor, second floor & third floor has been booked vide file no. 86/C-13/B-I/UC/CLZ/2025 dt. 01.09.2025. A show cause notice u/s 343 & 344 of DMC Act issued to owners/ occupiers of the property in question wherein date of personal hearing also mentioned dated 19.09.2025. The complaint was also received from SHO, PS Mukherjee Nagar regarding construction at third floor and first floor along with photographs. The work stop notice vide no. 933/EE(B)-I/CLZ/2025 dt. 27.08.2025 issued to owner of second floor & third floor and work stop notice vide no. 959/EE(B)-I/CLZ/2025 dt. 01.09.2025 was issued to owner of the first floor i.e. plaintiff. After following due process of law as per DMC Act, demolition order was passed on 14.11.2025, after considering documents submitted by the owners/occupiers of A the property in question. On the basis of the documents, protection was granted - to the ground floor, first floor & second floor (except

extension of rooms walls by enclosing projection in the room at first floor and entire third floor) and demolition order was passed for extension of rooms walls by enclosing projection in the room at first floor and entire third floor as the construction was recently raised. The proceeding u/s 343 & 344 is pending and further action will be taken by the department after following due process of law as per DMC Act. Against the demolition order, owner of the third floor filed an Appeal no 83/2026, before ATMCD. As per the order dated 06.02.2026, stay was granted by the Hon'ble Court till next dated of hearing. The owner of the third floor has also applied for regularization in the month of January 2026 which has already been rejected on 20.03.2026.

4.7. It is vividly clear from status report, dated 18.04.2026, filed by respondent no 2, Municipal Corporation of Delhi that there are two properties bearing no 2417 & 2418, Hudson Lane, GTB Nagar, Delhi. Pertinently, both the properties have been amalgamated into one unit. Further, the properties were inspected and as per record, there is no sanction plan of the property. A show cause notice was issued to the owner/occupiers of the suit property and the properties were booked for unauthorized construction and demolition order was passed. The proceeding u/s 343 & 344 is pending and further action will be taken by the respondent no 2, after following due process of law as per DMC Act.

4.8. After perusal of status report, dated 18.04.2026, filed by respondent no 2, Municipal Corporation of Delhi, I am of the view that there is no infirmity or error in the Impugned order dated 31.10.2026, passed by Ld. JSCC/ASCJ/Gudn. Judge, North, Rohini Court. As per the status report there are grave violation of Delhi Municipal Corporation, Act, by the owner/occupiers of suit property. The suit property bearing no 2417 & 2418 was amalgamated into one unit which is

impermissible under the law. Furthermore, there is no sanction plan issued for raising construction on the suit property, which is outright violation of DMC, Act. Admittedly, the construction is being raised on the suit property. Ergo, any construction in the teeth of provisions of Delhi Municipal Corporation, Act cannot be allowed at any cost. Thus, the Ld. Trial Court rightly restrained the Appellants from raising any further construction on the first floor of the suit property.

4.9. Further, the arguments raised by the Appellant that the appellant is not concerned with the Second and Third floor of the suit property is liable to be rejected as the construction raised in entire property 2417 & 2418, Hudson Lane, GTB Nagar, Delhi, is without sanction plan and against the provisions of DMC Act. Further, the Ld. Counsel for the Appellants has brought on record a sanction plan, dated 26.05.1988, for the property bearing no 2418 issued by Delhi Development Authority. I am of the view that after the amalgamation of property 2417 & 2418, Hudson Lane, GTB Nagar, Delhi, the sanction plan, dated 26.05.1988, for the property bearing no 2418 issued by Delhi Development Authority is no longer in existence. Admittedly, the construction has been raised in the suit property, thus, the sanction plan, dated 26.05.1988, for the property bearing no 2418 issued by Delhi Development Authority is of no assistance to the Appellants. Moreover, the Status Report dated 18.04.2026, filed by the MCD is explicitly clear with respect to the extent of unauthorized construction raised in the suit property in the year 2025, thus the Appellant cannot take the shelter of sanction plan issued by DDA in the year 1988.

4.10. Another argument raised by Ld. Counsel for Appellant is that the mandate of Section 478(1) of Municipal Corporation Act is

not complied with, thus the suit is liable to be dismissed. I am of the view that the argument of Ld. Counsel is also liable to be rejected as the Impugned Order dated 31.10.2025 is arising out of application Order 39 Rule 1 & 2, Code of Civil Procedure, 1908, ergo, the question of maintainability can be agitated at the appropriate stage before the Ld. Trial Court. *Arguendo*, even if the mandate of Section 478(1) of Municipal Corporation Act, is not complied with, in any case, the unauthorized construction against the mandate of law can be restrained in an application under Order 39 Rule 1 & 2, Code of Civil Procedure, 1908.

- 4.11. Ergo, I am of the view that the Ld. Trial Court rightly passed the Impugned Order dated 31.10.2025 and there is no infirmity in the impugned order dated 31.10.2025.

5. RELIEF

- 5.1. Ergo, in view of above discussions, I do not find any infirmity in the impugned Order dated 31.10.2025, passed by Ld. JSCC/ASCJ/Gudn. Judge, North, Rohini Court, CS SCJ NO 971/2025, titled as “M/s Kundan Construction Company Vs Delhi Municipal Corporation & Ors. Hence, the appeal filed by appellant stands dismissed.
- 5.2. Pending applications, if any, stand disposed of accordingly.
- 5.3. Copy of this order be sent to the Trial court. Ahlmad is directed to return the trial court record forthwith as per rules.
- 5.4. **Appeal file be consigned to record room as per rules.**

Announced in open
Court on 08.07.2026

(Akbar Siddique)
DJ-04, North, Rohini Courts,
Delhi/08.07.2026