

**IN THE COURT OF SH. ABHITOSH PRATAP SINGH RATHORE
DISTRICT JUDGE-05, SOUTH WEST DISTRICT,
DWARKA COURTS, NEW DELHI.**

**RCA DJ ADJ 46/2025
CNR No. DLSW01-002875-2025**

IN THE MATTER OF:

**SH. RAM JI LAL
S/O LATE SH. CHHOTE LAL
R/O KHASRA NO.108/12
GALI NO-38, RAJAPURI
UTTAM NAGAR, NEW DELHI**

...APPELLANT

VS.

**1.SMT.SUMAN SHARMA
W/O SH.MAHESH SHARMA
R/O J-65/66 KHASRA NO.108/12
GALI NO.38, RAJAPURI**

**2.M/S SETELITE TELE SERVICES PVT LTD
PLOT NO.3, 3RD FLOOR
VISHAL GARDEN, NEW DELHI-110009
THROUGH ITS MD/CHAIRMAN/A/R**

**3.MINISTRY OF TELECOMMUNICATION
UNION OF INDIA,SANCHAR BHAWAN
NEW DELHI
THROUGH ITS SECRETARY**

**4.THE DEPUTY COMMISSIONER,
MCD NAJAFGARH ZONE
NEAR DHANSA BUS STAND
NEW DELHI-110043**

**5 SHO PS DABRI
DELHI POLICE**

...RESPONDENTS

Date of Filing : 03.04.2025

Date of conclusion of Final Arguments : 11.03.2026
Date of pronouncement of Judgment : 30.03.2026

JUDGMENT

1. The present appeal has been filed under Section 96 of the Civil Procedure Code against the impugned judgment dated 6th March 2025 passed by the Court of the Learned ASCJ-cum-JSCC-cum-Guardian Judge, Dwarka Courts, New Delhi, in Suit No. CS ASCJ 202 of 2025 titled Ramji Lal vs. Suman Sharma and others, whereby the plaint of the plaintiff was rejected under Order VII Rule 11 CPC.

BRIEF FACTS AS PER APPEAL:-

2. The brief facts, as stated in the appeal, are that the appellant had filed a suit for injunction along with other consequential reliefs and damages against the respondents on the ground that, on 25th December 2024, installation of a tower was started by defendant No. 2 on the 5th floor roof of defendant No. 1 herein, with the connivance of defendant No.s 3 to 5, without any prior permission or grant of order by the authorities concerned.

Thereafter, the plaintiff, along with other residents of the colony, raised objections to such illegal installation within a very densely populated colony. It is submitted that a play school is situated just opposite the property in question upon which the tower was being installed, and the house of the plaintiff is adjacent to the property of defendant No. 1.

Due to such installation of the tower, the wall of the plaintiff's property was totally damaged. When the plaintiff and other residents of the colony inquired about the illegal installation of the tower, the workers and other

officials of defendant No. 2, along with defendant No. 1, began to abuse and threaten the plaintiff and also misbehaved with the residents of the colony in filthy language. The appellant chose to approach the court for proper adjudication of this matter. However, the trial court was pleased to reject the plaint at the first instance.

GROUND OF APPEAL

3. The appeal has been filed on the ground that the Learned Trial Court has failed to exercise the jurisdiction vested in it by law. The Learned Trial Court has passed the impugned judgment on the basis of surmises and conjectures and has erred in appreciating the correct proposition of law.

It is also filed on the ground that the Learned Trial Court has passed the judgment without appreciating the provisions of law under Order VII Rule 11 and has grossly erred while rejecting the suit, observing that the plaintiff/appellant has no cause of action. It is further filed on the ground that the Learned Trial Court did not even direct the respondents to file a written statement on their behalf and straightaway rejected the plaint.

REPLY

4. Reply to the appeal was filed on the behalf of Respondent no.4 and Written synopsis was filed on behalf of Respondent No.1

Respondent no.4 has contested the appeal on the ground that the appeal is non-maintainable. The appeal has been opposed on the ground that the appellant lacks *locus standi* to file the present appeal. It is contended that the claim set up in the present appeal is contrary to law, facts, and the material available on record. It is further submitted that the competent department had duly granted permission for the erection of the cell phone tower antenna on the concerned

property. Therefore, there exists no illegality, irregularity, or error in the judgment passed by the learned trial court.

Respondent No. 1 has contested the appeal on the ground that the appellant has failed to demonstrate infringement of any legal right. The plaintiff's case is based on generalized apprehensions and vague allegations, and no credible evidence was produced to substantiate the claims. It is further stated that the appellant is not the owner of the property where the tower is installed. His grievance mainly relates to an adjoining property owned and possessed by Respondent No. 1. It is stated that no injunction can be claimed over acts done on another's private property unless a specific legal right, such as an easement, is affected or there is nuisance. Both need to be clearly pleaded and proved. It is stated that there is a statutory bar under the DMC Act, 1957. As per Section 347E of the said Act, the jurisdiction of civil courts is barred in respect of matters appealable under Section 343 or 347B of the Act. The cellular tower is a building as per the definition in the DMC Act, and once permission is granted by the competent authority for construction, it cannot be challenged in a civil suit.

Arguments heard. Record perused.

5. Before proceeding further it would be pertinent to discuss law related to Order VII Rule 11 and maintainability of appeal from an order rejecting a Plaint. Order VII Rule 11 of the Code of Civil Procedure empowers the court to reject a plaint at the initial stage if there are certain fundamental defects in the plaint itself. The provision aims to prevent misuse of the judicial process by eliminating suits that are legally untenable on their face. It is a settled position of law that a Plaint can be rejected under Order VII Rule 11 for reasons emanating from its 'inherent insufficiency'. And for this purpose

the court must examine only the averments contained in the plaint and the documents filed with the plaint. The defence taken in the written statement or disputed facts are absolutely irrelevant at this stage. As per Order VII Rule 11, a plaint may be rejected in the following situation:-

1. When the plaint does not disclose a cause of action.
2. When the relief claimed is undervalued and the plaintiff fails to correct the valuation within the time granted by the court.
3. When the plaint is insufficiently stamped and the deficiency is not cured within the time allowed.
4. When the suit appears from the statements in the plaint to be barred by any law.
5. When the plaint is not filed in duplicate.
6. When the plaintiff fails to comply with procedural requirements relating to filing the plaint.

It is equally well settled that the power under this rule can be exercised at any stage of the proceedings and even *suo-motu* by the court. Rejection of a plaint results in termination of the suit, but it does not bar the plaintiff from filing a fresh plaint if the defect can be cured. In this regard, it would be pertinent to quote Order VII Rule 13 CPC;

Where rejection of plaint does not preclude presentation of fresh plaint.—The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

But where a plaint has been rejected on the ground of no cause of action or being barred by law, the only remedy in such eventuality is to file an appeal under Section 96 of CPC. In this regard it would be pertinent to discuss Section 2(2) of CPC, 1908. Section 2(2) of CPC, 1908 defines decree as:

“(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include —

*(a) any adjudication from which an appeal lies as an appeal from an order, or
(b) any order of dismissal for default”.*

It is clear from the bare reading of Section 2(2) that an order rejecting plaint under VII Rule 11 falls within the definition of decree hence appeal from it shall lie as an appeal from a decree.

Section 96 of CPC, 1908 provides appeal from original decrees. Same is reproduced below

“96. Appeal from original decree.—(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees”.

From the conjoint reading of Section 2(2) and Section 96 it is more than clear that any order rejecting plaint under Order VII rule 11 is appealable as a decree. Hence, the appeal in the present matter is maintainable.

Now, coming to the facts of the case.

In the eye of the storm lies the installation of a tower that was initiated by Defendant No. 2 on the fifth-floor roof of Defendant No. 1. It is the case of the

appellant/plaintiff that it was done without any prior permission or grant of order by the concerned authorities. When the plaintiff, along with other residents of the colony, raised objections, they were met with an angry response from Defendant Nos. 1 and 2. Thereafter, the plaintiff/appellant personally approached Defendant No. 1 and the officials of Defendant No. 2 and informed them about the gravity of the situation. He also showed them reports and research with respect to the harmful effects of the installation of a tower within such a densely populated area, but Defendant No. 1 and Defendant No. 2 did not cooperate, nor did they understand the issue raised by the plaintiff. Left with no other option, the plaintiff approached the Court for redressal of his grievances.

The status report was filed by the MCD. In the report, it was stated that permission/regularization for the erection of a cell tower/antenna has already been granted by the department in respect of the concerned property.

The plaint of the plaintiff was rejected under Order VII Rule 11 on the ground that a cellular tower is a building within the definition given in the Delhi Municipal Corporation Act, 1957. The learned Trial Court relied on the judgment passed in Cellular Operators Association of India v. Municipal Corporation of Delhi, 2011 (179) DLT 381. The learned Trial Court also relied on Section 347B of the DMC Act, whereby it is provided that any person aggrieved by any order made or notice issued under the Act may prefer an appeal against such order, including an order sanctioning or refusing to sanction the erection of any building or execution of any work. Further, under Section 347E of the Act, it is provided that no court shall entertain any suit, application, or other proceedings in respect of any order or notice appealable under Section

343 or 347B, and no such order or notice shall be called in question otherwise than by preferring an appeal under those sections.

Relevant portion of the impugned judgment is given below:-

“6.It is settled law now that a cellular tower is a “building” within the definition given in the Delhi Municipal Corporation Act, 1957. Reliance is placed on the judgment in the case of Cellular Operators Association of India & Ors. vs.Municipal Corporation of Delhi cited at (2011) 179 DLT 381, wherein it was held that :

“A. It is held that the temporary structures/towers on rooftops for providing Cellular Basic Mobile Phone services are “building” within the meaning of the Municipal Acts and hence cannot be erected/installed without obtaining the permission of the Municipality.

B. In the grant of the said permission, all provisions of the Municipal Act and the Bye-Laws apply.”

7. Under Section 347B of the DMC Act, any person aggrieved by any orders made or notices issued under the Act may prefer an appeal against such order (including an order sanctioning or refusing to sanction the erection of any building or the execution of any work) to the Appellate Tribunal. Further, under Section 347E of the Act, it is directed that no court shall entertain any suit, application or other proceedings in respect of any order or notice appealable under section 343 or section 347B and no such order or notice shall be called in question otherwise than by preferring an appeal under those sections.

8. Therefore, a cellular tower with all its paraphernalia (including DG set) is a “building” and once the permission for its construction/installation is given by the concerned authority, such permission cannot be challenged in a civil suit under Sections 347B r/w 347E of the DMC Act.

9. The sanction letter of defendant no. 2 is dated 15.01.2025 Hence, if the plaintiff claims that the sanction has been violated or that the sanction is illegal, the correct remedy for him is under the DMC Act and not in a civil suit. With the sanction in favour of the defendant

no.2 and in view of the above-noted observations, the present suit is rejected u/o VII Rule 11 CPC”

The central reasoning adopted by the Trial Court in rejecting the plaint was that any order passed by the Municipal Corporation of Delhi (MCD) permitting the erection of a cellular tower is akin to an order permitting construction. The Trial Court relied upon the judgment of the ***Cellular Operators Association of India v. Municipal Corporation of Delhi***, (supra) wherein the Hon’ble High Court of Delhi held that temporary structures erected on rooftops for providing cellular mobile services fall within the definition of “building” under the Delhi Municipal Corporation Act, 1957, and therefore cannot be installed without prior permission from the municipal authority. Consequently, the erection of the tower was held to be in pursuance of the permission granted by the MCD.

There is no fault in the reasoning of the trial court till this stage.

Now, it has to be seen whether the parties had any other remedy available to them in the DMC Act, 1957. Section 347B of DMC Act, 1957 has been referred by the Ld.Trial Court. The same is reproduced for ready reference.

347B. Appeals against certain orders or notices issued under the Act

(1) Any person aggrieved by any of the following orders made or notices issued under this Act, may prefer an appeal against such order or notice to the Appellate Tribunal, namely:—

(a) an order according or disallowing sanction to a lay-out plan under section 313;

(b) an order directing the alteration or demolition of any street under section 314;

(c) a notice under sub-section (1) of section 315;

(d) a notice under sub-section (2) of section 317;

(e) an order directing the disposal of things removed under Chapter XV or seized under section 334, or an order rejecting the claim of any person for the balance of the proceeds of sale of things so disposed of;

(f) an order sanctioning or refusing to sanction the erection of any building or the execution of any work under section 336;

(g) an order withholding sanction under the proviso to sub-section (1) of section 337;

(h) an order cancelling a sanction under section 338;

(i) an order requiring the rounding off, splaying or cutting off the height of a building intended to be erected, or for the acquisition of any portion of a site, under section 339;

(j) an order disallowing the erection of any building or the execution of any work under section 340;

(k) an order requiring the stoppage of any erection or work under section 344;

(l) an order requiring the alteration of any building or work under section 345;

(m) an order directing the sealing of unauthorised constructions under section 345A;

(n) an order refusing to grant permission under sub-section (2) of section 346;

(o) an order granting or refusing permission under section 347;

(p) any such other order or notice relating to or arising out of planned development under the provisions of this Act as may be prescribed by rules.

(2) An appeal under this section shall be filed within thirty days from the date of the order or notice appealed against:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) An appeal to the Appellate Tribunal shall be made in such form and shall be accompanied by a copy of the order or notice appealed against and by such fees as may be prescribed by rules.

The section begins with the words ‘any person aggrieved’. It states that any person aggrieved by any of the orders mentioned in the section may prefer an appeal against such order or notice. The limitation period for the appeal is 30

days. However, the Appellate Tribunal may entertain an appeal after the expiry of the period if sufficient cause is shown.

It is evident that the appellant in the present appeal would come within the ambit of the words ‘any person aggrieved’. Hence, it is not a situation where the plaintiff was remediless. Rather, he had an equally efficacious remedy under the MCD law-the very law under which sanction for the erection was granted.

The second limb of the trial court’s reasoning is that the jurisdiction of the civil court is expressly barred by the Delhi Municipal Corporation Act as the court can’t entertain the suit. The learned trial court has referred to Section 347-E, which provides for a bar of jurisdiction of courts. The same is reproduced for ready reference.

347E. Bar of jurisdiction of courts

(1) After the commencement of section 7 of the Delhi Municipal Corporation (Amendment) Act, 1984, no court shall entertain any suit, application or other proceedings in respect of any order or notice appealable under section 343 or section 347B and no such order or notice shall be called in question otherwise than by preferring an appeal under those sections.

(2) Notwithstanding anything contained in sub-section (1), every suit, application or other proceeding pending in any court immediately before the commencement of section 7 of the Delhi Municipal Corporation (Amendment) Act, 1984, in respect of any order or notice appealable under section 343 or section 347B, shall continue to be dealt with and disposed of by that court as if the said section had not been brought into force.

It is evident that the said construction was carried out pursuant to sanction or permission obtained from the MCD, as provided under Section 347B. A right of appeal is available to any aggrieved person under the said provision. In respect of matters for which a remedy is provided under Section 347B, the jurisdiction of the civil court stands expressly barred.

It is clear from a conjoint reading of both the provisions that the DMC Act provides for a self-contained procedure and, in a way, a separate jurisprudence for matters concerning permission of construction or other similar matters that come within MCD's purview. To add to it, the jurisdiction of the civil court has been expressly barred. The exclusion clause would have been ignored by the court taking cognizance of the present matter, had the parties been remediless. However, that is not the situation. Therefore, the civil court cannot go into questions for which the parties had a remedy and in respect of which the jurisdiction of the civil court is expressly barred. Installation of towers, including cellular towers, is a matter that concerns the economic policy of the nation. When Parliament has already enacted a law clearly excluding the jurisdiction of the civil court, the civil court cannot assume a jurisdiction which it has been expressly barred from exercising.

Hence, this Court finds no illegality or infirmity in the said order of the learned trial court and, as a natural corollary, no ground to entertain this appeal.

The appeal is accordingly dismissed.

A copy of this judgment be placed on the trial court record.

The trial court record be sent back.

**Typed to the dictation directly,
corrected and pronounced in the
open Court on 30.03.2026.**

**(Abhitosh Pratap Singh Rathore)
District Judge-05, South West District
Dwarka Courts, New Delhi**