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

+ **RSA 137/2018**

DELHI URBAN SHELTER IMPROVEMENT BOARD Appellant
Through: Mr. Parvinder Chauhan, Adv.

Versus

KHAZANI DEVI (SINCE DECEASED) THROUGH LRS.. Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% 18.09.2018

CMs No.38042/2018 & 38044/2018 (both for exemption)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

RSA 137/2018 & CMs No.38043/2018 (for condonation of 45 days delay in filing the appeal) & 38045/2018 (for stay)

3. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 2nd April, 2018 in RCA No.61355/2016 of the Court of Additional District Judge-13 (Central)] partly allowing the First Appeal under Section 96 of the CPC preferred by the respondents/plaintiffs against the judgment and decree [dated 26th September, 2012 in Suit No.421/09/00 of the Court of Additional Senior Civil Judge (North)] of dismissal of suit filed by the respondent/plaintiff against the predecessor-in-interest of the appellant/defendant. The appeal is also accompanied with an application for condonation of 45 days delay in filing thereof.

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4. The claim in the suit filed by the respondent/plaintiff and from which this appeal arises was twofold. Firstly, for injuncting the appellant/defendant from taking action pursuant to cancellation of licence for a coal depot plot granted to the respondent/plaintiff and secondly, for restraining the appellant/defendant from, in pursuance to notices issued, demanding damages for area of land beyond licenced premises unauthorisedly occupied by the respondent/plaintiff.

5. The Suit Court dismissed the suit in entirety.

6. However, on First Appeal being preferred by the respondent/plaintiff, the First Appellate Court, though has maintained the dismissal of the suit against taking action with respect to licenced premises, for the reason of the suit for the said relief having become infructuous on the appellant/defendant sealing the licenced premises, but has allowed the appeal to the extent for the relief of restraining the appellant/defendant from, taking further action in pursuance to the notices demanding damages for unauthorised use and occupation of additional area. The reasoning which prevailed with the First Appellate Court was, that the damages for unauthorised use and occupation could not be recovered as the survey report of unauthorised use and occupation had not been proved.

7. It was *inter alia* the plea of the respondent/plaintiff that, without following the procedure prescribed under Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (PP Act), damages for unauthorised use and occupation could not be recovered.

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8. This is another case where the appellant/defendant has wasted 18 years in litigation, without initiating proceedings under Section 7 of the PP Act. As observed in some other orders / judgments, in this case also, the appellant/defendant, insofar as the said relief is concerned, ought to have, on the very first date, made a statement that it will initiate proceedings under Section 7 of the PP Act for recovery of damages for unauthorised use and occupation. The claim of the appellant/defendant in the notices demanding damages for unauthorised use and occupation of public premises was in the exclusive jurisdiction of the Estate Officer and the jurisdiction of the Civil Court to entertain the same, or to grant injunction with respect thereto, was in any case barred. However, as aforesaid, the appellant/defendant, in the last 18 years, has not initiated the proceedings.

9. Today also, the counsel for the appellant/defendant is unable to justify that the appellant/defendant is entitled to recover damages for unauthorised use and occupation, otherwise than following the procedure under Section 7 of the PP Act. He however states that the notices impugned in the suit were a precursor to initiation of proceedings under Section 7 of the PP Act.

10. On enquiry, it is informed that the appellant/defendant has not received any notice of the appeal preferred by the respondents/plaintiffs against the judgment of the First Appellate Court.

11. On the plea aforesaid of the appellant/defendant, the following substantial question of law is framed:

“Whether the injunction granted by the First Appellate Court is beyond the scope of the civil suit and the jurisdiction of the Civil Court is barred under the provisions of the PP Act?”



12. Admit.
13. The Trial Court record be requisitioned.
14. Issue notice to the respondents/plaintiffs by all modes including *dasti* and through the counsel for the respondents/plaintiffs before the Suit Court, returnable on 27th September, 2018.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 18, 2018

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