

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

Date of Decision: 08.10.2012

+ FAO 425/2012

OCCUPANTS WELFARE ASSOCIATIONS & ANR Appellants
Through : Mr. Sanjay Agnihotri, Adv.

versus

NITIKA JAIN & ANR Respondents
Through : None

CORAM:
HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.(ORAL)

CM No. 17524/2012 (exemption)

Exemption as prayed is allowed, subject to just exceptions.

Application stands disposed of.

FAO No. 425/2012

1. The appellants herein i.e. defendant no. 1 and 2 before the learned trial court have challenged the order passed under Order 39 Rule 1 and 2 CPC whereby the appellants have been restrained from disturbing the peaceful entry from ground floor to terrace bearing space No. TR-2, measuring super area of 500 sq. ft. in the building known as T.C. Jaina Tower – III, constructed on Plot No. B-4, Block A-1, Local Shopping Centre, Janak Puri, New Delhi.
2. Learned counsel for the appellants has contended that the high poles antennae/tower on the roof top of the building have been installed by the

tenants of respondent no. 1 i.e. plaintiff before the learned trial court. It is contended that cracks have been developed in the ceiling/terrace of the said building and the life of the occupants of the said building as well as the whole property itself is in danger. It is contended that the said aspect has not been considered while passing the impugned order. It is also submitted that there is lack of territorial jurisdiction with the learned trial court as the suit ought to have been filed in Tis Hazari Court instead of Dwarka Court.

3. The impugned order shows that on 19.09.2012, the appellants had appeared before the trial court and had moved two applications, i.e. one under Section 16 read with Section 20 read with Order 7 Rule 10 read with Section 151 CPC and the other application under Order 1 Rule 10 read with Section 151 CPC. The appellant did not reply to application under Order 39 Rule 1 and 2 CPC. The impugned order shows that the final view on the application under Order 39 Rule 1 and 2 CPC is yet to be taken by the learned trial court. The next date before the trial court is 19.10.2012 for written statement.

4. In these circumstances, it is appropriate if the appellants/defendants file WS/reply to application under Order 39 Rule 1 and 2 CPC on the date already fixed. As the matter is still pending consideration before the learned trial court, it will not be appropriate to deal with the aforesaid contentions.

5. Accordingly, the appeal is dismissed. The trial court shall decide the application finally under Order 39 Rule 1 and 2 CPC as expeditiously as possible, preferably within four weeks from the receipt of this order.

A copy of this order be sent to learned trial court.

CM No. 17523/2012 (stay)

In view of the order on the main appeal, no orders are required on this

application.

The same stands disposed of accordingly.

VEENA BIRBAL, J

OCTOBER 08, 2012

kks