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

+ CS(OS) 1215/2013 and I.A. 10822/2013, 12516/2013

KAMAL GHANSALA & ANR Plaintiffs
Through: Mr. Tarique Siddiqui, Advocate with
Ms. Rakhshan Ahmed, Advocate

versus

AMIT KUMAR & ORS Defendants
Through: Ms. Neeharika Aggarwal, Advocate
for D-1 and D-2.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

% **ORDER**
19.02.2015

1. The present suit has been instituted by the plaintiffs praying *inter alia* for passing a decree of permanent and mandatory injunction against the defendants No.1 and 2 in respect of the construction being undertaken by them above the second floor of premises No.B-6/11, Safdarjung Enclave, New Delhi. Further, the plaintiffs have sought damages against the defendants No.1 and 2 for allegedly raising illegal construction on top of the second floor.

2. It is an undisputed position that the plaintiffs are the owners in occupation of the basement, ground floor and first floor of the suit premises and the defendants No.1 and 2 are the owners in occupation of the second floor and terrace above the second floor excluding the

servant quarters and the toilet built on the terrace. As per the averments made in the plaint, the cause of action for instituting the present suit arose when the defendants No.1 & 2 had allegedly started raising construction of a dwelling unit on the terrace of the second floor without obtaining sanctioned building plans from the defendant No.3/SDMC.

3. It is stated by the counsel for the defendants No.1 and 2 that the sanctioned building plans were obtained and were valid till September, 2013 but thereafter, they have not got them revalidated due to the pendency of the present proceedings. She states that as the only relief sought by the plaintiffs herein is to restrain the defendants No.1 and 2 from raising any construction above the second floor of the suit premises except in accordance with law, she is willing to make a statement that the defendants No.1 and 2 shall not raise any construction on the terrace of the second floor of the suit premises without obtaining sanctioned building plans from the defendant No.3/SDMC.

4. Counsel for the defendants No.1 and 2 also draws the attention of the Court to the order dated 12.02.2014, wherein the statement of the counsel for the defendants No.1 and 2 was recorded to the effect that the present suit is not maintainable in view of the provisions of

Section 347-B read with Section 347-E of the Delhi Municipal Corporation Act, 1957.

5. Learned counsel for the plaintiffs states that in view of the submission made by the counsel for the defendants No.1 and 2 as noted above, the present suit may be disposed of, while binding the said defendants to the statement made on their behalf. He further states that his clients reserve their right to approach the defendant No.3/SDMC for seeking demolition of the partial construction undertaken by the defendants No.1 and 2 on the terrace of the suit premises in accordance with law.

6. Leave, as prayed for, is granted. The right of the plaintiffs to approach the defendant No.3/SDMC for passing appropriate orders in accordance with law, is reserved.

7. The suit is disposed of alongwith the pending applications, while binding the defendants No.1 & 2 to the statement made on their behalf and recorded above.

8. Parties are left to bear their own cost.

HIMA KOHLI, J

FEBRUARY 19, 2015

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