

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

+ CM(M) 733/2012 & CM 10967/2012 (stay)

% Decided on: 5th May, 2015

PAVAN CHAWLA AND ANR Petitioner
Through Mr. Harish Malhotra with Mr.
Sandeep Vishnu and Mr. Anil Kumar
Gupta, Advs.
versus

ALAPE KAUR AND ORS Respondent
Through Mr. Sanjeev Mahajan, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Property No.G-73 Connaught Circus, New Delhi was let out to the petitioners by respondent Nos. 1 and 3 along with Sardar Indrave Singh Mann and Sardar Gopalinder Singh Sibia vide registered lease deed dated 16th October, 1990. The said lease deed was renewed after the expiry of 5 years and is being extended from time to time. Respondent Nos. 1 and 2 were raising unauthorized construction on the terrace of the suit premises. Thus, the petitioners filed a civil suit No. 133/2010 which is pending before the learned Civil Judge. As a counter blast to the said suit, respondent Nos. 1 to 3 filed suit No. 43/2011 seeking mandatory and permanent injunction against the petitioners alleging unauthorized construction by the petitioners on the tenanted premises, inter alia, by demolishing the internal permanent walls, covering and amalgamating the front verandah with the tenanted

premises by building concrete wall and addition of a floor. It was stated that the terms of the lease deed did not permit any structural alteration in the tenanted premises nor any damage to it. The petitioners were permitted to erect temporary structure and cover the courtyard with permission of NDMC or any other concerned authority. However, no permission was taken.

2. An application under Order 39 Rules 1 and 2 CPC was filed by the respondents wherein a Local Commissioner was appointed. Pursuant to the report of the Local Commissioner, the learned Trial Court held that the so called renovation carried out was not within the terms and conditions of the lease deed dated 16th October, 1990 and the petitioners have prima facie deviated from the terms and conditions of the lease deed and were restrained from carrying out any construction work at the suit premises till final decision of the suit.

3. In an appeal filed against the order dated 20th September, 2011 passed by the learned Civil Judge, the learned Additional District Judge vide the impugned order dated 2nd June, 2012 dismissed the appeal holding that the order of the learned Civil Judge was well reasoned, based on justified and cogent logic.

4. In the present petition, the petitioners re-agitate the same pleas and rely upon the written statement filed by the NDMC before the learned Trial Court stating that no structural and permanent alteration has been made in the suit premises and only works which were permissible under building bye-laws have been carried out by the petitioners.

5. I have heard learned counsel for the parties.

6. A perusal of the report of the Local Commissioner shows that on site inspection which was photographed the Local Commissioner found some

construction work was in progress and several labourers were working even till 7.30 PM. Some fresh sanitary wares were kept on the floor and the construction work was being carried out in the front part as well as right portion of the suit property from entrance which covers approximately 1/3rd portion of the total covered area of the suit property. In the front part from entrance a window of about 4½ X 3½ ft. had been built by breaking the load bearing wall of the conference room. Contrary versions were given by the people who were present with regard to the existing structure. One person said that no window existed whereas the other said that window was small and its size was increased. Another window on the other wall of the conference room also looked to be recently built by breaking the wall. The open verandah had been covered by the petitioners. Even the main wall of the toilet had been broken and replaced by plywood. In one room there were no new change except the one which was carried out due to the repair by the NDMC during Common Wealth Games 2010. The flooring appeared to be new.

7. In the written statement NDMC stated that the renovation carried out did not violate any clause of the building bye-laws. However, it noted that the partition wall had been changed by installation of wooden partition. It noted that the partition wall which was damaged during replacement of window at the time of renovation of Connaught Place carried out by the NDMC had been installed. However, as noted above and in the report of Local Commission, the said wall has been replaced by wooden partition and even the front verandah have been covered and amalgamated with the suit premises by building concrete wall. From the report of the Local Commissioner it is evident that there are constructions which are not

permissible by the terms and conditions of the lease deed dated 16th October, 1990 even if there may not be violation of the building bye-laws with which the NDMC was concerned. Hence I find no error in the order of the learned Trial Court as well as in the impugned order.

8. Consequently, the petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 05, 2015
‘v mittal’