

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

**+ FAO 198 OF 2014**

**% Date of decision: 03<sup>rd</sup> February, 2015**

**KAMLESH KUMARI & ORS. .... Appellants**

**Through: Mr. A. K. Sen, Advocate**

**versus**

**S. MANMOHAN SINGH & ORS. .... Respondents**

**Through: Mr. B.B. Gupta, Advocate for  
respondent no.1.**

**CORAM:**

**HON'BLE MR. JUSTICE J.R. MIDHA**

**JUDGMENT (ORAL)**

1. The appellants have challenged the interim order dated 4<sup>th</sup> July, 2014 passed by the learned Trial Court permitting respondent no.1 to carry out certain repairs in respect of the suit property.
2. The appellants are landlords of the suit property comprising of a shop bearing Municipal No.14/5, Yusuf Sarai Market, Aurbindo Marg, New Delhi which is occupied by respondent no.1 as a tenant. The rent of the suit property is Rs.100/- per month and therefore, the relationship between the parties is governed by Delhi Rent Control Act, 1958. Respondent no.1 instituted a suit for injunction for restraining the landlords from interfering in his peaceful possession and occupation in respect of the suit property and/or attempting to demolish the same. Respondent no.1 further sought injunction against the landlords from dumping any obnoxious/harmful chemicals or other substances or water containing acids/alkali to erode or

destroy or endanger the roof of the suit property. Respondent no.1 also sought the relief of perpetual injunction for restraining the landlords from interfering and/or creating any hindrance/ obstacle or nuisance in the necessary repairs. In the alternative, respondent no.1 sought a decree of mandatory injunction for directing the landlords to immediately carry out the necessary repairs.

3. Respondent no.1 filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure before the Trial Court to seek an interim injunction in mandatory form for permitting him to carry out the necessary repairs at his own cost and expenses particularly those relating to the damaged roof in the rear portion of the demised premises so as to bring the same into the original condition and to make the premises habitable and safe for human habitation. This application was strongly opposed by the landlords.

4. Vide order dated 4<sup>th</sup> July, 2014, the learned Trial Court allowed the interim application of respondent no.1 and permitted respondent no.1 to carry out the repairs of the damaged portion. However, the learned Trial Court made it clear that respondent no.1 shall not remove any support already affixed to the premises from below though he can put additional wooden or iron girders in support of the roof. The learned Trial Court further directed respondent no.1 to carry out the repairs under the guidance of some recognized architect/civil engineer.

5. The appellants challenged the order dated 4<sup>th</sup> July, 2014 before this Court and also sought an interim stay. However, this Court vide order dated 28<sup>th</sup> July, 2014 issued notice to the respondent but did not stay the operation of the impugned order. In that view of the matter, respondent no.1 carried

out the necessary repairs in terms of the order dated 4<sup>th</sup> July, 2014.

6. The parties have taken photographs of the present condition of the suit property as on 02<sup>nd</sup> February, 2015 and have handed over the same along with the photographs taken by the local commissioner. The photographs are taken on record. The parties shall place one set of the photographs before the learned trial Court.

7. Learned counsel for the appellant submits that the respondent No.1 has carried out repairs beyond the purview of order dated 04<sup>th</sup> July, 2014, which is disputed by the learned counsel for the respondent No.1.

8. Learned counsel for the appellant further submits that the finding of the learned Trial Court [at page 8 (second para)] that 5<sup>th</sup> rear portion shown in the site plan is prima facie a part of tenancy and was covered or probably the forefathers of defendants gave permission to the tenants to cover the remaining open area, is misconceived.

9. This Court is of the view that since the order dated 04<sup>th</sup> July, 2014 has already been implemented, the interference at this stage is not warranted. However, the repairs carried out by respondent No.1 shall be subject to final outcome of the suit and the appellants are permitted to raise all the contentions raised in this appeal before the learned Trial Court. The Trial Court shall adjudicate the same without being influenced by the prima facie findings in the order dated 04<sup>th</sup> July, 2014. Nothing contained in the order dated 04<sup>th</sup> July, 2014 shall be treated as an expression of the final outcome of the averments made by the parties. The appeal and pending application are disposed of on the aforesaid terms.

10. At this stage, learned counsels for both the parties request for

reference of their disputes to Delhi High Court Mediation and Conciliation Centre.

11. List before Delhi High Court Mediation and Conciliation Centre on 23<sup>rd</sup> February, 2015 at 03:00 p.m.

12. Since this appeal has been disposed of, the report of the outcome of the mediation proceedings shall be sent to learned Trial Court.

13. Copy of this order be given *dasti* to the parties under signature of the Court Master.

**J.R. MIDHA, J**

**FEBRUARY 03, 2015**

**rsk**