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

+ W.P.(C) 5277/2013 & CM No.11824/2013

ANURAG SHARMA & ANR Petitioners

Through: Mr. Amit Gaurav, Adv. with
Mr. Anurag Sharma, P1.

versus

PREM SHARMA & ORS Respondents

Through: Mr. Jai Gupta and Ms. Sunita Yadav,
Advs. for R1 & 3.
Mr. Gursharan Singh, Adv. for R9 &
10.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **27.01.2015**

1. This is a writ petition which is directed against the order dated 12.7.2013 passed by the Tribunal for Maintenance of Parents and Senior Citizens (in short the Tribunal) constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (in short the Act).
2. The petitioner is aggrieved by the impugned order only to the extent that the Tribunal has directed construction of an external staircase for accessing the first and the second floor of the property in issue.
3. To be noted, the property in issue is situate at 61, RPS Colony, Khanpur, New Delhi – 110016.
4. Notice in this petition was issued on 2.9.2013.

5. The petition was listed before court on 26.8.2013. On that date, a direction was issued that it be placed before the roster bench. The matter, thereafter, came up before court on 2.9.2013. On that date, respondents No.9 and 10 were represented by Mr. Gursharan Singh, Advocate. On 02.09.2013, the counsel for the petitioner sought time to place on record the site plan of the aforementioned property. The court, after hearing the counsels for the parties, granted an interim stay qua the impugned order in respect of the directions issued with regard to construction of an external staircase, and provisioning of a kitchen for use on the upper floors.

6. Today, I am informed that all the respondents have been served. However, only respondent Nos.1, 2, 9 and 10 are represented. The remaining respondents, i.e. respondent Nos.3 to 8 are not represented.

6.1 In these circumstances, the said respondents are proceeded ex-parte.

7. In any event, what is clear after hearing counsel for the petitioner as well as counsel for respondent Nos.1 and 2, is that, respondent Nos.1 and 2 are essentially the only contesting respondents.

8. Counsel for the petitioner, as indicated above, says that while the petitioners have no difficulty in respondent No.1, who is the mother of the petitioner No.1, residing on the ground floor of the aforementioned property; their objection is, as to the direction issued with regard to construction of an external staircase.

9. The grievance of the petitioners, it appears, emanates from their stand (though not substantiated before me even on a *prima facie* basis), that the, property, in issue is a Hindu Undivided Family (HUF) property, and that, the Tribunal has not kept in mind, this aspect of matter, while passing the

impugned order. According to the petitioners, this direction would in effect result in the property in issue being partitioned.

9.1 On counsel being asked as to how the property was a HUF property, he said that the petitioners will demonstrate this before a competent court, which shall return a finding to that aspect.

10. It was then put to the learned counsel for the petitioners as to whether the direction presently made, could continue to operate till the petitioners, approach a competent civil court and obtain, the necessary directions, in that behalf. Counsel for the petitioners submits that the petitioners would be agreeable to such a direction being passed.

11. It may also be noted that the financial burden of building an external staircase, as well as, for provisioning a kitchen on the upper floors, as per the directions of the Tribunal, falls on respondent Nos.2 and 4.

12. To be noted, respondent No.4 is the brother of respondent No.1 and the uncle of petitioner No.1 and respondent No.2.

13. Counsel for the respondent Nos.1 and 2 is also agreeable to the directions which I propose to pass hereafter.

14. Accordingly, the writ petition is disposed of with the following agreed directions:-

(i) The operative directions contained in the impugned order shall continue to operate subject to the petitioners approaching the competent civil court, which, needless to say, would be free to rule upon the claim of the petitioners that the aforementioned property is a HUF property. The competent civil court will also then, if necessary and, if there is merit in the petitioners' case, be free to devise an appropriate methodology as prescribed

in law for partitioning the aforementioned property.

(ii) Till such time, the petitioners approach the competent civil court and an appropriate order is passed in that behalf, these directions will continue to bind the parties herein.

(iii) As indicated in the impugned order, respondent Nos.2 and 4 shall bear the expenses for constructing the external staircase and for provisioning a kitchen. The needful will, however, be done after obtaining necessary permissions from the concerned municipal authorities.

15. The writ petition is, accordingly, disposed of.

RAJIV SHAKDHER, J

JANUARY 27, 2015

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