

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 27.03.2015

+ **FAO(OS) 144/2015**

RAJESH KUMAR GUPTA

... Appellant

versus

SUSHIL MARWAH

... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Mr Pramod Ahuja with Mr Abhishek Mishra

For the Respondent : Mr Deepak Dhinigra with Mr Rajesh K. Verma

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CAV 300/2015

The learned counsel for the respondent/ caveator is present.

The caveat stands discharged.

CM 5658/2015

Allowed subject to all just exceptions.

FAO(OS) 144/2015 & CM 5659/2015

1. This is an appeal arising out of an order dated 18.02.2015 passed by a learned Single Judge of this Court in IA No. 17173/2014 which was an application filed by the respondent/ plaintiff, who is an old widow of approximately 79 years of age. The appellant is a builder who took the

premises belonging to the respondent under a collaboration agreement dated 15.04.2012 for constructing a basement, stilt floor, ground floor, first floor, second floor and the third floor with lift. The construction was to be done entirely at the cost and expense of the appellant. In addition, the appellant was required to pay a sum of Rs 1.325 crores to the respondent. In consideration for the same, the appellant was entitled to the second floor of the constructed building. In addition, certain other payments, including rent, were also required to be paid by the appellant to the respondent.

2. It transpires that the building has not yet been completed. The payment of Rs 1.325 crores has not been done in full. In fact, only a sum of Rs 35 lacs has been paid to the respondent. In addition, a sum of Rs 4.16 lacs has been paid to the MCD and a sum of Rs 8.05 lacs towards rent upto March, 2014 has been paid by the appellant to the respondent.

3. On the one hand, the building has not been completed for whatever reason and the full payment has not been made by the appellant and, on the other, the possession of the entire super-structure is being retained by the appellant. It is in these circumstances, when the said application was moved under Order 39 Rules 1 and 2 CPC, the learned Single Judge observed as under:-

“5. In my opinion, the submissions of the defendant are without any merit. The defendant has rights of the second floor of the suit property. He has no right, title or interest on the balance portion of the suit property. The present application is confined to relief regarding the portions other than the second floor which actually fell to the share of the plaintiff. A repeated question was posed to learned counsel for the defendant as to what prejudice is caused to the defendant in case the plaintiff is permitted to reconstruct the balance portion of the suit property which is falling to her share. The only submission made is that the defendant has spent more than Rs.2 crores on the project and the entire problem has arisen on account of additional construction raised at the instance of the plaintiff. He also submits that material facts have been concealed in the plaint including a notice issued by the MCD.

6. In my opinion, the defendant has failed to show any prejudice likely to be caused. Paragraphs 6 and 15 of the Collaboration Agreement read as under:-

“6. That the said property shall be divided between the parties as under:-

First party Allocation:	Entire basement floor, Entire upper ground floor, Entire First Floor and Entire Third Floor with its roof rights upto sky with undivided 3/4 th share of stilt (Parking)
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Second party Allocation:	Entire Second Floor with undivided 1/4 th share of stilt (Parking)
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15. That during construction period, if any problems arises by any department (as by DDA, MCD,

Police, any other person) then the first party will come forward and will give their full co-operation to the second party in all respects, then completion time will be extended automatically.”

7. The defendant has rights only on the second floor. The insistence of the defendant for continuing to purportedly occupy the other portion of the suit property on the premise that he is willing to carry out construction has no basis. It would be in the interest of justice if without prejudice to the rights and contentions of the parties this issue is adjudicated at the time of disposal of the suit. The plaintiff is permitted to carry out balance construction/renovations on the area, which has fallen to her share. The defendant shall not cause any obstruction to the plaintiff at any stage. The plaintiff will not in any manner touch or deal with the area which has fallen to the share of the defendant. With the above clarification the present application stands disposed of

8. Needless to add for the purpose of carrying out balance construction the plaintiff would necessarily have to deal with the MCD and issue of the notice that has been served by MCD. In case necessary clearance is obtained by the plaintiff from MCD, it would be open to the defendant to approach this Court with liberty to carry on similar construction on the second floor subject to terms and conditions that may be imposed by the Court at that stage.”

4. In the background of the facts which we have narrated and upon examining the order passed by the learned Single Judge, this is certainly not a matter in which the appellate court is required to interfere in an interim direction given by the learned Single Judge. All that the learned Single Judge has done is to direct the appellant to handover the possession of

whatever construction he has done of the building except the second floor to which the appellant would have been entitled to under the agreement on completion of the building. *Prima facie*, we get the clear impression that the builder has been completely unfair to an old widow of 79 years of age and is unnecessarily harassing her. On the one hand the building has not been constructed and even the agreed upon payment, as per the schedule, has not been made and on the other, the builder insists upon retaining the possession of the entire structure to the detriment of the respondent, much beyond the portion which might ultimately fall to his share. We feel that the learned Single Judge has balanced the equities by directing that the appellant may retain the possession of the second floor and hand over the possession of the remaining portion of the building.

5. As mentioned above, no interference is called for with the impugned order. The appeal is dismissed with costs of Rs 10,000/- to be paid to the respondent within three weeks.

BADAR DURREZ AHMED, J

**MARCH 27, 2015
SR**

SANJEEV SACHDEVA, J