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

+ **FAO(OS) 530/2014 and CM Nos.20752/2014 and CM No.20754/2014**

ROHIT SAROOP

..... Appellant

Through: Mr Manjul Dahiya, Adv.

versus

SURAJ NARAIN (DECEASED) THROUGH HIS LRS AND ORS

..... Respondents

Through: Ms Shalini Kapoor, Ms Kriti Arora and Mr Abhijeet, Advs for respondent No.1

Mr Arun Vohra, Adv for respondents 3, 10 and 11

Mr Pramod Soren, Adv for respondents 2(a) and 2(c)

Mr Sanjay Bhatt and Ms Vidushi Shubham, Advs for respondents 7 to 9

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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21.08.2015

The present appeal challenges an order dated 11.11.2014 passed by the learned Single Judge in a suit for partition. The said order put in place an *ad hoc* arrangement to enable the parties to ensure that valuable tenancy rights are not lost on account of the default on payment of rent. The operative portion of the order reads as follows:-

“9. The following proportionate amount shall be paid by the parties:

(1) 33% each by the said three branches of the HUF of Jagat Narain and Sons, Udai Narain, Pratap Narain and Dharam Narain;

(2) Plaintiff, Late Sh.Suraj Narain through LRs., Defendant no.2, Prem Narain and Defendant no.3, Rajiv shall each pay 9.42%;

(3) Sharda, Defendant no.1(a), Rita, Defendant no.1(b), Rekha, Defendant no.1(c), Nisha and Defendant no.1(d) through LRs shall pay 1.18% each;

(4) The branch of Pratap Narain shall together pay 33% through legal heirs of Late Sh.Rajinder, Defendant no.5, Lata, Defendant no.4(i), Meera, Defendant no.4(ii) and Geeta, Defendant no.4(iii);

(5) The branch of Late Sh.Dharam Narain now being represented by Shakuntala, Defendant no.6, Ravi, Defendant no.7 and Sandhya, Defendant no.8 shall pay 33.33% together.

The above shall be deposited with the Registrar General by 15.12.2014.

10. Mr. Jagdeep Kishroe, Advocate for Defendants no. 4 and 5 submits that Defendants no.4 and 5 are in possession of only a part as mezzanine floor and thus, these Defendants may be permitted to get a portion of the ground floor and only then, they will pay the proportionate amount. It is made clear that no order with regard to the possession or running of the business is being passed today.

11. The deposits will be without prejudice to the rights and contentions of the parties and shall be paid to the account of HUF to preserve the tenancy rights in the property. This amount is ultimately to be paid to the

landlord in respect of the rent due.”

During the pendency of the present appeal, the learned Single Judge subsequently clarified the impugned order in the following terms on 18.12.2014:

“1. It is stated by the learned counsel for Defendant no.1(c)(i) that appeal has been filed against order dated 11.11.2014 which was listed yesterday and the next date fixed is 20.02.2015.

2. If some of the parties are not willing to pay the amount in terms of order dated 11.11.2014, the other parties shall be at liberty to deposit the amount on behalf of defaulting parties if such party/parties wants to avoid default and delay in payment of rent and renewal of lease.

3. If any of the parties does not deposit the amount with the Registrar General of this Court by 07.01.2015, it shall be presumed that the said party is not interested in depositing the amount.”

We have heard counsel for the parties. The learned Single Judge has made it clear in the impugned order that the amounts deposited in accordance with the proportion determined in the interim order is only by way of an *ad hoc* arrangement and shall not be construed as the shares of the parties in the main partition suit. Having reiterated the said observations, we direct that if any amounts are paid in compliance with the said order or if any party defaults from payment of its tentative share, the same shall not be construed to its prejudice and all rights and contentions of all the parties to assert their substantive claims in the partition suit with respect to their right,

title and entitlements to the respective shares are preserved and kept alive. Any amount paid pursuant to the interim order would of course be subject to the final adjustment in the decree to be drawn at the end of the proceedings in the suit.

The appeal along with the pending applications is disposed of in above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 21, 2015

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