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

+ **CONT.CAS(C) 845/2016 & CM 24927/2016**

EHTASHAMUDDIN AHSAN & ANR

..... Petitioners

Through: Mr J.H.Jaferi, Mr A. Hassan and
Mr Abrar Ahmed, Advocates.

versus

ILYAS AZMI & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

ORDER

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18.07.2016

Counsel appearing on behalf of the petitioners states that this court by way of order dated 31.03.2016 had, subject to the appellants (respondents herein) within four weeks from that date depositing in court a sum computed @ Rs.1,00,000/- per month with effect from the month of February, 2015 till the month of April, 2016 and further subject to the appellants (respondents herein) with effect from the month of May, 2016 continuing to deposit in this court a sum of Rs.1,00,000/- per month by the 15th day of the month, stayed the execution of the judgment and decree impugned in the appeal.

Counsel would urge that the appellants (respondents herein) did not comply with the direction issued by this court by way of order dated 31.03.2016 and rather instituted an application seeking modification of the said order dated 31.03.2016.

Counsel invites my attention to the order dated 10.05.2016, where in paragraph 13 thereof it was directed by this court as follows:-

“13. The appellants having not complied with the condition subject to which stay of operation of the decree/execution was granted, it is directed that

neither the appellants/applicants nor the respondents nor any of the other occupants/owners of the 28 flats should, during the pendency of appeal, lock the basement save with mutual consent and all shall be entitled to use the basement in common without appropriating any part thereof and without carrying out any construction therein and none shall deprive other of such common use thereof.”

Counsel urges that the appellants (respondents herein) are in contempt of both the said orders dated 31.03.2016 and 10.05.2016 respectively.

A plain reading of paragraph 13 of the order dated 10.05.2016, extracted hereinabove, makes it clear that whilst rejecting the appellants’ application seeking modification of the order dated 31.03.2016, this court had directed that the appellants/applicants, the respondents or any of the other occupants/owners of the 28 flats existing on the subject property would not lock the basement in the suit structure save with mutual consent and all the occupants/owners of the said 28 flats would be entitled to use the basement in common without appropriating any part thereof and without carrying out any construction thereon. It was further directed that none of the occupants/applicants of the said 28 flats shall deprive any other of such common use of the subject basement.

In this view of the matter, learned counsel appearing on behalf of the petitioners seeks leave to withdraw this petition with liberty to approach the concerned court with an appropriate application seeking execution of the judgement and decree impugned in the appeal.

Leave and liberty granted. The petition is disposed of accordingly.

Dasti.

SIDDHARTH MRIDUL, J

JULY 18, 2016

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