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

+ **CM(M) 996/2016**

KRISHNA KANTA YADAV & ANR Petitioners
Through **Mr.Rajiv Garg and Mr.R.K.Jain,**
Advocates.

versus

DR SANJEEV VISHAMBER RAINI & ANR Respondents
Through **Mr.Bobby Lao, Advocate for R-1.**

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **29.09.2016**

CM No. 36365/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 996/2016 and 36364/2016 (stay)

1. By the present petition, the petitioners seek to impugn the order dated 20.09.2016 by which an application filed by respondent under Section 151 CPC for providing police aid for execution of the order dated 05.06.2015 was allowed.
2. The respondent/plaintiff has filed the present suit seeking permanent and mandatory injunction against the petitioners to restrain the petitioners from creating obstruction/hindrane in his passage to the roof of the second floor property and further to remove the door fixed in between the common passage opening at the roof on the second floor.
3. The trial court by its order dated 05.06.015 disposed of an application

under Order 39 Rules 1 & 2 CPC filed by the respondent. The following directions were passed:-

“9. In these circumstances, the plaintiff may be permitted to by defendants visit the roof top for maintenance of the pipes or install new water pipes. However, the plaintiff or his plumber/contractor may do so during the day time and in a manner which should not cause any hindrance in the peaceful living of the defendants who are residing at the second floor and further the plaintiff shall not cause alteration/construction etc. in the pipes or install new water pipes in a way which may damage the property of the defendant at second floor in any manner. “

4. The respondent was unable to comply with the said order. On 31.05.2016, the trial court noted that without giving a finding on the merits and deciding who is responsible for not letting the order being executed effectively, a Local Commissioner be appointed to bring the true facts before the court.

5. The Local Commissioner visited the premises on 10.06.2016. The Local Commissioner noted that the basic dispute is that the respondent wants to remove metallic pipes and install PVP pipes which will be installed by passing through a common shaft area and a new connection of PVP pipes which will be installed over the roof and will be laid over the roof while passing through the edges of the roof to the back side of the building.

6. The Local Commissioner noted the stand of the petitioner that he won't let the construction take place or let new PVC pipes installed whether through the common shaft area or through the back side of the building.

7. Keeping in view these circumstances, the trial court vide impugned order dated 20.09.2016 noted that one year has passed since the order dated 05.06.2015 was passed and it has not been executed till date. Hence, the

SHO concerned was directed to deploy appropriate police personnel to remain present at the time of the execution of the order.

8. Learned counsel appearing for the petitioners has vehemently argued that the roof belongs to the petitioners. The respondent cannot lay new pipes on the roof because in case the petitioners wish to carry out construction on the roof then they will again be stopped from doing so as it would affect the water supply of the respondent. He submits that the pipes can be installed by the respondent on the outer side of the wall of the building but not across the roof or on the roof. He also submits that his clients can also at the cost of the respondent have the pipes installed to void any breakage.

9. In my opinion, there is no merit in the stand of the petitioners. The order of the trial court dated 05.06.2015 is quite clear. The respondent has been permitted to visit the roof top for maintenance of the pipes or install new water pipes. He has also been restrained from damaging the property of the petitioners. Admittedly, this order dated 05.06.2015 has not been challenged and has attained finality.

10. The petitioners cannot now seek modification or variation of the said order dated 05.06.2015 as is being sought to be argued.

11. It is obvious, on a perusal of the impugned order, that the trial court was compelled to pass the order in view of the fact that the petitioners have been obstructing implementation of the order dated 05.06.2015 which is apparent from the report of the Local Commissioner.

12. There is no merit in the present petition and the same is dismissed

JAYANT NATH, J

SEPTEMBER 29, 2016

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