

\$~9.

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

+ CM(M) No.99/2015 & CM No.2074/2015 (for stay).

PRATAP SINGH SAINI

..... Petitioner

Through: Mohd. Elahis and Mr. A.K. Suri,  
Advs.

versus

SUBHASH CHANDER

..... Respondent

Through: Mr. Ashish Mohan and Mr. Mohit  
Kumar, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

%

**17.07.2017**

1. This petition under Article 227 of the Constitution of India impugns the order dated 27<sup>th</sup> January, 2015 of the Court of Additional Senior Civil Judge (Central), Delhi in CS No.324/2013 filed by the respondent / tenant against the petitioner / landlord. By the said order the application of the respondent / tenant under Section 151 of the Code of Civil Procedure, 1908 (CPC) was allowed and the respondent / tenant was permitted to at his own costs get the asbestos sheets on the roof of the premises in his tenancy changed and get necessary plastering and white washing done, without however carrying out any unauthorised constructions.

2. The petition was entertained and notice thereof issued.

3. Vide subsequent order dated 26<sup>th</sup> March, 2015 which continues to be in force, the operation of the order dated 27<sup>th</sup> January, 2015 was stayed.

4. The counsels have been heard.

5. The counsel for the petitioner / landlord has argued that (i) the respondent is a tenant under the petitioner in the premises; and, (ii) that the

jurisdiction of the Civil Court to pass the order as has been issued is barred by Section 50 of the Delhi Rent Control Act, 1958 owing to the remedy under Section 44 of the said Act being available to the respondent / tenant.

6. The impugned order records that the respondent / tenant had instituted the suit, from which this petition arises, to restrain the petitioner / landlord from carrying on unauthorised construction over the premises in the tenancy of the respondent / tenant and thereby damaging the premises in the tenancy of the respondent / tenant and that vide order dated 22<sup>nd</sup> December, 2012 in the suit the petitioner / landlords was restrained from raising unauthorised construction.

7. The respondent / tenant filed the application, against the order wherein this petition has been filed, averring that the petitioner / landlord, feeling unhappy with the order dated 22<sup>nd</sup> December, 2012, made hole in the roof of the premises in the tenancy of the respondent / tenant.

8. I have thus enquired from the counsel for the petitioner / landlord as to how could the jurisdiction of the Civil Court be barred in this respect. Certainly, once the petitioner / landlord during the pendency of the suit, qua maintainability whereof no argument is urged, damages the tenancy premises, the landlord cannot prevent the Civil Court from undoing the said wrong.

9. I have further enquired from the counsel for the petitioner / landlord that how can the jurisdiction of Civil Court be said to be barred, when the Rent Controller is not authorised to issue injunctions or any interim orders to take care of a situation where the landlord has taken the law in his own hands, particularly during the pendency of a Civil Suit.

10. No answers have been forthcoming.
11. The counsel for the respondent / tenant in this regard has also drawn attention to *Yogender Pal Bhatia Vs. Rajesh* 116 (2005) DLT 202 which is squarely on the point and takes the same view.
12. The only legal question which has been urged, thus has no merit.
13. Dismissed.
14. No costs.
15. Needless to state, the interim order stands vacated.

**RAJIV SAHAI ENDLAW, J**

**JULY 17, 2017**

‘pp’..