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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 331/2018 , CAV 638/2018 ,CM APPL. No.28327/2018**

ARUN K SODHANI & ANR Appellants

Through: Mr. Vijay Sharma, Advocate.

versus

DR PENTAPATI PULLARAO Respondent

Through: Mr. Dilip Pandita, Advocate.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **20.07.2018**

CM. No.28326/18 (Ex.)

Exemption allowed subject to all just exceptions.

The application is disposed of.

FAO 331/2018 & CM. No.28328/17

Submissions have been made on behalf of either side qua the petition and qua the application CM. No. 28328/17, an application filed on behalf of the appellant seeking stay of the operation of the impugned order dated 06.06.2018 of the learned ADJ-07, South East, Saket whereby on an application under Order XXXIX Rules 1 & 2 of the CPC filed on behalf of the plaintiff of the said suit arrayed as the respondent to the present petition, it was directed vide Para 14 thereof to the effect:-

“14. Applying the aforesaid guidelines titled in the case of Dorab Cawasji Warden (Supra), defendants no. 1 and 2 are directed to handover duplicate key of the terrace within fifteen days to the plaintiff for accessing terrace. Plaintiff shall try to visit the terrace only once in fifteen days except for some emergent situation, however, at the same time, plaintiff is also directed not to create any obstruction in the peaceful life of the defendants in the 2nd floor. It is further directed that plaintiff shall visit the terrace only during day time except in case of any exigency. In such a situation, he shall inform the defendants, if they are available. The defendants are further directed to give free access to the plaintiff through their iron gate installed above the first floor so that he can reach the terrace. It is clarified that in case of non availability of the defendants at any time, they shall not lock the iron gate denying access to the plaintiff to terrace. With these directions, interim application is disposed off.”

The grievance of the appellants is to the effect that no roof rights have been assigned to any of the persons residing in the building situated at B-18, Nizamuddin East, New Delhi neither on the lower ground floor, nor on the ground floor nor on the first floor at which the respondent resides nor on the second floor at which the appellants reside nor qua the terrace thereof to any person and that

only use of the amenities and the facilities of the terrace have been provided to all the residents of the said building.

The said aspect is not refuted on behalf of the respondent neither before the learned Trial Court nor during the course of submissions made now. Vide the application that had been filed before the learned Trial Court under Order XXXIX Rules 1 & 2 of the CPC, *inter alia* the applicant thereof, i.e., the respondent to the present petition had sought a restraint against his being prevented from access to the terrace for ascertaining the requisite water supply to his premises in relation to which he has submitted that apart from the four common water tanks installed on the terrace, there is an independent water tank of his which he needs to verify and ascertain for regular check up of the water supply.

On behalf of the appellants, it has been submitted that there are letters of the residents of the lower ground floor and the ground floor to indicate that they have never had any problem in accessing the terrace or in user of the water at any stage and that the plaintiff of the suit, i.e., the respondent to the present petition has unnecessarily moved the said application seeking a restraint against the appellants herein from preventing the respondent who is the plaintiff of the said suit to access to the terrace.

During the course of the submissions that have been made on behalf of the appellants, it has been submitted that the appellants have developed a terrace with much costly plantations and improvements

made by them. Needless to observe the submissions during the course of the present proceedings itself on behalf of either side are to the effect that no roof rights have been assigned to any of the residents of the building B-18, Nizzamudin East, New Delhi. It is submitted on behalf of the appellants that the appellants vide the present appeal and vide annexure-A6 to the present appeal seek to submit an undertaking which is to the effect:-

“That the appellants are willing and ready to undertake that there shall be no trouble to the respondent for his regular water supply from the overhead water-tanks installed on the terrace floor and that the appellants shall take every care for that matter. The appellants further undertake to state that the respondent and/or his technician shall be allowed to go to terrace in case he would want to inspect the common overhead water-tanks for any genuine reason, in the day hours subject to pre-intimation to the appellants one day before. The appellants expect the respondent to be reasonable and honest for his requirement to access terrace floor for the matter as above.”,

and it is thus been submitted that in the circumstances, the interim order granted by the learned Trial Court, i.e., the impugned order dated 06.06.2018 be set aside and vacated. It is essential to observe that the undertaking sought to be submitted by the appellants

would result into further multiplicity of litigation in the event of there being any disputes between the parties.

In the circumstances of the case, it is held that there is no infirmity whatsoever in the impugned order dated 06.06.2018 of the learned Trial Court. A submission is now made on behalf of the appellants that a Local Commissioner be appointed is also declined as it is not required in the circumstances of the case. Nothing observed hereinabove shall however amount to an expression of the merits of the case.

Copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J

JULY 20, 2018/NC