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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 1104/2016 & I.A. No.8082/2014 (u/s 151 CPC)**
S.N. SHEOPURI & ANR. Plaintiffs

Through: Mr. Rajeev Sharma & Ms.
Radhalakshmi R., Advs.

Versus

FABINDIA OVERSEAS P. LTD. Defendant

Through: Mr. Ravi Gupta, Sr. Adv. with Mr.
R.K. Mehta, Mr. Virender Mehta, Mr.
Kunal Mehta & Mr. Gautam Mehta,
Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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21.05.2018

1. This order is in continuation of the earlier orders dated 25th April, 2018 and 26th April, 2018.
2. The counsel for the plaintiffs has been heard.
3. However, before the order could be dictated, the senior counsel for the defendant, under instructions from the counsel for the defendant who in turn has taken instructions from Ms. Arpita Mukherjee, Head, Legal & Compliance of the defendant, states that the defendant consents to a final decree for partition by metes and bounds in terms of the report dated 1st July, 2014 of Mr. Ravi Avasthi, Advocate / Local Commissioner appointed in this suit.
4. The counsel for the plaintiffs states that it be also clarified:
 - (a) that since the defendant has opted to take half vertical portion adjoining the property No.N-13, Greater Kailash-I, New Delhi, the

existing staircase and the existing toilet at the rear end in the other half of the property falling to the share of the plaintiffs, shall belong exclusively to the plaintiffs and the defendant shall build its own staircase to the basement and upper floors as well as toilet, kitchen etc. as may be required;

(b) that neither the plaintiffs nor the defendant shall in future construction/addition/alteration, utilize the FAR in excess of their / its share and the plaintiffs will cooperate with each other in obtaining sanctions if any required for carrying out any works in respective portions of the property; and,

(c) that both parties shall create separate entrances and exits for their respective portions.

5. The senior counsel for the defendant is agreeable to the aforesaid but states that

(i) in accordance with the offer earlier given by the counsel for the plaintiffs, the defendant be permitted to open, the existing lift / elevator installed by the defendant in the rear portion of the property, towards the defendant's side of the property; and,

(ii) it be clarified that if certain portion of the lift/elevator of the defendant falls in the area belonging to the plaintiffs, in that event, defendant shall make corresponding area available to the plaintiff adjoining the lift.

6. The counsel for the plaintiffs is agreeable thereto.

7. It has further been agreed that the lift / elevator aforesaid, even if slightly protruding into the portion of the plaintiffs, shall remain as it is and

the cost of construction of the staircase, toilet etc. in the portion of the defendant and of changing the opening of the lift / elevator towards the portion of the defendant shall be exclusively borne by the defendant and the entire works shall be carried out on or before 30th November, 2018 and the plaintiffs will be put into separate vacant physical possession of their portion of the property in terms of the report aforesaid of Mr. Ravi Avasthi, Advocate / Local Commissioner, on or before the said date.

8. It has further been agreed that the existing electricity and water connections in the property shall enure to the benefit of the plaintiffs and the meters thereof are already installed in the portion of the plaintiffs and the defendant shall, within the aforesaid six months, apply for new connections in its own name and after the partition is effected, avail of electricity and water to defendant portions / property from the said facility connections.

9. It has further been agreed that the partition will be effective qua the open terrace above the property also.

10. A final decree is thus passed, of partition of property No.N-14, Greater Kailash-I, New Delhi in terms of report dated 1st July, 2014 of Mr. Ravi Avasthi, Advocate / Local Commissioner appointed in this suit and on the following terms and conditions:-

- (i) that the defendant, in terms of the report dated 1st July, 2014 of Mr. Ravi Avasthi, Advocate / Local Commissioner appointed in this suit, to take half vertical portion adjoining the property No.N-13, Greater Kailash-I, New Delhi;
- (ii) that the existing staircase and the existing toilet at the rear end falling in the other half of the property falling to the share of

- the plaintiffs shall belong exclusively to the plaintiffs and the defendant shall build its own staircase to the basement and upper floors as well as toilet, kitchen etc. as may be required;
- (iii) that neither the plaintiffs nor the defendant shall in future construction utilize the FAR in excess of their / its share and will cooperate with each other in obtaining sanctions if any required for carrying out any works in respective portions of the property;
 - (iv) that in accordance with the offer earlier given by the counsel for the plaintiffs, the defendant is permitted to open the existing lift / elevator installed by the defendant in the rear portion of the property, towards the defendant side of the property;
 - (v) that both parties shall create separate entrances and exits for their respective portions;
 - (vi) that the lift / elevator even if slightly protruding into the portion of the plaintiffs shall remain as it is and compensation for such space shall be given to plaintiffs in corresponding space of defendants side of portion and the cost of construction of the staircase, toilet etc. in the portion of the defendant and changing the opening of the lift / elevator towards the portion of the defendant shall be exclusively borne by the defendant and the entire works shall be carried out on or before 30th November, 2018 and the plaintiffs will be put into separate vacant physical possession of their portion of the property in terms of the report aforesaid of Mr. Ravi Avasthi, Advocate / Local Commissioner, on or before the said date;

- (vii) that the existing electricity and water connections in the property shall enure to the benefit of the plaintiffs and the meters thereof are already installed in the portion of the plaintiffs and the defendant shall within the aforesaid six months apply for new connections in its own name and after the partition is effected avail of electricity and water to defendant portions / property from the said facility connections;
- (viii) that the partition will also be effective qua the open terrace above the property.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MAY 21, 2018

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