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

+ **CONT.CAS(C) 891/2018 & C.Ms. 50551-52-53/2018**

SANTOSH KUMARI KUBA (DECEASED) THR LRS.

..... Petitioners

Through: Mr. Sudipto Sirchar, Advocate

Versus

JAGDISH CHAND DHIR & ANR.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

03.12.2018

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Petitioners are aggrieved by non-compliance of order of 17th September, 2018 passed by Executing Court whereby construction in the suit property is put on hold. The grievance of petitioners is that respondent No.2 herein is a Developer, who is raising construction in the suit property despite being intimated vide letter of 18th September, 2018 that there is restraint order on construction in the suit property.

On query, petitioners' counsel submits that application under Order 39 Rule 2A of CPC was filed before the Executing Court but no orders have been passed thereon and the matter is coming up before the Executing Court on 19th January, 2019 and by then, construction in the suit property will be completed. Petitioner's counsel submits that an application has been filed to appoint a Court Commissioner to inspect the

suit property with the prayer to ensure that construction in the suit property is immediately halted.

In the peculiar facts and circumstances of this case, this Court appoints Ms. Pratiti, Advocate (Mobile No. 9999191350) as Court Commissioner, who shall inspect the suit property and ensure that construction in the suit property is halted forthwith. The Court Commissioner shall visit the suit premises i.e. House No. 1761, C.R.Park, Kalkaji, New Delhi-110019 at the earliest.

The Court commissioner is permitted to be accompanied by the representative(s) of petitioner, who shall ensure that Court Commissioner is provided with the copy of order of 17th September, 2018 passed by Executing Court to ensure its compliance. The S.H.O. concerned is directed to provide assistance of local police to the Court Commissioner at the time of execution of commission. Court Commissioner is at liberty to get the construction in the subject property photographed / videographed by a professional photographer/ videographer, if so required, at the expense of petitioner. The Court Commissioner shall ensure that construction in the suit property is immediately halted. The fee of the Court Commissioner is fixed at Rupees Seventy Thousand only, plus out of pocket expenses to be borne by petitioner.

The party in possession of the subject property is directed to cooperate in execution of commission and to allow Court Commissioner to access the premises.

Since an efficacious remedy is available to petitioner, therefore, this petition and applications are disposed of with direction to Court Commissioner to submit report within two weeks to the Executing Court,

who shall prepone the date of hearing on petitioners' application under Order 39 Rule 2A CPC to ensure compliance of its orders.

With aforesaid directions, this petition and applications are disposed of.

A copy of this order be given *dasti* under the signatures of Court Master to counsel for petitioners.



(SUNIL GAUR)
JUDGE

DECEMBER 03, 2018

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