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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 27th August, 2019

+ **FAO 98/2019 & CM No. 11120/2019**

SUNIL BATRA

..... Appellant

Through: Mr. Harshvardhan Pandey,
Adv. with appellant in person.

versus

SMT. SHWETA BATRA & ORS.

..... Respondents

Through: Mr. Jagdeep Kr. Sharma & Mr.
Anirudh Mehrotra, Advs. with
Respondent no.1 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

Caveat 237/2019

Since the caveator has appeared, caveat stands discharged.

FAO 98/2019 & CM No. 11120/2019

1. The appellant herein had instituted a civil suit (suit no. 10474/2016) impleading the respondents, and one another, as defendants, the prayer made therein being for certain reliefs against some of them (first, second and fourth defendants) primarily concerning property bearing no. C-35, second floor, South Extension Part-I, New Delhi. The prayers in the said civil suit include one for a decree for eviction of the first respondent (first defendant in the suit) from the suit property and for the peaceful and vacant possession

thereof to be handed over to him (the plaintiff). The other reliefs – in the nature of permanent injunction, damages/mesne profits etc. – are directed against the said first defendant and the other two defendants (second and fourth). Along with the civil suit, the appellant (plaintiff) had also moved an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC), prayer being for interim mandatory injunction to be granted against the first defendant (first respondent herein) directing her to vacate the subject property during the pendency of the civil suit. The said application was dismissed by the additional district judge by order dated 19.12.2018 which is impugned by the appeal at hand.

2. The appellant relies on decision of a learned single judge of this Court reported as *Barun Kumar Nahar vs. Parul Nahar & Anr. 2013 (135) DRJ 307* whereby, in almost similar fact-situation, an interim mandatory injunction was granted in favour of the plaintiff against first defendant of that case.

3. The first respondent herein is the daughter-in-law of the appellant, she being married to the third respondent (third defendant in the suit). There has been some matrimonial dispute engaging the parties over some period of time. The father-in-law seeks vacant possession of the subject property claiming to be its exclusive and absolute owner referring, in this context to devolution of interest therein upon him and his mother, after death of his father Hari Chand Batra on 14.01.2001, he being the owner of 1/⁴th share (along with his brothers by virtue of registered sale deed dated 20.09.1965). The plaintiff (appellant) also relies on Relinquishment Deed dated

05.05.2009 statedly executed by his mother in his favour. He describes the presence of the first respondent (first defendant) in the subject property as that of a permissive user, she having been allowed to stay for a certain period till she found the cover of roof elsewhere. He describes her presence unwelcome on account of her alleged cruel conduct, she having initiated certain criminal proceedings against him embroiling him in litigation.

4. The suit is being contested, *inter alia*, by the first respondent claiming a right to live in the subject property also referring in this context to the provisions of Protection of Women from Domestic Violence Act, 2005, her case being that the property is owned by Joint Hindu Family/HUF wherein her husband (third respondent) also has a share and consequently she being in a position to exercise her right to residence therein.

5. The learned additional district judge found it difficult to grant interim relief in the nature of mandatory injunction and, thus, dismissed the application by order dated 19.12.2018.

6. Having heard and perused the record, this Court finds no error or impropriety in the impugned order. The decision in *Barun Kumar Nahar* (supra) is distinguishable on facts. The learned additional district judge has raised doubts even as to the *prima facie* case set up by the appellant in the civil suit. Even if that view may be treated as debatable, the fact remains that under the cover of an interim order, a mandatory injunction of such import and consequences cannot be granted, the touchstone of balance of convenience and possibility of irreparable loss being caused, if the plaintiff were to eventually fail in

the suit, being too weighty reasons why such relief ought not be permitted on an application under Order XXXIX Rules 1 and 2 CPC. In fact, grant of such relief as an interim measure under the said provisions of law would virtually amount to decreeing the suit which is impermissible.

7. The appeal is found to be frivolous and wholly without merit and thus dismissed with costs of Rs. 20,000/-. Pending application is also dismissed.

R.K.GAUBA, J.

AUGUST 27, 2019

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