

\$~37

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

%

Judgment delivered on: 12.03.2021

+ FAO 24/2021, CM APPL.1593/2021, CM APPL.1594/2021 &
CM APPL.8381/2021

KRISHAN CHANDA & ANR.

..... Appellants

versus

MOHINDER JIT SINGH & ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellants: Mr. Subhash Oberoi with Mr. Rohit Oberoi, Mr. Vaibhav Sethi, Advocates. (through Video Conferencing).

For the Respondents: Mr. J.P. Sengh, Senior Advocate with Mr. Mohinder J.S. Rupal and Mr. Rakesh Sharma, Advocates for R-1. (through Video Conferencing).

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 04.01.2021 whereby the Trial Court has disposed of the interim applications filed by respondents no.1 and 2 under Order XXXIX Rule 1 & 2.

2. Respondents had filed the subject suit for permanent and mandatory injunction and damages against the appellants contending that the appellants are owners and occupants of the second floor with

terrace rights and the first floor has been in their possession which was subsequently bought by the appellants. Respondents are owners of and occupying the ground floor and the basement.

3. It is contended that in and around December, 2019, respondents/Plaintiffs started noticing that there was dampness in the master bedroom of the premises at the ground floor. On checking the cause of leakage, it is alleged that leakage was found to be happening from the upper floors i.e. the first and second floors of the subject property.

4. It is contended that leakage and seepage is to an extent that water is dripping on the ground floor and basement of the subject property and even percolating in the electrical pipes and fittings in the walls.

5. Respondents filed the subject applications seeking a restraint on the appellants from causing any seepage or pilferage from the upper floors to the ground floor and basement of the property and for a direction to carry out all necessary repairs and renovation at their own cost so as to prevent any further leakage or pilferage from the upper floors to the ground floor and basement.

6. The Trial Court to ascertain the factual position appointed a Local Commissioner to visit the spot along with an expert. The Report of the Local Commissioner opined that the root cause of leakage or seepage or damage was due to the old pipelines of the

entire building. The Trial Court noticed that no objection was filed to the report of the Local Commissioner.

7. The Trial Court has also noticed that the counsel for the appellants had also stated that the pipelines were old and were required to be changed.

8. The Local Commissioner had suggested that repair work required about 3.5 lakhs. After assessing the report, the Trial Court by the impugned order has directed that the entire pipelines, through which water is being supplied from the upper floors to the ground floor, are to be replaced by new pipelines of the same size.

9. Trial Court by the impugned order while directing that pipelines be replaced observed that as no estimate or invoice of new pipelines was produced. The Trial Court directed that the cost of new pipelines and accessories would be borne by the appellants at 80% and respondent at 20%. Trial Court has held that the differential ratio has been directed due to *prima facie* inaction on part of the appellants to take remedial measures at the earliest which has aggravated the level of damage.

10. Insofar as the cost of labour and material like cement, concrete, sand etc., towards removal of old pipelines and fixing and fitting of new pipelines is concerned, Trial Court has directed that said cost shall be borne 50:50 by the parties. For rest of the repairing works within the respective portions, Trial Court has directed that the same

shall be borne by the parties qua their own respective portions.

11. Before this Court, a submission was made on the very first date of hearing. i.e. 15.01.2021 by the learned counsel for the appellants that the inspection was carried out by the Local Commissioner by taking the assistance of a mere plumber and not an expert/engineer. Accordingly, he had prayed for a Civil Engineer to be appointed to inspect the property.

12. In view of the above submissions, the Assistant Engineer (Civil) PWD posted in the Delhi High Court was appointed as a Local Commissioner to inspect the property and submit a report as to the cause of seepage, leakage and dampness in the building.

13. The property was inspected by the Assistant Engineer (Civil) PWD and report has been filed.

14. As per the report dated 18.01.2021, the Assistant Engineer has reported that there is lot of seepage, leakage and dampness in the ground floor and basement. He has reported that the first-floor toilet has been dismantled, therefore the Galvanised Iron (GI Pipes) water supply lines are visible and same has got rusted very badly. He has opined that cause of seepage, leakage and dampness in the building is solely due to damaged/rusted water pipelines and the water is flowing from upper floors to the ground floor and basement.

15. Nothing to the contrary has been placed on record by the

appellants. Since the report of the Local Commissioner appointed by the Trial Court as also of the Assistant Engineer PWD appointed by this Court, shows that the cause of seepage, leakage and dampness in the building is due to damaged/rusted water supply lines which are present in the portion of the property owned by the appellants, I find no infirmity in the direction issued by the Trial Court in directing the parties to have the rusted pipelines replaced with the pipelines of same size and make.

16. I also find no infirmity with the view taken by the Trial Court that in case remedial steps had been taken at an appropriate stage, further damage would not have occurred to the property.

17. I accordingly do not see any cause to interfere with the apportionment done by the Trial Court in bearing the cost of replacing the pipelines and accessories.

18. In view of the above, no case is made out for interfering with the impugned order. The appeal along with pending applications is accordingly dismissed.

19. Further, on 15.01.2021, when the Local Commissioner was appointed, the fee of the local commissioner was fixed at Rs. 50,000/-, which was directed to be shared by the parties subject to the report of the local commissioner. It was directed that in case the report opined that leakage was on account of damaged pipelines in the portion of the appellants, appellants shall reimburse to the respondent half of the fee

of the Local Commissioner.

20. Since the report of the Local Commissioner is that seepage is occurring on account of the damaged pipelines in the upper floors i.e. the floors of the appellants, appellants are directed to reimburse to the respondent 50% of the fee paid to the Local Commission i.e. Rs. 25,000/-, within a period of three weeks.

21. Parties shall commence the repair works forthwith and conclude the same within a period of four weeks from today.

22. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

SANJEEV SACHDEVA, J

MARCH 12, 2021

ak

नित्यमेव जयते