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

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Judgment delivered on: 16.09.2021

+ FAO 212/2021

HEM SINGH

..... Appellant

versus

RAJ KUMAR SAINI AND ANR

.....Respondents

Advocates who appeared in this case:

For the Petitioner:

Mr. Rajesh Sharda, Advocate (through VC).

For the Respondent:

Ms. Neelam Sharma with Ms. Kanjani Sharma,
Advocates.

Ms. Yukti, Advocate (through VC)

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.30481/2021

1. Appellant has filed over the email of the Court Master an affidavit enlisting the details of repair work which the appellant intends to carry out. The same is taken on record.

2. Learned counsel appearing for the respondent submits that there is an apprehension that in the garb of alleged repair work, appellant may carry out structural additions or alterations to the property or may create third party rights.

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to HMJ Sanjeev Sachdeva.

FAO 212/2021

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3. Learned counsel for the appellant undertakes on behalf of the appellant that appellant shall not carry out any structural additions or alterations in the subject property or create any third party rights during the pendency of the Suit before the Trial Court.

4. Learned counsel for the appellant submits that appellant shall carry out the repair work at his own cost and without prejudice to the rights and contentions of the parties and shall not claim any special equities because of the same.

5. The undertaking is accepted.

6. In view of the above, appellant is permitted to carry out the repair works as mentioned in his affidavit dated 15.09.2021.

7. The Court Commissioner appointed by the Trial Court i.e Ms. Yukti, Advocate shall monitor the repair work and inspect the property once after 15 days and thereafter on being intimated by the appellant of completion of repair work which shall not be later than 45 days from today.

8. In case the Commissioner finds that the appellant is carrying out work beyond the work which is being permitted by this order, Commissioner shall duly inform the Trial Court and on so being informed the Trial Court shall pass an order restraining the appellant from raising any construction, after due notice to the appellant.

9. The additional fee of the Local Commissioner for the said purpose is fixed at Rs.25,000/- to be paid by the appellant in two instalments, half to be paid prior to commencement of the repair work and the remaining half to be paid after the first inspection.

10. It is clarified that the permission granted to the appellant to carry out repair work would be without prejudice to the rights and contentions of the parties and no special equities shall flow to the appellant therefrom.

FAO 212/2021 & CM APPL.30479/2021

11. Appellant impugns order dated 25.03.2021 whereby the Trial Court has disposed of the application under order 39 Rule 1 & 2 filed by the respondent without notice to the appellant.

12. Since notice had not been issued to the appellant, the application under Order 39 Rule 1 & 2 shall not be treated as having been disposed of but the order dated 25.03.2021 shall be treated as an ad interim order and the application is restored to the file of the Trial Court.

13. Appellant shall file his reply to the application within a period of two weeks. Rejoinder to the reply be filed by the respondent on the record of the Trial Court within two weeks thereafter.

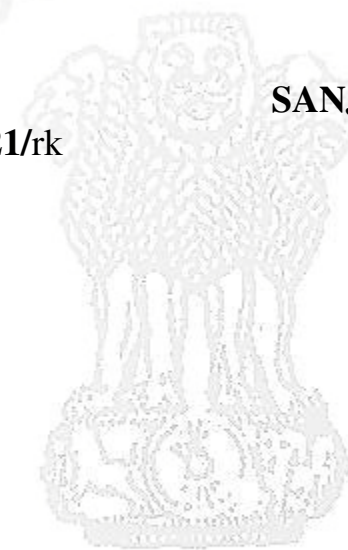
14. Trial Court shall thereafter decide the application under Order

39 Rule 1 & 2 on merits without being influenced by anything stated in this order.

15. The appeal is accordingly disposed of with the aforesaid directions.

16. Interim as well as final reports be filed by the Commissioner before the Trial Court.

SEPTEMBER 16, 2021/rk **SANJEEV SACHDEVA, J.**



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