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

Date of decision: 16.08.2023

+ CM(M) 1309/2023 & CM APPLs. 41795-96/2023
MADHU SHARMA THROUGH ITS GPA HOLDER RUCHI
SHARMA PANDEY & ORS. Petitioners

Through: Mr. Rajshekhar Rao, Senior Advocate
with Mr. Manu Yadav, Advocate with
Petitioner No.3 in person.

versus

SADHNA SHARMA @SUDHA & ANR. Respondents

Through:

Mr. Mukesh Gupta, Standing Counsel
with Mr. Abhishek Sharma, Advocate
for MCD/R-2

Mr. S.P. Jain, Advocate for
Respondent No. 1 with Respondent
No. 1 in person (through VC).

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 41796/2023 (For Exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1309/2023 & CM APPL. 41795/2023

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 09.08.2023 passed by the ADJ-2, North West District, Rohini Courts, Delhi ('Trial Court') whereby, the Trial Court allowed the application filed by Respondent No.1 seeking directions to the Petitioners herein to open the locks of the terrace along with the Barsaati



Floor of the residential plot B-169, Lok Vihar, Pitampura, Delhi ('subject property') and to permit Respondent No. 1 to carry out necessary repairs so as to prevent the leakage at the first floor where the Respondent No.1 is residing.

1.1. The Petitioners herein are the defendants and the Respondent No.1 is the plaintiff in the civil suit.

2. The learned senior counsel for the Petitioner states at the outset that the Petitioners have no objection in facilitating the repairs of the terrace so as to enable the Respondent No. 1 to fix the seepage on the roof of the first-floor portion.

2.1. He states however the Petitioners have an objection in providing the duplicate set of keys of the terrace to Respondent No.1 as that is the final relief sought in the civil suit. He states it is a disputed issue between the parties.

2.2. In this regard, he relies upon prayer (a) of the plaint as well as the prayer sought in the application filed under Order 39 Rule 1 and 2 which is pending adjudication. He states that access to keys of the terrace is a specific relief sought by the Respondent No.1 and it has not been adjudicated upon till date by the Trial Court.

3. Issue notice. The learned counsels for the Respondent Nos. 1 and 2 accept notice.

4. The learned counsel for the Respondent No.1 states on instructions from Respondent No.1 that he has no objection to the Petitioners not providing the duplicate set of keys, so long as the terrace is made accessible for a continuous period of twenty-one (21) days from 9 a.m. to 7 p.m. to permit the labour and the contractor engaged by Respondent No.1 to carry



out the repairs on the terrace of the subject property so as to fix the leakage on the first floor.

5. In response, learned senior counsel for the Petitioners states that they are agreeable to the aforesaid suggestion of the Respondent and will provide the requisite access with effect from 18.08.2023.

6. In view of the submissions made by the parties and in view of the averments made in the petition, the order dated 09.08.2023 is modified to the extent that the Petitioners are exempted from providing a set of keys (both gates) of the terrace to the Respondent No.1 herein.

6.1. The statement of the Petitioners that they will provide uninterrupted access to the terrace of the subject property for a continuous period of 21 days from 9 a.m. to 7 p.m. to Respondent No.1 with effect from 18.08.2023 to enable the labour and contractor engaged by her to carry out repair and cleaning work is taken on record and they are bound down to the same.

6.2. All other terms and conditions in the impugned order remain unchanged.

6.3. The undertaking of both the parties are taken on record and the parties are bound down to the same.

7. The learned counsel for the Respondent No.2 states that he is neither a necessary party nor a proper party to this petition and he prays for his deletion.

7.1. The learned senior counsel for the Petitioner has no objection to the said prayer of the counsel for Respondent No.2.

7.2. The same is allowed. The Respondent No.2 is deleted from the array of parties.

8. With the consent of the parties, it is further agreed that the Petitioners



herein will also be permitted to peacefully carry out re-flooring of the entire terrace area including the existing construction i.e., Barsaati standing on the terrace area of the subject property.

8.1. The Petitioners will also be entitled to re-plaster the terrace area as well as the Barsaati and to re-paint the said area.

8.2. It is clarified that however; no extensions or alterations will be carried out by Petitioners in the existing Barsaati or the terrace floor while carrying out the repair work.

8.3. It is further agreed by the parties that the Petitioners herein will carry out the aforesaid work of re-flooring, re-plastering and re-painting after 11.09.2023.

9. The learned senior counsel for the Petitioner states that since it is dispute between the family members, the matter can be resolved through mediation.

9.1. In reply, the learned counsel for the Respondent No.1 states that he will take instructions on the said suggestion made by the counsel for the Petitioner and apprise the Trial Court on 11.09.2023, the date already fixed.

9.2. The parties are directed to consider the offer of mediation and if the Respondent No.1 is aggregable, the Trial Court is requested to refer the parties to the Mediation Centre annexed with the Trial Court.

10. With the aforesaid directions, the present petition along with the pending application is disposed of.

MANMEET PRITAM SINGH ARORA, J

AUGUST 16, 2023/msh/asb

Click here to check corrigendum, if any