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

Date of decision: 11.10.2023

+ CM(M) 1664/2023 & CM APPLs. 52817/2023, 52818/2023

P.R. MEHTA (SINCE DECEASED) THR LRS Petitioner

Through: Mr. Parvinder Chauhan and Ms.
Aakriti Garg, Advocates

versus

RAJESH TALWAR Respondent

Through: None

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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. 52818/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1664/2023 & CM APPL. 52817/2023

1. The present petition filed under Article 227 of the Constitution of India impugns the order dated 07.10.2023 passed by the Civil Judge, Central District, Tis Hazari Courts, Delhi ('Trial Court') in CS SCJ No. 1642/2021 titled as "**Rajesh Talwar v. P. R. Mehta**" to the (limited) extent that it



restrains the Petitioner herein from carrying out construction/renovation work in the property bearing No. 185, Church Mission Road, Fateh Puri, Delhi ('suit property'). The operative part of the impugned order which the Petitioner is aggrieved of reads as under:

"Both the parties are directed to maintain status quo till the NDOH and defendant is also restrained to carry any type of construction/renovation work in the suit property till the NDOH."

2. The learned counsel for the Petitioner states that in the application filed by Respondent No.1 (the plaintiff) under Order 39 Rule 1 and 2, Code of Civil Procedure, 1908 ('CPC'), the limited relief which was sought by the plaintiff was only with respect to creation of third-party rights. He states that there was no relief seeking restraint against the construction/renovation work, which was being carried out in the suit property. The prayer in the said application reads as under:

"I. Pass an ex-parte ad-interim injunction in favour of Plaintiff and against the Defendants thereby restraining the defendants; their agents, associates, assignees, from creating any third-party rights in the suit property i.e. bearing municipal number 177, 183 to 188, Church Mission Road, Fateh Puri, Delhi-110006, herewith till the final disposal of the suit, in order to avoid multiplicity of litigations."

2.1. He states that the Petitioner herein is ready and willing to make a statement that he shall not create any third-party rights until the application under Order 39 Rule 1 and 2 CPC is decided by the Trial Court. He states that he was willing to make this statement even on 07.10.2023.

2.2. He states that, however, the ad-interim restrain granted vide impugned order dated 07.10.2023 with respect to the renovation/construction work is causing grave prejudice to the Petitioner. He states that the renovation work with respect to electrical re-wiring and Plaster of Paris ('PoP') was in



progress on 07.10.2023. He states that, the specific details of the on-going work are set out on ground 'cc' in the petition which reads as under:

"cc. That at this stage, it is apposite that the Petitioners have not carried out any construction and/or modification requiring any kind of permission/sanction. The nature of work undertaken and executed by the Petitioner No. 1 is such which is specifically exempted from requirement of obtaining sanction/ permission. It is further pertinent to mention here that, as on today, following works are underway:

- i. POP work on false ceiling and walls;*
- ii. Completion of electrical wiring in concealed pipes and installation of distribution panel at entrance, fans and AC's;*
- iii. laying of floor tiles, upto 5 feet height on walls, and in bathroom and washing area.*
- iv. Fixing of Aluminum framed Glass work on Doors, windows and live kitchen in dining area.*
- v. Plumbing work in bathroom, at water storage tank, installation washbasin for hand wash.*
- vi. Painting."*

2.3. He states that there are eight (8) workmen engaged for completing the said work. He states that, therefore, if the impugned order continues till the next date of hearing before the Trial Court i.e., 04.11.2023, it will cause grave prejudice to Petitioner.

2.4. He states that since no relief was sought by the plaintiff, the impugned direction is without jurisdiction and further the order is unreasoned. He therefore prays that the order be set aside in these proceedings. He states that the work being carried out by the Petitioner in the suit property is permissible under the bye-laws.

2.5. He states that he is not challenging the directions of the Trial Court appointing the Local Commissioner which has been passed with the consent of the parties and is being executed, today.

3. This Court has considered the submissions of the counsel for the



Petitioner and perused the paper-book.

4. None appears on behalf of the Respondent despite advance service.
5. The reasons which weighed with the Trial Court for granting the restraint against construction/ renovation are not evident from the impugned order. The Petitioner is willing to make a statement that he will not create third party rights.
6. In the facts of this case, it is deemed appropriate to request the learned Trial Court to take up the plaintiff's application filed under Order 39 Rule 1 and 2 CPC on 16.10.2023; and to hear and decide the contentions of the Petitioners herein with respect to the grounds raised in the present petition for vacation of the restraint order.
7. The Petitioner is granted opportunity to file an additional reply to the application under Order 39 Rule 1 and 2 CPC on or before 13.10.2023, with an advance copy to the plaintiff alongwith this order.
8. The Petitioner is at liberty to file an application before the Trial Court placing on record its additional reply and this order, on 16.10.2023.
9. The Trial Court is requested to adjudicate the plaintiff's application under Order 39 Rule 1 and 2 CPC preferably within a period of one (1) week from 16.10.2023.
10. The Respondent is directed to remain present before the Trial Court on 16.10.2023.
11. Accordingly, with the aforesaid directions, the present petition is disposed of. Pending application if any, stand disposed of.
12. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No



physical copy of order shall be insisted by any authority/entity or litigant.

OCTOBER 11, 2023/msh/asb

MANMEET PRITAM SINGH ARORA, J

Click here to check corrigendum, if any