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

+ C.R.P. 118/2024

LAL MOHD

..... Petitioner

Through: Mr. Sachin Agarwal and Mr.
Virender Kumar, Advs.

versus

MUSLIM

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **01.04.2024**

CM APPL. 18973/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

C.R.P. 118/2024 & CM APPL. 18972/2024 (stay)

3. The petitioner, who is defendant in the suit instituted by the respondent/plaintiff, assails the impugned order dated 02.03.2024 passed by the learned ADJ-02, Sahadara District, Karkardooma Courts, New Delhi, whereby his application under Section 114 read with Order XLVII and Section 151 of the CPC for review of order dated 21.02.2023 was dismissed.
4. No one is present for respondent/plaintiff despite advance notice.
5. I have heard learned counsel for the petitioner and have perused the record.



6. Shorn off unnecessary details, the petitioner is the son of respondent/plaintiff. It appears that previously a suit was filed by the respondent/plaintiff bearing CS No.787/2019 titled as '*Muslim v. Lal Mohd.*' seeking mandatory, permanent injunction and damages/*mesne profit* against the petitioner/defendant. The case of the respondent/plaintiff was that he was allotted the property in question by the DDA under the Scheme meant for leprosy patients. The said suit came to be settled between the parties on 03.12.2019 in terms of Settlement/Memorandum of Understanding (MoU) arrived at between the parties in the Delhi Mediation Centre, Karkardooma Courts, Delhi, whereby the petitioner/defendant was acknowledged to be a licensee under the respondent/plaintiff in respect of accommodation on the ground floor of the premises in question and *inter alia* it was also agreed that the petitioner/defendant would continue to pay charges towards consumption of electricity and shall have only a right to stay in the property as a licensee. Further, it was acknowledged that the respondent/plaintiff is the original allottee of the suit property from the DDA.

7. It appears that respondent/plaintiff filed another suit bearing CS 1241/2021 on 09.12.2021 seeking mandatory and permanent injunction and recovery of damages/*mesne profit inter alia* seeking relief against the petitioner/defendant and his family members to handover the vacant and peaceful possession of the portion of the suit property in his favour. An application under Order XII Rule 6 CPC was filed on behalf of the respondent/plaintiff which was initially dismissed vide order dated 27.09.2022 by the then Civil Judge-02, Shahdara District, Karkardooma Courts, New Delhi, against which, a review application was filed by the respondent/plaintiff. The same was



allowed vide order dated 13.02.2023, and accordingly, on the application under Order XII Rule 6 CPC, the suit was decreed in favour of respondent/plaintiff. The petitioner filed an appeal before the learned District Judge bearing No. MCA DJ 35/2023, which was dismissed vide order dated 21.02.2024. A review was filed by the petitioner/defendant/appellant, which has been dismissed by the learned Trial Court vide impugned order dated 02.03.2024.

8. It would be expedient to reproduce the order dated 02.03.2024 passed by the learned Appellate Court:

“02.03.2024

Fresh application received by way of assignment. It be checked and registered.

Present: Sh. Virendra Kumar and Sh. Harish Chandra, Id.
Counsels for the applicant.

Arguments heard on the review as well as stay application moved on behalf of the applicant pursuant to order dated 21.02.2024 passed by this Court.

It is submitted by Ld. Counsel for the applicant that the applicant had undertaken construction in the property being the licensee and therefore he is entitled for the benefit of Section 60 (b) of Easement Act and therefore, his license cannot be terminated nor the applicant can be asked to vacate the suit property. It is further submitted that in the mediation settlement between the parties it was agreed that the applicant shall pay the electricity charges and shall not damage the property and articles in any manner and he shall only have a right to stay in the property being a licensee and since then he has been regularly paying the electricity charges and has also complied with the terms and conditions of the mediation settlement dated 03.12.2019, therefore, he has a right to stay in the property. In this regard, Ld. Counsel for the applicant has also relied upon two judgments one titled as "Eri Mohan & Anr. v. Smt. Maya Devi & Anr.", RSA No.s 82 & 84 dated 26.07.2011 passed by Hon'ble High Court of Delhi and another judgment titled as "Ram Sarup Gupta vs. Bishun Narain Inter College and Ors." dated 08.04.1987 passed by Hon'ble Supreme Court of India.

It is pertinent to mention herein that the applicant has nowhere mentioned in the said mediation settlement that either the



respondent/plaintiff had ever permitted the applicant to carry out any construction in the suit property or that the applicant had actually constructed the ground and first floor of the property in question and spent about Rs. 4 lacs, which is now stated by the applicant in the instant application. Nor the applicant has ever challenged the terms and conditions of the mediation settlement dated 03.12.2019 before any Court.

In view of the above, this Court is of the view that the facts of the judgments cited by the Ld. Counsel for the applicant do not apply to the facts of the present case.

Further, without prejudice to the above, it is always open for the applicant to seek recovery of the alleged amount spent in the construction and renovation of the suit properties to the tune of Rs. 4 lacs & Rs. 2 lacs, as stated in the instant application, against the respondent/plaintiff, as per law. However, this does not entitle the applicant either any benefit of Section 60 (b) of Easement Act or any right to remain in the suit property.

Accordingly, I find no error or illegality in the impugned order dated 21.02.2024 passed by this Court and in view of the above stated discussion, no ground is made out for allowing the present application.

Hence, present application u/s 114 r/w Order XLVII & section 151 CPC to review the order dated 21.02.2023 and for seeking stay of the operation of the order dated 21.02.2023 are hereby dismissed being non-maintainable.

Present application file be consigned to record room after due compliance, as per rules.”

9. Unhesitatingly, the present revision petition is bereft of any merits. Evidently, petitioner/defendant acknowledged himself as a licensee in the premises in terms of MoU dated 03.12.2019. That being the case, it is not open to him to challenge the title of his father i.e. respondent/plaintiff. No legal right accrued to him under Section 60(b) of the Easement Act either since there is no *iota* of evidence that he ever contributed any amount towards the construction of the property. Merely because he has been paying the consumption charges towards the electricity, does not cloth him with the title of the property in question. The impugned order does not suffer from any kind of



jurisdictional error. Hence, the present revision petition is dismissed along with the pending application.

APRIL 1, 2024/ck

DHARMESH SHARMA, J.