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

+ **LPA 288/2024 & CM APPL. 21162/2024**

**MOHD SAUBAN JIRJIS**

..... Appellant

Through: **Mr. Atin Handuja and Mr. Shadab Alam, Advocates**

versus

**STATE OF NCT OF DELHI & ORS.**

..... Respondents

Through: **Ms. Nitika Bhutani, Advocate for R-1**

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Date of Decision: 09<sup>th</sup> April, 2024.

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**JUDGMENT**

**MANMOHAN, ACJ: (ORAL)**

**CM APPL. 21163/2024 (for exemption)**

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

**CM APPL. 21164/2024**

Keeping in view the averments in the application, the delay in filing the appeal is condoned.

Accordingly, the application stands disposed of.

**LPA 288/2024 & CM APPL. 21162/2024**

1. The present Letters Patent Appeal has been filed under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which stands extended to the High Court of Delhi, challenging the impugned judgment dated 19<sup>th</sup> February, 2024, passed by the learned Single Judge in W.P.(C) 7611/2022, disposing of the said writ petition with directions to the



Appellant herein and one Ms. Sama Jahan<sup>1</sup>, to pay an amount of Rs. 10,000/- each, per month, i.e., a total sum of Rs. 20,000/-, towards maintenance, to the Respondent No. 3 herein.

2. The Respondent No. 3 herein had initially filed an application under Rule 22 (3) (1) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules (Amendment) Rules, 2016 ('Rules, 2016') seeking eviction of her grandson i.e., Appellant herein, from the first floor flat located in property bearing No. A-99/2, Shaheen Bagh, Abul Fazal Enclave Part-II, Jamia Nagar, New Delhi – 110025 ('subject property'). The Respondent No. 3 also sought eviction of Ms. Sama Jahan, her daughter-in-law, from flat on the fourth floor in the subject property.

3. The Respondent No. 3 filed the applications on the plea that though she is the owner of the subject property, she has been driven to live in the basement, which is inhabitable.

4. The said application was disposed of by the District Magistrate, directing the Respondent No. 3 to vacate the basement and shift to the flat located on the upper ground floor of the subject property. The District Magistrate directed the Appellant herein and Ms. Sama Jahan not to interfere with the occupation of the upper ground floor flat by the Respondent No. 3.

5. The Respondent No. 3, being aggrieved by the said order, preferred an appeal under Rule 22 (3) (4) of the Rules, 2016, to the Divisional Commissioner. The Respondent No. 3 contended that the upper ground floor was not fit for living, as confirmed by the police authorities and therefore, was aggrieved by the order of the District Magistrate. The Divisional

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<sup>1</sup> Respondent No. 4 in W.P.(C) No. 7611/2022



Commissioner, after examining the record and in view of the report of the police officer, set aside the direction issued by the District Magistrate and held that Respondent No. 3, cannot be directed to vacate the basement until the [construction] of the upper ground floor is completed.

6. The Respondent No.3 herein filed the writ petition challenging the said order dated 21<sup>st</sup> May, 2018, passed by the Appellate Court of Divisional Commissioner, praying for a direction against the Appellant and Ms. Sama Jahan to vacate the flats under their possession and to permit her to occupy the said flats.

7. In the writ petition, in view of the controversy as regards the completion of construction of the subject property, the learned Single Judge vide order dated 23<sup>rd</sup> January, 2023, appointed a Local Commissioner to ascertain the status of construction in the subject property. In pursuance to the said order, the Local Commissioner filed a detailed report dated 09<sup>th</sup> February, 2023. The submissions of the Respondent No. 3 that the basement and the upper ground floor are in inhabitable condition was borne out from the said report. However, the report bore out that Appellant herein was occupying the flat on the first floor and Ms. Sama Jahan had leased out a flat on the fourth floor for monthly rent of Rs. 13,500/-.

8. In view of the report, the learned Single Judge while declining to pass order of eviction against the Appellant and Ms. Sama Jahan, has instead moulded the relief and directed both Appellant and Ms. Sama Jahan to pay Rs. 10,000/- each per month, as maintenance to Respondent No.3.

9. The learned counsel for the Appellant states that Respondent No. 3 is his grand-mother and since she has two sons and two daughters, the liability



to maintain Respondent No. 3 lies with her children. He states that the Appellant is a grandson and not liable to maintain Respondent No. 3.

9.1. He states that Respondent No. 2, i.e., the paternal uncle of the Appellant and the younger son of Respondent No. 3 has instigated the present proceedings. He states that the two flats on the upper ground floor fell to the shares of Respondent No. 2 and Respondent No. 3. He states that the said flats have been disposed of by Respondent No. 2 and the plea of lack of accommodation is artificial.

9.2. He states that the Appellant herein is 27 years old and does not have the financial wherewithal to pay Rs. 10,000/- per month. He states that the flat on the first floor in the subject property is being occupied by the Appellant in pursuance to the gift made by the father of the Appellant to him. He states that the said flat at the first floor was allotted to the father of the Appellant as per the family settlement.

10. We have heard the learned counsel for the Appellant and perused the record.

11. There is no dispute that Respondent No. 3 is the owner of the subject property. This fact is also borne out from the Collaboration Agreement dated 17<sup>th</sup> January, 2015. The Appellant and Ms. Sama Jahan have occupied the flats on first floor and fourth floor respectively in terms of Addendum-II to the said agreement. Thus, Appellant and his father have, admittedly, inherited the said flat from Respondent No. 3.

12. The report of the Local Commissioner<sup>2</sup> duly bears out the unliveable condition of the basement and the upper ground floor flat of subject

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<sup>2</sup> Dated 09<sup>th</sup> February, 2023



property. The learned counsel for the Appellant fairly admits that the Respondent No. 3 is presently not living in the subject property and is residing with her daughter. In the facts reported by the Local Commissioner, the unwillingness of Respondent No.3 to live in the upper ground floor flat is reasonable.

13. The Respondent No. 3 is stated to be about 87 years old. The Respondent No. 3 has sought the eviction of Appellant and Ms. Sama Jahan from the flats under their occupation. The learned Single Judge has, however, moulded the said relief and instead directed both Appellant and Ms. Sama Jahan to pay Rs. 10,000/- per month. The issuance of the said direction is within the jurisdiction of the Court/Tribunal under provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which enable directing payment of maintenance. The flats which Appellant and Ms. Sama Jahan are occupying, were admittedly owned by Respondent No. 3 and therefore, she is entitled to receive maintenance from the persons who have inherited from her. The Local Commissioner's report shows that the said flats are capable of fetching rent in excess of Rs. 13,500/- per month and therefore, fixation of monthly maintenance of Rs. 10,000/- per month by both Appellant and Ms. Sama Jahan suffers from no infirmity.

14. We accordingly, find no merit in the present appeal and the same is dismissed along with pending application.

**ACTING CHIEF JUSTICE**

**MANMEET PRITAM SINGH ARORA, J**

**APRIL 9, 2024/hp/aa**