



2024.DHC.4753



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 12th June, 2024***
+ **FAO 196/2024, CM APPL. 35286/2024 (stay)**

MS PAYAL KASHYAP

..... Appellant

Through: Mr. Vikash Singh, Senior Advocate
with Mr. Pushkar Sood and Mr. Satya
Prakash Singh, Ms. Deepika Kalia
and Ms. Vasudha Singh, Advocates.

versus

RITU PAHWA & ANR.

..... Respondents

Through: Mr. Himanshu Chaubey and Mr.
Siddharth Garg, Advocates for R1.
Mr. Tushar Sannu, Standing Counsel
with Mr. Manoviraj Singh, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 35287/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The Appeal under Section 104 read with Order 43 Rule 1 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) has been filed by the appellant against the impugned Order dated 07.05.2024, *vide* which



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the learned ADJ has granted the Injunction to restrain the appellant from carrying out any further construction in respect of the lift in the vicinity of the premises of the respondent i.e. Flat No. 70, Munirka Enclave, New Delhi, as shown in the site plan filed along with the Complaint.

4. According to the appellant, he is the owner of Flat No. 72, Second and Third Floor, Munirka Enclave, New Delhi-110067. He had applied for permission for the installation of a lift in accordance with the Policy, circulated by the South Delhi Municipal Corporation ('SDMC'). The NO Objection Certificate (NOC) dated 18.03.2024 was granted to the plaintiff *herein* for the installation of a common lift with a connecting Bridge in DDA Flat Nos. 70 to 72, Munirka Enclave, New Delhi.

5. Ms. Ritu Pahwa/Respondent No. 1 submitted a representation to the President of Munirka Enclave Resident Association (for short "MERA") and a meeting was held on 11.04.2024, wherein the grievances of the respondent No. 1 regarding the installation of the lift, was discussed and it was resolved with an assurance to keep the roadside entry for the lift. The respondent No. 1 issued a Letter dated 11.04.2024, to the President of MERA.

6. It is further submitted that the respondent No. 1 filed a Civil Suit seeking decree of Permanent Injunction in her favour to restrain the defendants (who are the appellants *herein*) from carrying out/permitting the construction of the lift in the vicinity of the property of the plaintiff. The learned ADJ *vide* impugned Order dated 07.05.2024 granted an *ex-parte* stay whereby the appellant was restrained from carrying out any further construction, till the next date of hearing.

7. Aggrieved by the said *ex-parte* Interim Injunction, the present Appeal has been preferred challenging the impugned Order. Learned Senior



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Advocate appearing on behalf of the appellant, has contended that the stay has been granted *ex-parte* without even giving a Notice to the appellant. The Sanction Plan/NOC was duly obtained from SDMC. The construction of the lift is being done in accordance with the sanction plan. Furthermore, all the concerns of the respondent No. 1 had been addressed before undertaking the construction work. Moreover, 75% of the construction has already been completed and an amount worth Rs.13,00,000/- has already been spent. The appellant has aged parents, who have difficulty in climbing up the staircase. It is, therefore, submitted that the *ex-parte* injunction granted by the learned ADJ, is not merited.

8. Learned counsel appearing on behalf of the respondent No. 1, who has appeared on advance Notice, has vehemently defended the impugned Order and has submitted that not only is it infringing on his privacy, but is also not being constructed in accordance with the sanction plan. The lift is being constructed adjoining to the wall of the flat of the respondent No. 1, without leaving the required gap, which has resulted in damage to her flat. The main contention raised on behalf of the respondent No. 1 is that the construction is being done in violation of the sanction plan and secondly, that the Plan has not been sanctioned in accordance with the Guidelines.

9. It is also submitted that the sanction plan shows that it is the steel lift, which is to be installed but a concrete structure is being raised.

10. Submissions heard.

11. From the submissions of the parties, it has emerged that the lift is being constructed in the colony as per the Policy of the SDMC Guidelines. The Sanction Plan had been duly obtained. The concerns of the respondent No. 1, were duly addressed in the RWA meeting on 11.04.2024.



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12. Insofar as, the challenge to the guidelines of SDMC, permitting construction of lifts in the Colonies is concerned, this is not the proper forum as the Policy, which permits construction of the lift itself needs to be challenged. *Prima facie* the construction is being carried out by the appellant No. 1, in accordance with the sanctioned plan. Learned counsel appearing on behalf of the appellant has also explained that it is the Steel Lift, which has to be installed but it is only an outer cover of concrete which is being constructed and that there is no violation of the terms of the NOC/Sanction plan.

13. When asked to specifically highlight how the construction being carried out, is not in accordance with the sanctioned plan, learned counsel for respondent No. 1 submitted that this construction is causing inconvenience and has also caused damage to the flat of the respondent No. 1, which is on the ground floor.

14. In case there are grievances of the respondent No. 1 of the construction being in violation of the Sanctioned Plan, she is at liberty to file an application stating all the deviations before the SDMC, which shall decide the same, within one week of filing of the Application.

15. Though the respondent No. 1 has refuted that 75% of construction work of the lift has been completed, but has conceded that the outer structure of the lift has been constructed upto the second floor.

16. Considering that the lift is being constructed after obtaining the relevant NOC and the sanction plan from SDMC and that the construction to the extent of 75% for raising the outer structure, has already been completed and an amount worth Rs.13,00,000/- has already been spent, without prejudice to the rights of the parties, the interim stay is hereby vacated with



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the liberty to the appellant to continue with the lift construction. However, in case, there is any deviation or violation of the Sanction Plan found by SDMC, it shall be duty bound to immediately stop the construction work or to take the corrective measures/demolish, as may be warranted in the given situation.

17. The order made *herein* is without prejudice to the rights and contentions of the parties. The Appeal is hereby disposed of with the directions to the learned ADJ, to dispose of the application under Order 39 Rules 1 and 2 of CPC, after hearing both the parties within 15 days.

18. Be listed before the learned ADJ on 12.07.2024.

**NEENA BANSAL KRISHNA
(VACATION JUDGE)**

JUNE 12, 2024/RS

Signature Not Verified

Digitally Signed By: AHIL
SHARMA

Signing Date: 14.06.2024
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