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

+ W.P.(C) 10118/2024, CM APPL. 41420/2024 & CM APPL. 41421/2024

MOHIT GHANSAL & ANR.Petitioners

Through: Mr. Amit Sinha, Advocate.

versus

ISHWAR DAYAL GHANSAL & ANR.Respondents

Through: Mr. Ajit Rajput, Advocate for
Respondent Nos. 1 and 2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **24.07.2024**

1. The present writ petition assails the order dated 28th June, 2024 passed by District Magistrate (East) in eviction case no. 744/2023¹, in terms of an application filed by the Respondents herein, under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the Delhi Maintenance and Welfare of Parents and Senior Citizen (Amendment) Rules, 2016. By way of the Impugned Order, the Petitioners have been directed to be evicted from the subject property – W.A-106/C, W.A. Block, First Floor, Shakarpur, Delhi – 110092.

2. Under the Delhi Maintenance and Welfare of Parents and Senior Citizen (Amendment) Rules, 2016², the Petitioners have a statutory remedy of preferring an appeal before the Divisional Commissioner against the

¹ “Impugned Order”

² “Rules”



Impugned Order. However, the Petitioners submit that on account of the current vacancy in the position of Divisional Commissioner, the statutory remedy of appeal against the Impugned Order cannot be effectively availed by them.

3. In light of the above, apprehending their eviction in terms of the Impugned Order passed by the District Magistrate and since they have no alternative forum to challenge the same, the Petitioners have filed the instant writ petition under Article 226 of the Constitution of India, 1950 along with an application under Section 151 of the Civil Procedure Code, 1908, seeking an *ad-interim* stay on the operation of the Impugned Order.

4. The Court has considered the submissions of the parties. In the opinion of the Court, since the Petitioners already have a statutory right of appeal under the aforementioned Rules, the Petitioners ought to first exhaust that remedy before invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

5. At this juncture, counsel for the Petitioners states that he shall file an appeal against the Impugned Order along with an application seeking *ad-interim* relief, before the Divisional Commissioner within three weeks from today. The above statement is taken on record and the Petitioners will be bound by the same.

6. In view of the above, the present petition is disposed of with the following directions:

- (i) The Petitioners shall, within a period of three weeks from today, file an appeal with the Divisional Commissioner under Rule 22 (4) of the of the Delhi Maintenance and Welfare of Parents and Senior Citizen Rules (Amendment) Rules, 2016 along with an application for *ad-*



interim relief.

- (ii) If such an appeal is preferred within the above timeline, the eviction order dated 28th June, 2024 shall be kept in abeyance and not given effect to till the date the Divisional Commissioner assumes charge and considers the application of the Petitioner for *ad interim* relief in the appeal. The Divisional Commissioner shall decide the said interim application after hearing the parties and thereafter proceed to adjudicate the appeal on its merits.
- (iii) The Divisional Commissioner is directed to expeditiously decide the appeal which would be preferred by the Petitioner as aforesaid.

7. The petition is disposed of in the above terms. It is clarified that the Court has not examined the merits of the case and no opinion has been expressed thereon.

8. All rights and contentions of the parties are left open and the Divisional Commissioner shall adjudicate the appeal on its own merits, in accordance with law.

SANJEEV NARULA, J

JULY 24, 2024/sapna