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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 01st July, 2024***
+ CM(M) 2013/2023 & CM APPL. 63293/2023 & CM APPL.
63294/2023 & CM APPL. 34194/2024 & CM APPL. 34195/2024

PAWAN KUMAR & ANR. Petitioners
Through: Ms. Smiti Verma, Advocate (through
VC).

versus

MUNICIPAL CORPORATION OF DELHI & ANR.

..... Respondents
Through: Mr. V P Rana, Advocate for R-2 with
R-2 in person.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The present petition has been filed by the petitioners under Article 227 of the Constitution of India challenging order dated 09.11.2023 passed by the learned Additional District Judge, Dwarka Court, Delhi.
2. The petitioners herein are the plaintiffs before the learned Trial Court and they have filed a suit for mandatory and permanent injunction against the defendants with the prayer that no illegal or un-authorised construction be raised in the front portion of the property bearing No. H-369, Front Side, Vikaspuri, New Delhi.
3. Defendant No. 2 Shri Subhash Chand Gupta @ Subhash Chander Gupta happens to be the actual contesting defendant.
4. Learned Trial Court, vide order dated 09.08.2023, decided the application moved by the plaintiffs under order XXXIX Rules 1 and 2 of



CPC, whereby, they had sought *ex-parte* and interim injunction in their favour and against defendant No.2 from raising or continuing with any un-authorised or illegal construction in the suit property. Learned Trial Court, after hearing both the sides, passed the order in favour of plaintiffs directing as under:

“7. For discussion above-stated, the present application of the plaintiff under Order 39 Rules 1 & 2 CPC is allowed and the defendant no. 2 is restrained from raising any unauthorized construction in the suit property i.e. front portion of the property bearing no. H-369, Vikaspuri, Delhi- 110018 till the disposal of the suit. Nothing stated herein above shall tantamount to be my expression on merits of the case.”

5. Feeling aggrieved, the defendants filed an appeal and the Appellate Court, vide order dated 09.11.2023, allowed the appeal and set aside the aforesaid order.

6. This is how the plaintiffs are before this Court.

7. When the present petition was taken up by this Court on 07.12.2023, the operation of the order of the learned Appellate Court was directed to be stayed and order dated 09.08.2023 passed by learned Trial Court was directed to be restored.

8. Heard.

9. During the course of consideration, learned counsel for the respondent No. 2 Shri Subhash Chand Gupta @ Subhash Chander Gupta, who is also present in Court, has stated that respondent would abide by the direction given



by the learned Trial Court and would not indulge in any kind of illegal or un-authorised construction in the said portion of the suit property. It is also stated that in view of such statement, actually speaking, nothing survives in the main suit. It is also stated that if the respondent No. 2 is required to raise any construction, it will be strictly in consonance with the relevant bye-laws and with the due permission and sanction of municipal authorities.

10. It is averred by learned counsel for respondent No.2 that since this Court is already seized of the matter, the learned Trial Court may not pass any final order based on such statement. He further states that such statement was made by respondent No. 2 before the learned Trial Court also by moving an application.

11. Be that as it may, keeping in mind the peculiar facts placed before this Court, and since the respondent No. 2 who is present in Court has also stated that he would not raise any kind of illegal or un-authorised construction in the suit property, the grievance of the plaintiffs stands fully taken care of.

12. The statement made by respondent No. 2 before this Court is take on record and the order dated 09.08.2023 of learned Trial Court is restored and as a necessary sequel, the impugned order passed by learned Appellate Court is set aside.

13. The petition stands disposed of in the aforesaid terms.



14. In view of said statement, the learned Trial Court would be at liberty to dispose of the entire suit.

(MANOJ JAIN)
JUDGE

JULY 01, 2024/sw