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

+ **CONT.CAS(C) 10/2024**

MR. ATUL NATH & ANR.

..... Petitioners

Through: **Mr. Shaunak Kashyap, Ms. Nistha Gupta, Advocates (M:9415152494)**

versus

MR. ACHAL NATH & ORS.

..... Respondents

Through: **Mr. Ashish Verma, Ms. Shobhana Takiar, Mr. Kuljeet Singh, Advocates for R-1 to 4 (M:9871603434)**

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

08.01.2024

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1. The present contempt petition has been filed alleging non-compliance of the order dated 05th August, 2021 passed by the learned Additional District Judge, South East, Saket Courts, New Delhi in *MISC. No. 62/2021* and *MISC. No. 63/2021* and also order dated 28th March, 2014 passed by this Court in *CS(OS) No. 2250/2013*.

2. Attention of this Court has been drawn to paragraph 47 of the order dated 28th March, 2014, which reads as under:

“47. Applying the settled law to the facts of the present case, in my view the plaintiff has been able to make out a strong prima facie case in the light of the documents placed on record. The stand taken by the defendant no.4 in his written statement duly supported by defendants no.2 and 3, the voluminous bills from Suraj Nurses Bureau from 31.7.2011 onwards (81 bills placed on record), would show that the plaintiff was looking after his mother in the house and not the defendant no.1. Supporting hospital bills, the bills of Chemist, the existence of four bed rooms and a large living room on the first floor, all lean in favour of the plaintiff to establish a strong prima facie case and balance of convenience, and in case the plaintiff is deprived of



exclusive use of the ground floor, including the living room except Kitchen, the plaintiff would suffer irreparable loss. Accordingly, the defendant No.1, his servants, agents, relatives, or anyone acting through him are restrained from using any portion of the ground floor except access to the kitchen. The defendant No.1 is further restrained from causing any hindrance, inconvenience or obstruction to the peaceful enjoyment of the plaintiff of the entire ground floor except kitchen. The key deposited with the Registrar (Original) shall be handed over to the counsel for the plaintiff forthwith.”

3. Attention of this Court has also been drawn to the order dated 05th August, 2021 passed by the learned Additional District Judge. The relevant portion of which is reproduced as under:

“7. In that view of the matter, the plaintiff cannot be allowed to argue contrary to the dictate of the said Will. In the said Will, common rights have been given to the plaintiff as well as defendant No.1 on the garden of ground floor, and other common areas and when the plaintiff is relying on the said that he is the absolute owner or in possession of the ground floor area to the exclusion of other beneficiaries. In law, a document can either be accepted or denied in toto and not in part. Therefore, the stand of the plaintiff with regard to his exclusive right on the common area and garden, as propounded in the Will, cannot be accepted. Moreover, the plaintiff has also not specifically claimed the relief in the present suit to restrain the defendant to use the ground floor. As such the entry/activity of the respondents on the common areas including the garden cannot be said to be falling within the purview of the interim stay order dated 28.03.2014”

4. This court records that all the parties are family members who are residing in the same building except respondent nos. 3 to 5.

5. It is seen that there are already directions by this Court that petitioners shall be granted access to the kitchen, which is situated on the ground floor and that further, the petitioners have been restrained from using any portion of the ground floor except access to the kitchen.

6. It is also noted that there are directions already passed by this Court that the common areas including garden shall be enjoyed by all the parties.



7. Thus, after some arguments, all the parties give their undertaking that they will not obstruct each others' rights for use of the common areas. They undertake that they shall abide by the aforesaid orders and not cause any hindrance, inconvenience or obstruction in the peaceful enjoyment of all the common areas.

8. Recording the aforesaid undertaking, the present petition is disposed of.

MINI PUSHKARNA, J

JANUARY 8, 2024

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