



\$~107

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 307/2024 & CM APPL. 56609/2024**
MITHILESH TYAGI & ORS.Appellant

Through: Mr. Sidharth Tyagi and Ms. Jagriti
Kedia, Advocates.

versus

ANITA SHARMA & ORS.Respondent

Through: Mr. K.K. Varma, Advocate for R-1.
Mr. Harsh Singhal, Advocate for
R-2/MCD.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

ORDER

% **25.09.2024**

CM APPL. 56610/2024 (Exemption)

Exemption allowed, subject to all just exceptions.

FAO 307/2024

1. Appellants are defendant Nos. 4, 7 and 8 in a suit filed by Anita Sharma (respondent No.1 herein). Such suit seeks permanent and mandatory injunction in relation to installation of lifts with respect to DDA flats situated at Mayur Vihar, Phase-II.

2. Learned Trial Court, while taking up the above suit for the first time, permitted the amendment in the suit and also simultaneously directed the defendants to maintain *status quo* with regards to installation of lifts between the portion of flat No. E-I (GF), E-2(FF), E-3(SF), E-5(GF), E-6(FF), E-7(SF) and E-87(TF) Mayur Vihar, Phase-II, Delhi-91 till NDOH.

3. Appellants are aggrieved by the aforesaid order and the prime-most contention is that the aforesaid construction is being carried out in terms of a scheme which has been duly approved by DDA. It has also been contended that in a similar kind of matter with respect to other DDA flats, this Court vide order dated 12th June, 2024 passed in FAO No.196/2024 *Ms. Payal Kashyap*



vs. Ritu Pahwa & Anr. had vacated the interim stay and thereby permitted the construction with respect to installation of the lifts.

4. When asked, whether the appellants had moved any application under Order XXXIX Rule 4 CPC before the learned Trial Court, the answer was in negative, while supplementing that so far they had not even received the formal summons of the suit.

5. After hearing arguments for some time, learned counsel for the appellants states that, without prejudice to their rights and contentions, they may be permitted to withdraw the present petition with liberty to file appropriate application under Order XXXIX Rule 4 CPC seeking vacation of the abovesaid stay which had been granted by the learned Trial Court on the very first day of hearing of the suit.

6. The next date before the learned Trial Court is reported to be 1st October, 2024.

7. The present appeal is accordingly disposed of as not pressed.

8. All the rights and contentions of the parties are left open.

9. The appellants are permitted to move appropriate application seeking appropriate relief and it is expected that the learned Trial Court, keeping in mind the nature of the urgency involved, would take up such application on priority basis and would make best endeavour to dispose of the same as expeditiously as possible, after hearing both the sides.

10. Order *dasti*, under the signature of the Court Master.

MANOJ JAIN, J

SEPTEMBER 25, 2024/ss