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

% ***Date of Decision: 4th October, 2024***

+ **FAO 320/2024 & CM APPL. 58568/2024 & CM APPL. 58567/2024**
SUSHEELA RANA & ORS.Appellants

Through: Mr. Ankur Sinha, Advocate for A-1 to 3.

versus

BRIJ BHUSHAN RANARespondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The appellant No.1 is defending a suit for partition filed by her son.
2. When such partition suit was taken up by learned Trial Court on 7th May, 2024, it restrained the appellant from the raising any construction over the suit property till further orders, and her son was also directed to comply with Order XXXIX Rule 3 CPC within a week.
3. However, fact remains that no affidavit of compliance was filed when the matter was thereafter taken up on 7th August, 2024.
4. According to learned counsel for the appellant, in such a situation, the learned Trial Court should have vacated the interim order.
5. When asked, learned counsel for the appellant, in all fairness, submitted that he continues to comply with the order and there is no construction activity going on in the suit property. It is submitted that keeping in mind the fact that the house where the appellant was earlier residing was in a dilapidated and dangerous condition, it had to be demolished.
6. The construction activity is stopped at the moment and the photographs



have also been placed on record.

7. The next date before the learned Trial Court is stated to be 7th November, 2024 and when asked, learned counsel for the appellant stated that he would not press his appeal provided that the learned Trial Court is requested to take up the abovesaid application moved by her son under Order XXXIX Rule 1 and 2 CPC and to decide the same as expeditiously as possible.

8. Nobody appears from the side of the respondent son on advance notice.

9. However, in view of the abovesaid, and since the appellant had already stopped the construction activity, without prejudice to the rights and contention of the appellant, the present appeal is disposed of as not pressed with the request to the learned Trial Court to take up the application seeking injunction on the date fixed itself i.e. 7th November, 2024 and to dispose it of in accordance with law, after hearing both the sides.

10. Needless to say, both the sides, including the appellant herein would provide requisite assistance in this regard to the learned Trial Court and the appellant would be also at liberty file a reply to the abovesaid application, with advance copy to the opposite side.

11. The appeal stands disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

OCTOBER 4, 2024/ss