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

% ***Date of decision: 24th October, 2024***

+ **CM(M) 3634/2024 & CM APPL. 62955/2024**

RITU PAHWA

.....Petitioner

Through: Mr. Naman Joshi with Ms. Ritika Vohra and Mr. Amber Tickoo, Advocates.

versus

PAYAL KASHYAP & ANR.

.....Respondents

Through: Mr. Vikas Aora with Mr. Abhay Sachan, Advocates.
Mr. Tushar Sannu, Standing Counsel with Mr. Nikhil Kadha, Advocates for MCD.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The next date in the present petition is 12.12.2024.
2. The instant application has been moved by petitioner seeking clarification of order dated 18.10.2024.
3. This Court, after having gone through its last order dated 18.10.2024, feels that there is no requirement of clarifying anything, as the order is very clear and specific.
4. However, since counsel for both the sides are present and since there is urgency in the matter as application moved by the petitioner/plaintiff moved under Order XXXIX Rule 1 and 2 CPC is pending consideration and is listed today before the learned Trial Court for arguments at 2:00 P.M., with the



consent of both the parties, the main petition as such has been taken up for hearing and disposal.

5. The petitioner/plaintiff is aggrieved by order dated 04.10.2024 whereby his application moved under Order VII Rule 14 CPC has been dismissed and he has been denied to place on record three documents i.e. (i) Report of Structural Engineer dated 27.05.2024, (ii) Report of Architect dated 20.06.2024 and (iii) copy of one Newspaper advertisement dated 24.06.2024.

6. According to petitioner, these reports are relevant to establish that construction of lifts has not been carried out in accordance with sanction/NOC received from the MCD whereas according to learned counsel for the respondent No. 1, these reports have been obtained by the plaintiff privately and have no value, particularly, when there is a report in this regard, from a governmental body i.e. MCD and which report is contrary to the reports which the plaintiff wants to place on record.

7. According to learned counsel for the respondent No.1, moreover, keeping in mind the nature of the relief sought in the suit in question, there was none to have prevented the plaintiff to obtain these reports, prior to the institution of suit.

8. The attention of this Court has also been drawn towards order passed by Hon'ble Supreme Court in SLP (Civil) No. 13293/2024. Earlier, while dealing with the same suit, learned Trial Court had passed *ex-parte* order to plaintiff. Such order was challenged by filing a FAO before this Court and, eventually, the petitioner/plaintiff knocked the doors of the Hon'ble Supreme Court and while disposing of the above said SLP, the Hon'ble Supreme Court



also directed the learned Trial Court to consider the injunction application filed by the appellant therein at the earliest and in accordance with law. It was also observed that till disposal of such application, there shall be a *status quo*.

9. Naturally, it will not only be appropriate but also in the interest of both the sides, if the learned Trial Court hears the above said application as expeditiously as possible.

10. According to learned counsel for petitioner herein, the above said three documents are of importance and would be required to be looked into while considering the aspect related to injunction and, therefore, the present petition has been filed.

11. During course of the arguments, learned counsel for the respondent No. 1 apprehended that since there is already 'interim stay' in favour of the petitioner, he may come up with some other application also as the intention of the petitioner is, merely, to delay and prolong the arguments on said application moved under Order XXXIX Rule 1 and 2 of CPC.

12. When asked, Mr. Naman Joshi, learned counsel for petitioner, on instructions, stated that the case is fixed for arguments today itself and he would not seek any adjournment and would abide by the date and time to be given in this regard by the learned Trial Court for the purposes of addressing arguments on the above said application. He also states, on instructions, that he would not insist for argument on any other pending application and would not also move any other application before the disposal of the said application moved under Order XXXIX Rule 1 and 2 of CPC. He also states that if the documents are permitted to be allowed, he would not even insist for



immediate filing of admission/denial thereof and defendants may file the same in due course. It is with the idea that there is no further delay in the disposal of the above said application.

13. I have gone through the impugned order dated 04.10.2024.

14. Undoubtedly, there is no plausible explanation as to why these reports could not be obtained by the plaintiff before the institution of the suit but, merely because of the above said reason, the denial of request was not appropriate, particularly, keeping in mind the nature of the controversy raised in the suit and the nature of documents sought to be produced.

15. Learned counsel for respondent No. 1, without prejudice to his rights and contentions and in order to ensure speedy disposal of the above said application moved under Order XXXIX Rule 1 and 2 and Order XXXIX Rule 4 of CPC states that he would have no objection if the above said petition is allowed and plaintiff is permitted to place on record, the above said documents i.e. Report of Structural Engineer dated 27.05.2024, Report of Architect dated 20.06.2024 and copy of one Newspaper advertisement dated 24.06.2024.

16. Therefore, in order to cut short the controversy and with the consent of learned counsel for respondent No. 1, the present petition is allowed and the above said three documents i.e. Report of Structural Engineer dated 27.05.2024, Report of Architect dated 20.06.2024 and copy of one Newspaper advertisement dated 24.06.2024 are directed to be placed on record.



17. As undertaken by Mr. Naman Joshi, learned counsel for petitioner/plaintiff, the petitioner/plaintiff would render due assistance and cooperation to the learned Trial Court and would abide by the date and time given or to be given by the learned Trial Court so that in terms of the directions given by the Hon'ble Supreme Court, the above said application is disposed of as expeditiously as possible.

18. Copy of the order be given *dasti* under the signatures of the Court Master.

19. The next date stands cancelled.

20. However, since both the learned counsel, who have appeared before this Court, would also appear before the learned Trial Court, they would inform about the outcome of the present petition so that the learned Trial Court is in a position to take these documents on record and hear arguments, accordingly.

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

(MANOJ JAIN)
JUDGE

OCTOBER 24, 2024/sw