



2025:DHC:11576-DB



\$~38

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

Date of decision: 17.12.2025

+ **FAO(OS) 19/2025 & CM APPL. 8604/2025 (Delay of 37 days in filing the appeal)**

GHANSHYAM KHOHARAppellant

Through: Mr. Mani Karan Sharma and
Mr. Devvrat Pradhan,
Advocates along with Appellant
in person.

versus

**MADAN MOHAN THROUGH HIS LEGAL HEIRS &
ORS.**Respondents

Through: Mr. Akshat Sharma, Advocate
for LR No. 1(b) of Respondent
No. 1/Mr. Shiva Gupta (in
person through video-
conferencing).

**CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

% **JUDGEMENT (ORAL)**

ANIL KSHETARPAL, J.

1. The present Appeal, filed under Section 104 of the Civil Procedure Code, 1908 [“CPC”] read with Section 10 of the Delhi High Court Act, 1966, challenges the Order dated 19.11.2024, passed by the learned Single Judge of this Court in I.A. No. 45396/2024 in CS(OS) 366/2018, whereby the application under Section 151 of the



2025:DHC:11576-DB



CPC seeking issuance of necessary orders and directions filed by the Plaintiff [**“Appellant herein”**], was dismissed.

2. The Plaintiff’s suit for partition and permanent injunction is pending before the learned Single Judge of this Court.

3. The Plaintiff filed the said application seeking relief to install an iron grill in the suit property i.e. House No. B-38, Sarvodaya Enclave, New Delhi [**“Suit Property”**], for security purposes. The Plaintiff claims that he is living in the front portion of the first floor of the suit property.

4. It is stated that in between the constructed portion, there is a courtyard which is open from ground floor to top floor. The rear portion of the first floor, the Defendants have rented out, and which portion is currently occupied and in possession of the tenants of the Respondents. The Plaintiff claims that a temporary roof supported by iron bars has now been constructed at the ground floor in the open courtyard, which makes the first floor vulnerable to intrusion by anyone. The Plaintiff wants to put an iron grill over a railing, which is already 2.5-3 feet.

5. The said iron grill would neither hamper the passage nor obstruct in any manner the premises which is in possession of the tenant of the Respondent. The application has been dismissed by the learned Single Judge on the ground that the Court was unable to appreciate the Plaintiff’s submission regarding the location where the proposed grill is intended to be installed.

6. During the pendency of the present Appeal, a layout plan has been produced in order to clarify the position/location with a copy to learned counsel for LR No. 1(b) of Respondent No. 1.



2025:DHC:11576-DB



7. Yesterday, on the Court's query, the LR No. 1(b) of Respondent No. 1, namely, Shiva Gupta initially took a stand that he resides on the first floor, however, on further questioning, he admitted that he resides on the ground floor.

8. Learned counsel for the LR No. 1(b) of Respondent No. 1 submits that there are sewerage and water pipelines situated in the open courtyard and servicing of the same would require some access. The Appellant, who is present in the Court, has assured that a small passage will be installed in the grill and he will give access to the Respondents, as and when required.

9. Learned counsel for the LR No. 1(b) of Respondent No. 1 further alleges that the present Appeal filed by the Appellant is not maintainable because the Impugned order does not constitute a "Judgment" as per the provision of Section 104 of the CPC.

10. This Court has considered the submissions of both parties.

11. The application was finally decided by the learned Single Judge, which directly affects the rights of the Appellant. This Court is of the view that the Order impugned herein is appealable under Section 10 of the Delhi High Court Act, 1966. We are also guided by a full bench Judgement of this Court in *Jaswinder Singh v. Mrigendra Pritam Vikram Singh Steiner* [2012 SCC OnLine Del 5506], wherein, while taking into consideration the judgement of the Hon'ble Supreme Court in *Shah Babulal Khimji v. Jayaben D. Kania* [(1981) 4 SCC 8], it was held that a non-appealable order passed by the learned Single Judge that amounts to a "judgment" can be appealed to the Division Bench under Section 10 of the Delhi High Court Act, 1966. The relevant extract of *Jaswinder Singh (supra)* is



reproduced herein below for the sake of brevity:

“28. The question as to the maintainability of appeals from orders passed by a learned Judge exercising ordinary original civil jurisdiction which are not appealable under Order 43 Rule 1 of the said Code has been examined by the Supreme Court in *Shah Babulal Khimji v. Jayaben D. Kania*(1981) 4 SCC 8. An appeal was held to be maintainable if the order was within the meaning of “Judgment”. If the order purports to decide valuable rights of parties and what are called the orders of the moment, an appeal was held to be maintainable if it is not categorized in the nature of an order which is appealable under Order 43 Rule 1 of the said Code. The expression “Judgment” has been held to be capable of taking three different characters. It may be a final Judgment, it may be a preliminary judgment or it may be an intermediary or interlocutory Judgment. The third category are cases which possess characteristics and trappings of finality and may have direct and immediate effect rather than an indirect or remote one. It is against such orders also that an appeal has been held to be maintainable while discussing the scope of clause 15 of the Letters Patent of the Chartered High Courts as the case emanated from the Bombay High Court. As noticed aforesaid that clause 10 of the Letters Patent of Lahore as applicable to Delhi is distinct on view of the absence of any ordinary original civil jurisdiction in the High Court Judicature at Lahore, not being a Presidency town.

33. It is in respect of the aforesaid prevalent legal position that consequences of the Supreme Court judgment in *Shah Babulal Khimji* case (supra) have to be examined. The apex court examined the issue whether any appeal can arise from exercise of ordinary original civil jurisdiction by the learned Single Judge if it is not an appealable order under Section 104 read with Order 43 Rule 1 of the said Code. The judgment in *Shah Babulal Khimji* case (supra) thereafter proceeded to discuss the nature of Judgments and orders which may flow from the pen of the learned Single Judge while exercising ordinary, original civil jurisdiction. It is in this context that the labels of final Judgment, preliminary judgment and an intermediary or interlocutory judgment were given. The final judgment was one by which the suit or action brought by the plaintiff is dismissed or decreed in part or full. On the other hand, a preliminary judgment is said to have two forms, i.e., where a suit may be dismissed on preliminary objections raised by the opposite party or the preliminary objections are decided in a manner where the view taken would result in non-termination of the suit and the suit is to be tried on merits but the rejection of the preliminary objections adversely affects a valuable right inasmuch as it defers the right to get the suit terminated on a preliminary ground. Lastly,



intermediary or interlocutory Judgments are of the nature which may not be an interlocutory order within the meaning of Order 43 Rule 1 of the said Code but possess the characteristics and trappings of finality and is treated as a Judgment. Of course here a reference has been made to the definition of a 'Judgment' within the meaning of Letters patent so as to be appealable to a larger Bench.

35. We are of the view that principles enunciated in *Shah Babulal Khimji* case (supra) as to what would constitute an appealable Judgment/order must equally apply to Section 10 of the said Act so that if an order, which is not an appealable order under the said Code, but otherwise satisfies the tests as laid down in *Shah Babulal Khimji* case (supra), in other words effects vital and valuable rights or, is an order which, decides matters of moment; the remedy of appeal to the Division Bench would equally be available.

39. We, thus, conclude by laying down the following principle of law:

In case of an order passed by the learned Single Judge in exercise of ordinary original civil jurisdiction in case of a non-appealable order under Section 104 read with Order 43 of the said Code which meets the test of a "Judgment" that decides matters of moment or affects vital and valuable rights of parties and which works serious injustice to the parties concerned as per the parameters laid down in *Shah Babulal Khimji case* (supra) by the Supreme Court, an appeal to the Division Bench would exclusively lie under Section 10 of the said Act and not under Clause 10 of the Letters Patent."

12. A senior citizen wants to feel secure while living in his house. He is prepared to install an iron grill, at his own expense, while ensuring that, as and when required, the Respondent will be provided passage and access to carry out repairs and maintenance work.

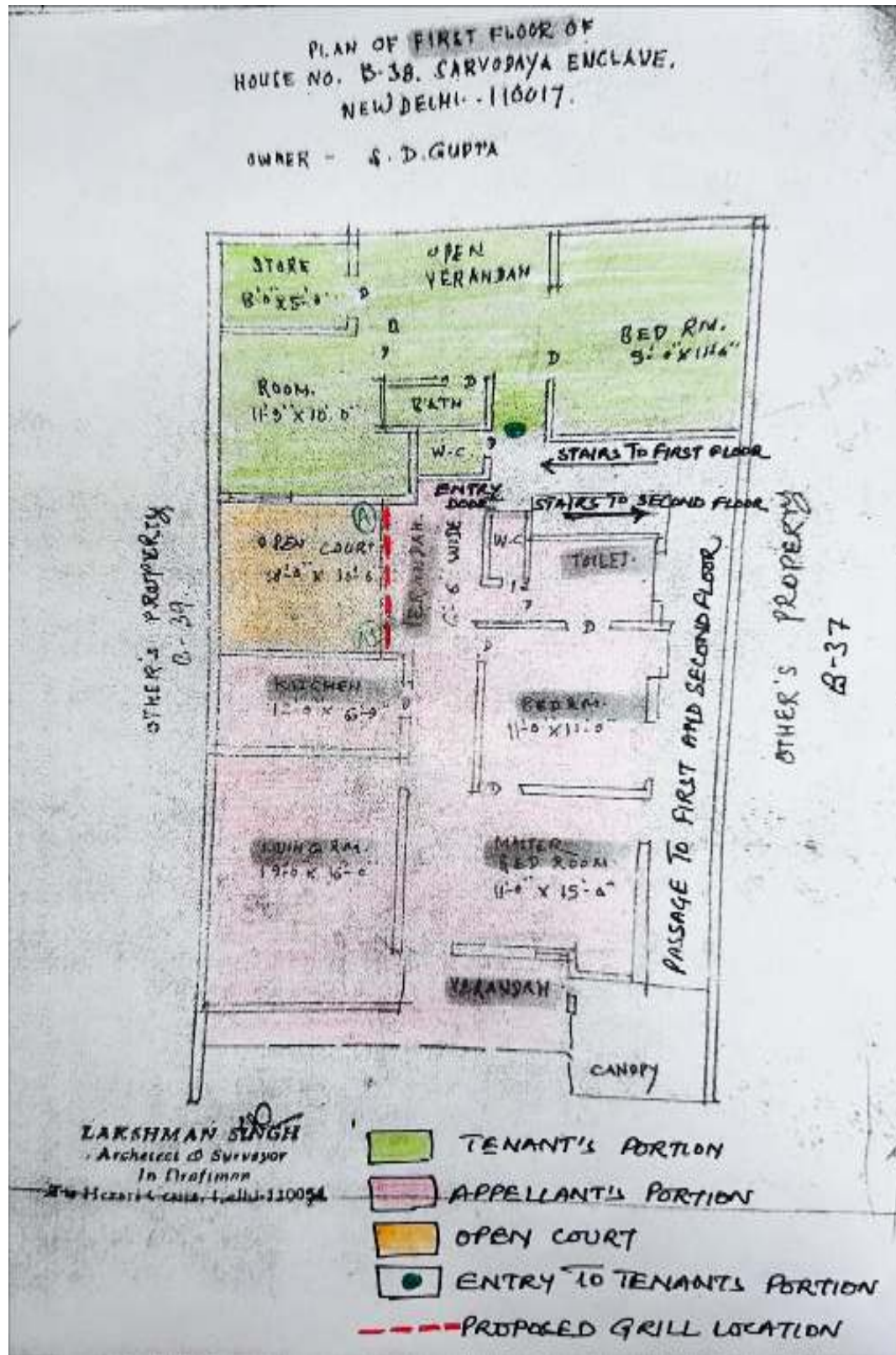
13. The iron grill is proposed to be installed on the Red dotted line (Points A to A1 in Green ink) between the *verandah* and open courtyard, as shown in the layout plan, which has been handed over across the bar.



2025:DHC:11576-DB



14. We have seen the layout plan and its photocopy is extracted as under:-





2025:DHC:11576-DB



15. This Bench does not see any inconvenience to be caused to the Respondents by the installment of the said iron grill.

16. Hence, the present Appeal is allowed, and the impugned Order is set-aside to the effect that the Appellant will ensure that the iron grill is properly installed without structurally damaging the suit property and access is provided to the Respondents for carrying out maintenance work, as and when required.

17. Accordingly, the present Appeal along with pending application, if any, stands disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
DECEMBER 17, 2025/tk/va