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

+ **RSA 191/2025**

BRIJESH MISHRA

.....Appellant

Through: Mr. Ishan Sanghi (DHCLSC) with
Ms. Poorvashi Kalra, Advocates.

versus

VED PRAKASH (DECEASED) THROUGH LRS AND ANOTHER

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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18.11.2025

CM APPL. 72264/2025 (exemption)

Exemption granted, subject to just exceptions.

The application stands disposed-of.

CM APPL. 72265/2025 (condonation of delay in filing)

By way of the present application filed under section 5 of the Limitation Act 1963, the appellant seeks condonation of about 66 days delay in *filing* the present second appeal.

2. For the reasons stated in the application, which is duly supported by affidavit, the delay is condoned.
3. The application is allowed.
4. The appeal is taken on Board.

RSA 191/2025 & CM APPL. 72263/2025 (stay)

5. By way of the present second appeal filed under section 100 of the Code of Civil Procedure 1908, the appellant impugns judgment dated



14.05.2025 passed by the learned District Judge-04, South District, Saket Courts, New Delhi in appeal bearing RCA DJ No.72/2024.

6. After briefly hearing Mr. Ishan Sanghi, learned legal-aid counsel appearing for the appellant, it transpires that the proposed questions of law sought to be raised by way of the present second appeal are the following:

“A. Whether the Learned Courts below failed to appreciate that the reasonable and bona fide use of the common terrace by the Appellant, including placement of flowerpots along the parapet wall for safety, beautification, and environmental purposes, did not amount to obstruction or unlawful interference with the Respondents’ rights?”

B. Whether the Learned Courts below erred in holding that the presence of flowerpots constituted a hindrance, despite there being no evidence of actual obstruction or inconvenience caused to the Respondents?”

C. Whether the Learned Courts below failed to recognize that the Appellant’s actions were undertaken with the consent and participation of other occupants of the building, and therefore could not be treated as unilateral?”

7. Mr. Sanghi submits, that the dispute between the parties relates to the placement of flower pots on the roof of the suit property.
8. It is in this backdrop that the learned trial court, while holding the respondents (plaintiffs in the suit) as having proved that the roof of the suit property is under common ownership, directed the appellant (defendant in the suit) to remove all flower pots from the roof of the



suit property since they were put there without taking consent of all stakeholders/occupants of the suit property.

9. Further, the learned first appellate court has held as follows :

“..... Once, it was not in doubt that the area is a common area and all parties have equal access and right to use it, no real defence was available to the defendants. Plaintiffs had never objected to the 'number of the flower pots' rather the objection was with respect to the presence of the flower pots themselves. It has never been denied that plaintiff has as much right over the roof as the defendants. Whatever evidence defendants have produced does not show their exclusive entitlement to use the roof and once common right over the roof is established nothing can be done on the roof except with the consent of all the stakeholders.

In the given facts and circumstances, Ld. Trial Court has rightly come to a finding that plaintiffs are entitled to mandatory injunction, as prayed for. This court does not find any infirmity or illegality in the judgment passed by Ld. Trial Court. Accordingly, the appeal filed by the defendant/appellant is dismissed.”

10. Accordingly, the operative portion with which the appellant is aggrieved, is the mandatory injunction issued by the learned trial court which was subsequently upheld by the learned first appellate court, to the effect that the appellant must remove all flower pots from the roof of the suit property.
11. In these circumstances, this court is of the view that no question of law, muchless a substantial question of law arises for consideration in the present second appeal.
12. The present second appeal is, accordingly, dismissed in-limine.



13. Further, this court records its consternation at the filing of second appeals in such frivolous cases, which amount to sheer waste of judicial time. However since, the appeal has been filed through legal-aid, this court restrains itself from imposing cost in the matter.
14. Pending applications, if any, stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 18, 2025
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