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

\# **CNR No. DLHC010075812025**

\+ FAO 34/2025, CM APPLs. 9423/2025, 13905/2025

VIJAY SHARMA .....Appellant

Through: Mr. Sachin Bansal, Ms. Arti Sharma, Mr. Gaurav Chauhan, Advocates.

versus

VINOD SHARMA & ORS. .....Respondents

Through: Mr. Jaideep Malik, Advocate for respondent Nos. 1 and 2

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% 29.10.2026

1. The present appeal filed under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC") is directed against the order dated 12.02.2025 passed by the learned District Judge-06, South, *Saket* Courts, New *Delhi*, whereby the appellant's application filed under Order XXXIX Rule 2A of the CPC came to be dismissed.

2. The dispute between the parties arises out of the property bearing Plot No. 6-B, *Khasra* No. 122, Palm Drive, near DLF *Chhatarpur*, Village *Satbari*, New *Delhi*, admeasuring approximately 600 square yards (hereinafter referred to as the "suit property"). The appellant, who is the plaintiff in the pending civil suit, is the brother of respondent no.1. Respondent no.2 is the wife of respondent no.1, while respondent no.3 is the elder brother of the appellant and has

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been arrayed as a proforma defendant. The parties have competing claims in respect of the property, including the first floor thereof.

3. The appellant's grievance is that despite the orders passed by the Trial Court, respondents no.1 and 2 entered into the first floor of the suit property on 17.12.2024 and thereafter continued to bring household articles and appliances into the premises. It is his case that the first floor had been locked by him before leaving for the USA and that the keys had been handed over to respondent no.3. According to the appellant, respondents no.1 and 2 entered the premises when the lock was opened during the proceedings conducted by the Local Commissioner and refused to vacate despite being asked to do so. He further alleges that the respondents subsequently brought in several articles, permitted outsiders to enter the premises and disconnected the cord of the CCTV cameras, all in breach of the *status quo* directions. The appellant also alleges that the police officials failed to intervene despite being present at the spot.

4. Learned counsel for the appellant submits that the Trial Court failed to give due consideration to the report of the Local Commissioner dated 24.01.2025, which, according to him, substantiates the appellant's case regarding the circumstances in which respondents no.1 and 2 entered the first floor. It is contended that the respondents could not have altered the existing position by entering the premises and thereafter sought protection on the ground that they were in possession. It is further urged that the photographs placed on record and the subsequent conduct of the respondents clearly demonstrate a breach of the *status quo* order.

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5. *Per contra*, learned counsel appearing for respondents no.1 and 2 submits that respondent no.1 is the owner of the suit property and that respondents no.1 and 2 have been residing therein. Their possession, according to them, was neither obtained forcibly nor in violation of any order of the Court. It is further submitted that the appellant himself was not residing in the first floor when the Local Commissioner visited the premises and that the report does not record that the appellant was found in physical possession thereof. It is also pointed out that no transfer, alienation or creation of third-party rights in respect of the suit property has taken place. The articles brought into the premises, it is submitted, were ordinary household goods and their presence cannot, by itself, constitute disobedience of the *status quo* order.

6. Before examining the rival submissions, it would be apposite to notice the sequence of orders passed by the learned Trial Court. On 09.12.2024, an *ex parte* order directing maintenance of *status quo* in respect of the suit property was passed, and a Local Commissioner was appointed to visit the premises. On 13.12.2024, upon respondent no.1 raising an objection regarding want of prior notice of the commission, the Trial Court directed the Local Commissioner to revisit the property on 17.12.2024, this time with police assistance.The said direction was thereafter continued by order dated 18.12.2024 till further orders. It is, therefore, the direction operating from 17.12.2024 onwards, and continued on 18.12.2024, which assumes significance while examining the allegations of subsequent disobedience.

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7. The scope of proceedings under Order XXXIX Rule 2A CPC is well settled. The provision is intended to secure compliance with an injunction or other order of the Court and permits consequences to follow where disobedience is established. However, the power is not to be exercised merely on the basis of an allegation or an inference drawn from disputed circumstances. In "*Food Corporation of India v. Sukh Deo Prasad*"[1], the Supreme Court emphasised that the obligation said to have been breached must be found in the order itself and that the power under Rule 2A, being punitive in nature, is to be exercised with caution. Likewise, in "*U.C. Surendranath v. Mambally's Bakery*"[2], the Court reiterated that wilful disobedience is an essential requirement. The Court must, therefore, be satisfied that a clear and operative direction was knowingly and deliberately disobeyed.

8. In the present case, as per the report of the Local Commissioner dated 24.01.2025, the ground floor was found in possession of respondent no.3 and his family members, while the semi-constructed second floor was not habitable and was not found to be in anyone's exclusive possession. As regards the first floor, the Local Commissioner recorded that it was under the lock and key of the appellant, as stated by the parties and their respective counsel. The report further records that the representatives of the appellant and respondent no.3 were initially not inclined to open the first floor. The request made by respondents no.1 and 2 to break open the locks was

[1](2009) 5 SCC 665
[2](2019) 20 SCC 666

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not accepted by the Local Commissioner, however, it was eventually opened by the son of respondent no.3.

9. Apparently upon entering the first floor, the Local Commissioner found a drawing-cum-dining room, kitchenette, three bedrooms, bathrooms and a wrap-around balcony. The report also records that the premises appeared as if no one was staying there. The appellant's counsel informed the Local Commissioner that the appellant used to reside there but had left for the USA and had handed over the keys to respondent no.3. Respondents no.1 and 2, on the other hand, asserted that they were the owners and had been in possession. On a prima facie view, it appears that the report thus brings out the rival claims made at the spot, but it does not record any independent determination by the Local Commissioner as to the person in actual possession of the first floor immediately before it was opened. The order dated 27.02.2025 passed by this Court, while issuing notice in the present appeal, had also noticed that the Trial Court had not expressed any opinion on the findings recorded by the Local Commissioner. Having examined the report in the present appeal, this Court finds that although the omission to discuss it was a relevant aspect, the contents of the report do not establish wilful disobedience of the *status quo* direction.

10. It is also necessary to bear in mind that the *status quo* direction dated 17.12.2024 came to be passed after the dispute regarding the first floor had arisen during the visit of the Local Commissioner. The direction was thereafter continued on 18.12.2024. The appellant's principal grievance regarding the initial entry of respondents no.1 and

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2 is thus founded on the circumstances in which the parties claim to have come into possession of the first floor. That controversy cannot be determined in proceedings under Order XXXIX Rule 2A CPC, particularly when the material on record does not establish the precise state of possession immediately prior to the passing of the operative direction.

11. As regards the alleged acts subsequent to the *status quo* direction, the appellant relies upon the photographs and asserts that respondents no.1 and 2 brought household articles, electrical appliances, gas cylinders and other goods into the first floor. He also alleges that the CCTV camera cord was disconnected. The respondents have denied these allegations and have maintained that they were residing in the premises. The Trial Court, upon considering the material placed before it, found that no alienation or transfer of the suit property had taken place and that no third-party rights or encumbrance had been created. It also found that the mere bringing of household articles and appliances into the premises did not, in the facts of the case, establish a breach of the *status quo* direction. This Court finds no sufficient material to take a contrary view in proceedings of the present nature.

12. Significantly, the record does not show that respondents no.1 and 2 have alienated the suit property, parted with its possession or created any third-party interest therein. They have consistently asserted that they themselves are residing in the premises. The position emerging from the record is that respondents no.1 and 2 continued to remain in possession and have not parted with possession of the suit

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property.While that issue remains open for adjudication in the suit, the material presently available does not establish that, after the operative *status quo* direction was passed or the respondents transferred possession or otherwise altered the nature of the property in a manner demonstrably contrary to that direction.

13. The distinction between a disputed claim of possession and a proved act of disobedience is material in the present proceedings. Order XXXIX Rule 2A CPC cannot be invoked to decide, in a summary manner, the competing claims of the parties to the suit property or to determine the legality of their respective possession. The provision can be attracted only when breach of a specific direction of the Court is established.

14. This Court is, therefore, not persuaded to interfere with the conclusion reached by the Trial Court. It is clarified that the observations made herein are confined to the appellant's application under Order XXXIX Rule 2A CPC and shall not be construed as an expression of opinion on the rival claims of title or entitlement to possession, which remain to be adjudicated in the pending civil suit.

15. No ground to interfere with the impugned order is made out. The appeal, along with pending applications is dismissed.

MANOJ KUMAR OHRI, J

OCTOBER 29, 2026/*rd*

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