

HIGH COURT OF DELHI

CORAM:HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

Date of Decision: 24th November 2023

CM(M) 804/2022 & CM APPL. 35541/2022

LAKHBIR SINGH (SINCE DECEASED) & ORS. ...PETITIONERS

VERSUS

KAWALJEET SINGH BHATIA & ANR. ...RESPONDENTS

Legislation:

Article 227 of the Constitution of India

Section 151 of the Code of Civil Procedure, 1908 (CPC)

Subject:

Petition under Article 227 challenging the Trial Court's order denying permission to repair property damaged due to MCD's demolition action on adjacent property.

Headnotes:

Civil Procedure – Repairs to Property – Permission for Repairs Granted: Petition under Article 227 - Constitution challenge to Trial Court's order denying roof repair permission. High Court sets aside Trial Court order - allows petitioner to repair property damaged due to MCD's demolition actions on upper floor. Mutual NOCs for regularisation/compounding applications to MCD agreed by parties. [Paras 1, 3, 7, 8]

Municipal Corporation of Delhi (MCD) – Demolition and Repairs: MCD confirms demolition on Respondent No.1's property - no current proceedings against petitioner's property. MCD policy permits independent applications by both parties for regularisation or compounding of unauthorised constructions. [Paras 3, 4]

Agreement between Parties – Schedule for Repairs: Detailed schedule for repairs agreed by parties - includes timeframe, supervision arrangements. Petitioner bears costs for repairs on Respondent No.1's property - no rights to recover these costs. Parties undertake not to obstruct each other's repair works - respect future MCD permissions for construction. [Paras 8, 8.8]

Court Directions – Compliance and Cooperation: MCD directed to promptly consider applications for compounding and regularisation. Petitioner can approach Trial Court for impediments in order implementation - MCD to extend cooperation for direction compliance. [Paras 9, 10]

Decision – Trial Court’s Order Overturned: Impugned order dated 24.05.2022 set aside - petition disposed of with directions. Decision made with mutual consent of parties. [Para 11]

Referred Cases: Not listed

Representing Advocates:

Petitioners: Mr. Ankit Singh and Ms. Neha Yadav

Respondents: Mr. Subrat Deb, Ms. Poulomi Barik, Mr. Vikrant V. Goyal, and Mr. Nitin Chandra. **J U D G M E N T**

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This Petition filed under Article 227 of the Constitution of India impugns the order dated 24.05.2022 passed by ASCJ, East District, Karkardooma Courts, Delhi (‘Trial Court’) in CS No. 450/2018, whereby the application filed by the Petitioner under Section 151 of the Code of Civil Procedure, 1908 (‘CPC’) seeking permission to get the roof of his room repaired at his own cost was dismissed.

1.1. The petitioner herein is the plaintiff and the Respondent No.1 herein is the defendant before the Trial Court.

1.2. The plaintiff filed suit for permanent and mandatory injunction, seeking directions to restraint the defendant no.1 i.e., Respondent No.1 herein from constructing the room on the space over the roof of the premises of the plaintiff bearing no. 129-A, Ground Floor, Pocket-1, Phase-1, Mayur Vihar, New Delhi (‘suit property’).

2. The Petitioner in the present petition seeks permission of this Court to carry out repairs in the suit property.

3. The learned counsel for the Petitioner states that there is seepage in the suit property due to the demolition action carried out by Municipal Corporation of Delhi (‘MCD’) on the flat owned by Respondent No.1, which is located on the first (1st) floor. He states that the first floor is immediately above the flat owned by the Petitioner.

3.1. He states that due to the damage caused to the flooring of the flat on the first (1st) floor during demolition, the roof of the Petitioner’s flat has been damaged and substantial seepage has come inside the flat.

- 3.2. He states that the notice for unauthorised construction, which was issued by MCD with respect to the Petitioner's flat has been quashed by ATMCD and as on date, there are no proceedings for unauthorised construction pending against the Petitioner herein. He states that the Petitioner's old construction is otherwise protected under the Special Laws operating in the state.
- 3.3. He states that the Petitioner is willing to carry out repairs on the flooring of the Respondent No.1's flat, at Petitioner's costs, so that the roof of the Petitioner's flats can be repaired. He states that there is seepage in different sections of the suit property due to the damage in the flooring of the first floor flat.
4. The learned Standing Counsel for Municipal Corporation of Delhi ('MCD') confirms that the show cause notice qua suit property has been quashed and as on date, no fresh proceedings have been initiated by MCD against the said property.
- 4.1. He further confirms that demolition action was carried out in the premises of the Respondent No.1 on the first (1st) floor in pursuance to a separate show cause notice issued against him.
- 4.2. He, however, clarifies that under the existing policy for regularisation and compounding, both Petitioner and Respondent No.1 can move independent applications for seeking permission for regularising the unauthorised construction and/or compounding the deviations.
5. He states that there is no legal impediment in the Petitioner carrying out the repairs proposed by them in this petition.
6. The learned counsel for Respondent No.1 states on instructions that Respondent No.1 would apply to MCD for permission to regularise the construction on his first floor.
- 6.1. He states that so long as the Petitioner does not raise any unauthorised construction, while carrying out the repairs; Respondent No.1 has no objection if the Petitioner carries out repairs in the existing construction. 6.2. He states that Respondent No.1 will extend cooperation to the Petitioner for inspecting his flat on the first floor and carrying out repairs on the flooring in his first floor flat, albeit at the cost of the Petitioner.
7. At this stage, learned counsel for the Petitioner and Respondent No.1 jointly state that they will file independent applications to MCD for regularisation/compounding of their respective flats and they hereby give their no objection certificate ('NOC') in favour of the each other.

7.1. They also undertake to execute any document of NOC requested by the other party to submit to MCD, so that, the respective applications can be processed expeditiously. They further undertake not to interfere in the processing of the said application(s) of the other party before MCD.

7.2. The statement of the parties is taken on record and they are bound down to the same.

8. Accordingly, with the consent of the parties, the following schedule for repairs of the suit property i.e., the flat of the Petitioner and the flooring of the first floor flat of Respondent No.1 has been agreed to:-

8.1. The Petitioner along with his contractor will visit the first floor flat of Respondent No.1 on 25.11.2023 between 10 A.M. and 12 P.M. to make an assessment of the area of the flat, which has to be repaired.

8.2. The parties agree that the repairs in the first floor flat of the Respondent No.1 will be undertaken and completed expeditiously between 27.11.2023 and 02.12.2023. The work of repairs will be carried out between 10 A.M. to 6 P.M. The Respondent No.1 will ensure that his representative remains present in the said premises during this time, so that the work can be carried out under his supervision. The repairs will be carried out by the Petitioner's contractors and workmen at the cost of the Petitioner.

8.3. The workmen, who have to carry out the work in the premises of the Respondent No.1 shall carry their identification card and show them to the Respondent No.1 or his representatives upon his request.

8.4. The cost of carrying out the repairs on the first (1st) floor will be borne by the Petitioner and Petitioner will have no rights to recover the said cost from the Respondent No.1.

8.5. The Petitioner undertakes that he will only carry out repairs of the existing construction in the suit property and not raise any new construction. 8.6. The Respondent No.1 undertakes not to obstruct the Petitioner in carrying out the repairs in the suit property as well as the first floor premises of the Respondent No.1.

8.7. The Petitioner also undertakes that after the Respondent No.1 has received permission for compounding/regularisation from MCD, Petitioner will not interfere in the Respondent's right to carry out repairs and construction according to the permission granted by MCD.

8.8. The MCD is directed to consider the application(s) filed by the Petitioner and Respondent No.1 for compounding and regularisation in accordance with law, in a time bound manner and preferably within one (1) month from the date of receipt.

9. The Petitioner will be at liberty to approach the Trial Court, in case, there is any impediment in the implementation of this order.

10. The MCD will also extend all cooperation before the Trial Court to ensure the due compliance of these directions.

11. With the aforesaid directions and with the consent of the parties, the impugned order dated 24.05.2022 is set aside and the present petition is disposed of. Pending application(s) are disposed of.

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