

CS 53/25

MRS. ABHA RATHORE Vs. APOORVA GANDHI

17.04.2025

Present: Ms. Jyoti Gulati, Id. Counsel for plaintiff.
Shri D.K. Sharma and Ms. Seema, Id. Counsels for defendant.

Written statement on behalf of defendant is filed. Copy supplied.

It is submitted by Id. Counsel for plaintiff that there is a delay in filing the written statement. In response to this, Id. Counsel for defendant submits that he will file an appropriate application for condonation of delay.

Arguments heard on the application u/o 39 rule 1 & 2 CPC.

ORDER on IA u/o 39 rule 1 & 2 CPC.

It is submitted that plaintiff has filed the present suit for possession, permanent and mandatory injunction, recovery of rent, mesne profit alongwith pendente lite and future interest. It is further submitted that plaintiff is the sole, exclusive and absolute owner of the suit property i.e. one flat of three room set bearing PVT Flat no.2 on the first floor upto the extent of ceiling level, a part of built up property bearing no.D-63, Area measuring 6780 sq yards alongwith common staircase & entrance, out of the khasra no.155, situated at abadi of Gali no.2, Laxmi Nagar in the area of village Shakarpur Khas Illaqa Shahdara, Delhi-92 by way of registered GPA dated 19.09.2001 vide registration no.6036 book no.4, volume no.384 on pages 89 to 98 and by way of registered Will

dated 19.09.2001 vide registration no.5930, book no.3, volume 08 on page 9 and 10. It is further submitted that plaintiff has let out the tenanted property to defendant on 10.09.2021 on a monthly rent of Rs.11,000/- for a period of 11 months and rent agreement was executed and notarized on 02.10.2021 for a period from 10.09.2021 to 09.08.2022. In the month of September 2022 when the plaintiff asked the defendants to vacate the tenanted property and handover the possession. The defendant no.2 requested to let her stay as she has place to go and she undertook to pay rent on time and increase the rent to Rs.12,000/-. It is further submitted that defendant has illegally occupied the tenanted property and has not paid the arrears of rent of 13 months till date. It is further submitted that no prejudice would be caused to defendants if relief of permanent injunction be granted in favour of the plaintiff. It is further submitted that defendants are evading their liabilities towards the plaintiff with ill motive and malafide intention. It is therefore requested that an ad-interim injunction thereby restraining the defendants, their legal heirs, agents, assignees etc. from selling, transferring, alienating the suit property, mentioned in para no.2 of the suit of creating any charge or third-party interest on the suit property in any manner whatsoever, whether directly or indirectly in any manner till the final disposal of the suit. Hence, the present application is filed.

Reply to the application has been filed by defendant no.2. It is submitted that suit of the plaintiff is not maintainable and is liable to be dismissed as the plaintiff had deliberately suppressed the material facts and not disclosed vitally material facts and therefore, the answering defendant no.2 are the lawful occupation and possession of the tenanted

premises and regularly paying rent. No cause of action has ever arisen in favour of plaintiff to file the present suit against the defendants. Defendant has further denied all the allegations as alleged by the plaintiff in the plaint and prayed for dismissal of the suit.

Heard. Record perused and considered.

Order 39 Rule 1 CPC

Order 39 Rule 1 of the CPC empowers courts to grant temporary injunctions in the following circumstances:

- 1. **Property in Dispute:** Where any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree.*
- 2. **Damage to Property:** Where the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors.*
- 3. **Breach of Contract:** Where the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.*

Order 39 Rule 2 CPC

Order 39 Rule 2 deals with the injunction to restrain the repetition or continuance of a breach. It provides that in any suit for restraining the defendant from committing a breach of contract or other injury, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.

Prerequisites for Granting Temporary Injunction

The courts consider several factors before granting a temporary injunction. These include:

- 1. **Prima Facie Case:** The applicant must establish that there is a bona fide dispute and a strong case in their favor. It does not mean proving the case beyond doubt but showing that there is a serious question to be tried.*
- 2. **Irreparable Injury:** The applicant must demonstrate that they will suffer irreparable harm or injury if the injunction is not granted. This injury must be such that it cannot be adequately compensated by damages.*
- 3. **Balance of Convenience:** The court must be satisfied that the balance of convenience lies in favor of the applicant. This means that the inconvenience caused to the applicant by refusing the injunction would be greater than the inconvenience caused to the respondent by granting it.*
- 4. **No Delay or Laches:** The applicant must approach the court without undue delay. Any unreasonable delay in seeking the injunction may result in the denial of relief.*

In the present case, plaintiff has filed the present suit for possession, permanent and mandatory injunction, recovery of arrears of rent, mesne profit alongwith pendente lite and future interest against the defendants. Matter is at the initial stage and issues are yet to be framed in the present matter. It is pertinent to mention here that during the course of arguments, Id. Counsel for defendants has submitted that he has instructions from the defendants that they will not create any third party interest in the suit property till final disposal of the present case. In this regard, statement of Id. Counsel for defendants is recorded separately at bar. Trial will take a long time. Matter is now before the court and the court is duty bound to protect the suit property. Further, defendants have no objection if the interim stay is granted. In view of above, considering the facts and circumstances of the present case, to avoid

multiplicity of proceedings, to protect the suit properties, the present application is being disposed off with the following order:

ORDER

Application u/o 39 rule 1 & 2 r/w Section 151 CPC is allowed. Defendants, their representatives, associates, attorneys and agents etc are restrained from selling, alienating, transferring the possession or creating any third party interest in the suit property i.e. one flat of three room set bearing PVT Flat no.2 on the first floor upto the extent of ceiling level, a part of built up property bearing no.D-63, Area measuring 6780 sq yards alongwith common staircase & entrance, out of the khasra no.155, situated at abadi of Gali no.2, Laxmi Nagar in the area of village Shakarpur Khas Illaqa Shahdara, Delhi-92 till final disposal of the suit.

A status quo be maintained by parties in respect of property i.e. one flat of three room set bearing PVT Flat no.2 on the first floor upto the extent of ceiling level, a part of built up property bearing no.D-63, Area measuring 6780 sq yards alongwith common staircase & entrance, out of the khasra no.155, situated at abadi of Gali no.2, Laxmi Nagar in the area of village Shakarpur Khas Illaqa Shahdara, Delhi-92 till final disposal of the present case.

Put up for completion of pleadings, admission & denial of documents and framing of issues on 03.05.2025.

Typed to the dictation directly,
corrected and pronounced in
open court on 17.04.2025

(Pooja Jain)
District Judge-03,
EAST/KKD Courts, Delhi.