

30.01.2025

Present: Sh. Kuldeep Gola, Ld. counsel for plaintiff.
Ms. Annu Arora, Ld. counsel for defendant no. 1 and 2 with .
None for D-3.
Sh. Arun Sharma, ld. counsel for witness of BSES.

1. PW-6/Vijay Singh is examined, cross-examined and discharged. Diet money paid.
2. Let summons be issued to witness at S. No. 5 and 7 on filing of PF. Summons to witness at S. No. 5 be also served through DCP concerned.
3. Arguments on application moved by defendants u/s 151 CPC heard.
4. In the said application, defendants have prayed for permission from this court for causing repair of the damages/leakage portion of the suit property. It is argued on behalf of defendants that some leakage from the third floor of the property is occurring to the second floor leading to damage to second floor and first floor. Thus, it is prayed that defendants be allowed to cause repair as the damage to the property may cause harm to some person. It is argued that the leakage is occurring from the bathroom of the third floor (in possession of the plaintiff) and reeking smell is emanating therefrom.
5. Application is strongly opposed by the counsel for plaintiff who points out that this application is only a ruse to cover up the breach of injunction order dated 04.02.2023 whereby parties were directed to maintain *status quo* qua nature, title and possession of suit

property. He points out that on or about 24.11.2024, D-1 and D-2 have broken down a bathroom on the first floor of the property and to cover up the said violation, the present application has been moved.

6. When this fact was put to D-2 by this court, he admitted in court that some construction was carried out by him in the bathroom of the first floor on or about 24.11.2024. Thus, prima facie, there is a clear violation of the injunction order passed by this court dated 04.02.2023.
7. Thus, on merits, defendants herein are guilty of violating court orders and as such are not entitled for any discretionary relief as prayed in the present application. Even otherwise, I may note that if there was any leakage from the third floor to the second/first floor of the suit property, this court is at loss to understand as to why such a plea was not taken earlier by the defendants before they themselves demolished their bathroom at the first floor? This clearly shows that there is some substance in the argument made by counsel for plaintiff that only to cover up their act of demolition/construction in the suit property, the present application has been moved by defendants and not on account of any inhospitable condition prevailing in the suit property.
8. Be that as it may, even otherwise, the present suit is inter alia for partition of suit property and not for injunction. Thus, in law, a substantive relief qua any repair in the property cannot be passed on an application moved by defendants.
9. In such circumstances, there is no merit in the present application. It

is dismissed with cost of Rs.10,000/- to be paid to the plaintiff.

10. At this stage, counsel for plaintiff presses his application u/O XXXIX Rule 2A CPC. Copy already supplied. Let D-1 and D-2 file their reply to the said application within 15 days from today with advance copy to the other side.

11. List for further PE and arguments on the aforesaid application on 21.04.2025.

AASHISH GUPTA
DJ-01/NE/KKD/DELHI
30.01.2025