

CS DJ No:- 325/22

AMBIKA KAPUR & ANR. Vs. ARVIND KUMAR BAJPAI

20.01.2023

Present:- Plaintiff no. 1 in person along with Ld. Counsels Sh. Nikunj Verma and Ms. Taniya Raheja.
Sh. Manmeet Singh, Ld. Counsel for all the defendants.

Cost of Rs. 2,000/- stands paid on behalf of defendants to plaintiffs today.

In terms of previous orders Ld. Local Commissioner had inspected the suit property i.e. K/8-B, 2nd Floor, Lajpat Nagar-II, New Delhi and filed report on 18.01.2023. It is reported by Ld. Local Commissioner as well as plumber (who is present in the Court today) that there is no fresh leakage/seepage of water in the suit property and that the dampness, crust, mold at different places in the suit property could be possible as earlier there was leakage in the drainage pipe of both the bathrooms of 3rd floor in the property i.e. defendant's flat which were got repaired by the same plumber in the month of November, 2022.

Ld. Counsels for plaintiffs has objected to the report of Ld. Local Commissioner as well as report of the plumber stating that both of them had possibly connived with the defendants and have not filed an impartial report on record.

Additional reply to the application under Order XXXIX Rule 1 and 2 CPC filed on behalf of defendants.

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There are two applications under Order XXXIX Rule 1 and 2 CPC moved on behalf of plaintiffs which are pending disposal. Essentially, in the first application, it is prayed on behalf of plaintiffs that defendants be directed to take necessary steps to stop leakage/seepage and water penetration in plaintiff's floor and to permit plaintiffs to access common passage leading to the terrace of the property in question for maintaining the overhead water tank. Vide 2nd application similar reliefs are sought by the plaintiffs with additional prayers that defendants be directed to repair their bathrooms with leakages and waterproof them immediately, to allow plaintiffs to clean overhead water tanks at least once every quarter, to restrain defendants from conducting any construction, digging, drilling and hammering in their floor and to carry out repair work in the floor of the plaintiffs.

Submissions heard. Record perused.

Vide order dated 07.01.2023, substantial arguments have already been heard on behalf of both the parties and as an interim measure, this Court deemed it expedient to dispose application under Order XXVI Rule 9 CPC to first get premises in question inspected to find out actual cause of leakage/seepage in the suit property.

Now, in addition to the observations of this Court, in order dated 07.01.2023, it is noted that as per the report of Ld. Local Commissioner as well as plumber (whose name was

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suggested by plaintiff no. 1 herself) there is no fresh leakage/seepage of water in the suit property i.e. K/8-B, 2nd Floor, Lajpat Nagar-II, New Delhi, as such, no prima-facie case is made out for grant of any injunction in favour of plaintiffs to direct defendants to stop the seepage/leakage, repair their bathrooms or carry out any water proofing at this stage. The question as to whether the suit property belonging to the plaintiffs was damaged due to possible leakages from the defendant's flat is a matter of trial to be decided after leading of evidence by both the parties, as such, no prima-facie case further arises to direct defendants to carry out repair in suit property. Since, plaintiffs have failed to show prima-facie case in their favour, there is no point of testing the case of plaintiffs on the touchstone of balance of convenience and irreparable loss for grant of temporary injunction in their favour.

So far as prayer of the plaintiffs for being permitted to clean overhead water tanks situated at the terrace of property in question once in every quarter, Ld. Counsel for defendants has fairly conceded on behalf of defendants to permit the plaintiffs to carry out the said cleaning with prior intimation (at least 48 hours) to the defendants. Separate statement of Ld. Counsel for defendants is recorded to that effect.

In view of the statement of Ld. Counsel for defendants, plaintiffs are permitted to get overhead water tanks

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situated at the terrace cleaned with prior intimation to the defendants once in every quarter for a reasonable duration.

Both the applications under Order XXXIX Rule 1 and 2 CPC stand disposed of in above terms accordingly.

Put up for completion of pleadings, filing of affidavit of admission/denial of documents as well as settlement of issues on **11.04.2023**.

(Akash Jain)
ADJ-1 (South-East), Saket Court
New Delhi/20.01.2023