

CS DJ-325/22

AMBIKA KAPUR & ANR. Vs. ARVIND KUMAR BAJPAI & ORS.

07.01.2023

Present : Ms. Taniya Raheja and Sh. Nikunj Verma,
Ld. Counsel for plaintiffs.
All three defendants already ex-parte.
Sh. Manmeet Singh, Ld. Counsel for all defendants
(through VC).
Proxy counsel for defendants.

Today application under Order VII Rule 11 CPC read with Section 151 CPC, Written Statement along with application under Order VIII Rule 1 CPC read with Section 5 of Limitation act, 1963 and reply to application under Order XXXIX Rule 1 & 2 CPC are filed on behalf of defendants. Copy supplied.

Arguments on the pending application under Order IX Rule 7 CPC heard.

It is submitted by Ld. Counsel for defendants that he could not appear on the date fixed for hearing i.e. 06.10.2022 as he was occupied in another case in Noida and had moved the present application on the same date before this Court to show his bonafide. It is further submitted on behalf of defendants that settlement talks were going on between the parties and defendants may be permitted to participate in the proceedings.

Per contra, it is argued on behalf of plaintiffs that in the absence of Ld. Counsel for defendants, defendants should have remained present in the Court and the present application ought to be dismissed.

Submissions heard. Application perused.

Be that as it may, keeping in view the totality of circumstances, for just decision of the case, it is imperative that defendants be permitted to participate in the proceedings. **The present application under Order IX Rule 7 CPC is accordingly allowed subject to cost of Rs.2000/- payable by defendants to plaintiffs.**

At this stage, Ld. Counsel for plaintiffs has pressed her application under Order XXXIX Rule 1 & 2 CPC.

It is argued by Ld. Counsel for plaintiffs that in the year 1994, Mr. Inder Kumar Kapur i.e. father of plaintiffs had purchased the property bearing No.K/8-B, 2nd Floor, Lajpat Nagar-II, New Delhi (hereinafter referred to as 'suit property') and after the death of father of plaintiffs, the suit property had been transferred in the joint name of both the plaintiffs. Thereafter, brother of both the plaintiffs vide Relinquishment Deed dated 07.09.2021 relinquished his share in the suit property in favour of both the plaintiffs. It is stated that defendant no.1 is the owner of property bearing no. No.K/8-B, 3rd Floor, Lajpat Nagar-II, New Delhi (hereinafter referred to as defendant's flat). It is averred that earlier brother of Plaintiffs was residing in the suit property and in the month of October 2021, he moved out. Thereafter, Plaintiff No. 1 moved in the suit property but before shifting she carried out renovation in the property as there was constant leakage from the third floor in the property. Plaintiff No. 1 finally shifted into the suit property in the month of October, 2021. It is alleged that within just one to two months of getting the renovation done, the ceiling of the rooms started showing

signs of water penetration and leakage which resulted in substantial damage to the suit property. It is alleged that plaintiff no.1 got the premises inspected by the plumber who concluded that leakage in the ceiling of the suit property is due to bursting of pipe fixed in the bathroom floor and back balcony of defendant's flat. It is further alleged that despite repeated requests made by plaintiff no.1, defendants had not cooperated to stop water leakage in the suit property resulting in substantial damage to the ceiling and walls of the suit property of plaintiffs.

In the present application under Order XXXIX Rule 1 & 2 CPC, it is mainly prayed on behalf of plaintiff no.1 that defendants be directed to take steps to stop leakage and water penetration in the suit property from the walls and ceiling as it would result in collapse of the beams at any time and plaintiff no.1 is living under constant threat to her life.

In response to the abovesaid application, it is argued by Ld. Counsel for defendants that alleged leakage in the suit property is not owing to any action of defendants but due to the renovation work carried out by plaintiffs in the suit property before shifting. It is argued that plaintiffs have concealed the fact that in November, 2022, at the instance of plaintiff no.1 as well as RWA, an inspection was carried out by a Plumber and substantial damage was caused in the bathroom of the defendant's flat and no leakage was found in the property belonging to defendants. It is further argued that prior to shifting, plaintiff no.2 who is the brother of plaintiff no.1 had been residing in the suit property for almost 20 years and no complaint of any leakage or water penetration had been made by

him to defendants. As such, the present application be dismissed with costs.

Submissions heard. Application perused.

Perusal of record shows that after institution of the present suit, application under Order XXVI Rule 9 CPC read with Section 151 CPC had been disposed off by Ld. Predecessor Court, vide which a Local Commissioner was appointed to inspect the suit property and file a report detailing actual situation of the water leakage/seepage in the property. The Local Commissioner had carried out inspection of suit property on 10.09.2022 and found ceiling as well as walls of the suit property being partly damaged. Ld. Local Commissioner found cracks in the ceiling in the bedroom and bathroom from which water was also dripping out. Dampness in walls was also found visible owing to possible seepage. The said inspection was carried out in the presence of both, plaintiff no.1 as well as defendant no.2.

Before disposing off the present application, I deem it expedient that a Plumber should be appointed who may inspect both, second floor and third floor of the property in question and find out actual cause of leakage/seepage of water in the suit property. The plumber should make sure that no unreasonable damage is caused to the premises of defendants or plaintiff no.1 while carrying out inspection. Inspection be carried out by Plumber namely, Pappu, Mobile No.9810339256 (the name of the plumber is suggested by Plaintiff No. 1 and is not objected on behalf of Defendants) **on 13.01.2023 at 2:00 PM** and expenses of Plumber is to be borne by plaintiff no.1. The inspection proceedings be duly photographed and videographed by Plaintiff

No. 1 and copies thereof be shared with the Court as well as the defendants.

Put up for filing of report **on 20.01.2023**. Both the parties and plumber, so appointed shall remain present on next date of hearing.

Copy of the order be given dasti, as requested.

(Akash Jain)
ADJ-01 (South East) Saket Court
New Delhi/07.01.2023 (vg)

At 04:30 PM

Present:- None.

Certain clarifications are required from the parties.
As such, list the matter on **10.01.2023 at 02:00 PM**.

(Akash Jain)
ADJ-01 (South East) Saket Court
New Delhi/07.01.2023 (vg)