

**IN THE COURT OF SH. GOPAL SINGH CHAUHAN
DISTRICT JUDGE-03: WEST DISTRICT TIS HAZARI
COURT: DELHI**

Civ DJ No. 326/2023

In the matter of :-

Sh. Rajesh Saini

.....Plaintiff

V/s

- 1. Smt. Suman**
- 2. Sh. Mohan Kumar Verma**

.....Defendants

-ORDER-

1. Vide this order I shall dispose off two applications, one of D-1 u/o VII Rule 11 CPC for seeking rejection of plaint and another of plaintiff u/o XXXIX Rule 1 & 2 CPC for seeking permission to install lift and direction to restrain the defendant from causing hindrance in doing so, arguments on which were already heard.
2. Facts of case of the plaintiff, in brief (required to be discussed for decision of the applications), are as follows- Ms. Tanya Saini on behalf of her father Sh. Rajesh Saini in capacity of his SPA, has filed present suit initially against Smt. Suman. Later, vide order dated 26.02.2024 application of the plaintiff u/o I Rule 10(2) CPC was allowed and Sh. Mohan Kumar Verma was impleaded as D-2 in the matter with direction to the plaintiff to make consequential amendments in the plaint. The plaintiff is owner in possession of first floor of property no.WZ-523/21, Basai

Dara Pur, New Delhi-110015, ad-measuring 150 sq. yds., along with undivided proportionate in the land beneath, with parking rights of one Scooter and one Car in stilt parking area, with common rights to use lift, stair case and passage, with all common facilities of the building, after he has purchased the same from D-1 vide registered sale deed dated 05.03.2020. Property no.WZ-523/21, Basai Dara Pur, New Delhi-110015, is hereinafter referred to as 'suit property'. The D-2, a builder, has constructed the suit property consisting of seven flats, stilt parking, common areas, etc., in collaboration of the D-1. The plaintiff resides in his portion of the suit property with his family which includes her mother aged about 75 years. The D-1 has retained remaining portion of the suit property. In two flats on upper ground floor she resides with her family whereas remaining flats she has rented out to tenants. Grievance of the plaintiff appears to be that at the time of sale of the first floor, the D-1 had assured that the left over work in the suit property viz. installation of lift, main gate, etc., would be completed within 15-20 days, however, it was not done. In the present matter decree of damages and mandatory injunction inter alia directing the defendants to install lift, is sought.

3. In her written statement the D-1 has mainly contended that it was obligation of the builder/ D-2 to complete the work in the building, however, he had not done so due to which the D-1 has also suffered losses.

4. In his written statement the D-2 has mainly submitted and contended that he has already done approx. 60% work required for installation of the lift including pillar, machine room, etc., that he has always been ready and willing to execute the remaining work

of lift, gate, etc., however, he could not do so as the D-1 has illegally withheld a sum of Rs.6 lakhs out of total agreed consideration of Rs.32 lakhs, payable to him (D-2) for construction of the property and that even lift machine purchased by the D-1 is also lying in the property.

5. First, the application u/o VII Rule 11 CPC is taken up for hearing.

In this application mainly it is contended that the suit is time barred as the same has been filed beyond period of three years from the date of execution of the sale deed, the terms of which are basis of cause of action in the matter.

6. In reply filed on behalf of the plaintiff the aforesaid plea has been opposed and mainly it is contended that the suit is related to continuous wrong and continuous breach of contract. In this regard provision u/s 22 of Limitation Act is referred which provides that in case of a continuing breach of contract in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be continues. In alternative, Ld. counsel for the plaintiff has urged that in view of ratio of order/ judgment dated 10.01.2022, passed by Hon'ble Supreme Court in Suo Moto Writ Petition (C) No.3 of 2020, the present suit be considered to have been filed with the limitation period.

7. The registered sale deed by the D-1 in favour of the plaintiff, which is basis of cause of action in the matter, was executed on 05.03.2020. The present suit was filed on 27.04.2023. It is observed that vide aforementioned order/

judgment of the Hon'ble Supreme Court i.e. in Suo Moto Writ Petition (C) No.3 of 2020 In Re: Cognizance for extension of limitation, in wake of Covid-19 pandemic, for the purpose of calculating the period of limitation, period between 15.03.2020 and 28.02.2022 was directed to be excluded. Hence, even if it is assumed that cause of action in the present matter was not continuing one then also the present suit can be considered to have been filed within limitation period. Consequently, the application u/o VII Rule 11 CPC is being dismissed being devoid of any merit.

8. Now, the application u/o XXXIX Rule 1 & 2 CPC, which was filed during proceedings of the matter on 26.04.2025, is taken up for hearing.

In the application mainly it is contended that on 03.03.2025, mother of the plaintiff, aged about 75 years, has suddenly suffered brain stroke due to which she remained hospitalized for approx. 43 days including 39 days in ICU. That the brain stroke resulted in paralysis in entire left side of her body thereby limiting movement of her limbs and her condition is such that it necessitated the requirement of a nursing attendant to support her daily needs. That under these circumstances it is almost impossible and unsafe to move her to ground floor even with the help of a wheelchair or any other mean. It is prayed that interim injunction in favour of the plaintiff and against the defendant be passed granting permission to the plaintiff to get the lift installed at his own expense and to restrain the defendants, their agents, etc., from interfering or causing hindrance during

the installation and subsequent operation of the lift and that concerned SHO be directed to ensure maintenance of law and order during the installation and operation of the lift.

9. Ld. counsel for the D-1 has preferred to argue orally and he has opposed the aforesaid plea made on behalf of the plaintiff mainly by contending that granting relief of mandatory injunction would tantamount to granting final relief itself and that it is impermissible in law.

10. Copy of the registered sale deed, dated 05.03.2020, is annexed with the plaint. In the present context the following mentioned terms thereof are relevant to be taken into consideration- *‘And whereas the vendor for her legal needs and requirements has agreed to sell entire first floor without roof/terrace rights, measuring 150 sq. yds..... with common rights to use lift, staircase and passage, with all other common facilities of the said building...’.*

‘10. That the electricity and maintenance charges for parking area, lift and with all other common facilities of the building, shall be borne by all floor wise occupants of the said building in equal ratio i.e.1/4th share each. However, if the vendee or other owners/occupants of any floor(s) do not pay or neglect to pay the maintenance cost or electricity cost of running the lift, in such an event, only the remaining owners/ occupants of the said building will have exclusive right to use the lift. However, on payment of maintenance cost or electricity cost of running the lift by such defaulting owners/ occupants shall make their entitlement to use such facility’.

11. The facts that by virtue of registered sale deed, dated

05.03.2020, the plaintiff had acquired ownership of first floor portion of the suit property and that he is residing there with his family, have not been disputed on behalf of the defendants. From the above highlighted terms of the sale deed it is evident that the plaintiff has a right to use common facilities including the lift. In fact, dispute appears inter se between the D-1 and the D-2 as the D-1 has contended that the D-2 has failed in his duty to complete the work in the suit property whereas the D-2 has averred that he has not done so as entire payment was not made by the D-1 to him, hence, because of that the plaintiff cannot be made to suffer as he has got right to enjoy his property with benefits attached to it. Photographs of the suit property annexed with the plaint depict that shaft for housing the lift is complete. As aforementioned, in his written statement the D-2 has inter alia stated that he has already done approx. 60% work required for installation of the lift including pillar, machine room, etc., and that even lift machine purchased by the D-1 is also lying in the property. Copy of discharge summary dated 15.04.2025 of Maharaja Agrasen Hospital, West Punjabi Bagh, New Delhi, in respect of the mother of the plaintiff, has been annexed with the application.

12. As far as contention made on behalf of the D-1 that granting relief of mandatory injunction would tantamount to granting final relief itself and that it is impermissible in law, is concerned, the following mentioned observation of the Hon'ble High Court of Delhi in judgment rendered in case 'Vishal Gupta Vs. L&T Finance Limited', 2009 SCC OnLine Del 2806, is relevant to be considered here- '30. *The only question that remains is whether a mandatory interim injunction by this Court can be issued at this stage to the*

Defendant. The rule that a Court cannot grant an interim relief that would amount to grant of the final relief at the interlocutory stage is not an inflexible one. It would depend on the facts of every case...'. Hence, it is evident that in fit cases the court can grant interim mandatory injunction. Moreover, installation of the lift is not the only relief asked for in the present matter.

13. Considering the condition of the mother of the plaintiff it can be said that facility of the lift has become a basic need for her. Very strong prima-facie case is found in favour of the plaintiff. Balance of convenience also lies in his favour and he is likely to suffer irreparable loss in case injunction is not granted in his favour.

14. In view of above discussion, without prejudice to the rights and contention of the parties, the application under consideration is hereby allowed in the following terms- Plaintiff is permitted to get the lift installed in the suit property at his own expense subject to getting necessary permission/ sanction from concerned authority(ies) and to use the same in accordance with the terms of the sale deed 05.03.2020. The defendants are directed not to interfere or cause hindrance during the installation and subsequent operation of the lift. The plaintiff shall be at liberty to take assistance of the police, if need arises, by approaching SHO of the concerned police station. The concerned SHO shall provide necessary assistance to ensure effective implementation of terms of this order.

As aforementioned, issues pertaining to operation of the lift including payments of electricity bill in respect thereof, shall be governed by the terms of the sale deed dated 05.03.2020.

15. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case. Also needless to mention here that relief granted to the plaintiff vide this order shall be subject to final decision in the suit to the otherwise.

(GOPAL SINGH CHAUHAN)
DJ-03, WEST/DELHI
09.06.2025