

**IN THE COURT OF SH SHIV KUMAR
ADDITIONAL DISTRICT JUDGE-02 (WEST),
TIS HAZARI COURTS, DELHI**

Civ DJ No. 605/23

Smt. Kamlesh Bhatia

..... Plaintiff

Versus

Smt Ruby Chatrath

....Defendants

ORDER

1. Vide this order, I shall decide the applications of plaintiff as well as of defendant no. 1 moved under order 39 rule 1 & 2 read with section 151 CPC.

2. Arguments on both applications filed u/o 39 rule 1 & 2 CPC read with section 151 CPC, have been heard from both sides, on the last date of hearing.

3. By way of application u/o 39 rule 1 & 2 CPC read with section 151 CPC, the plaintiff is seeking injunction against the defendants, their associates

and agents, from throwing the water/ detergent water/oily water or anything which is dangerous in the the smooth using of the stairs, forming part of the property in question. It is averred by the plaintiff that in the month of June, 2020, the defendants started the business of pesticide from their garage at ground floor of the property in question. It is further averred by the plaintiff that due to paucity of space , the defendants wanted to purchase the house of the plaintiff to enlarge their business, but the plaintiff declined their request. It is further averred that due to decline of request of the defendants by the plaintiff, the behaviour of the defendants changed for the plaintiff and they started harassing & humiliating the plaintiff with sole motive to drive out of the plaintiff from her house by purchasing the same at a lowest price.

4. It is further averred that for the last some time, with a view to harass and humiliate the plaintiff, the defendants used to flow the detergent water mixed with oily things on the common stairs with malafide intention to harm the life of the plaintiff and due to the above act, the floor of the common stairs becomes slippery and there is every apprehension that anybody can slip from the stairs at any moment.

5. It is further averred that, plaintiff used to go to temple in evening hours and at that time the condition of the stairs used to be normal and usable but when the plaintiff returned from the temple she found that it had become

slippery and became dangerous. It is further averred that plaintiff slipped from the stairs due to the above said act of the defendants and suffered multiple injuries in her body and remained hospitalized and incurred expenses of Rs. 3 lac approximately on her medical treatment.

6. It is further averred that several times request has been made to the defendants for stopping their above said acts, but the defendants have not acceded the said request and rather threatened to the plaintiff. It is further averred that legal notice dated 13.07.2023 was also sent to defendants but defendants did not comply the terms of the said notice.

7. On the other hand, defendants have contended that suit against defendant no. 2 is not maintainable as defendant no. 2 is a minor child below the age of 18 years. It is further contended that suit of the plaintiff is a gross abused the process of law and has been filed with the sole purpose of harassing and pressurizing defendant no. 1. It is further averred that the suit of the plaintiff is a counter blast to the police complaint dated 31.05.2023 and 12.07.2023 lodged by the defendant no. 1 against the plaintiff's daughter and grand children on ground of ruffian and holiganistic behaviour of plaintiff's daughter and her children.

8. The defendants have denied the allegations of the plaintiff and averred that allegations leveled by the plaintiff are baseless, meritless and unsubstantiated. Defendant no. 1 has averred that grand daughter of the plaintiff used to throw contaminated water which spilled over on the stairs. It is further averred that on one occasion, the remaining left over water, kept for feeding stray dogs was thrown on defendant no. 1 in utmost in disdainful manner. It is further averred that there has been no interaction with the plaintiff due to her rude and indifferent attitude towards the neighbours or at least with the defendant no. 1.

9. In the plaint, plaintiff has not specifically mentioned any date, month and time when defendants flew the detergent water mixed with oily things on the common stairs on the property in question. It has also not been mentioned that the plaintiff himself has seen defendant no. 1 or his maid (defendant no. 2) throwing detergent water mixed with oil on the common stairs of the property in question. The plaintiff has averred that he has slipped on the stairs twice due to the above said act of the defendants and in support of such contention two discharge summaries have been attached. Admittedly, there is cross-complaints pending between the parties. The discharge summary placed on record of the plaintiff reveals that the date of admission of the plaintiff in the hospital is 13.08.2020 and the date of her discharge from

hospital is 16.08.2020. And in the second discharge summary the date of admission is 22.09.2020 and discharge from hospital is 26.09.2020. In the first discharge summary the history of fall followed by pain, swelling and deformity left hip is mentioned. In the second discharge summary it is mentioned that approximately after three weeks of surgery, plaintiff had fallen again on the operated side. There are allegations of continue throwing detergent water mixed with oil by the defendants on the common stairs used by the plaintiff as well as other occupants of the building. Though no evidence has placed on record by the plaintiff regarding throwing of detergent water mixed with oil on the common stairs by the defendants, but nobody has right to throw detergent water mixed with oil on the common stairs as it causes inconvenience to the user of the common stairs as well as this act may cause injury to the users of the common stairs. Therefore, without giving any finding on merit, a prima facie case and balance of convenience lies in favour of the plaintiff for passing injunction in her favour and plaintiff will suffer irreparable loss, if injunction not granted in favour plaintiff, therefore, the defendants and their representatives are restrained from throwing of detergent water mixed with oil on the common stairs of the property in question till the disposal of the suit. Application under order 39 rule 1 & 2 read with section 151 CPC is allowed with the above said directions.

10. The defendant has also filed an application u/o 39 rule 1 & 2 read with section 151 CPC seeking relief of injunction against the plaintiff by restraining the plaintiff from throwing water of any type including left over water from the bowl used to feed stray dogs and removing the gate put on the stairs leading to terrace/roof and not obstructing and creating hindrance to the plaintiff for accessing the terrace/roof of the property in question. The defendant no. 1 is also seeking relief, directing the plaintiff not to put her personal lock on the terrace door. It is averred by the defendant no. 1 that plaintiff and her kin have been throwing left over water from the bowl upon the defendant no. 1. It is further averred that defendant no. 1 is residing at 2nd floor and plaintiff is residing on the 3rd floor of the property in question and in order to create obstacles and hurdles in the right of the defendant no. 1 to access the roof, the plaintiff and her daughter have put a gate on the stairs leading to roof and they keep it locked. It is further averred that the said act of the plaintiff was objected by defendant no. 1 as well as by Sunder Vihar Resident Welfare Association but the plaintiff and her daughter refused to budge from their stand and keep the door of roof/terrace locked. It is further averred that defendant no. 1 requested the plaintiff, her daughter and her kin to remove the lock but they have not acceded his request and rather used filthy language against him. It is further averred that defendant no. 1 was forced to make a call at 110/112 and even had to seek police assistance for accessing the

roof/terrace of the property in question.

11. On the other hand, plaintiff has denied the above said allegations of defendant no.1 and reiterated her allegations made in the plaint. The plaintiff has denied the putting of gate on the stairs, leading to the roof and keeping the door of the roof locked.

12. I have perused the letter written by RWA to defendant no.1 in which it is mentioned that all the residence of building have equal right to access the terrace and no single party should be putting the lock and restricting every one access. It is also mentioned in the letter that the representative of the RWA namely Mr. Pathak and Mr. Yadav went to the plaintiff to resolve the matter, but the plaintiff refused to open the door. The photographs attached by defendant no.1 are showing one gate installed on the stairs and there is lock on the main door of the terrace/roof. The plaintiff has not denied that defendant no. 1 has no right to access the terrace/roof, her only stand is that no hindrance/obstruction has been created by the plaintiff for accessing terrace/roof by the defendant no. 1.

13. Though in this case, the defendant has not filed any counter-claim seeking any relief on merit from the court and has moved application u/o 39 rule 1 & 2 CPC and by exercising power under section 151 CPC, this court is of the view that access to the roof/ terrace is very much necessary for the defendants for inspecting the water tanks and getting the supply of clean and hygienic water from the water tanks kept on the roof/terrace of the property in question and the right to get clean and hygienic water is also a fundamental right under Article 21 of the Constitution Act. It is not the case of plaintiff that the roof/terrace of the property in question is the personal property of the plaintiff, so all the residents of the property in question has right to access the same.

14. In view of the above said facts and observations and without expressing anything on merit, it is held that prima facie case and balance of convenience lies in favour of the defendant no. 1 for passing injunction in his favour and he will suffer irreparable loss, if injunction not granted in favour of defendant no. 1. Therefore, the plaintiff and her representatives are restrained from throwing detergent water mixed with any oil on the common stairs of the suit property till the disposal of present suit. The plaintiff and her representatives are further restrained from creating any hindrance and obstructions in the way of the defendant no. 1 for accessing the roof/terrace of

the suit property and also further restrained from putting personal lock on the door of the roof/terrace of the suit property till the disposal of present suit. Application of defendant no. 1 under order 39 rule 1 & 2 read with section 151 CPC is also allowed.

**Announced in the open court
On 23rd February, 2024**

**(Shiv Kumar)
Addl. District Judge
West-02: Delhi**