

IN THE COURT OF SH. AJEET NARAYAN
JSCC-ASCJ-GJ, SOUTH EAST DISTRICT, SAKET COURTS,
NEW DELHI

MCA SCJ No. 1/2025
CNR No. DLSE03-000374-2025



1. Shiv Kumar
Son of Late Sh. Krishna Sharma,
R/o H. No.20, Ground Floor,
Aliganj Kotla Mubarakpur,
Delhi-110003.

2. Sh. Yogesh Sharma
Son of Late Sh. Krishna Sharma,
R/o H. No.20, Second Floor,
Aliganj Kotla Mubarakpur,
Delhi-110003.

... Appellants

VERSUS

1. Gyan Chand Sharma
At C-174, Swaran Jayanti Puram,
Ghaziabad, U.P.

2. Shri Kant Sharma
At House no.20, First Floor,
Aliganj, Kotla Mubarakpur,
New Delhi-110003.

... Respondents

MCA SCJ No. 4/2025
CNR No. DLSE03-001983-2025



Sh. Gyan Chand Sharma
S/o Late Shri Krishna Sharma,
R/o C-174, Swarna Jayanti Puram,
Ghaziabad, Uttar Pradesh.

... Appellant

VERSUS

1. Sh. Shiv Kumar
S/o Late Shri Krishna Sharma,
R/o H. No. 20, Ground Floor,
Aliganj, Kotla Mubarakpur,
New Delhi – 110003.

2. Sh. Shri Kant Sharma
S/o Late Shri Krishna Sharma,
R/o H. No. 20, First Floor,
Aliganj, Kotla Mubarakpur,
New Delhi – 110003.

3. Sh. Yogesh Kumar
S/o Late Shri Krishna Sharma,
R/o H. No. 20, Second Floor,
Aliganj, Kotla Mubarakpur,
New Delhi – 110003.

...Respondents

Date of Institution	:24.02.2025 (MCA SCJ-01/2025)
	:08.10.2025 (MCA SCJ-04/2025)
Date of Reserving Judgment	: 13.05.2026
Date of Judgment	: 08.08.2026

ORDER

1. Vide this order, I shall dispose of, both the abovementioned appeals filed under Order 43 Rule 1 (r) read with Section 104 CPC against the impugned order dated 03.02.2025, passed by Ld. ACJ-cum-CCJ-cum-ARC, South West, Saket Courts, while disposing off the application under Order 39 Rule 2A CPC filed by the plaintiff, in civil suit bearing no. CS SCJ 1007/2024, titled as **Gyan Chand Sharma Vs. Shiv Kumar and Ors.** In the original suit, Gyan Chand Sharma, is the plaintiff who has filed the suit against Shiv Kumar, defendant no. 1; Shri Kant Sharma, defendant no. 2; and Yogesh Kumar, defendant no. 3. During the trial, the defendant no. 2 Shri Kant Sharma has been proceeded *ex-part* by the court.

The appeal bearing no. **MCA 4/25** titled as **Gyan Chand Sharma Vs. Shiv Kumar** has been filed on behalf of plaintiff, namely Gyan Chand Sharma, and the appeal bearing no. **MCA 1/25** titled as **Shiv Kumar Vs. Gyan Chand Sharma** has been filed by defendant no. 1 and 3, namely Shiv Kumar and Yogesh Kumar. For the sake of convenience, the appellant and the respondents in both the appeals, herein shall be referred to as their original status in the original suit.

2. Briefly stated the facts of the suit is that the plaintiff filed the present suit for declaration and issuance of Permanent and Mandatory Injunction against the defendants in respect of the suit property bearing **No.20, Aliganj, Kotla Mubarakpur, New Delhi-110003**. In the said suit, the plaintiff has averred that he is the

real brother of the defendants and the suit property was purchased by their grandfather and in the year 2023, parties decided to construct a three-storey building with stilt parking for residential purpose, but dispute arose between them. Then dispute was resolved and a family settlement deed dated 16.07.2023 was executed and the above said property was partitioned between the parties and as per the said deed, the plaintiff is the owner of the third floor and the defendant No.1 is owner of ground floor and defendant No.2 i.e. Mr. Shri Kant Sharma is the owner of first floor, whereas defendant No.3 is the owner of second floor and the stilt parking remained in the joint possession of the parties. It I further averred that defendants have ganged up against the plaintiff and are not allowing him to use the stilt parking and that the defendants are in the process of constructing a kitchen in the parking in violation of building bye laws. It has been further averred in the plaint that defendants are also not allowing the plaintiff's unhindered ingress and egress through the main gate of the suit property and defendants have put up their own lock at the main gate and have refused to give the key to the plaintiff. Therefore, mainly on these averments, the plaintiff has filed the main suit bearing no. 1007/2024, before the Ld. Trial Court and has sought the decree of declaration, mandatory and permanent injunction as well as money decree against the defendants.

3. Thereafter, on 28.09.2024, Ld. Trial Court, while partly allowing the application for interim injunction under Order 39

Rule 1 and 2, passed an injunction order in favour of plaintiff directing the defendants not to obstruct the plaintiff's ingress and egress to the suit property, i.e., third floor and common areas and to hand over a set of keys to the lock placed on the main gate of the suit property.

4. Then, after the said order, during the trial, plaintiff has filed an application under **Order 39 Rule 2A CPC**, stating that when plaintiff contacted the defendants through WhatsApp and SMS and asked them to comply with the order, defendants did not comply with the order and even put the lock on gate to the parking and on the gate to the roof on the top floor, accordingly, despite this clear order, the defendants continued to disobey by refusing to hand over the key, keeping the locks, and carrying on encroachments on the common areas. Hence, the plaintiff, therefore, filed an application under Order 39 Rule 2A CPC, alleging willful disobedience of the injunction and seeking attachment of the defendants' property and detention in civil prison for contemptuous conduct. The appellant had moved the said application on the ground of willful and deliberate disobedience by the respondents of the injunction order dated 28.09.2024.

5. Thereafter, after taking the reply of the defendants and hearing arguments, impugned order dated 03.02.2025 was passed and Ld. Trial Court has directed the defendants with following order: -

.....In view thereof, the defendants are directed to hand over the keys of the main entrance gate of the suit property, if any manual lock has been installed thereat. In case an electronic lock has been installed, the code of the same be provided to the plaintiff by the defendants. In case the main entrance gate has both the manual and the electronic lock, both the keys and the electronic code be provided to the plaintiff by the defendants. The defendants may not provide the aforesaid set of keys and the entrance code only if their case is that the main entrance gate is not kept locked at any point of time. At this juncture, it is important to point out that the order dated 28.09.2024 was never challenged by the defendants. **Accordingly, the defendants are being granted with a last and final opportunity to make compliance of the aforesaid order.** Further, for the sake of convenience, the manner in which the order is to be complied with by the defendants has also been stated above. Thus, the present application stands disposed of....”

6. Now the aforesaid order dated 03-02-2025 is under challenge under these two present appeals.

7. Now, firstly, the appeal filed by plaintiff, bearing MCA 4/25 titled as Gyan Chand Sharma Vs. Shiv Kumar and the ground of said appeal is being discussed. It is submitted by the plaintiff that the Ld. Trial Court thereby committed a serious error of law in refusing to exercise power vested under Order 39 Rule 2A CPC. Vide present appeal, taking the main grounds of appeal, it is alleged by the plaintiff that:

A. the impugned order suffers from non-application of mind in failing to decide the specific issue of blocking access to the common areas (stilt parking, roof/terrace, water motor metal

frame), despite these being pleaded in detail in the Order 39 Rule 2A CPC application. The order dated 28.09.2024 directed the respondents not to encroach on the common areas of the suit property, but defendants continued to disobey by refusing to hand over the key, keeping the locks, and carrying on encroachments on the common areas. Therefore, the Trial Court completely ignored this aspect of the application under XXXIX Rule 2A by not returning any findings. Therefore, the impugned order is perverse error of law and ought to be set aside.

B. the Ld. Trial court disposed of the application without addressing the plaintiff's explicit prayers for attachment of property and detention of defendants in civil prison as per Order 39 Rule 2A.

C. the omission to consider attachment or detention amounts to refusal to exercise power under Order 39 rule 2A CPC, leaving the plaintiff remediless despite proved disobedience of the order of the court.

D. the impugned order does not decide the lis presented before the court and a mere direction to comply with the earlier order dated 28-09-2025 is no adjudication of the violations complained by plaintiff.

8. The present appeal is also accompanied by the application under Section 5 of the Limitation Act for condonation in delay in filing of present appeal from impugned order dated 03-02-2025, stating that same could not be filed due to fraudulent mis

representation of the defendants that they would comply with the order dated 03-02-2025 and the delay is neither intentional and deliberate.

9. Reply to the present appeal has been filed on behalf of the defendant no. 1 and 3, stating that the appeal has not been filed within the period of limitation and same has been filed with delay of about 8 months. It is further stated that appellant has failed to disclose any cogent and plausible ground for setting aside/modification and variation of the impugned order. The grounds so raised in the appeal are based on false and misleading facts. It is stated that answering defendants/respondents have not committed any disobedience of the order of the court and no case of contempt under Order 39 Rule 2A CPC is made out and Ld. Trial Court has rightly declined to initiate any contempt proceedings. It is prayed that appeal may be dismissed.

10. Also, reply to the application under **Section 5 Limitation Act** has also been filed on behalf of defendants stating that application is not maintainable and plaintiff/appellant has failed to explain any cogent and plausible ground for condonation of delay in filing of present appeal.

11. Now, secondly, the appeal filed by defendants, bearing MCA 1/25 titled as **Shiv Kumar & Ors Vs. Gyan Chand Sharma** and the ground of said appeal is being discussed.

12. It is submitted on behalf of defendants in present appeal

that plaintiff along with the suit has also filed an application under Order 39 Rule 1 and 2 CPC and the same was partly allowed by the Ld. Trial Court dated 28.09.2024, whereby the defendants were directed not to obstruct the ingress and egress of plaintiff in the suit property particularly the third floor and the common areas of the suit property during the pendency of the suit. Further, defendants were also directed to hand over one set of keys of the main entrance gate of the suit property to the plaintiff. It is further stated that defendant no. 1 and 3 / appellants never obstructed the ingress and egress of the plaintiff in the suit property, but appellants were not having an extra key being digital lock put at the main gate of the building. The same fact has been conveyed to the plaintiffs that they can also get the separate gadgets/ instrument installed at the third floor to have unhindered and direct access to the suit property, however instead of doing the same, plaintiff preferred an application under Order 39 Rule 2A CPC claiming that appellants/defendants have violated the order dated 28.09.2024. Thereafter appellants filed the reply to the aforesaid application that they have never disobeyed, breached or violated the order dated 28.09.2024 passed by the Ld. Trial Court and the allegations against the appellant are totally false and baseless. However, the said application under Order 39 Rule 2A CPC, where the grievance of the plaintiff was that he has not been provided with the keys of the main entrance gate as per the order dated 28.09.2024, was disposed of by Ld. Trial Court vide order dated 03.02.2025 where court has directed the defendants that “*defendants are being*

granted with last and final opportunity to make compliance of the aforesaid order i.e. 28.09.2024 and were directed to hand over the keys of the main entrance gate of the suit property, if any manual lock has been installed there at and in case an electronic lock has been installed, the code of the same be provided to the plaintiff by the defendants.”

13. Vide present appeal, taking the main grounds of appeal, it is alleged by the defendants that:

A. that Ld. Trial Court did not appreciate the fact that there has never been any type of hindrance on the part of the appellants to the respondent no. 1 for stopping his access/ingress and egress to the third floor or the common area of the suit property in any manner. Ld. Trial Court also did not appreciate the fact that the appellants have not disobeyed, breached or violated the order dated 28.09.2024 passed by Ld. Trial Court in any manner.

B. that Ld. Trial Court did not appreciate the fact that it is the respondent No. 1/plaintiff, who has not visited the suit property even at once after passing of the order and thus the question of non-handing over of the keys does not arise.

C. that Ld. Trial Court did not appreciate the fact that in the main gate of the building, a digital lock is installed for giving access to each floor and every floor owner has got installed the gadget to their respective floor through some app to open and close the same. It is further submitted that the respondent/plaintiff has not got installed any instrument in his

floor attaching with the said digital lock of main gate which is required for its operation. There is no extra key with the appellants which could be given to the plaintiff. Even when the said instrument was installed, the appellants/defendants had asked the respondent no. 1/plaintiff to contribute for installation charges and get connected the said lock with his floor but he refused to do so.

D. that Ld. Trial Court did not consider the submissions of the appellants that electronic lock has not been installed after the order dated 28.09.2024, but the digital lock is installed much before the filing of the suit and appellants have also filed the invoices for the installation of the same.

14. It is prayed that the impugned order dated 03.02.2025 passed in CS SCJ 1007/2024 titled as Gyan Chand Sharma vs. Shiv Kumar and Ors., while disposing of the application under Order 39 Rule 2A CPC be set aside/modified.

15. Reply to the present appeal has been filed on behalf of the plaintiff stating that defendants have not challenged the order dated 28.09.2024, which was passed by the learned Trial Court in CS SCJ No. 1007/24 titled “Gyan Chand Sharma vs. Shiv Kumar & Ors.” It is stated that the subsequent impugned order dated 03.02.2025 merely ensures and reiterates the compliance of the directions already issued vide order dated 28.09.2024. The said order of 03.02.2025, does not create any fresh rights or obligations but only enforces the earlier order. Without

challenging the substantive and operative order dated 28.09.2024, the present appeal against the compliance order dated 03.02.2025 is not maintainable in law. It is prayed that appeal may be dismissed. It is submitted that the order dated 28.09.2024 has attained finality and the appellants cannot be permitted to circumvent the same by indirectly assailing its compliance order dated 03.02.2025. It is further stated that the appeal does not disclose any error of law or jurisdiction wanting interference. It is prayed that the appeal may be dismissed.

16. I have heard the arguments and perused the record including the impugned order.

17. Before advertng to the facts and circumstances of the case, the provision under Order 39 Rule 2 A needs to be discussed. **Order 39 Rule 2 A CPC:**

“2A. Consequence of disobedience or breach of injunction.

(1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time

if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.”

18. It is settled law that the invocation of contempt jurisdiction under Order XXXIX Rule 2-A of CPC is of a summary and exceptional nature and can be invoked only where there is a clear, unambiguous, and willful disobedience of an order of the Court.

19. The Supreme Court in ***Food Corporation of India v. Sukh Deo Prasad, (2009) 5 SCC 665***, has held that the power exercised by a civil Court under Order XXXIX Rule 2-A of the CPC is analogous to the power to punish for civil contempt under the Contempt of Courts Act, 1971. Consequently, the burden lies heavily on the person alleging violation to establish, by clear, cogent evidence, that the order of injunction has been breached. The standard of proof is necessarily a strict one, leaving no room for doubt, and there is no scope for findings founded on conjecture, surmise or inference.

20. The Supreme Court in ***U.C. Surendranath v. Mambally's Bakery, (2019) 20 SCC 666***, held that disobedience, to attract punitive action under the Rule, must be willful.

21. Before, coming to the facts of the present case, the application under Section 5 of the Limitation Act filed by

plaintiff for condonation of delay in filing the present appeal, needs to be taken up. The plaintiff has stated that said appeal against the impugned order could not be filed within the limitation period, as plaintiff was under the impression that defendants are going to comply with the main injunction order as directed by the court, due to which same was filed after much delay. Considering the reasons given by plaintiff, the same seems to be plausible, and also considering the fact that court needs to be liberal in its approach while deciding the application of limitation as the dispute between parties should be decided on merits, as opposed to the disposal on technical grounds, hence, in the interest of justice, the application under Section 5 Limitation Act filed by plaintiff is allowed and delay in filing the appeal stands condoned. Application under Section 5 stands disposed off.

22. Now appreciating the facts of the case in hand in light of the law discussed, therefore, proceedings under Order 39 Rule 2A are quasi-penal in nature, so willful and deliberate disobedience must be strictly established on the record and it is also clear that mere non-compliance isn't automatically willful. The court while dealing the application under Order 39 Rule 2A must first record a clear finding on whether willful disobedience/breach is proved. If same is proved, the court has discretion on the quantum or mode of action, whereby it could be attachment of property, detention in civil prison or both, according to the gravity of the breach by the violator. While dealing with the application under the said provision, the Court

must examine whether ingredients of wilful disobedience or breach are established or not before disposing of the application and court must return a finding on wilfulness of the breach.

23. The appellate court in appeal need to generally examine that whether the Ld. Trial Court has applied the correct legal test, has considered the evidence of alleged disobedience and whether exercised its discretion judicially. In the present case, the learned Trial Court has failed to exercise the jurisdiction vested in it under Order XXXIX Rule 2A CPC, as once the appellant/plaintiff alleged that the respondents/defendants had deliberately withheld the keys in violation of the injunction and has obstructed the ingress and egress of plaintiff in the suit property, the Ld. Trial Court was required to determine whether there was a willful disobedience of the same. If the answer was in the negative, the application ought to have been dismissed by a reasoned order and if the answer was in the affirmative, the Court was required to consider the statutory consequences contemplated by Rule 2A, i.e., attachment, detention, or any other coercive measure, contemplated by the Rule. In the considered opinion of this court, merely granting another opportunity to comply with the original injunction order, without adjudicating the issue of willful breach, amounts to a failure to decide the application in accordance with law. Therefore, Ld. Trial Court, by merely redirecting the compliance of original injunction order, without recording a finding either way, the Ld. Trial Court arguably failed to exercise the jurisdiction vested in it

under Rule 2A. Also, the appellate court cannot assume this fact, that since the defendants were again directed to comply with the main order of injunction, therefore it means that defendants are guilty of breach of injunction under the said provision. The reason for the same is that Ld. Trial Court has not appreciated the rival contentions of both the parties in order and has not considered the material on record and has not returned any findings on the key issues. **Accordingly, such an order does not constitute a judicial determination of the application under Order 39 Rule 2A CPC and is liable to be set aside.**

24. Now the next question before the appellate court is regarding the scope of appellate interference that whether the matter need to be remanded back to trial court for fresh adjudication or whether the appellate court can itself decide the issue in question.

In an appeal under **Order 43 Rule 1**, the appellate court exercises the same jurisdiction as the trial court, including, *reappreciating evidence, determining questions of fact and law and finally dispose of the matter where the record is complete, i.e., if there is no need for oral evidence, or if the relevant facts are admitted or the dispute is purely legal.* Order 41 Rule 33 CPC gives the appellate court wide power to pass “any order which ought to have been passed” and to make such further orders as the case may require, even if the appeal is confined to part of the order, the appellate court can grant relief between the parties consistent with the whole controversy.

However, in the present case, plaintiff has disputed many contentions of the defendants, for e.g., whether the lock is electronic, whether there are no physical keys, whether defendants offered installation of the electronic device/app and whether the plaintiff refused the defendants. The trial court record is silent on these disputed factual issues. Further if these finding requires oral evidence/cross-examination or not, there might be a possibility that these disputed factual questions may need evidence, which the appellate court is not well-positioned to record. Therefore, in the factual scenario of the case, where the trial court never returned any findings on these issues, the remand allows the trial court, which is the primary fact-finding court, to conduct that exercise properly, with opportunity to lead evidence and even seek local commission/technical inspection, if necessary. Hence, if there is no finding to test in appeal, then the appellate court would effectively be conducting a first instance inquiry, not an appellate review. Therefore, in view of this court, the appellate court should not decide these factual disputes for the first time and matter should be remanded back to the trial court for fresh adjudication.

25. Now coming to the appeal filed by the defendants, it needs to be examined that whether defendants are aggrieved party or not. By the impugned order, Ld. Trial Court did not record any findings on the aspect of willful disobedience or breach by the defendants, also, the Ld. Trial Court did not order the attachment of property or order any civil imprisonment

against the defendant and Ld. Trial Court merely directed them again to comply with the earlier injunction order dated 28.09.2024. The impugned order has merely reiterated the earlier directions passed by the Court dated 28.09.2024 without recording any adverse finding against the defendants and no coercive action has been taken against them.

It is a settled law that a “**person aggrieved**” is the one whose legal rights are adversely affected or against whom an adverse adjudication has been made. A party cannot maintain an appeal merely because it disagrees with the reasoning of the Court or wishes that Court should have dismissed the application of the opposite party. Hon’ble Supreme Court in *Sri V.N. Krishna Murthy & Anr. Etc. Vs. Sri Ravi Kumar & Ors., Civil Appeal Nos. 2701-2704 of 2020*, has held that:

“22. Though it has been vehemently contended before us and also pleaded before the High Court that the judgment and decree of the Trial Court affects the appellants adversely. The appellants have failed to place any material or demonstrate as to how the judgment and decree passed by the Trial Court adversely or prejudicially affects them. Mere saying that the appellants are prejudicially affected by the decree is not sufficient. It has to be demonstrated that the decree affects the legal rights of the appellants and would have adverse effect when carried out.....

23. The appellants have thus failed to demonstrate that they are prejudicially or adversely affected by the decree in question or any of their legal rights stands jeopardized so as to bring them within the ambit of the expression ‘person aggrieved’ entitling them to maintain appeal against the decree.”

In the present case, the pertinent point to note is that the main injunction order dated 28.09.2024 is binding on the defendants, as it has never been challenged and it has attained finality, and the Ld. Trial Court has merely directed the defendants to comply with the said order. Therefore, in the considered opinion of this Court, the defendants have not suffered any legal prejudice by the said order, as the defendants were already bound by the earlier injunction order.

Even otherwise, since the appeal filed by the plaintiff has been allowed and the matter is liable to be remanded back for fresh adjudication on the issues involved in the application, i.e. whether defendants are guilty of any willful disobedience of the injunction order or the said alleged violation was due to any practical impossibility as alleged by defendants in view of the electronic lock installed at the main gate, hence, the contention of defendants, taken in the present appeal, that they have never breached the injunction order and they could not hand over the keys to the plaintiff due to the presence of digital lock at the gate and the alleged non co-operation of the plaintiff with the defendants with respect to the ingress and egress to the suit property, will remain open before the Ld. Trial Court on remand.

26. It is clarified that this order shall not be construed as an expression of opinion on the merits of the defendant's defence/ contention in the proceedings taken under the application under Order 39 Rule 2A CPC or under the present appeal. **Therefore, the appeal filed by the defendants are dismissed being not**

maintainable at this stage, as they are not an aggrieved party, however it is clarified that their contentions on merits are open to be considered by the Ld. Trial Court on remand.

27. In view of aforesaid discussion, the appeal filed by the plaintiff i.e., bearing no. MCA SCJ no. 4/2025 titled as **Gyan Chand Sharma vs. Shiv Kumar** is allowed and the impugned order dated 03.02.2025 passed on the application under Order 39 Rule 2A CPC filed by the plaintiff is set aside and the application under Order 39 Rule 2A CPC is restored to the file of Ld. Trial Court for fresh adjudication in accordance with the law after considering the pleadings, materials on record and submissions of both the parties.

28. Accordingly, the appeal filed by the defendants i.e., bearing no. MCA SCJ No. 1/25 titled as **Shiv Kumar vs. Gyan Chand Sharma** is dismissed being not maintainable and disposed of in view of above order, subject to the condition that all the contentions of defendants are open for consideration before the Ld. Trial Court. Since the matter is remanded for fresh adjudication, no opinion is expressed on the merits of rival contentions.

File be consigned to record room. TCR be sent back to Ld. Trial Court along with copy of judgment/ order of the appeal.

**Announced in the open court
today i.e. 08.08.2026**

(Ajeet Narayan)
JSCC-ASCJ-GJ:South-East
Saket Courts:Delhi