

Order 23

27.09.23

Today is fixed for hearing of the injunction application filed by the plaintiff as well as for hearing of the application u/o 39 Rule 4 CPC filed by the defendants.

Both the parties file haziras. Plaintiff files a petition praying for extending the force of ad-interim order of temporary injunction passed in this suit.

Now both the applications fixed for hearing today are taken up for consideration. Heard the Ld. Advocates for both the parties at length.

On the basis of the submission made by both the parties with regard to the disputes involved between the parties in relation to the two applications under consideration as well as taking into account the report of Engineer Commissioner, it transpires that the said report, upon which the fate of both the applications are dependent to a considerable extent, is to some extent wanting in the following manner :

According to pages 4 & 5 of the said report, it has been observed by the Engineer Commissioner on point no (iii) of the schedule of commission work as under -

*“ **Schedule A property** – The Karibarga near the stair case area has been withdrawn from the other side i.e. from the premises no 69B, proper plugging of the holes needs to be done. The premises no 69A is maintained barring the portion of the intermediary wall. It is partially damaged due to the construction activity of the RCC roof slab by the occupants of 69B Beadon Street.*

***Schedule B property** – Part of the Kari Barga near the staircase area has been replaced by an RCC slab that rests on the intermediary wall that falls within premises no 69A Beadon Street.*

There is a separate 5 inches brick wall erected on the northern side room at 2nd floor, similar wall was necessary to be erected through out the length of the intermediary wall running from south to north as stated in the partition deed. However, it would have been better to transfer the load of the slab on the new construction of the makeshift eastern side brick wall of premises no 69B.

Yes, indeed the load bearing capacity has been destabilized during cutting/disturbance to the old brick wall and we do not know whether any non shrink grouting compound has been used to eliminate the gaps visible at the joint ends.”

From the same, it can be tentatively inferred that the intermediary wall, which falls within the A schedule property belonging to the plaintiff and proforma defendants, has been damaged to some extent on account of construction activities of RCC roof slab in the B Schedule property belonging the defendants and the load bearing capacity of the old intermediary brick wall has been destabilized. According to the Engineer Commissioner, there is necessity to erect a 5 inches brick wall through out the length of the said intermediary wall running from South to North as stated in the partition deed. But the said report is completely silent as to how and in what manner the proposed 5 inches brick wall may be erected without disturbing the intermediary wall in any manner.

In the absence of any such suggestion on the part of the Engineer commissioner regarding the manner of erection of the 5 inches brick wall without disturbing the intermediary wall is not before this court, it is quite difficult to pass any effective order upon the plaintiff's injunction application as well as on the application of the defendants u/o 39 Rule 4 CPC. The Ld. Advocates for both the sides also accede to such difficulty for want of the aforesaid suggestion in the said report.

In view of the above, I am of the considered opinion that the Engineer Commissioner may be directed to submit a supplementary report giving his suggestion in the manner as aforesaid to sort out the above issue. The Ld. Advocates for both the sides also accedes to such proposition.

Accordingly the Engineer Commissioner, who was earlier appointed in this suit, is directed to submit a supplementary report in continuation with his earlier report dtd 5.8.23 in terms of the observations made in the body of this order by 7.12.23.

The defendants are directed to make payment of a sum of Rs. 10,000/- to the Engineer Commissioner at once on account of his fees and other incidental expenses. A fresh writ will be issued along with a copy of this order sheet after payment of fees.

The force of ad-interim order of temporary injunction is extended till the date fixed.

D/C by me

Judge 2nd Bench

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