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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RSA 39/2025

SHAUKAT ALI (SINCE DECEASED) THR LRSAppellant

Through: Mr.Anil Sharma, Mr.Aman Bhardwaj
and Mr.Arpit Sharma, Advocates

versus

KIRORI MAL

.....Respondent

Through: Mr.Harshit Chopra, Advocate for R-
2/MCD alongwith Mr.Dinesh Chand,
AE, Building Department, Shahdara
North Zone, MCD

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

% **11.03.2025**

CM APPL. 11262/2025 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CM APPL. 11263/2025 (Delay in re-filing)

By way of this application, the applicant/appellant seeks condonation of delay in re-filing the captioned appeal.

For the sufficient cause being shown in the application, the same is allowed and the delay of 12 days in re-filing the captioned appeal is condoned.

The application stands disposed of.

RSA 39/2025

1. The present regular second appeal under Section 100 of the Code of



Civil Procedure, 1908 has been filed on behalf of the appellant challenging the judgment dated 07.11.2024 passed in RCA DJ NO. 65/2019 titled as *Kirorimal vs. Shaukat Ali (since deceased) & Ors.*, whereby the learned first Appellate Court set aside the impugned judgment and decree dated 21.08.2019 passed by the learned ACJ cum ARC, in civil suit bearing No.4438/2015 titled as *Kiroli Mal Vs. Shaukat Ali & Anr.* The learned Trial Court had dismissed the said suit seeking decree of mandatory and permanent injunction and damages vide judgment dated 21.08.2019.

2. Learned counsel for the appellant submits that the respondent had filed a suit for mandatory injunction seeking recovery of the possession of the suit property bearing No. A-33/3, Main Gamri Road, Near Dispensary, Ghonda, Delhi-110053 from the appellant. In the said suit, initially, the issues were framed on 16.02.2015 and subsequently, an additional issue was framed on 14.03.2015 to the effect that "*whether the suit of the plaintiff is barred under Order 2 Rule 2 CPC*". The said issue was treated as preliminary issue and vide order dated 15.09.2016, the learned Trial Court dismissed the suit.
3. Aggrieved of this, the respondent filed an appeal bearing RCA No. 89/2016. The learned first Appellate Court, vide order dated 22.03.2017, allowed the appeal party and remanded the matter back to the learned Trial Court to decide issues No. 1 to 3 in respect of remaining portion other than originally given on license in April, 2007 which was allegedly trespassed by the appellant/defendant No.1 somewhere in the year 2014 as well as issues No. 4 and 5 framed on 16.02.2015.



4. The learned Civil Judge again dismissed the suit vide judgment dated 21.08.2019.
5. Learned counsel for the appellant submits that the learned first Trial Court has fallen into error by enlarging the scope of the trial contrary to the directions given by the learned first Appellate Court in RCA No. 89/2016 vide order dated 22.03.2017.
6. Issue notice. Learned counsel for the respondent No.2 accepts notice.
7. On filing PF, issue notice to the respondent No.1 through all permissible modes, returnable on 13.08.2025.
8. Both the parties are directed to file brief written submissions not exceeding five pages [*with reference to the PDF page number of the digital record of the Court*] along with relevant judgments [*with an index of the specific paragraphs of the said decision and the corresponding proposition of law, to be relied on*] within four weeks with a copy to the opposite party at least one week in advance of the next date of hearing.
9. Trial Court Record and Appellate Court Record be requisitioned before the next date of hearing.

CM APPL. 11261/2025 (Stay)

1. The present application under Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the appellant seeking stay of the operation of the impugned judgment dated 07.11.2024.
2. Learned counsel for the appellant submits that there are serious errors in the judgment passed by the learned first Appellate Court. It is submitted that the respondents have already filed the execution and if



the stay is not granted, the appellant shall suffer an irreparable loss.

3. Issue notice. Learned counsel for the respondent No.2 accepts notice and seeks time to file the reply
4. Let the reply be filed.
5. On filing PF, issue notice to the respondent No.1 through all permissible modes, returnable on 13.08.2025.
6. In the meantime, the learned Executing Court is requested to defer the date beyond the date fixed by this Court.

DINESH KUMAR SHARMA, J

MARCH 11, 2025

Dy/smg..