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

+ CS(OS) 150/2010 & IAs. 5256/2013, 342/2014, 275/2018,
3501/2018, 4819/2018 and 14798/2018

KAMAL KUMAR NEWAR Plaintiff
Through: Mr.Pramod Kr. Seth, Adv.

versus

NAND KUMAR NEWAR & ORS
Defendants
Through: Mr.M. M. Kalra and Ms.Sonali
Kumar, Advs. for D-1
Mr.Avneesh Garg and Mr.M. T.
Reddy, Advs. for D-3 & 4

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
ORDER
% **18.11.2019**

I.A. 275/2018

1. This is an application filed by the defendant nos. 3 and 4 under Order XXXIX Rule 2A CPC for violation of order dated 15th April, 2014 by defendant no.1.
2. Two submissions have been made by Mr.Avneesh Garg, learned counsel for the defendant nos. 3 and 4 inasmuch as after the status quo order has been passed, the defendant no.1 has leased out the property in question to a third party. That apart, it is the submission that the construction has been made by the defendant no.1 on the property concerned. Mr.M. M. Kalra, learned counsel for the defendant no.1,

states that the portion of the terrace of the property in question has been leased out to Tower Witson India Pvt. Ltd. He concedes to the fact that in view of the status quo order, the same could not have been done without the permission of the Court. He states that the corrective steps shall be taken by the defendant no.1 in that regard. On the submission no.2 of Mr.Garg, Mr.Kalra states even though the stand has been taken in the reply that no construction is being made by the defendant no.1, the construction which has been effected on the plot in question is as a remedial measure because of change of environmental norms as there is a ban on usage of coal. I may note that the Local Commissioner who visited the property has in para 4, 5 and 6 of the report, stated as under:-

“4. That it is most respectfully submitted that the undersigned instructed the appointed photographer to take photographs of the entire suit property in order to verify whether construction was being carried out or any fresh construction had been carried out in the suit property. That on inspection, the undersigned established that fresh construction had been carried out in the suit property but there was no ongoing construction being carried out on the suit premises at the time of arrival of the undersigned. However, there were a number of freshly constructed structures in the suit property that were incomplete and raw materials for their completion were lying around the suit property.

5. That on inspection, the undersigned observed a number of permanent structures that appeared to have been newly constructed: -

1) A 2.5 feet ground elevation in a specific area of the suit property has been made, admeasuring

about 145 feet x 28 feet;

- 2) Existing trees have been cut down;*
- 3) Tracks for trolley movement have been installed on the newly; constructed elevated ground;*
- 4) Elevations for installing pillars on the side of the abovementioned tracks admeasuring about 1-1.5 feet in height;*
- 5) Existing furnace structure along with its shed situated at the back of the suit property is broken;*
- 6) A new structure for building a furnace is under construction;*
- 7) Various raw materials are lying in the Suit Property which seem to having been used for construction purposes such as Steel Pillars, Trolley Tracks, Shed Tins, Angles (for resting/ installing sheds).*

6. That after inspecting the Suit Property and taking photographs, the undersigned inquired Mr. D.K. Rai, Manager of the Suit Property, if any new construction is being carried out in the suit premises. Mr. D.K. Rai confirmed that construction is being carried out in the suit property and that materials produced in the Suit Property are used for the purposes of the carrying out the construction. The undersigned also inquired a few workers on the Suit property at the time and they confirmed that construction is going on slowly and gradually at the Suit Property.”

3. From the above, it is noted that even the Local Commissioner had found construction has taken place and, in fact, Mr.D. K. Rai,

Manager of the said property, has confirmed that the construction is being carried out in the suit property.

4. Let an affidavit along with the site plans showing the site as was existed on the date when the status quo order was passed and the site as existing today be filed by the defendant no.1 within four weeks from today.

5. Response thereto, if any, be filed by the defendant nos. 3 and 4 within four weeks thereafter.

6. List the application for hearing on 4th March, 2020.

Dasti.

V. KAMESWAR RAO, J

NOVEMBER 18, 2019/bh