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

\+ RSA 103/2023, CM APPL. 29557/2023, CM APPL. 29559/2023,

PRATAP NARAIN VERMA ..... Appellant
Through: Mr. Mohd Zohaib, Advocate

versus

BHARAT BHUSHAN GUPTA & ANR. ..... Respondents
Through: Mr. Arun Mohan, Sr. Advocate with Mr. V.K. Gupta, Sr. Advocate with Mr. Sanjeev Mahajan, Mr. Sakal Bhushan, Ms. Ruchira Gupta and Ms. Harshita Sharma, Advocates for R-1

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% 11.12.2023

CM APPLs. 29558/2023, 61862/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present applications stand disposed of.

CM APPL. 61804/2023 (For early hearing)

1. This is an application filed by the Appellant for early hearing in this matter by the Appellant.

2. The learned counsel for the Respondent states that he has no objection to the relief sought.

3. Accordingly, the application is allowed.

RSA 103/2023

1. The learned counsel for the Appellant states on instructions from the

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Appellant, who is present in Court, that the Appellant is in possession only of the rooms marked as ‘C’ and ‘D’. He refers to the sketch map available at page 92 of this paper book.

1.1. He states that the Appellant has no concern with the room marked ‘A’ as well as the area marked ‘B’ including the entire open area located in Plot No. RZ-28, Indira Park Extension, Near Hanuman Mandir, Uttam Nagar, New Delhi (‘suit property’); with reference to the sketch mark.

1.2. He states, he has no objection if a Local Commissioner is appointed to verify this factual situation. He states that he is making the submissions in order to justify that the Appellant’s liability to pay mesne profits should be limited to the mesne profits awarded by the Trial Court and the Appellant should not be made liable for the mesne profits, which are payable by Respondent No. 2.

1.3. He states on instructions from the Appellant that room marked ‘A’ as well as the area marked ‘B’ including the open area is all lying vacant and an Appellant has no objection, if the physical possession of the said areas is recovered by the Respondent No. 1 herein.

2. The learned senior counsel for Respondent No. 1 states that a Local Commissioner be appointed forthwith, at the cost of Respondent No. 1 and the fee of Local Commissioner shall abide by the final outcome of this appeal.

3. Mr. Vishnu Sharma, Advocate (Chamber No. 379, Block-II, Delhi High Court, Ph.No. 9871705230, E-mail ID vishnusharmalawyer@gmail.com) who is present in Court, has been appointed as a Local Commissioner to visit the suit property with the sketch plan filed at page 92 of this paper book.

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3.1 He will be entitled to take assistance of a draftsman to draw out a site plan of the subject property as per scale, at the site.

3.2 The Local Commissioner shall identify room ‘C’ and ‘D’, which is in possession of the Appellant herein on the site plan; and handover the possession of the remaining area at the site to Respondent No. 1 or his authorised representative. The remaining area includes room marked ‘A’ as well as the area marked ‘B’ including the entire open area in the suit property.

3.3 In order to secure the room marked at ‘A’ as well as the area marked ‘B’ including the open area, the Respondent No. 1 will be at liberty to install appropriate fencing to secure his possession and protect from any further encroachment.

3.4 As per the sketch plan (at page 92) there is one gate on the eastern boundary for the suit property. The Respondent No. 1, while fencing off the remaining area to be secured in his possession, will simultaneously take steps to provide access to the room nos. ‘C’ and ‘D’ in a straight line. This passage will run from room no. ‘C’ parallel to the southern boundary towards the existing gate on the eastern boundary. This passage will be of a width up to five (5) feet running from room no. ‘C’ till the existing gate, which is located at the eastern boundary.

3.5 This proposed passage to room no. ‘C’ will be outlined on the site plan, drawn by draftsman under the supervision of the Local Commissioner (‘site plan’). The remaining area marked at ‘A’, ‘B’ and the open area shall be enclosed by appropriate fencing and physical possession shall vest with Respondent No. 1. The location of the proposed fencing for securing the area in possession of Respondent No.1 will also be outlined on the site plan.

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3.6 The Local Commissioner will be at liberty to use drone photography to capture the existing site status.

3.7 The Local Commission's Report be filed within two (2) weeks.

3.8 To sum up, the Local Commissioner with the assistance of the draftsman will prepare a site plan showing locations of room nos. A, C and D, the open area including area marked 'B'. The proposed passage from room 'C' to the existing gate, will be demarcated using the legend of a broken line. The Respondent No.1 will construct a fencing on this broken line using barbed wire (or metro sheet). The Respondent No.1 will be at liberty to construct a fencing barbed wire (or metro sheet) for the remaining area in its possession, unless a boundary wall already exists. The Local Commissioner will demarcate the proposed area of fencing as well using the legend of a broken line on the site plan.

3.9 The said site plan will be handed over by the Local Commissioner to Appellant and Respondent No.1 within three (3) days. After the site plan is handed over to Respondent no. 1, the Respondent No. 1 will be at liberty to carry out the said fencing by barbed wire (or metro sheet) within one (1) week thereafter.

4. With the consent of the parties, the date of Local Commission is fixed as 16.12.2023 at 11:00 A.M. No further notice will be required to be served on parties, since the order has been passed in the presence of the parties.

5. The fee of the Local Commissioner is initially fixed at Rs. 75,000/- to be paid by the Respondent No. 1 at the end of the Commission on 16.12.2023.

6. For the interregnum, the directions issued to the Appellant at paragraph 1.2 of the order dated 30.11.2023 is put in abeyance until the next

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date of hearing. The Appellant is directed to ensure that the undertaking given at paragraph 1.1. and paragraph 2 of the said order is complied with within the time granted by this Court.

7. The learned counsel for the Appellants is directed to place on record the copy of the civil suit No. 33/2023 filed by him during the pendency of these proceedings within a period of one (1) week.

8. List on 23.01.2024.

9. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 11, 2023/*rhc/sk*

Click here to check corrigendum, if any

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