

# Seth Surjamull & Seth Babulal Dharmada ... vs Sh. Ram Gopal & Sons & Ors on 15 March, 2023

**Author: Prateek Jalan**

**Bench: Prateek Jalan**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 290/2017

SETH SURJAMULL & SETH BABULAL DHARMADA  
AND DHARMIK TRUST & OTHERS

.....

Through: Mr. Raman Kapur,  
Advocate with Mr. Anand M.  
Mishra, Advocate (Enrolment  
D/273/2007, Mobile  
9871699591).

versus

SH. RAM GOPAL & SONS & ORS

..... Defe

Through: Mr. Mukesh Gupta, Standing  
Counsel for MCD.  
Ms. Anchal Tiwari, Advocate  
D-78.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 15.03.2023 I.A. 7181/2017 (application under Order XXXIX Rule 2A of the CPC)

1. This is an application under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908, alleging violation of an ad interim order dated 19.06.2017 by defendant Nos. 1 to 126.

2. By the aforesaid order, following ad interim directions were passed:-

"13. It is, accordingly, directed that till the next date of hearing, the defendants directly or through their representatives, agencies or assignees are restrained from carrying out any construction activity in the Katra Dhulia without appropriate sanction of a building plan. Defendant North Delhi Municipal Corporation is directed to ensure compliance of the building byelaws."

3. The present application was filed later in June, 2017, alongwith I.A. 7180/2017. The applications were listed before the Vacation Bench on 28.06.2017, when I.A. 7180/2017 was disposed of with a direction upon the concerned SHO to ensure compliance of the work stop notice dated 23.06.2017 issued by North DMC, as well as the injunction order dated 19.06.2017.

4. The suit was decreed on 27.09.2018 with the following order:-

"1. The present suit is filed on account of a fire that had broken out in the shops at Katra Dulia, situated in the suit property. The following reliefs have been sought in the present suit:-

(i) Pass a decree of permanent injunction, thereby restraining the defendants, their representatives, agents, assigns, etc. from undertaking any work, of any nature whatsoever, at the suit property falling in Katra Dhooliyanwala, more specifically detailed in para 3 above:

(ii) Pass a decree of permanent injunction, thereby restraining the defendants, their representatives, agents, assigns, etc. from occupying any portion of the suit property falling in Katra Dhooliyanwala, more specifically detailed in para 3 above."

2. The learned senior counsel appearing for the plaintiffs states that the property is more than 100 years old and on account of a fire that had broken there is a possibility of the structure being damaged. He submits that the defendants who are statutory tenants in the premises are trying to carry out renovation work in the garb of repairing the building which is extremely dangerous and is also contrary to the building bylaws.

3. After some arguments, the learned counsel appearing for some of the defendants/tenants strenuously state that without prejudice to their rights and contentions; including maintainability of the present suit; and without admitting any claims made in the present suit they will not carry out any constructions in the building in their respective areas/shops in any form without complying with the law including seeking all necessary permissions from the Municipal Corporation, if necessary. They submit that they will also not carry out any additional construction in the garb of renovation.

4. I have perused the additional affidavit filed by North Delhi Municipal Corporation dated 25.09.2018. I have also been shown a report from the Fire Fighting Department dated 24.05.2017.

5. In my opinion, given the facts and circumstances of the case, a decree can be passed against the defendants in terms of the submissions made by some of the learned counsel for the defendants. This is so as none of the defendants can claim any rights to carry out any additional construction in the property which is contrary to law. All such additional constructions would require appropriate approval of the concerned Municipal Corporation.

6. Accordingly, a decree is passed in favour of the plaintiffs and against the defendants/tenants in terms of the above statements, stated in paragraph 3 above.

7. The learned senior counsel for the plaintiffs submits that in view of the above nothing further survives in the present suit.

8. The suit stands disposed of as above. All pending applications, if any, also stand disposed of."

5. Mr. Raman Kapur, learned Senior Counsel for the plaintiff- applicant, submits that the defendants are still liable to be held in contempt for non-compliance of the order dated 19.06.2017, between the date of the said order i.e. 19.06.2017 and the date of decree.

6. Learned counsel for the plaintiff-applicant is directed to file an additional affidavit within 4 days, stating the nature of the contempt alleged, and against whom.

7. List on 23.03.2023.

PRATEEK JALAN, J MARCH 15, 2023/'vp'/