

Rajeev Jain And Anr vs Gulshan Kumar Jain Through Lr on 2 April, 2025

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 2ndApril, 2025

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CM(M) 3397/2024

RAJEEV JAIN AND ANR

Through:

Mr. Vishvanath Kumar
Kanniappan, Advocates

versus

GULSHAN KUMAR JAIN THROUGH LR

Through: Mr. Ravi Dev Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM(M) 3397/2024& CM APPL. 19251/2025

1. Petitioners are defending a civil suit which had been filed by their father Mr. Gulshan Kumar Jain (since deceased).

2. Admittedly, the petitioners herein have also filed a suit for partition and both such suits are pending before one and the same Court and the matters are now fixed for final arguments on 04.04.2025.

3. As far as the Civil Suit No. 204/2024 filed by Mr. Gulshan Kumar Jain (since deceased) is concerned, the learned Trial Court while considering an application moved under Order XXXIX Rule 10 read with Order XV A CPC directed the defendants therein to deposit occupational charges @ Rs. 16,500/- per month w.e.f. January, 2024 till conclusion of trial.

4. Their limited grievance is that no such direction could have been made as they have also sought partition of the property in question as well and have substantive right in such property.

5. Such order is dated 24.07.2024.

6. When the present petition was taken up by this Court on 13.09.2024, this Court had, merely, directed that the impugned order, insofar as it related to direction regarding deposit of occupational charges, shall remain in abeyance.

7. Petitioners have now moved the present application seeking early hearing for the reason that the cases are fixed for final arguments and if the stay is not granted, the present petition would become infructuous.

8. Learned counsel for respondent appears on advance notice and submits that no process fee was ever filed by the petitioners to get them served in the present matter. So much so, according to him, the respondents had never authorised any Mr. Shekhar Gupta, Advocate to represent them in the present matter on the last date i.e. on 24.02.2025

9. However, leaving aside the above, he submits that the petitioners have, deliberately, concealed one vital fact. It is contended that when said suit was taken by learned Trial Court on 11.09.2024, the defense of defendants was struck off but for the reasons best known to the defendants, such fact was never revealed to this Court on 13.09.2024.

10. Copy of such order dated 11.09.2024 has also been shown to the Court and the same has been taken on record.

11. He thus, submits that direction has been obtained from this Court, by concealing a vital fact.

12. Mr. T Kanniappan, Learned counsel for petitioner submits that he is in no position to apprise as to why such fact was not highlighted in the petition. He, however, submits that there is a change in the counsel and, thus, they have, now, appeared before this Court, in the present matter. Curiously, he himself is not aware of any such order, though, fact remains such order dated 11.09.2024 has been shown and placed on record. Any such petition whereby any litigant seeks invocation of supervisory powers under Article 227 of Constitution of India must disclose all the facts.

13. The above said order makes it very clear that the defense of the defendants (petitioner herein) was struck off by the learned Trial Court on 11.09.2024. In such a situation, it was incumbent upon them to have themselves highlighted the same when this Court took up the matter on 13.09.2024.

14. Though the petitioners are seeking early hearing in the matter, fact remains that the present petition needs to be dismissed for not disclosing such vital subsequent fact. Interesting, such order dated 11.09.2024 has not even been assailed so far. Additionally, since both the suits are already at the stage of final arguments, this Court does not find any compelling reason to invoke its supervisory powers.

15. The petition stands dismissed.

16. However, it is clarified that this Court has not given any observation on merits of the case and learned Trial Court, would dispose of the suits, without being influenced by the present order.

(MANOJ JAIN) JUDGE APRIL 2, 2025/sw/shs