

Niharika Ghosh @ Niharika Kundu vs Shankar Ghosh & Anr. on 2 April, 2025

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 2nd April, 2025

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CM(M) 431/2023, CM APPL. 60590/2023 & CM APPL. 12288/2023
NIHARIKA GHOSH @ NIHARIKA KUNDU

Through: Mr. O.P. Gulabani, Advocate also
with petitioner in person.

versus

SHANKAR GHOSH & ANR.

Through: Mr. Gobind Malhotra, Mr.
Singh and Ms. Namrata M
Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner has filed a suit for permanent and mandatory injunction against her husband and mother-in-law (respondents herein).
2. The relief sought in such suit is, merely, with respect to direction for restraining them from keeping and feeding stray/street dogs in the property in question where she herself is also, reportedly, residing.
3. Admittedly, the plaintiff is residing at first floor and defendants reside at ground floor of same property i.e. 62-D, Humayunpur, Safdarjung Enclave, New Delhi.
4. During pendency of the abovesaid suit, the plaintiff had moved an application under Order XXXIX Rule 1 and 2 CPC seeking interim injunction and such application was dismissed by the learned Trial Court vide order 18.04.2022.
5. Feeling aggrieved, the plaintiff filed an appeal and such appeal was also dismissed by the Court of learned Senior Civil Judge on 07.02.2023.
6. Such order is under challenge in the present petition.
7. However, thereafter, there is subsequent development in the matter, as on the basis one more application filed by the plaintiff under Order XXXIX Rule 1 and 2 CPC, the learned Trial Court vide order dated 16.11.2023 has granted some respite to the plaintiff, by directing as under:-

"9. In view of the above, the triple test of prima facie case, balance of convenience and irreparable injury has been satisfied by the plaintiff in its favour. Defendants are hereby restrained from feeding/tending/keeping stray dogs and their puppies in the common passage, staircase and landing near the staircase of property bearing no.62D, Humayun Pur, Safdarjung Enclave, New Delhi, and are directed to ensure that the stray dogs and their puppies do not enter/occupy the aforesaid common area, till the pendency of this suit. Accordingly, application u/O XXXIX Rule 1 & 2 CPC stands allowed.

10. Defendant no. 1 is further directed to comply with the guidelines passed by the Hon'ble Delhi High Court in Dr Maya D. Chablani v. Radha Mittal & Ors. for the well-being and proper feeding/tending of the stray dogs while exercising compassion and his right to feed community dogs.

11. The present order shall not affect any kind of proceedings in any competent court. Nothing in this order shall be construed as the court's observations on the merits of the case."

8. Learned counsel for respondents/defendants, when asked, submitted that he would comply with the directions contained in the abovesaid order but also supplements that the plaintiff has already filed an application under Order XXXIX Rule 2A CPC. He submits that he would make appropriate statement in this regard before the learned Trial Court, provided the abovesaid application is also withdrawn by them, unconditionally.

9. In view of the subsequent order passed by the learned Trial Court, the grievance of the plaintiff has been, to a very large extent, taken care of.

10. It will, therefore, be appropriate to proceed ahead with the trial, so that the issue is resolved, for once and all.

11. It has been jointly informed by learned counsel for both the parties that the next date before the learned Trial Court is 05.05.2025 for framing of issues.

12. Learned counsel for both the parties also, in all fairness, submit that they would extend their best co-operation and assistance to the learned Trial Court so that the abovesaid suit is disposed of, as expeditiously as possible.

13. Keeping in the mind aforesaid subsequent development whereby the interim order has been passed in favour of the plaintiff, this Court does not find any further reason to invoke its supervisory powers and, resultantly, the petition is disposed of in aforesaid terms.

14. Needless to say, since a very short point is involved in the abovesaid suit and the parties are also closely related, learned Trial Court, keeping in mind the abovesaid facts, would give requisite priority to abovesaid suit so that it is disposed of as expeditiously as possible.

(MANOJ JAIN) JUDGE APRIL 2, 2025/ss/js