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

Date of Decision: 23.01.2025

\+ **RC.REV. 273/2024 & CM APPL. 58763/2024**

RAMESHWARI .....Petitioner

Through: Dr. Janak Raj Rana and Mr. Vinod Patidar, Advs.

versus

AJAY PAL SINGH .....Respondent

Through: Mr. Sudhir Naagar, Ms. Rajshree Singh and Mr. Piyush Aggarwal, Advs.

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed on behalf of the Petitioner/tenant impugning the order dated 29.08.2024 passed by the learned ACJ-cum-CCJ-cum-ARC South East, Saket Courts, New Delhi [hereinafter referred to as "the Impugned Order"]. By the Impugned Order, the Application for leave to defend filed by the Petitioner/tenant has been dismissed and the Petitioner/tenant was directed to vacate the tenanted premises i.e., shop on ground floor of property number 289, Punjabi Bazar, Gurudwara Road, Kotla Mubarakpur, New Delhi 110003, measuring 25 feet X 24 feet (shown in red colour in the site plan annexed along with the Eviction Petition) [hereinafter referred to as "subject premises"].

2. Learned Counsel for the Petitioner has made the following

contentions. In the first instance, he submits that the Respondent/landlord is in the habit of filing multiple litigations. He submits that even previously, four other matters have been filed seeking vacation of the Petitioner/tenant from the subject premises.

2.1 Secondly, it is contended that the need as set out by the Respondent/landlord is not *bona fide*. He submits that there is no requirement of the daughter-in-law of the Respondent/landlord to set up a boutique. Learned Counsel for the Petitioner/tenant submits that the subject premises is in a dilapidated condition hence, the subject premises cannot be used for running the business. Therefore, the need of the Respondent/landlord is not *bona fide*.

2.2 Thirdly, a challenge has been laid to the memorandum of family settlement, more specifically, with respect to the site plan attached therewith. It is stated that the memorandum of family settlement was executed in the year 2020 while the site plan is of March, 2021 and thus the settlement is forged and fabricated.

2.3 Lastly, it is contended that there are other alternate suitable accommodations being 1640 Kotla Mubarakpur New Delhi [hereinafter referred to as "Property No. 1640"], 289 Punjabi Bazar, Gurudwara road, Kotla Mubarakpur [hereinafter referred to as "Property No. 289"] and property no. 1662/1, Bapu Park, Kotla Mubarakpur [hereinafter referred to as "Property No. 1662/1"] available with the Respondent/landlord. Thus, it is contended that the Impugned Order suffers from an infirmity.

3. Learned Counsel for the Respondent/landlord, on the other hand, submits that the Impugned Order has dealt with adequately all the grounds

that have been raised by the Petitioner/tenant. He submits that the landlord-tenant relationship between the parties is not in dispute and neither has the ownership been challenged by the Petitioner/tenant. In addition, it is explained by the learned Counsel for the Respondent/landlord that the subject premises was previously jointly owned by the Respondent/landlord and his two brothers. It is contended that the brothers of the Respondent/landlord have since expired and that their legal heirs are now the joint owners of the subject premises along with the Respondent/landlord.

3.1 Learned Counsel for the Respondent/landlord contends that the eviction petitions which were filed earlier were filed by the Respondent/landlord and his brothers jointly and that the grounds taken in the previous eviction petitions have not been taken in the present Eviction Petition, it is explained that those eviction petitions were entirely based on separate causes of action.

3.2 In addition, so far as concerns the challenge to the memorandum of family settlement dated 29.12.2020 [hereinafter referred to as "MOFS"] as well as to the site plan dated 17.03.2021, learned Counsel for the Respondent makes two submissions. He submits that the same challenge was raised before the learned Trial Court and has been adequately dealt with in paragraph 27 to 31 of the Impugned Order. He submits that the learned Trial Court has given a finding that the Respondent/landlord and the two co-owners have stated on affidavit that they affirm the contents of this MOFS, thus there can possibly be no challenge to the terms of the settlement. He seeks to rely upon the affidavits filed by the co-owners which were filed before the learned Trial Court confirming the MOFS.

3.3 Secondly, it is contended that as far as concerns the *bona fide* need of the Respondent/landlord, the son of the Respondent/landlord got married in the year 2018 and the need is for the daughter-in-law of the Respondent/landlord who wishes to set up a ladies' garment boutique. Learned Counsel for the Respondent/landlord submits that even the son of the Respondent is unemployed.

3.4. Learned Counsel for the Respondent/landlord contends that there is no suitable alternate accommodation which is available with the Respondent/landlord. So far as concerns Property No. 1640, it is contended that some portion which thereof is under the occupation of the Respondent/landlord and is being used for residential purpose. The remaining part of the Property No. 1640 has either been let out to other tenants or is under occupation of other family members/ co-owners. Learned Counsel further submits that Property No. 289 and Property No. 1662/1 have fallen into the shares of the other co-owners pursuant to the MOFS and are not available with the Respondent/landlord.

4. The examination by a Court in a Revision Petition is limited and circumspect. The Supreme Court in ***Abid-ul-Islam v. Inder Sain Dua***[1], has held that the jurisdiction of this Court is only revisionary in nature and limited in its scope. The Supreme Court while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided in the said Act has held that this is a conscious omission. The High Court is not expected to substitute and supplant its view with that of the learned Trial Court, its only role is to satisfy itself on the process adopted. Thus, the scope

[1] (2022) 6 SCC 30

of revisionary jurisdiction of this Court has been limited to examine if there is an error apparent on the fact of the record or absence of any adjudication by the learned Trial Court, and it is only then should the High Court interfere. The legislature has consciously removed the two stages Appeal which existed priorly. The Supreme Court has also cautioned from converting the power of superintendence into that of a regular first Appeal under revisionary jurisdiction. The relevant extract of the ***Abid-ul-Islam*** case is as follows:

> *"**Scope of revision***
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> *"22. We are, in fact, more concerned with the scope and ambit of the proviso to Section 25-B(8). The proviso creates a distinct and unequivocal embargo by not providing an appeal against the order passed by the learned Rent Controller over an application filed under sub-section (5). The intendment of the legislature is very clear, which is to remove the appellate remedy and thereafter, a further second appeal. It is a clear omission that is done by the legislature consciously through a covenant removing the right of two stages of appeals.*
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> *23. The proviso to Section 25-B(8)* ***gives the High Court exclusive power of revision against*** *an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance.* ***Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record****, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.*
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> *xxx xxx xxx*

> *25. The aforesaid decision has been recently considered and approved by this Court in* Mohd. Inam *v.* Sanjay Kumar Singhal [Mohd. Inam *v.* Sanjay Kumar Singhal, *(2020) 7 SCC 327 : (2020) 4 SCC (Civ) 107] : (SCC pp. 340-41, paras 22-23)*
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> > *"22. This Court in* Sarla Ahuja *v.* United India Insurance Co. Ltd. [Sarla Ahuja *v.* United India Insurance Co. Ltd., *(1998) 8 SCC 119] had an occasion to consider the scope of proviso to Section 25-B(8) of the Delhi Rent Control Act, 1958. This Court found, that though the word "revision" was not employed in the said proviso, from the language used therein, the legislative intent was clear that the power conferred was revisional power. This Court observed thus : (SCC p. 124, para 11)*
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> > *'11. The learned Single Judge of the High Court in the* ***present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction****. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made,* ***but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.****'*
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> > ***It could thus be seen, that this Court has held, that the High Court while exercising the revisional powers under the Delhi Rent Control Act, 1958 though could not reassess and reappraise the evidence, as if it was exercising appellate jurisdiction, however, it was empowered to reappraise the evidence for the limited purpose so as to ascertain whether the conclusion arrived at by the fact-finding*** *court is wholly unreasonable.*
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> [Emphasis supplied]

5. This Court has examined the Impugned Order. So far as concerns the aspect of multiple litigations, given the fact that the Petitioner/tenant has himself affirmed that each of these litigations filed previously were not filed on the same ground as that of the grounds which have been raised in the Eviction Petition in which the Impugned Order has been passed this contention is without merit. There is no bar on a landlord filing more than one Petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958.

Reliance in this regard is placed on the judgment passed by a Coordinate Bench of this Court in ***Sanjeev Sood & Ors. v. Ravi Kanta Madhok***[2] wherein the Court has held that *bona fide* need of the landlord is a recurring cause and therefore the landlord is not precluded from instituting fresh proceedings. The relevant extract of the ***Sanjeev Sood case*** is reproduced below:

> *"9. As regards the plea of res-judicata that as an earlier eviction petition was decided against Smt. Ravi Kanta Madhok between the same parties it may be noted that with time the requirement of Smt. Ravi Kanta Madhok and members of family dependent on her has increased. Her grandson has now grown up.* ***Further an eviction proceeding under the Rent Act on the ground of bonafide requirement or non-payment of rent is a recurring cause and therefore the landlady is not precluded from instituting fresh proceedings. In an eviction petition on the ground of bonafide requirement the genuineness of the said ground is to be decided on the basis of requirement on the date of suit. Further even if suit for eviction on the ground of bonafide requirement is filed and is dismissed, it cannot be held that once a question of necessity is decided against the landlady she will not have a bonafide and genuine necessity ever in future. In the subsequent proceedings if such claim is established by cogent evidence adduced by the landlord, decree of possession could be passed. (See N.R. Narayan Swamy v. B. Francis Jagan (2001) 6 SCC 473; K.S. Sundararaju Chettiar v. M.R. Ramachandra Naidu (1994) 5 SCC 14 and Surajmal v. Radheyshyam (1988) 3 SCC 18)."***
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> [Emphasis Supplied]

6. In any event, the principles of *res judicata* will not apply to this contention as concededly the requirement of the Respondent/landlord and his brothers as explained above, in the earlier eviction petitions were for different requirement.

7. The aspect of availability of suitable alternate accommodations has been adequately dealt with by the learned Trial Court. The learned Trial

[2] 2015 SCC OnLine Del 9196

Court has examined the contentions qua each of the three properties mentioned by the Petitioner/tenant and has found that neither of these are available. Paragraph 51 of the Impugned Order which deals with each of these properties is reproduced below:

> *"51. Whether the properties are available and suitable as averred by the respondent"*
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> *i)* ***1640 Kotla Mubarakpur New Delhi*** *:- In the affidavits filed on behalf of the respondent there is no submission that any of the portion of this property is lying vacant or is suitable for the purposes of a garments shop cum boutique.* ***The petitioner along with his family is residing in the second floor of property. The other floors except the ground floor are stated to be in possession of other family members of the petitioner****. This has not been denied by the respondent in her application seeking leave to defend. The petitioner has averred that there are rooms in the back portion of the property which have been let out for residential purposes. It is submitted that the said rooms being residential in nature and also in the backside with very narrow access from the front gully are not suitable for running the said business. The front portion on the ground floor are jointly owned by the petitioner and other family members and rent proceeds out of the same are being equally distributed between him and other co - owners. The space is being used as offices permissible in residential area and have already been let out to other tenants.* ***These pleadings of the petitioner have not been contested by the respondent. Further even positively no assertion has been made that any portion of this property is lying vacant and suitable for the purpose of starting a garments sale shop and boutique****.*
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> *ii)* ***289 Punjabi Bazar, Gurudwara Road, Kotla Mubarakpur*** *:- The respondent has averred that the petitioner is in possession of four shops and one shop/office on first floor after evicting other tenants. The petitioner has clearly explained that the other shops have fallen into share of the other co - owners.* ***In the foregoing paragraphs it has been held that the respondent cannot challenge the family settlement entered into between the family members of the petitioner. No material has been placed on record by the respondent to show that the petitioner is in possession of any of the shops. A vague and bare averment has been made regarding the same and the same does not raise a triable issue****.*
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> *iii) Property No. 1662/1, Bapu Park, Kotla Mubarakpur :-* ***It has been clearly stated by the petitioner that this property has not fallen into his share by virtue of the family settlement****."*

[Emphasis Supplied]

8. The learned Trial Court has dealt with each one of the properties which are stated to be available by the Petitioner/tenant. It is contended that the Respondent/landlord and his family members are residing in the second floor of Property No. 1640 and the other floors, except ground floor, of this property are in the possession of other family members, thus are not available for use. The front portion of the ground floor is jointly owned by the Respondent/landlord and his other family members and the space is being used for offices permissible in residential areas and are occupied by other tenants.

8.1 Property No. 289 is owned by other co-owners/other family members of the Respondent/landlord and since this space does not belong to the Respondent/landlord, hence is not available for his use. The same is the case *qua* Property No. 1662/1 which is also not owned by the Respondent/landlord.

8.2 Thus, quite clearly, neither of these properties are available with the Respondent/landlord for the use as is set out in the Eviction Petition.

9. The provisions of Section 14(1)(e) of the Act have been provided with care by the legislature, not only is the accommodation to be 'alternate', but it is also required to be suitable. The Supreme Court in the ***Shiv Sarup Gupta* v. *Mahesh Chand Gupta***[3] has held that for an Eviction Petition to fail on the ground of availability of alternate suitable accommodation, the availability of another accommodation must be suitable and convenient in all respects as

[3] (1999) 6 SCC 222

the tenanted accommodation from which the landlord seeks eviction of the tenant. It was held that:

> *"14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy.* ***Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation****, may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural.* ***Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available then the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction****. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come."*
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> [Emphasis Supplied]

10. As discussed above, concededly the Property No. 1640, Property No. 289 and Property No. 1662/1 are not available with the Respondent/landlord. These properties cannot thus be considered as suitable alternate accommodations.

11. Lastly, so far as concerns the challenge to the memorandum of family

settlement/site plan, it is settled law that the veracity of a family settlement cannot be challenged in the manner as has been sought to be done, especially by a stranger to the settlement such as the Petitioner/tenant. The Supreme Court in ***Kale & Ors. v. Dy. Director of Consolidation & Ors.***[4] held as follows:

> *"18. In the recent decision of this Court in S. Shanmugam Pillai v. K. Shanmugam Pillai [(1973) 2 SCC 312] the entire case law was discussed and this Court observed as follows: [pp. 319, 321-322, paras 12, 24-25]*
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> *"**If in the interest of the family properties or family peace the close relations had settled their disputes amicably, this Court will be reluctant to disturb the same. The courts generally lean in favour of family arrangements.***
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> *Now turning to the plea of family arrangement, as observed by this Court in Sahu Madho Das v. Pandit Mukand Ram **the courts lean strongly in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all. As observed in that case the family arrangement can as a matter of law be inferred from a long course of dealings between the parties.***
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> ***tes which might ruin them all. As observed in that case the family arrangement can as a matter of law be inferred from a long course of dealings between the parties.***
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> *In Maturi Pullaiah v. Maturi Narasimham this Court held that although conflict of legal claims in praesenti or in future is generally a condition for the validity of family arrangements, it is not necessarily so. Even bona fide disputes present or possible, which may not involve legal claims would be sufficient. Members of a joint Hindu family may to maintain peace or to bring about harmony in the family, enter into such a family arrangement. **If such an agreement is entered into bona fide and the terms thereto are fair in the circumstances of a particular case, the courts would more readily give assent to such an agreement than to avoid it."***
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> *19. Thus it would appear from a review of the decisions analysed above that **the courts have taken a very liberal and broad view of the validity of the family settlement and have always tried to uphold it and maintain it. The central idea in the approach made by the courts is that if by consent of parties a matter has been settled, it should not be allowed to be reopened by the parties to the agreement on frivolous or untenable grounds.**"*

[4] (1976) 3 SCC 119

[Emphasis Supplied]

11.1 A challenge to the MOFS was also laid by the Petitioner/tenant before the learned Trial Court. The learned Trial Court examined the same and gave a finding that the MOFS set out that a settlement was entered in on 01.09.2020 and thereafter reduced to writing on 29.12.2020. It was clarified by the Respondent/landlord that the original MOFS contained a site plan which was undated. The original MOFS was sought to be placed on record later by the Respondent/landlord. The learned Trial Court examined the MOFS and found that the language used in the memorandum is unambiguous and clear with respect to the properties partitioned and the share of each family member of Respondent/landlord. On this aspect the learned Trial Court also given a finding that the partition was orally done on 01.09.2020 and MOFS is only a record of the same. The relevant extract of the Impugned Order is set out below:

> *"23.* ***In my view a tenant cannot challenge the family settlement entered into by the landlord with his family*** *members. During adjudication of petitions under the Delhi Rent Control Act, the courts ought not to examine the family settlement as under the Transfer of Property Act.* ***The petitioner need not show that he is absolute owner of the suit property. He only should be having a better title than that of the tenant.*** *In the facts of the present case, the petitioner and other co-owners have entered into an oral family settlement on 0 1.02.2020 and the same has been recorded as a memorandum on 29.12.2020. It is no longer res integra that a memorandum of family settlement does not require registration under the Indian Registration Act and an oral family settlement is permissible. I am supported by the judgments of the Hon'ble High Court of Delhi in the cases of A.K. Nayar v. Mahesh Prasad, 2008 SCC OnLine Del 1025 and* ***Subhash Jain v. Ravi Sehgal, 2014 SCC OnLine Del 548.***
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> *xxx xxx xxx xxx*
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> *25. The law on this point is settled that a tenant cannot challenge any arrangement between the landlord and his family members. Even an*

unequal family settlement cannot be questioned by the tenant when the parties to the settlement do not question the same. ***The other co -owners Sh. Vikas Chaudhary and Sh. Akash Chaudhary have filed their affidavits confirming the settlement and have stated that they have no objection to the same. All the co - owners have become bound by the settlement entered into by them and have also acted upon the same by giving their affidavits****....*

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29. The question to be considered by the court is whether the issue raised by the respondent is a triable issue or not. ***In my view, when the settlement between the parties was orally done on 01.09.2020 and the memorandum being only a record of the same, the issue raised is not a triable one. The language used in the memorandum is unambiguous and clear with respect to the properties partitioned and*** *in whose shares they are falling. In para A of the settlement it is recorded as under,*

> *"A) The parties have agreed that the following properties/portions have fallen to the share of FIRST PARTY, and shall be exclusively owned and possessed by it:*
> *(i) Second Floor in the 'front portion' of Property no. 1640, Kotla Mubarakpur, New Delhi,*
> *(ii) Entire Property in 'back portion' of Property no. 1640. Kotla Mubarakpur, New Delhi, with all its floors and roof rights.*
> *The back portion and front portion are shown in red and green colour respectively in the site plan annexed herewith"*

30. Even if the argument of the Ld. counsel for the respondent that the site plan was prepared on a later date is accepted, there is no bar on the same. The court must consider what would be the ***scope of the trial if leave is granted on this ground. The petitioner and the co - owners Sh. Vikas Chaudhary and Sh. Akash Chaudhary have already stated on affidavit that they affirm the contents of the settlement. There is no dispute between them regarding the same. If leave is granted, the petitioner and the co-owners will again state the same an oath. When the respondent being tenant cannot challenge the family*** *settlement, this issue raised cannot be said to be a triable issue…."*

[Emphasis Supplied]

12. The Respondent/landlord had filed the affidavit of the Respondent and the other co-owners under the MOFS, Sh. Vikas Chaudhary and Sh. Akash Chaudhary affirming the MOFS on record and its site plan

evidencing the distribution of the joint properties. Clearly, once the co-owners and the signatory of the MOFS have affirmed its contents and verified the site plan – no challenge remains to the MOFS.

13. This Court finds no infirmity with the findings of the learned Trial Court in this behalf including since there was no challenge to the MOFS by any other party or by any co-owner. The Petitioner/tenant's challenge to the MOFS has no legal basis in proceedings under the Act and thus, cannot be sustained.

13.1 As stated above, the Supreme Court in ***Kale & Ors.*** case has held that the Courts should refrain from interfering in a family settlement and should lean towards enforcing the same. This Court finds no ground to interfere with the MOFS.

14. The learned Trial Court has examined the contentions as raised by the Petitioner/tenant and has found that no triable issue has been raised. The examination by this Court does not show anything to the contrary. The revisionary jurisdiction of this Court is limited and circumspect. All that the Court is required to examine, in terms of the judgment of the Supreme Court in ***Abid-ul-Islam*** case, is whether there is absence of adjudication for interference by this Court or any error apparent on the face of the record. This Court finds that no ground for interference has been made out by the Petitioner/tenant.

15. In view of the aforegoing discussions, this Court finds no infirmity with the Impugned Order. The Petition and pending Application is accordingly dismissed.

16. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JANUARY 23, 2025/r

Click here to check corrigendum, if any