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

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*Date of Decision: 09<sup>th</sup> July, 2025*

+ FAO 219/2024  
KURIA SINGH

.....Appellant

Through: Mr. Rajeev Saxena, Sr. Advocate with  
Ms. Megha Saxena, Advocates.

versus

NARAYAN SINGH

.....Respondent

Through: Mr. Abhishrut Singh, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ JAIN**

**J U D G M E N T (oral)**

**FAO 219/2024 & CM APPL. 39609/2025 (for urgent interim relief)**

1. The appellant-Mr. Kuria Singh (since deceased) takes exception to order dated 08.07.2024 whereby his application moved under Order XXXIX Rules 1 and 2 CPC has been dismissed and the application filed by his adversary seeking permission to reconstruct the roof has been allowed.
2. Such appeal is now listed for further consideration on 03.09.2025.
3. During the pendency of the appeal, Plaintiff-Mr. Kuria Singh died and as far as the present appeal is concerned, his LRs have already been brought on record.
4. The abovesaid application has been filed by the appellant seeking stay of the proceedings pending before the learned Trial Court.
5. However, when asked, learned Senior Counsel for the appellant/plaintiff, in all fairness, submitted that the suit has already progressed as the trial is complete and the matter is now listed for hearing of final arguments.
6. Of course, any application moved under Order XXXIX Rules 1 and 2



CPC is generally, decided while taking a *prima-facie* view and since the parties have already led their respective evidence and since the matter is already at the stage of final arguments, it will be appropriate if the learned Trial Court hears final arguments and decides the suit.

7. After hearing arguments for some time, Mr. Rajeev Saxena, learned Senior Counsel for the appellant/plaintiff has also no objection in this regard and does not, without prejudice to his rights and contentions, press this appeal. He, however, submits that when the appeal was pending before this Court, certain construction was raised by the respondent. The attention of the Court has been drawn towards orders dated 16.07.2024 and 07.08.2024. While taking such contentions on record, this Court had passed following order on 09.08.2024 read as under:-

*“1. Learned counsel for respondent states that he has taken requisite instruction from his client i.e. respondent Narayan Singh. It is informed that the matter is already fixed for final arguments before the learned Trial Court on 18<sup>th</sup> September, 2024 and, in case, the learned Trial Court decides in favour of the appellant herein and it is held that the appellant is also entitled to the terrace situated over Shop No.2, the respondent herein would restore status ante with respect to the construction carried out in the interregum. It is undertaken that it will be also ensured that there is enough of load bearing wall so that the right and interest with respect to terrace situated over Shop No.2 is not jeopardized or compromised, in any manner whatsoever.*

*2. Let an affidavit to said effect be filed within one week.*

*3. Photographs have also been shown by the respondent. Let the same be placed on record through e-filing module.*

*4. Put up on the date already fixed i.e. 9<sup>th</sup> September, 2024. ”*

8. Needless to say, the respondent/defendant shall remain bound by abovesaid and, therefore, in case after hearing arguments in the suit in question, the learned Trial Court decides the suit in favour of the appellant/plaintiff and if the plaintiff is held entitled to the terrace situated



over shop No.2, it would be at liberty to give appropriate directions in terms of the observation as extracted hereinabove.

9. Learned counsel for respondent/defendant also has no objection to the same.

10. In view of the above, the present appeal is disposed of as not pressed.

11. All rights and contentions of the parties are reserved.

12. The next date, already fixed i.e. 03.09.2025, is also hereby cancelled.

13. The next date before the learned Trial Court is stated to be 19.07.2025.

14. Learned Senior Counsel for the appellant submits that he is in some personal difficulty and would make appropriate request to the learned Trial Court seeking deferring of final arguments for a very short date. He is at liberty to make appropriate request in this regard before the learned Trial Court.

**(MANOJ JAIN)**  
**JUDGE**

**JULY 9, 2025/ss/js**