



2025:DHC:6045



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

% ***Date of Decision: 23<sup>rd</sup> July, 2025***

+ CM(M) 1328/2025 & CM APPL. 43747-43748/2025  
SAHIN BEGUM .....Petitioner

Through: Mr. A.K. Dhupar, Adv.  
versus

SHABNAM & ORS. ....Respondents

Through: Mr. Vanshul Pali, Panel Counsel for  
R-5/MCD.  
Mr. Niraj Kumar, Sr. Central Govt  
Counsel with MR. Chaitnaya Kumar,  
Advocates with SI Murari, Advocates.

**CORAM:**

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

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

**CM(M) 1328/2025 & CM APPL. 43747-43748/2025**

1. The petitioner is occupying ground floor of house no. 1062 Gali Rajan, Farash Khana, Delhi- 110006 and defendant Nos. 1 to 4 in the above said suit are occupants of first floor.
2. The abovesaid suit has been filed by the plaintiff with the prayer that the said defendants be restrained from demolishing the existing construction and also seeks restraining them from raising any new construction over the suit property.
3. When the suit in question was taken up by the learned Trial Court on 17.07.2025, counsel for defendant Nos. 1 to 4 made a statement that they would not raise any construction in the suit property till the disposal of the suit. However, they also sought liberty to carry out "*necessary repairs as permissible under law*".
4. Statement to the abovesaid effect was recorded and, accordingly, the



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application filed by the plaintiff under Order XXXIX Rule 1 and 2 CPC was disposed of while giving liberty to said defendants to carry out necessary repairs as permissible by law.

5. The grievance raised in the present petition is, merely, to the effect that under the garb of carrying out necessary repairs, the defendants have started raising construction, which is not permissible in view of the statement made by them before the learned Trial Court.

6. Fact remains that, since the impugned order decided an injunction application, the impugned order is appealable one as per Order XLIII Rule 1 CPC, and a petition under Article 227 of Constitution of India would not be maintainable.

7. Learned counsel for the petitioner, while acknowledging the same, submits that the present petition be re-registered as a *First Appeal from Order* (FAO).

8. The petition is, accordingly, directed to be re-registered as an FAO.

9. Petition stands disposed of in aforesaid terms.

10. Pending application stands disposed of in aforesaid terms.

**FAO No. \_\_\_\_\_ /2025 (to be re-numbered)**

11. Since according to petitioner, there is a violation of the undertaking given before the Court, instead of passing any order in the present appeal, the appellant is rather given liberty to move appropriate application before the learned Trial Court and, learned Trial Court is requested to consider the same and to dispose of the same in accordance with law, after giving due opportunity of hearing to both the parties.

12. Needless to say, learned Trial Court would also amply clarify as to what is meant by “*necessary repairs as permissible under law*”. It becomes



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imperative for the reason that it is contended by plaintiff that in the garb of necessary repairs, a party cannot be permitted to raise fresh construction, particularly, when a statement to that effect has already been made before the Court.

13. Appeal stands disposed of in aforesaid terms.

14. A copy of this Order be given *dasti* under the signatures of the Court Master.

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

**JULY 23, 2025/sw/PB**