



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

%

Judgment Reserved on: 08.12.2025

Judgment pronounced on: 15.12.2025

+ **FAO 333/2025, CM APPL. 74955/2025 & CM APPL. 74956/2025**

SIR SOBHA SINGH AND SONS PVT LTDAppellant

Through: Mr. Preetesh Kapur, Sr. Advocate
with Mr. Shaunak Kashyap, Ms.
Mayanka Dhawan, Mr. Vikram Kalra,
Mr. Apratim Animesh Thakur, Ms.
Varsha Pal and Mr. Kartikaya
Gautam, Advocates.

Versus

SMT RAJDIP BAMBAWALE & ORS.Respondents

Through: Mr. Sumit and Mr. D.K. Advocates.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Order XLIII of the Civil Procedure Code, 1908 (the CPC) has been filed by the plaintiff in C.S. NO. 311/2025 on the file of the District Judge, Patiala House Courts, New Delhi, aggrieved by the order dated 14.10.2025, by which the trial court dismissed their application under Order XXXIX Rule 1 and 2 CPC, whereby the plaintiff had sought to dismantle the old



lift and install a new lift at his own cost.

2. In this appeal, the parties shall be referred to as described in the plaint filed before the trial court.

3. The brief facts as stated in the plaint are as follows: The plaintiff, a private limited Company registered and incorporated under the Companies Act, 1956, is the lawful owner and landlord of the buildings at Sujan Singh Park, North and South, New Delhi-110003, which have been constructed on leasehold land under the Land and Development Office *vide* registered agreements for lease, both dated 08.10.1945. Defendant no. 1 was inducted as a tenant, based on an oral agreement, in Flat No. 84, Block G, 3rd Floor, Sujan Singh Park, New Delhi (the tenanted property). Thereafter, defendant nos. 2 and 3, the sons of defendant no. 1, were also inducted as joint tenants in the said property. During the construction of all the flat blocks, a lift-well was constructed along with the mummy area on the terrace as part of the building, with the



option to install a lift and machines at a later time.

3.1. In the year 1986, after the inception of the tenancy of defendant no. 1, she approached the plaintiff seeking permission/no-objection for sanction of power load for the operation of a lift in the lift-well of Block-G. On 30.01.1986, the plaintiff granted permission to her for additional power load to install a lift in the lift shaft of Block-G. The permission was in the nature of a license to defendant no. 1 for the installation and use of the lift and was intended for the benefit of all the residents. The permission was in the nature of a revocable license to use the lift and did not in any manner confer any exclusive or possessory rights over the lift, lift-well, machine room or any other portion of Block-G to the defendants.

3.2. In the year 2013, it came to the knowledge of the plaintiff that the defendants had, without seeking permission and consent from the plaintiff, caused multiple encroachments and had



carried out illegal constructions in Block-G by: (i) constructing a wooden cabin in the common area outside the tenanted flat; (ii) blocking the common 3rd floor landing of the lift (fire escape route) by enclosing it; (iii) constructing two bathrooms on the terrace for their servants; and (iv) illegally locking the terrace machine room and lift shaft.

3.3. The plaintiff issued a legal notice dated 22.02.2013, terminating the tenancy of the defendants on account of the said unauthorised constructions and calling upon them to handover possession of the tenanted premises in its original condition. A reply dated 11.03.2013, inter alia, denying carrying out the illegal constructions was received. Pursuant thereto, the plaintiff filed an eviction petition, being R.C. No. 5658/2016 under Sections 14(l)(j) and (k) of the Delhi Rent Control Act, 1958, seeking eviction of the tenanted premises. However, the plaint was dismissed *vide* judgement dated 09.07.2018 on the ground that



the plaintiff failed to prove as to who had illegally and in an unauthorised manner made additions and alterations to the tenanted premises and that any damage by such additions and alterations could not be proved to be attributable to the defendants.

3.4. The plaintiff subsequently came to know that the defendants had denied access to the lift in Block-G to other occupants and residents by blocking the lift gate on the second floor by sealing the lift opening door with a brick wall. The plaintiff again sent a notice dated 30.03.2019, terminating the tenancy of the defendants and for handing over vacant peaceful possession of the tenanted premises. However, the defendants failed to vacate. The plaintiff *vide* notice dated 02.01.2020 revoked the license granted to defendant no. 1.

3.5. Defendant no. 1 instituted CS No. 104/2020 against the plaintiff seeking a declaration to the effect that she was the rightful and exclusive owner of the lift installed in Block-G, along with a



decree of permanent injunction restraining the plaintiff from creating any third-party hindrance or obstruction in her exclusive, peaceful and unhindered use of the lift. In the said suit, the plaintiff filed a counterclaim, that is, No. 08/2020. The said suit was dismissed *vide* order dated 25.03.2025 as not maintainable. The counter claim was withdrawn by the plaintiff. A review of the order dated 25.03.2025 was also dismissed by the trial court.

3.6. The plaintiff filed CS No. 114/2021 seeking possession of the tenanted premises occupied by the defendants. In the suit, the plaintiff sought a decree directing the defendants to hand over vacant and peaceful possession of the tenanted property, along with recovery of pendente lite and future damages/mesne profits. The said suit is presently pending adjudication.

3.7. The plaintiff thereafter instituted the present suit, being CS No. 311/2025, seeking mandatory injunction concerning the lift installed in Block-G. The reliefs sought include directions to the



defendants to remove the lock from the lift machine room, clear all obstructions in the passage leading to it, refrain from interfering with the dismantling of the existing 40-year-old lift declared unsafe, and permit installation of a new lift accessible to all residents. An application under Order XXXIX Rule 1 and 2 CPC was filed by the plaintiffs, seeking urgent interim directions granting immediate access to the lift shaft and machine room to commence dismantling and installation work. The trial court, vide impugned order dated 14.10.2025, dismissed the application. Aggrieved, the appellant/plaintiff has come up in appeal.

4. The learned counsel for the appellant/plaintiff submitted that the existing collapsible lift is over 40 years old. The same poses a direct and imminent risk to life and property. Reliance was placed on a report and communications with the Rising Star Elevator Private Limited (RSEPL), wherein it is said that the impugned lift is unserviceable and it is highly unsafe to use the



said lift, declaring the existing lift as outdated, unsafe, noncompliant with prevailing safety standards and requiring immediate replacement to prevent accidents and injury. Any criminal liability from an unsafe lift would be on the landlord/plaintiff, which further underscores the urgency of the reliefs herein. A reference was also made to the Unified Building Bye-Laws for Delhi, 2016, specifically to clause 8.4.4 in chapter 8.

4.1. It was further submitted that the permission granted to the defendant no. 1 in 1986 was a permissive license, revocable at will and incapable of conferring any ownership or possessory rights. Defendants, as mere tenants, have no proprietary, possessory or exclusionary rights over common facilities such as the lift shaft and machine room, both of which are integral components of the building owned by the plaintiff. The license has been revoked by the notice dated 02.01.2020. The defendants have converted the common lift, intended for collective benefit of all



residents, into their private amenity by sealing access on the second floor with a brick wall and enclosing the third-floor landing within their tenanted flat, thereby completely denying the use of the lift to all other occupants of Block G.

5. On the other hand, the learned counsel for the defendants submitted that the defendants have a valid license and was given permission to install the lift, which they did at their own cost. The right of the defendant is protected under Section 60(b) of the Easement Act, 1882. He further contended that a similar prayer as made in the present suit was made in the counterclaim of the plaintiff (08/2025), which was later withdrawn unconditionally. Therefore, the present suit is barred by Order XXIII Rule 1(4) CPC. In support of the argument, reliance has been placed on the judgment of **Asma Lateef v. Shabbir Ahmad, (2024) 4 SCC 696**. Another suit seeking declaration and permanent injunction, being CS No. 299/2025 has been filed by the defendants, which is



pending adjudication. The guiding principles for deciding an application under Order VII, Rule 11 CPC, as noted in the judgment of **Srihari HanumandasTotala v. Hemant VithalKamat and Ors. (2021) 9 SCC 9**, was also referred to.

6. Heard both sides.

7. During the course of arguments, the learned senior counsel for the appellant/plaintiff drew the attention of the Court to **Annexure A-7**, judgment dated 25.03.2025 in CS104/2020, in which it has been held that the ownership of the building and the lift is with the plaintiff and the claim under Section 60(b) of the Easement Act claimed by the defendant was held untenable. Therefore, as long as the judgment remains in force, the defendants cannot claim any ownership rights over the tenanted premises and the lift, which is obviously part of the tenanted premises.

8. An objection has been raised regarding the maintainability of the suit itself. In **Asma Lateef (supra)**, it has been held thus:-



“50. Although not directly arising in the present case, we also wish to observe that the question of jurisdiction would assume importance even at the stage a court considers the question of grant of interim relief. Where interim relief is claimed in a suit before a civil court and the party to be affected by grant of such relief, or any other party to the suit, raises a point of maintainability thereof or that it is barred by law and also contends on that basis that interim relief should not be granted, grant of relief in whatever form, if at all, ought to be preceded by formation and recording of at least a prima facie satisfaction that the suit is maintainable or that it is not barred by law. Such a satisfaction resting on appreciation of the averments in the plaint, the application for interim relief and the written objection thereto, as well as the relevant law that is cited in support of the objection, would be a part of the court's reasoning of a prima facie case having been set up for interim relief, that the balance of convenience is in favour of the grant and non-grant would cause irreparable harm and prejudice. It would be inappropriate for a court to abstain from recording its prima facie satisfaction on the question of maintainability, yet, proceed to grant protection pro tem on the assumption that the question of maintainability has to be decided as a preliminary issue under Order 14 Rule 2CPC. That could amount to an improper exercise of power. If the court is of the opinion at the stage of hearing the application for interim relief that the suit is barred by law or is otherwise not maintainable, it cannot dismiss it without framing a preliminary issue after the written statement is filed but can most certainly assign such opinion for refusing interim relief. However, if an extraordinary situation arises where it could take time to decide the point of maintainability of the suit and non-grant of protection pro tem pending such decision could lead to irreversible consequences, the court may proceed to make an appropriate order in the manner indicated above justifying the course of action it adopts. In other words, such an order may be passed, if at all required, to avoid irreparable harm or injury or undue hardship to the party claiming the relief and/or to ensure that the proceedings are not rendered infructuous by reason of non-interference by the



court.”

(Emphasis supplied.)

9. The trial court dismissed the application for interim injunction on the ground that granting the interim relief would tantamount to decreeing the suit itself. Before the trial court, the argument that the suit is barred under Order XXIII Rule 1(4) CPC is never seen taken. On the other hand, the defendants expressed reservations about the learned trial judge proceeding with the matter on the ground that an earlier adverse order had been passed against them. Be that as it may, the order by which the counter claim was withdrawn is not before this court. Therefore, this court is unable to ascertain the circumstances under which the counter claim was withdrawn by the plaintiff. The parties can agitate the question of maintainability of the suit before the trial court, as the said aspect was never considered by it.

10. Till the question of maintainability is considered by the trial court and as rival contentions regarding the safety of the lift



has been raised, and as the safety of the residents is in danger, this Court deems it appropriate to appoint a Local Commissioner, namely, Mr. Laksh Khanna, Advocate. He shall visit the property on a date convenient to both sides after due notice to both sides. The Local Commissioner shall take the assistance of an expert if necessary to ascertain the safety and security of the lift in question. The Local Commissioner shall report the present condition of the lift, the constructions/obstructions, if any, made preventing the use of the lift by other residents of the building. A panel of experts who can assist the Local Commissioner shall be submitted by both sides, from which the Local Commissioner can select an expert for assistance.

11. List on 20.01.2026.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

DECEMBER 15, 2025