



2026:DHC:724



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

% Date of Decision: 20.01.2026

+ **FAO 54/2019**

NIRMAL TOWER BUILDING PVT LTDAppellant
Through: Mr. Anurag Pratap, Advocate

versus

NIRMAL TOWER BUILDING OCCUPANTS WELFARE
SOCIETY (REGD)Respondent
Through: Mr. Rajesh Pandit Arya and
Ms.Samridhi Sharma, Advocates

**CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

JUDGMENT (ORAL)

1. The present appeal has been preferred seeking setting aside of the order dated 22.01.2019 passed by the learned ADJ-05, Patiala House Courts, New Delhi, in CS No. 57932/2016, whereby the application filed on behalf of the appellant, who was the defendant before the Trial Court, came to be dismissed.

2. The respondent, who was the plaintiff before the Trial Court, had instituted the underlying suit seeking reliefs of declaration, mandatory and permanent injunction, and rendition of accounts. In the said plaint, it was claimed that the respondent is a registered society comprising of members who are owners of their respective flats in a multi-storey building, known as *Nirmal Tower Building Occupants Welfare Society (Regd), Barakhamba*



Road, New Delhi – 110001. It was further claimed that the building stood constructed in the year 1975, and that the appellant was responsible for the maintenance and upkeep of the common areas of the said building, which it failed to do. It was stated that, in terms of the licence deed executed between the apartment owners and the appellant, the apartment owners were making contributions towards maintenance, repairs, redecorating of the main structure and other related heads. The respondent was particularly aggrieved by the appellant's deliberate failure to maintain the common areas, as well as by shortcomings in the basic maintenance and upkeep of the staircases, electrical wiring, water pipelines, and cleanliness of the common areas etc. A grievance was also raised with respect to the installation of lifts. It was further averred that although there were two lifts; however, only one lift was operational.

3. The appellant filed an application praying that the respondent and its employees be restrained from stopping the licensees from making monthly maintenance/service charges to the appellant. Further, it was prayed that the respondent be restrained from illegally meddling into the affairs of the appellant. In support thereof, the appellant relied upon the order dated 19.07.2006 passed by this Court where the appellant claimed that the respondent was restrained from meddling in its affairs.

4. The application was opposed by the respondent and while referring to the judgment of this Court passed in **W.P.(C) 1959/2007** titled "O. S. Bajpai Vs. The Administrator of Delhi", it was claimed that every apartment owner in the multi-storey building is recognized as the owner of the apartment. Further, reliance was placed on the order dated 14.09.2018 passed in an application filed by the appellant in a different suit. It was also averred that



on account of the extreme poor and unhygienic conditions of the building, the members of the respondent/society, in its General Body Meeting (GBM) held on 14.09.2018, had resolved that all renovation work will be carried out by the respondent/society, which would also undertake end to end maintenance of the property.

5. A perusal of the record would show that the suit was initially filed before this Court, which was subsequently transferred to the District Court on enhancement of pecuniary jurisdiction.

6. Learned counsel for the appellant, while assailing the impugned order, had strongly relied upon the order dated 19.07.2006, a copy of which has been placed on record. A reading of the said order would show that the said order was passed with respect to an application filed by the appellant wherein he sought prohibition against the respondent from meddling with the affairs of the appellant company and barring them from distributing or displaying letters/notices to the occupants/flat owners of respondent till the disposal of the suit. The Court noted the submissions made on behalf of the respondent that it had neither meddled nor had the intent to meddle with the affairs of appellant/company, and insofar as the distribution of defamatory material was concerned, the respondent was directed not to circulate any defamatory material against the appellant. Although the said order also referred to other applications, the same are not germane to the present controversy.

7. A further perusal of the record would reveal that earlier, on 21.07.2005, this Court, while considering **I.A. 257/2005**, was seized with the issue of installation of lifts in the building. The Court noted that out of the two lifts installed in the building, one lift was non-functional and had to be



dismantled. The respondent thereafter installed a lift at their own cost at the request of the appellant. The Court directed that both the lifts were to be kept operational and that the cost of running the lift installed by the respondent/society was to be borne by the appellant, subject to the outcome of the suit.

The appellant thereafter filed **I.A. 6381/2005**, seeking modification of the said order to the extent that it had the absolute right to maintain both the lifts in the building. The said application came to be dismissed on 28.02.2006. The appellant assailed the said order by way of **FAO (OS) 309/2006** which came to be dismissed by a Division Bench of this Court on 12.07.2006. The Division Bench took note of the fact that the impugned order had considered the relevant facts as well as the hardship faced by the occupants and visitors of the multi-story building and found that the order had been passed while bearing in mind the interest of the occupants and visitors of the building.

8. In the present proceedings, though the appellant has claimed that only some of the occupants were paying the monthly maintenance/service charges, the said submission was strongly denied by the respondent. The Trial Court also came to the conclusion that the appellant's reliance on the order dated 19.07.2006 was of no significance as the same was primarily passed on account of issuance of defamatory material by the respondent. The Trial Court further noted that the subject application has been filed on the basis of letters exchanged between the parties in the years 1997 and 2000, whereas the suit itself came to be instituted in the year 2005, and held that the said letters could not advance the case of the appellant. The Court also took note of the fact that no mutation had been carried out in favour of



the appellant in the records of the NDMC in respect of the common areas. The impugned order further records that the respondent had entered into an agreement dated 18.09.2018 with a contractor for renovation of the building, as the suit property was found to be in a poor, unhygienic and shabby condition. The said agreement was entered into pursuant to a resolution passed in the General Body Meeting (GBM) held on 14.09.2018, whereby it was resolved that the respondent shall undertake end to end maintenance of the property. The order further records that the only source for carrying out the repair, renovation and maintenance work would be funds collected from the members/owners of the apartment in the building. The order also notes that the appellant had also preferred a declaratory suit in which it filed an application under Section 151 CPC against the respondent which came to be disposed of by the concerned Court on 14.09.2018, wherein it was recorded that it would be the respondent society which would be carrying out all the compliances with the NDMC, L&DO and other authorities in respect of the ongoing renovation work and that any charges payable to any authority in relation thereto would be borne by the respondent.

9. Learned counsel for the respondent society has submitted that since the year 2018, not a single owner/occupant has been paying monthly maintenance of the building to the appellant, and that the entire maintenance work is undertaken by the respondent society itself.

10. It is settled law that for the grant of a temporary injunction, the applicant is required to satisfy the Court *qua* the triple test, the conditions of which are: i) a *prima facie* case; ii) the likelihood of suffering of irreparable loss in case injunction is not granted; and iii) the balance of convenience favouring the applicant(s) (Ref: Gujarat Bottling Co. Ltd. Vs. Coca Cola



Co.¹)

11. In the present case, as discussed above, the appellant has failed to establish a *prima facie* case in its favour as the record reflects a persistent failure to discharge its maintenance obligations, especially regarding the lifts and common areas. Since the respondent society has already stepped in to rectify the “shabby and unhygienic” conditions by engaging contractors and committing its own funds, the balance of convenience clearly tilts in favour of the occupants who are ensuring the building’s habitability. Furthermore, given that the appellant has not been managing the day-to-day affairs or the renovation work, it cannot be said to be suffering any irreparable injury by the refusal of the interim relief sought.

12. After going through the state of neglect of maintenance in the respondent society recorded in earlier orders, this Court concurs with the *prima facie* opinion rendered by the Trial Court.

13. Finding no ground to interfere with the impugned order, the present appeal is dismissed.

14. The present appeal is, accordingly, disposed of.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 20, 2026

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¹ (1995) 5 SCC 545