



2026:DHC:9417-DB



\$~38

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

Date of decision: 14th OCTOBER, 2026

IN THE MATTER OF:

CNR No. DLHC010975172024

+ **MAT.APP.(F.C.) 442/2024, CM APPL. 76027/2024**

BHARTI KAWATRA Appellant

Through: Mr. Prosenjeet Banerjee, Senior
Advocate with Ms. Anshika
Sharma, Ms. Shree, Ms.
Baishnavi Rathoer, Advs.

versus

SUDHIR KAWATRA Respondent

Through: Mr Rajnish Kumar Jha, Mr
Faiazul Haque Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MS. JUSTICE RENU BHATNAGAR

JUDGMENT (ORAL)

1. The present Appeal has been filed by the Appellant/Wife challenging the Order dated 23.11.2024, passed by the learned Family Court-02, West District, Tis Hazari Courts, Delhi, in CS No. 31 of 2021, titled Sudhir Kawatra v. Bharti Kawatra, by which the learned Family Court has allowed the Respondent's application under Order XXXIX Rules 1 and 2 CPC by directing the release and handover of disputed machinery and goods to the Respondent/Husband before final adjudication of the suit.

Signature Not Verified
HARIOM SINGH KIRMOLIYA

21.10.2026 15:41



2026:DHC:9417-DB



2. Facts, in brief, leading to the present Appeal, are as under:
- a. That the Appellant and the Respondent were married on 05.12.1993 in accordance with Hindu rites and ceremonies, and two daughters were born out of the wedlock. It is stated that both – the Appellant and the Respondent, are entrepreneurs and are engaged in garment-related businesses. It is stated that the Appellant/Wife runs her business in the names and style of Bharti International and the Respondent/Husband runs his business in the name and style of Kay Enterprises.
 - b. It is stated that on 28.07.2011, a registered sale deed was executed in favour of the Appellant in respect of the premises bearing No. B-60, First Floor, DSIIDC Work Space, Tilak Vihar, New Delhi-110018 (*hereinafter referred to as the “Suit Premises”*). It is stated that disputes arose between the parties and the Respondent/Husband filed a Civil Suit before the District and Sessions Judge, West District, Tis Hazari Courts, for declaration of ownership and possession in respect of the Suit Premises, the machinery and equipment, and the raw materials lying therein, together with consequential reliefs of permanent and mandatory injunction and damages. The suit was initially registered as CS (DJ) No. 920 of 2019.
 - c. Since the matter pertained matrimonial dispute, *vide* order dated 18.03.2021, the Plaint was returned for presentation



2026:DHC:9417-DB



before the Family Court. Thereafter, the Respondent filed the Suit, being CS No. 31 of 2021, before the Family Court, West District, Tis Hazari Courts, New Delhi, with the following prayers:

“a) Pass a decree for declaration in favour of plaintiff against the defendant declaring the plaintiff as lawful owner of the premises bearing No. B-60, FF, DSIIDC Work Space, Tilak Vihar, New Delhi-110018;

b) Pass a decree of possession in favour of plaintiff and against the defendant directing the defendant to handover the peaceful physical possession of premises bearing no. B-60, FF, DSIIDC Work Space, Tilak Vihar, New Delhi-110018 to the plaintiff;

c) Pass a decree of mandatory injunction in favour of Plaintiff and against the Defendant directing defendant to unlock the said demised premises and to allow the plaintiff to have access to all the equipment/machineries lying therein without any interference;

d) Pass a decree of permanent injunction in favour of Plaintiff and against the Defendant restraining defendant or her agents, assignees, authorised representatives permanently from creating any third party interest in the demised premises bearing no. B-60, FF, DSIIDC Work Space, Tilak Vihar, New Delhi-110018;

e) Pass an award for a sum of Rs. 28,50,000/- payable by the defendant to the plaintiff towards damages caused to the plaintiff by the act/omissions of the defendants; AND/OR



2026:DHC:9417-DB



f) Pass any other order(s) as this Hon'ble Court deems fit and appropriate in the facts and circumstances of this case, may also be passed in favour of the plaintiff and against the defendant, in the interest of justice.”

- d. It is stated that along with the Suit, the Respondent/Husband also filed an application under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908, seeking the following interim injunctive reliefs:

“a) Ex-parte ad-interim injunction in favour of the Plaintiff/Applicant and against the defendant, her agents, servants, successors, legal representatives, assignees, associates, attorneys, administrators or any other person on her behalf thereby restraining them from creating any third party interest regarding shed/space bearing no. B-60, FF, DSIIDC Work Space, Tilak Vihar, New Delhi-110018 till the final disposal of the suit.

b) Ex-parte ad-interim injunction in favour of the Plaintiff and against the Defendant, her agents, servants, successors, legal representatives, assignees, associates, attorneys, administrators or any other person on her behalf, thereby directing the defendant to immediately unlock the shed/space bearing no. B-60, FF, DSIIDC Work Space, Tilak Vihar, New Delhi-110018 and grant access/taking out the same from the said premises of all the machineries/equipment and raw material lying therein.”

- e. It is the case of the Appellant/Wife that the Suit Premises



2026:DHC:9417-DB



were purchased to expand her garment business, Bharti International, and that the sale consideration was paid from funds generated through her business. The Respondent/Husband, on the other hand, claims that he had purchased the Suit Premises from his own resources in the name of the Appellant, who is his legally wedded wife. Thus, the parties dispute their respective rights and interests in the Suit Premises.

- f. It is stated that on 16.03.2012, a Perfecta Schmid Moulding Machine, along with other machinery and equipment, was purchased/imported for use in the parties' respective garment businesses. The Respondent/Plaintiff/Husband claims that the machinery was imported by him for Kay Enterprises. The Appellant/Defendant/Wife disputes the Respondent's claim of exclusive ownership and asserts that the machinery was purchased out of joint funds, including the proceeds of her business, Bharti International, and was intended for use in her business. According to the Appellant/Wife, her business unit manufactured moulds and brassier cups using the machine, which were subsequently utilised by the Respondent in manufacturing finished lingerie products.
- g. It is the case of the Appellant/Wife that she was managing the affairs of the Suit Premises and was paying the electricity bills of the Suit Premises until May 2013.



2026:DHC:9417-DB



According to the Appellant, she and her two daughters were compelled to leave the matrimonial home in April 2013, following which she began residing with her parents at Mussoorie, Uttarakhand. The Appellant further alleges that, upon visiting the Suit Premises in October–November 2013, she discovered that the Respondent had trespassed into the premises and that certain parts of the machinery had been removed. She thereafter locked the Suit Premises and also lodged a complaint with the Tilak Vihar Police Station.

- h. In the plaint, it is the case of the Respondent/Plaintiff/Husband that the Appellant/Defendant/Wife unlawfully locked the Suit Premises thereby dispossessing him of the premises and denying him access to the machinery, equipment and raw materials lying therein. The Respondent claims that the machinery was essential to the functioning of Kay Enterprises and that its continued inaccessibility caused him financial loss and business disruption. It is the case of the Respondent/Plaintiff/Husband that he received information that the Appellant had received a sum of Rs.75,000 as earnest money towards a proposed sale of the Suit Premises, giving rise to his apprehension that third-party interests might be created therein. He, therefore, filed the Suit along with an Application under Order XXXIX Rules 1 & 2 CPC.



2026:DHC:9417-DB



- i. The Appellant contested the suit and the application for interim relief by filing her written statement and reply dated 25.05.2022, wherein she reiterated her claim to ownership and possession of the Suit Premises and disputed the Respondent's claim of exclusive ownership of the machinery, equipment and raw materials lying therein.
- j. *Vide* Order dated 30.05.2023, the Family Court directed the Appellant/Wife not to create any third-party interest in respect of the Suit Premises. However, the Respondent's request for unlocking the premises and obtaining access to the machinery and other articles was deferred pending a report from a Local Commissioner. It is stated that *vide* order dated 07.03.2024, the learned Family Court appointed a Local Commissioner to inspect the Suit Premises and prepare an inventory of the machinery, equipment and raw materials lying therein. It is stated that the Local Commissioner visited the premises on 23.03.2024 and thereafter submitted his report dated 27.05.2024 before the learned Family Court.
- k. *Vide* order dated 23.11.2024, the Family Court partly allowed the Respondent's application under Order XXXIX Rules 1 and 2 CPC by holding that the Respondent's documents, including the invoice in the name of Kay Enterprises, and the Written Statement filed by the Appellant supported the Respondent's claim to the



2026:DHC:9417-DB



machinery. Accordingly, the Family Court directed that the Perfecta Schmid Moulding Machine 2046/2, together with the goods and raw materials in the name of Kay Enterprises lying in the Suit Premises, be released to the Respondent/Husband. The Respondent/Husband was permitted to utilise the machine, goods and raw materials. However, the Respondent was restrained from selling the machine during the pendency of the Suit. It is stated that for the purpose of implementing the aforesaid directions, the learned Family Court appointed the Local Commissioner. The Local Commissioner was authorised to break open the locks of the Suit Premises and hand over the specified machinery and raw materials to the Respondent. Relevant portions of the impugned Order reads as under:

“5. In reply of the said para, it is submitted by the defendant in her Written Statement that the defendant is not privy to import machinery. Thus, it implies that there was no contract of the defendant with any party to import the machinery. It is further submitted by defendant that the plaintiff would have imported the machinery for his business/ factory, but import of machinery does not establish the fact that it was imported/installed in the demised premises. It is the contention of defendant that the imported machinery was never been installed at the demised premises. The further contention of defendant in para no.9 that merely importing/ purchasing of the machinery, as alleged by the plaintiff, would not make him owner/ confer any right/ title over the demised premises. The said contention implies that



2026:DHC:9417-DB



the plaintiff might have imported the machinery under the name and style of 'Kay Enterprises' but by that itself, the plaintiff cannot be said to be owner of the premises in question.

6. The two things imply from the said paragraph that the imported machinery was not installed at the said premises and further, the machinery being in the name of plaintiff, automatically does not give the ownership right to the plaintiff in the suit premises. This Court is of the view that there is a candid admission on the part of defendant qua the said machinery that the said machinery belongs to the plaintiff and not to the defendant. Although, it is submitted in para no.13 of the Written Statement that the Perfecta molding machine 2046/2+ moulds, compressor, cutting machine, laminated fabric roll, tool box are owned by the defendant, however, the same is without any basis and documents and further, the same is contrary to the reply given by the defendant in reply to para no. 9 of the WS.

7. It is admitted on the part of defendant that she was carrying the business under the name of 'Bharti International' and not 'Kay Enterprises'."

1. Being aggrieved by the aforesaid order, particularly the direction for release of the machinery, equipment and raw materials to the Respondent at an interlocutory stage, the Appellant has filed the present Appeal.
3. It is pertinent to mention that though prayer (c) of the Suit is only to unlock the demised premises so that the Plaintiff can access all the equipment/machineries lying therein without any interference, the prayer in the Application under Order XXXIX Rules 1 & 2 goes



2026:DHC:9417-DB



beyond the prayer in the Suit by seeking access to the Suit Premises for taking away the machinery.

4. Learned Counsel appearing for the Appellant/Wife states that the direction passed by the Family Court could not have been passed in an Application under Order XXXIX Rules 1 & 2 CPC as it is beyond the scope of the Application under Order XXXIX Rules 1 & 2 CPC. Though the learned Counsel for the Appellant has also raised the question of limitation, this Court is not going into the said question because of the fact that the Family Court has not considered this question in the impugned Order.

5. *Per contra*, learned Counsel appearing for the Respondent/Husband supports the impugned Order by relying on the admissions made by the Appellant/Defendant/Wife in the Written Statement.

6. Heard the learned Counsels for the parties and perused the material on record.

7. A reading of the impugned Order reveals that the Learned Family Court has proceeded on conjecture and surmise by observing that the stand taken by the Appellant/Defendant/Wife implies that the Respondent/Plaintiff/Husband might have imported the machinery for his business unit and, therefore, that the machinery belongs to the Respondent. The Learned Family Court failed to appreciate that the mere fact that the machinery may have been imported in the name of Kay Enterprises, or that the Appellant denied being privy to its import, does not, by itself, establish the Respondent's exclusive ownership thereof. The Learned Family Court thus drew an inference of



2026:DHC:9417-DB



ownership without adequately considering the Appellant's specific plea that the machinery had been acquired from joint funds, including funds generated through Bharti International. The competing claims of ownership required proper adjudication on the basis of evidence and could not have been conclusively determined at the interim stage.

8. The present Suit is one for declaration and consequential reliefs, including possession and injunctions. The Suit Premises stand in the name of the Appellant/Wife under a registered sale deed dated 28.07.2011. The Respondent/Husband claims that he had provided the consideration for the purchase of the Suit Premises; however, the said claim is disputed by the Appellant and remains to be adjudicated. Further, the question of ownership of the machinery and other articles lying in the Suit Premises is distinct from the question of ownership of the Suit Premises itself. Neither the Respondent's claim to ownership of the Suit Premises nor his claim to exclusive ownership of the machinery could be treated as conclusively established merely for the purpose of granting the interim relief sought.

9. This Court has also perused the Written Statement filed by the Appellant/Defendant/Wife and finds that the same does not disclose any unambiguous admission of the Respondent's exclusive ownership of the machinery. In these circumstances, the direction issued by the Learned Family Court to the Local Commissioner to break open the locks of the Suit Premises and hand over the machinery, goods and raw materials lying therein to the Respondent/Husband, coupled with permission to use the same during the pendency of the Suit, amounts to granting substantive mandatory interim relief in respect of disputed



2026:DHC:9417-DB



property before the competing claims of the parties have been adjudicated. The Learned Family Court could have considered appropriate protective measures, including restraining the parties from alienating or creating third-party interests in the disputed property or, if warranted, directing that the machinery be kept in safe custody pending adjudication. However, in the facts and circumstances of the present case, the Family Court was not justified in directing the release of the disputed machinery and other articles to the Respondent and permitting their use before determining the parties' respective rights thereto.

10. It is well settled that interim relief under Order XXXIX Rules 1 and 2 CPC cannot ordinarily be granted in a manner that effectively grants the substantive relief sought in the Suit before trial, particularly where the relief would materially alter the existing position and affect disputed rights of ownership. The impugned directions, insofar as they direct the release of the machinery, goods and raw materials to the Respondent and permit their use during the pendency of the Suit, therefore, cannot be sustained.

11. Accordingly, the Appeal is allowed. The impugned Order dated 23.11.2024, insofar as it directs the release of the machinery, goods and raw materials to the Respondent/Husband and permits him to use the same during the pendency of the Suit, is set aside. Pending applications, if any, are also disposed of.

12. In the interest of justice, the Appellant/Defendant/Wife is restrained, during the pendency of the Suit, from selling, transferring, alienating or creating any third-party interest in the disputed



2026:DHC:9417-DB



machinery. It shall, however, be open to the Respondent/Husband to file an appropriate application before the Learned Family Court seeking directions for the safe custody of the machinery during the pendency of the Suit. In the event such an application is filed, the Learned Family Court shall consider and decide the same on its own merits, in accordance with law, without being influenced by any observations made in this Order.

SUBRAMONIUM PRASAD, J

RENU BHATNAGAR, J

OCTOBER 14, 2026

Rahul

Signature Not Verified
HARIOM SINGH KIRMOLIYA

21.10.2026 15:41