

(2000) 09 DEL CK 0006

In the Delhi High Court

Case No : C. R. 553/98

Smt. Manbhar Devi

APPELLANT

Vs

Shri Surinder Kumar and another

RESPONDENT

Date of Decision : 05-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2001) 1 AD 1003 : (2001) 89 DLT 740

Hon'ble Judges : B.A. Khan, J

Bench : Single Bench

Advocate : Mr. S.S. Gautam, for the Appellant;

Judgement

KHAN, (J)

1. Parties are fighting it out for four feet common passage. Petitioner is landlady and respondents her tenants. She has let out a shop to them and executed a rent deed dated 19.7.90. Her case is that there was a common stair and passage which was used by all the occupants of the tenanted shops including her for reaching to her residential accommodation on the second floor in the building. Respondents had started creating obstruction and nuisance in the passage in November, 1996 for which he filed a suit for perpetual injunction against them for restraining them from locking staircase, passage for using another part of the property except the tenanted shop and further putting any kind of goods/articles in stairs or in the passage of the property. She also sought ad-interim relief which was granted to her by order dated 14.1.1997 and whereby respondents were restrained from placing any kind of goods/articles in the staircase or passage.

2. Respondents Look appeal against this (MCA No.60/97) and submitted in their written statement that they used to display their goods in the disputed passage for the last two years or so which was necessary for the use of their tenanted shops and without this their business will suffer. Upon this Appellate court

evolved a via media to dispose of respondents' application under Order 39 Rules 1 & 2 CPC by restraining appellant from putting ghettos of their articles in the main passage but allowing them to display their articles just outside the shop.

3. In my view this was a reasonable arrangement evolved by Appellate court pending adjudication of respondents' suit as this was the appropriate way to save the interest of both parties. There is no dispute that passage is a common passage which could be used by all tenants including the respondents who had, however, no right to obstruct it. But at the same time they could be allowed such use of it which was necessary for the use of their tenanted premises. Therefore, Appellate court had done well to pass the balanced order which protected the interest of all concerned pending adjudication of rival claims in petitioner's suit. The order admits of no interference in revision jurisdiction. Revision petition is accordingly dismissed.