

Delhi District Court

Mrs. Sumitra Narwal vs Mr. Kamal Arora on 21 January, 2017

IN THE COURT OF SH. SUSHIL ANUJ TYAGI: ACJ-cum-CCJ-cum-ARC (SOUTH-WEST): DWARKA COURTS: NEW DELHI.

Civil Suit No.:208/11

Mrs. Sumitra Narwal  
DDA Flat no. 307 (Cat III) First Floor,  
Pocket-1 & 2 Sector-3, Dwarka,  
New Delhi-110078.

.....Plaintiff

vs.

Mr. Kamal Arora  
S/o late Sh. Krishan Arora  
DDA Flat no. 309 (Cat II) Second Floor,  
Pocket-1 & 2 Sector-3, Dwarka,  
New Delhi-110078.

.....Defendant

Date of Institution: 05.11.11  
Date of reserving order: 21.01.17  
Date of Judgment: 21.01.17

#### JUDGMENT

1. This is a suit for mandatory injunction filed by the plaintiff, against the defendant seeking directions to the defendant to take steps to stop the seepage/ leakage in his bathroom.

PLAINT:□

2. Briefly put, it is the case of the plaintiff is that she is  
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residing at property bearing DDA Flat no. 307 (CAT III) First Floor, Pocket 1 & 2, Sector 3, Dwarka, New Delhi since long and defendant is residing at the second floor of the suit property. As per plaintiff, due to old, rusted and damaged pipeline installed at the toilets of defendant, the roof of the plaintiff's toilets is continuously leaking from 2005 to which plaintiff requested the defendant to get the pipeline repaired but the defendant did not pay any heed to her request which resulted into complete water seepage at the house of plaintiff due to which electricity current passed in all the walls causing danger for the life and limbs of plaintiff and her family members.

3. Further, it is the case of the plaintiff that due to negligence of defendant, there is breakage of ceiling of the toilets since the walls is continuously wet due to leakage at the pipeline. It is averred that the defendant has also violated the instructions of Government of India, Ministry of Urban Development and Poverty Alleviation as issued vide letter no. K□20014/6/2000□DDIA dated 03.04.2011 whereby at clause 14 it is instructed to change the flooring with water proofing treatment but defendant changed the flooring without any water proofing treatment.

4. It is further averred that letters dated 15.09.05, 19.01.06 and 17.06.08 to various authorities of DDA such as Chief Engineer and Executive Engineer etc. were sent and Executive Engineer of DDA vide letter no. F3 (44) 05/WD□8/DDA/28 dated 06.12.08

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replied that the matter can be taken up with the allottee of Flat no. 309 directly and DDA is not responsible for same and thereafter plaintiff requested to get the pipeline of toilets repaired but defendant failed to take care for the request of plaintiff. Hence, the present suit has been filed by the plaintiff seeking mandatory injunction against the defendant to take steps to stop the leakage at his toilets.

WRITTEN STATEMENT:□

5. Written statement was filed on behalf of defendant wherein it is stated that no cause of action has arisen in favour of plaintiff against the defendant and that plaintiff has suppressed the material facts before the Hon'ble Court and has filed false and frivolous case against the defendant. It is stated that in 2009, plaintiff approached Delhi Legal Services Committee, Dwarka with the same complaint and both the parties appeared before Sh Gautam Manan, the then Hon'ble Secretary, DLSA where defendant agreed to get the pipelines of his toilet cum bathroom changed and water pipes as well as sewerage pipes were properly checked by plumber Mr. Jai Kishan, whose name was suggested by plaintiff herself, and the entire floor of the toilet of defendant was dug upto 3.25 ft. depth. The plumber replaced five joints of sewer pipes even though the same were in good condition and thereafter sealed all the joints with the LEAD and had also done proper water proofing on the surface level as well as walls of toilet cum bathroom of defendant and thereafter

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put concrete layer upto 1.5 feet height and again put another layer of water proofing on the surface and remaining walls of toilet cum bathroom. Thereafter, plumber again put the concrete on the remaining part of the depth and only made the surface at the third level and afterwards, said issue was settled by DLSA Dwarka on 03.10.09 vide settlement order

n o . 2 4 3 / 0 9 / D L S A / D w a r k a d a t e d  
03.10.09. It is alleged that there could not be any seepage from the  
toilet of the defendant and that plaintiff is adamant to harass the defendant.

6. It is further alleged that if there is some water leakage as  
alleged that may be due to plaintiff's own mistake as the plaintiff  
fixed additional water tank in her balcony and outside kitchen wall  
in the street at the height of 15 feet from the ground level and that  
plaintiff has one water connection in her additional water tanks in  
her bathroom also, and that the alleged seepage may be caused due  
to any defect in the pipelines as installed by the plaintiff herself. It is  
further averred that defendant had also repaired the floor of his flat  
and also repaired the pipes of his bathroom on 16.03.02 which can be verified from the letter  
issued by DDA no. EXE.WD 10/3(59)2000/DDA/372 dated 02.04.02.

REPLICATION:

7. Replication was filed on behalf of plaintiff stating therein that defendant accepted the leakage  
a n d s e e p a g e b e f o r e H o n ' b l e  
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Secretary, DLSA, Dwarka in October 2009 and changed the flooring  
and seat in one toilet only without waterproofing treatment and the leakage and seepage is still  
c o n t i n u i n g . I t i s f u r t h e r s t a t e d t h a t  
repairs of toilets of defendant were carried out in the year 2002 by DDA and not by the  
defendant as evident from DDA letter dated 07/4/2002.

ISSUES:

8. Following issues were framed vide order dated 17.04.12:

i). Whether the plaintiff is entitled for the relief of  
Mandatory injunction as prayed for? OPP.

ii).Relief.

PLAINTIFF EVIDENCE:

9. In support of her case, plaintiff examined four witnesses.

PW  is plaintiff herself. She has proved the letters dated 15.09.05, 19.01.06 and 17.06.08 as  
Ex.PW1/2 to Ex.PW1/4 respectively. She also proved the letter no. F3 (44) 05/WD   
18/DDA/28 dated 06.12.08 of Executive Engineer of DDA as Ex.PW1/5 and photographs  
t a k e n o n 0 7 . 0 5 . 1 2 a s E x . P W 1 / 6 &

Ex.PW1/7 respectively. PW□1 was cross examined by the defendant at length running into twelve pages.

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PW□2 is Sh. Laxmi Narain, Executive Engineer, WD□10, DDA, Central Nursery, Sector□5, Dwarka, New Delhi. He proved the following documents:□

i).Letter dated 17.09.05 wrote by Sh. D.S.Narwal to Executive Engineer, WD□0, DDA as Ex.PW2/A (OSR).

ii).Letter dated 17.06.08 wrote by Sh. D.S.Narwal to Chief Engineer, DDA Manglapuri as Ex.PW2/B.

iii).Letter dated 06.12.08 wrote by Executive Engineer, WD□10, DDA to Sh. D.S.Narwal as Ex.PW2/C.

iv).Letter dated 19.01.06 wrote by Sh D.S.Narwal to Executive Engineer, WD□0, DDA, Dwarka as Ex. PW2/D.

PW□3 is Sh. Dharam Singh Narwal. He tendered his affidavit by way of evidence as Ex.PW3/A. He deposed as per the case of the plaintiff. He was also cross examined at length by the defendant running in twelve pages.

PW□4 is Ms. Chhavi Chadha, Architect. She deposed that the leakage in the toilets is due to the upper floor as there is toilet above it and the cause for the leakage is due to drainage pipe or water supply pipe. During cross examination, she deposed that she inspected flat no. 307, in the last week i.e 21.01.2016 on the request of the plaintiff and there was a seepage on the ceiling of both the toilets of flat no. 307 and she did not break any wall or ceiling of toilet of flat no. 307 as it was already broken and M.S Bar already exposed. She also deposed that the seepage during time of

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inspection looked like one year old.

Plaintiff evidence was closed vide order dated 30.01.16.

DEFENDANT EVIDENCE:□

10. In defendant evidence, defendant has examined himself as DW□1 and tendered his affidavit Ex. DW1/A by way of evidence. He proved the following documents:

i). Attested true copy of order dated 25.07.2009 is Mark A. (The document was not filed earlier with the WS but ld counsel for plaintiff has given no objection to the filing of this document.)

ii). Ex. DW1/1 is true copy of order dated 03.10.2009.

iii). Ex. DW1/2 is true copy of letter no. EXE.WD 10/3 (59) 2000/DDA/372 dated 02.04.2002.

During cross examination, he deposed that the flat was purchased by him and his wife in the year 1998 and were residing in the flat since November 1999. He deposed that he did not visit the house of the plaintiff being no talking terms and got the repair done on the faith of the complaint of the plaintiff and had got the water proofing done in the year 2009 at that time, when the repairs were made.

He admitted the genuineness of documents of memorandum of association and admitted the same to be correct as  
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DW1/PA (colly.) (running in three pages). He denied the suggestion that the seepage in the ceiling and walls in the toilet of the plaintiff are due to defects in the old, rusted and damaged GI pipes of his bathroom or that due to his omission of doing the necessary repairs to rectify the seepage has caused danger to the life, health and safety of the plaintiff and her family. He further denied the suggestion that in 2009, he had only got the renovation done in his bathroom or that tiles of his bathroom got changed without any water proofing and without changing of GI pipes to rectify the seepage coming in the flat of plaintiff.

Defendant evidence was closed vide order dated 16.09.16.

APPRECIATION OF EVIDENCE & DECISION:

11. I have heard arguments advanced by ld. counsels for plaintiff and defendant and perused the material on record. My issue-wise findings are as under.

Issue no.1: Whether the plaintiff is entitled for the relief of Mandatory injunction as prayed for? OPP.

12. Admittedly, the plaintiff is residing at flat no. 307 Ist Floor, Pocket 1 & 2 Sector 3 D w a r k a , New Delhi  7 8 and the defendant is residing at the flat no. 309 in the same building and the flat of the defendant is just above the flat of the plaintiff. It is the

case of the plaintiff that there has been seepage/ leakage of water in the toilet/ bathroom of her flat which is coming due to the leakage of water from the drainage or water supply pipe of the toilet/ bathroom of the defendant. The defendant on the other hand, has denied that there has been no leakage or seepage in the pipelines of the toilet/ bathroom of the defendant. The defendant also alleged that in the year 2009, he voluntarily got the pipelines of his toilet cum bathroom properly checked and no defect was found in the pipelines in the defendant's toilet. It is alleged that entire floor of the defendant was dug upto 3 feet depth and the plumber replaced five joints of sewer pipes even though the same were in good condition. It is alleged that plumber had further sealed all the joints with LEAD instead of normal thread and fevicol and proper water proofing on the surface level as well as the walls of the toilet/ bathroom was done. Thereafter concrete layer of 1.5 feet height was put and thereafter again water proofing was done on the surface and walls. It is alleged that the issue was settled on 03.10.09 before the Hon'ble Secretary, DLSA, Dwarka vide settlement order in which it was mentioned that defendant has made the necessary repairs and the plaintiff had admitted her satisfaction.

13. The burden of proving the case lied upon the plaintiff. The plaintiff examined herself as PW□1, Sh Laxmi Narayan Executive Engineer DDA as PW□2, Sh Dharam Singh Narwal as PW□3 and Ms. Chhavi Chadha, Architect as PW□4.

14. The plaintiff has proved the letter dated 15.09.05 19.01.06 & 17.06.08 which was written by D . S . N a r w a l to the Executive Engineer, DDA with the request for inspection and repair of the seepage from damaged GI pipes in flat no. 309. The plaintiff has also proved the reply letter dated 06.12.08 written by Executive Engineer DDA to D.S.Narwal wherein it was replied that the responsibility of maintaining the flats example seepage/ leakage etc inside the flats rest with the respective allottees and it was requested that the matter may be taken up with the allottee of flat no. 309 Sh Kamal Arora. The plaintiff has also proved the photographs of the bathroom/ toilet which shows the seepage/ leakage on the roof coming to the adjoining walls.

15. The witness PW □2 Laxmi Narayan Executive Engineer WD □10, DDA brought the summoned record and proved the letter dated 17.09.05, 19.01.06 and 17.06.08 written by D.S.Narwal to the Executive Engineer and also the reply letter dated 06.12.08 written by Executive Engineer to D.S.Narwal.

16. PW □3 Dharam Singh Narwal is the husband of the plaintiff and he mainly corroborated the statement of the plaintiff and also proved the documents already Ex.PW1/2 to Ex.PW1/7.

17. PW □4 Chhavi Chadha is an Architect who stated that the leakage in the toilet is due to the leakage in the drainage pipe or water supply pipe in the toilet above on the upper floor.

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18. The defendant had tried to demolish the plaintiff case by stating that he has got repairs in the toilet/ bathroom in the year 2009 and that the seepage is not from the pipes of his bathroom/ toilet. He has also opposed the case on the ground that the seepage/ leakage is due to the fault of the plaintiff herself as the plaintiff has fixed additional water tank in her balcony and outside kitchen wall at a height of 15 feet from the ground level and she had one water connection in her bathroom also and the alleged seepage may be caused due to any defect in the pipelines installed by the plaintiff herself. The suit is also defended on the ground that the plaintiff has not been able to prove that the seepage/ leakage is coming from the pipelines of the defendant and that she has not examined any expert witness to prove this fact.

19. In the present case, conspicuously the leakage/ seepage is on the roof of the bathroom/ toilet of the plaintiff. It is not in dispute that the bathroom/ toilet of the defendant lie exactly above the bathroom/ toilet of the plaintiff. The plaintiff has stated that the plumbers who used to visit the premises have told her that the seepage is coming from the pipelines of the bathroom/ toilet of the upper flat.

20. The plaintiff has also examined the Architect PW □4 Chhavi Chadha to prove that the leakage is coming due to the drainage or supply pipe of the bathroom/ toilet of the defendant. The defendant has argued that PW □4 is not a technical engineer and her

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testimony can not prove that the seepage is coming from the

bathroom/ toilet of defendant. It is also alleged by the defendant that the statement of PW□4 is contradictory to the version of the plaintiff as she has stated in her cross examination that the seepage seems to be around one year old whereas the plaintiff case is that seepage is around Eleven years old.

21. It is well settled law that the evidence of an expert is not a conclusive proof but is merely corroborative. Section 45 of the Indian Evidence Act provides for the opinion of experts and it mentions that when the court has to form an opinion upon any question of Foreign law, Science or Art, the opinion of the persons specially skilled are relevant facts. The opinion can be admitted or denied but how much weight is to be given thereto lies within the domain of the court.

P W □4 C h h a v i C h a d h a is an Architect and she can not be said to have no knowledge about the seepage / leakage due to the pipes and as such her opinion can not be rejected outrightly. Further, the facts and circumstances in the natural course of events suggests that the seepage/ leakage coming on the roof of the bathroom/ toilet of the plaintiff is due to the pipeline in the bathroom/ toilet above it. As such, there is no confusion in the mind of the court regarding the fact of leakage/ seepage coming from the bathroom/ toilet of the defendant.

22. Further, in the cross examination, defendant DW □1 has stated that he has got replaced the five joints of sewer pipes and got

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them sealed through LEAD and thereafter he got the water proofing done at the surface level in three layers. However, during cross examination, to the specific question regarding the change of GI pipe, he replied that he did not get the GI pipes changed in 2009 as they were changed by the DDA in 2002 but he could not file any document to show that the DDA has changed the GI pipes in 2002. It is stated by PW□3 in his cross examination that in 2002, DDA got repaired P□trap and no digging was done by DDA at that time. No suggestion regarding change of GI pipes is given by the defendant to PW□3. It is clearly suggestive of the fact that GI pipes were neither changed in 2002 nor in 2009.

23. Though the defendant has argued that the leakage or seepage may be due to the mistake of the plaintiff but he has not discharged his onus of proving this fact. Thus, it becomes the incumbent duty upon the defendant to get his toilet/ bathroom repaired so that the leakage/ seepages does not cause inconvenience to the plaintiff.

24. The reply letter dated 06.12.08 by the Executive Engineer DDA to D.S.Narwal which is Ex.PW2/C and the Memorandum of Association of the RWA provides that the duty to maintain and repair the sewerage and water connection as lies with the apartment owner.



25. Thus, in the light on evidence which has come on record,  
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this court is of the view that the plaintiff has proved her case against the defendant and she is entitled to the relief of mandatory injunction. This issue is decided in favour of the plaintiff and against the defendant.

CONCLUSION:□

26. Relief: The suit of the plaintiff is decreed in her favour and the defendant is directed to take all the steps to stop the leakage in his bathroom/ toilet which is causing inconvenience to the plaintiff.

27. Decree sheet be drawn accordingly.

28. File be consigned to record room, after due compliance.

Announced in the open court (Sushil Anuj Tyagi) today i.e on 21.01.17  
ACJ/CCJ/ARC:South West District Dwarka Courts: New Delhi.

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