

2009 (3) SCR 336

PEDDI ASHOK KUMAR & ORS.

v.

PEDDI SUDARSHAN RAO
(Civil Appeal Nos. 1143-44 of 2009)

FEBRUARY 20, 2009

[DR. ARIJIT PASAYAT AND ASHOK KUMAR GANGULY, JJ.]

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Andhra Pradesh High Court permitting construction of the second floor, by modification of the interim order dated 3.11.2006, by which *status quo* was directed to be maintained. The High Court felt that there was no material to show that the building will not withstand the second floor and that there was inconvenience on the part of the applicant before the High Court to accommodate his sons. The High Court in the aforesaid premises modified the interim order dated 3.11.2006 and permitted construction of the second floor.

3. Learned counsel for the appellants assailed the correctness of the impugned order. There was no material before the High Court to show that any plan had been submitted or there was any sanction to construct the second floor. Specific stand was taken that the building would not withstand raising of the second floor. The High Court felt that it was for the appellant before the High Court to show that the building withstand the second floor. No material was placed by the applicant before the High Court to show that either there was any

sanction for construction of the second floor or that the factual situation was that construction of the second floor would not cause damage to the building. Merely because there was some purported inconvenience indicated by the applicant that could not have been ground to permit construction of the second floor.

4. In the circumstances, we set aside the impugned order of the High Court dated 20.10.2008 and direct that *status quo* as was earlier directed by the order dated 3.11.2006 shall continue to be operative till disposal of the matter by the High Court.

5. The appeal is disposed of accordingly. No costs.

