

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

+ **CRP No.152/2009**

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Date of decision:1st December, 2009

SHRI PUNEET CHADDHA

....Petitioner

Through: Ms. Geeta Luthra, Sr. Advocate with Ms.
Aanchal Mullick Sehgal, Advocate.

Versus

SHRI B.K. CHADDHA

... Respondent

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. This revision petition has been preferred by the defendant in the suit before the trial court against the order dismissing his application under Order 7 Rule 10 & 11 of the CPC.

2. The respondent/plaintiff is the father of the petitioner/defendant herein. The respondent/plaintiff instituted the suit from which this petition arises averring that he is the owner in possession of property bearing No.491-492 Double Storey Second Floor, New Rajinder Nagar, New Delhi – 110 060; that the petitioner/defendant being a son was earlier residing with him in the aforesaid house and also working with him; that the respondent/plaintiff upon marriage of the petitioner/defendant paid him a sum of Rs.15 lacs and the petitioner/defendant shifted with his family to Patel Nagar, New Delhi; that on 23rd December, 2007 the petitioner/defendant along with his wife and the children

came to the residence of the respondent/plaintiff and represented that their tenanted house in Patel Nagar was likely to be demolished and requested to be accommodated temporarily in the house of the respondent/plaintiff; they assured that they will shift out within a fortnight and the respondent/plaintiff permitted them to live in his house along with him temporarily; however the petitioner/defendant and his wife started harassing and torturing the respondent/plaintiff and his wife who are both old in age; that for the said reasons, the respondent/plaintiff vide legal notice dated 5th May, 2009 terminated the licence of the petitioner/defendant to live in his house; that the petitioner/defendant however did not vacate. The respondent/plaintiff in the circumstances in or about May, 2009 instituted the suit for the relief of mandatory injunction directing the petitioner/defendant to vacate the aforesaid house and to remove all his goods there from and also sought damages for use and occupation from the petitioner/defendant. The suit was valued for the relief of mandatory injunction at Rs.200.

3. The petitioner/defendant instead of filing a written statement filed an application under Order 7 Rules 10 & 11 of the CPC. It is pleaded therein that the respondent/plaintiff in the garb of mandatory injunction is seeking to recover possession from the petitioner/defendant; that the petitioner/defendant and his family has always resided “together” with the respondent/plaintiff; that the house had been purchased out of joint funds; that the petitioner/defendant is residing permanently in the suit premises; that even if the version of the respondent/plaintiff were to be correct, the respondent/plaintiff is required liable to value the suit property and pay the court fees as per the market value which is stated to be over 1.5 crore. Since the written statement has not been filed, from the application under Order 7 Rule 11 it may be noticed that there is no denial therein of the petitioner/defendant after his marriage having started living in Patel Nagar and of having come to live in the house on 23rd December, 2007 as averred in the plaint.

4. Be that as it may, for the purpose of Order 7 Rule 11 of the CPC it is the plaint alone which has to be seen. The rejection/return of the plaint was sought on the ground of it being not properly valued.

5. The trial court vide order impugned in this petition, while dismissing the application of the petitioner/defendant has held that the bone of contention was whether for the purposes of court fees and valuation, the suit is to be covered under Section 7 (v) (e) or Section 7 (iv) (d) of the Court Fees Act. The counsel for the petitioner/defendant before the trial court relied on ***Renu Nagar Vs. Anup Singh Khosla*** 156(2009) DLT 723 and ***Punjab Exchange Vs. Rajdhani Grains Limited*** 1975 RLR 485. The trial court held that the facts of the present case were different from those in the judgments cited; that the petitioner/defendant was not in exclusive occupation of the property; the respondent/plaintiff was also in occupation of the premises, it was held that since the respondent/plaintiff was already in possession of the premises as per averments in the plaint, it was not a case where the possession has to be taken over from the petitioner/defendant and then handed over to the respondent/plaintiff. The trial court thus held that the suit as framed was maintainable and was covered under Section 7 (iv)(d) of the Court Fees Act and had been filed appropriately for the purposes of court fees and jurisdiction.

6. The senior counsel for the petitioner has vehemently contended that the trial court has committed a gross error in not following the judgments aforesaid of this court and in carving out a distinction when none exists. It is argued that the judgment in ***Renu Nagar*** (Supra) though of a single judge of this court is in fact following the Division Bench of this court in ***Ashok Chaudhary Vs. Dr. (Mrs.) Inderjit Sandhu*** 1998(47) DRJ 575.

7. The senior counsel for the petitioner contended that she is not challenging the maintainability of a suit for mandatory injunction. The argument however is that such suit for mandatory injunction has to be valued under Section 7(v) of the Court Fees Act as a suit for the relief of possession and is to be valued on the market value of the property.

8. The attention of the senior counsel for the petitioner, during the hearing was invited to ***Prabhu Dayal Vs. Roop Kumar*** AIR 2005 Delhi 144, also a judgment of a Division Bench of this court. The senior counsel after going through the said judgment

mentioned the matter and contended that the same was not contrary to the judgment of the Division Bench in *Ashok Chaudhary* (Supra). She also contended that the judgment of the Supreme Court in *Sant Lal Jain v. Avtar Singh* AIR 1985 SC 857 relied upon referred to in *Prabhu Dayal* (Supra) had also been considered in *Ashok Chaudhary* (Supra). She thus further contended that even if there was any conflict in the judgments of the two Division Benches of this court, the matter required consideration and notice be issued and the proceedings in the suit before the trial court which were stated to be listed on the next date be stayed. However entertaining some doubts, judgment was reserved.

9. At the outset, I may state that on carefully going through the judgment in *Ashok Chaudhary* and in *Renu Nagar* forming the main stay of the arguments of the senior counsel for the petitioner, I do not find any mention of the judgment of the Supreme Court in *Sant Lal Jain* (supra) therein, as was informed. On such reading, I am further of the opinion that no fault can be found with the order of the trial court, even on the basis of the judgment of the Division Bench of this court in *Ashok Chaudhary*.

10. Section 7(iv)(d) of the Court Fees Act permits a plaintiff in a suit for injunction to value the same at the amount deemed appropriate by the plaintiff. Section (v) relates to suits for possession and requires such suits to be valued according to the market value of the property.

11. Once, it is admitted by the Senior Counsel for the Petitioner that she does not object to the maintainability of the suit for mandatory injunction, ordinarily the said suit will have to be valued as per the provisions of the Court Fees Act applicable to suits for injunction and not as per the provisions relating to suits for possession. It is too late in the day to contend that there is no difference between the suits of the two kinds. The Full Bench of the Jammu and Kashmir High Court in *Milka Singh Vs. Diana* AIR 1964 J&K 99 held that against a licensee a suit for mandatory injunction was maintainable and suit for possession was not required to be filed. The Supreme Court in *Sant Lal Jain* affirmed the principles of law laid down by the Full Bench of the Jammu & Kashmir High Court.

12. This court also in ***Hori Lal Vs. Sarwan Kumar*** (1992) 46 DLT 173 has held that upon revocation of license to occupy a property, a suit for mandatory injunction was maintainable. The said view of the single judge was affirmed by the Division Bench in ***Prabhu Dayal***.

13. That brings me to the Division Bench judgment in ***Ashok Chaudhary***. The Division Bench, on a reading of the plaint in that case, found the relief of vacation and putting the plaintiff therein into peaceful possession also to have been claimed besides the relief of mandatory injunction. In the face of such a plaint, it was held that it is the substance of the relief claimed as disclosed in the plaint as a whole and not merely the form in which the relief is expressed which is to be seen. However, in that case also the Division Bench observed that it has to be borne in mind that “it is not the case of the plaintiff that the defendant No.2 was in joint possession of the suit premises along with the plaintiff”; reading the plaint as a whole, it becomes clear that the relief asked for by the plaintiff squarely amounts to her having to get possession of the suit premises from the defendant who is in possession thereof and the plaintiff cannot secure the same by merely adding a prayer for mandatory injunction of the kind asked for in the plaint. It was found that the relief of recovery of possession of the suit premises was not a surplusage but a substantive relief claimed by the plaintiff. The relief for recovery of possession prayed for was not consequential to the relief of mandatory injunction prayed for and therefore Section 7(v)(e) of the Court Fees Act was held to be attracted to the substantive relief claimed in the plaint. In that case, the suit related to a barsati floor in exclusive possession of the defendant.

14. It would thus be seen that the plaintiff in that case was required to value the suit under Section 7(v) as a suit for possession because the relief claimed was for possession and the prayer for mandatory injunction was found to be a surplusage. While holding so also an exception was carved out for the cases where the licensee who is sought to be evicted is in joint possession with the plaintiff. The facts of the present case are covered by the said exception carved out by the Division Bench and the trial court has correctly appreciated the same.

15. The judgment of the single judge in ***Renu Nagar*** need not be discussed as the same merely follows the Division Bench in ***Ashok Chaudhary***. However, it may be pointed out that the suit in that case also related to a house which was in exclusive possession of the defendant.

16. Though the judgment of the Division Bench in ***Ashok Chaudhary*** was on the facts of that case but at this stage, it may be noted that the Supreme Court in ***Sant Lal Jain*** has held that where a licensor approaches the court for an injunction within a reasonable time after the license is terminated, he is entitled to the relief of injunction. Only if the licensor causes huge delay, the court may refuse the discretion to grant an injunction on the ground that the licensor had not been diligent and only in that case the licensor will have to bring a suit for possession which will be governed by Section 7(v) of the Court Fees Act.

17. In view of the dicta of the Supreme Court, and no other judgment to the contrary having been shown, it is to be held to be the law that where a suit is found for mandatory injunction only, it is to be valued under Section 7(iv)(d) and not under Section 7(v) of the Act.

18. Reference may also be made to the earlier judgment of another single judge of this court in ***Punjab Exchange*** (Supra). In that judgment also it was held that when the defendant is in exclusive possession and the plaintiff cannot secure the same by merely coupling or adding prayer for mandatory injunction of the kind asked for in the plaint, the plaint has to be construed in substance to be for possession. However, if the plaint is for a mere injunction, plaintiff can value the relief as he likes. It thus cannot be said that the judgment in ***Punjab Exchange*** also is against the respondent/plaintiff or that the same has not been correctly appreciated and/or distinguished by the trial court.

19. At this stage, reference may also be made to ***Shamlal Vs. Rajinder Kumar*** (1994) 30 DRJ 597 also referred to with approval by the Division Bench in ***Prabhu Dayal***. It was held therein that possession is a flexible term and is not necessarily restricted to mere actual possession of the property.

20. In the present case, not only is it pleaded by the respondent/plaintiff in the plaint but it is expressly admitted by the petitioner/defendant in his application under Order 7 Rule 11 of the CPC that the petitioner/defendant is residing in the house “together with the respondent/plaintiff”. That being the position, I fail to understand as to what possession can be sought to be recovered by the respondent/plaintiff and as to why he should be called upon to pay court fees on the market value of the house of which he is admittedly the owner and in possession. Considering the nature of the house also, which is essentially a flat, it cannot be said that the respondent/plaintiff is required to sue for possession or to pay market value.

21. The petition thus fails and is dismissed. However, before parting with the case I must express my anguish at the acrimonious manner in which the petitioner/defendant is contesting the suit filed by his aged parents. Obviously, the filing of the application under Order 7 Rule 11 CPC, inspite of the well settled legal proposition and in spite of the exception as in this case, expressly carved out in *Ashok Chaudhary* was to delay the filing of the written statement. The filing of this petition was yet another step to delay the suit in as much as by citing the judgments not applicable to the case, stay of the proceedings before the trial court was sought. Considering the age of the respondent/plaintiff, this court would be failing in its duty if after the matter having been brought to its notice the requisite directions are not issued.

I, therefore, direct the trial court to dispose of the suit from which this petition has arisen as expeditiously as possible and not later than one year from today.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**December 01, 2009
PP**