

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

+ C.R.P. 74/2014 & CM No. 9599/2014

% 10th October, 2014

**+ PUNJAB NATIONAL BANK ALL CADRE COOP. THRIFT AND
CREDIT SOCIETY LTD. Petitioner
Through: Mr. K.G. Mishra, Advocate.**

Versus

**PUNJAB NATIONAL BANK Respondent
Through: None.**

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The petitioner-plaintiff impugns the judgment of the trial court dated 28.01.2014 which has dismissed the suit filed by the petitioner-Society under Section 6 of the Specific Relief Act, 1963.

2. The facts of the case are that the petitioner-plaintiff Society was registered for the employees of the erstwhile New Bank of India and it started functioning from an area of 150 sq. ft. approximately in the premises N-86, Janpath, New Delhi, which was with the New Bank of India and a branch was operated therefrom. With effect from 04.09.1993, New Bank of India was amalgamated with the defendant bank i.e Punjab National Bank

whereby all the assets and liabilities of New Bank of India got transferred to the defendant/Punjab National Bank.

3. The petitioner-plaintiff claims that defendant vide its letter dated 23.09.1993 (Ex.PW1/45) asked that possession of the premises be handed over to the management of the defendant bank because there was no practice prevalent in the Punjab National Bank to provide any portion in a branch for any Union/Society. The petitioner/plaintiff claims that the employees of the plaintiff-Society were thereafter not permitted to enter the suit premises and in fact, the defendant bank shifted the branch at Janpath to its other branch. The petitioner-plaintiff claims therefore to have been dispossessed and accordingly, filed the subject suit under Section 6 of Specific Relief Act.

4. The relevant issues which were framed by the trial court are issues nos. 2 and 3 which read as under:-

“2. Whether the plaintiff had been in exclusive possession of approximately 150 sq. ft. area in premises No. N-86, Janpath, New Delhi since 1976?

3. Whether on 14th January 1994, the defendant dispossessed the plaintiff from the area referred to in issue No.2 as alleged? If so, to what effect?”

5. The trial court with respect to these issues has arrived at a finding that the petitioner-plaintiff Society was not in “possession” of the suit premises

because actually the premises were only allowed to be used and occupied by the petitioner-plaintiff Society. The trial court also records that once there is no legal or settled possession of the petitioner-plaintiff Society, the petitioner-plaintiff Society cannot claim to be put back into possession. The trial court has emphasized that the petitioner-plaintiff Society could not be in the exclusive possession of the suit premises because the suit premises is located within the main branch and there is no direct access i.e ingress and egress to the suit premises of the petitioner-plaintiff/Society and entry to the suit premises can only be by means of entry through the main gate of the premises which main gate was in the control and possession of the defendant bank. Accordingly, since the petitioner-plaintiff Society was not in exclusive possession of the premises, it was held that the suit cannot be decreed under Section 6 of the Specific Relief Act.

6. The relevant observations and conclusions of the trial court are contained in paras 23 and 24 of the impugned judgment which read as under:-

“23. For the purpose of Section 6 of Specific Relief Act, 1963, the possession of immovable property claimed by a person should be juridical that is to say that possession founded on some rights as held in Amir Khan vs. Mohd. Jamil ILR 15 Bombay 685. It is further required that the possession must be to the exclusion of all others.

At the outset, it may be mentioned that the plaintiff Society has failed to place on record any documentary evidence in the shape of Lease/ License Agreement or even written consent of the erstwhile management of New Bank of India to show that it was given permission to occupy the suit premises exclusively for the business of the plaintiff Society or that it had any right to stay in the suit premises. No doubt, the plaintiff Society was using a portion of the Bank's premises for its business with the tacit consent of the erstwhile management but neither it was given exclusive possession nor any right was created in favour of the plaintiff Society. The documents, letters and correspondences Ex.PW1/2 to Ex.PW1/44, relied upon by Counsel for the plaintiff Society, merely show that plaintiff Society was using the suit premises which was part of the Bank's premises but none of these documents is sufficient to establish that plaintiff Society had any right in the suit premises or was in exclusive possession of the same. It is an admitted position that the suit premises was a part and parcel of the Bank's premises situated on the first floor and the access to the Bank's premises through the main gate was always in control of the Bank management and the plaintiff Society had no control over the main entry gate of the premises which shows that the plaintiff Society was never in exclusive possession of the suit premises. Mere user of a part of Bank's premises by the plaintiff Society for a long period, would not create any legal right in its favour nor it tantamounts to exclusive possession of the plaintiff Society over that portion. Therefore, the plaintiff Society has failed to prove exclusive possession over the suit premises.

24. As regards the dispossession of the plaintiff Society from the suit premises by the defendant Bank on 14.01.1994, the plaintiff Society has not been able to prove on record any complaint made to the police or higher authorities of the Bank. Although in the plaint, the plaintiff Society has averred that it has a right to continue in the suit premises and cannot be dispossessed without due process of law but it has failed to establish its right in the suit premises and dispossession therefrom.

The Reliance placed by Counsel for the plaintiff Society on Clause 4 & 5 of the Notification dated 04.09.1993 vide which New Bank of India was amalgamated with the defendant Bank to argue that defendant Bank was under obligation to provide the space for the functioning of the plaintiff Society is also misplaced. Bare perusal of the said Notification would show that the same is in respect of the rights and liabilities of two Banks in relation to their commercial transactions only and the same are not applicable to the plaintiff Society. Therefore, the plaintiff Society has also failed to establish any sort of right over the suit premises under its use and is not entitled for any relief u/S 6 of Specific Relief Act.

Counsel for the plaintiff has argued that the contents of the notice Ex.PW1/45 are ex-facie false as another Society of the Officials of defendant Bank is functioning from Parliament Street Branch of the defendant Bank and it cannot be said that the defendant Bank has no policy of providing space to any Union or Society inside the Branch. This argument of Counsel for the plaintiff is also not sufficient to create any right in favour of the plaintiff Society. Even if for the sake of arguments, it is assumed that defendant Bank had allowed one Society to operate from one of its Branch's premises, it would not grant any right or privilege to the plaintiff Society to continue any occupation in the suit premises even when it has been asked to vacate the same vide notice dated 23.09.1993.

The issues are accordingly decided against the plaintiff Society and in favour of the defendant Bank.

(underlining added)

7. I completely agree with the aforesaid conclusions of the trial court. I may also note that there is already running another credit and thrift Society of the defendant bank for its employees and which could include the

employees of the erstwhile New Bank of India. Also, it is surprising as to how a credit and thrift Society run by the employees of the bank itself can claim right of possession of a premises of the bank itself, once the defendant bank categorically states that as per its policy, within a branch premises no space can be allocated to any Union or Society.

8. Powers under Section 115 of the Code of Civil Procedure, 1908 (CPC) can only be exercised if the court below acts in excess of its jurisdiction. When two views are possible and the trial court takes one plausible and possible view, it cannot be said that the trial court has acted in excess of its jurisdiction. Therefore, this Court accordingly cannot interfere with the impugned judgment in exercise of powers under Section 115 CPC.

9. In view of above, I do not find any merit in the petition. The same is, therefore, dismissed leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

OCTOBER 10, 2014