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

+ C.R.P. 110/2016 and CM Nos. 27009-27010/2016

MUBARAK ALI & ANR. Petitioners
Through Mr.Shakeel Ahmed and Mr.Abdul
Kalam, Advocates.
versus
ANEESA BEGUM Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
29.07.2016

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1. The present petition is filed under Section 115 CPC to impugn the order dated 19.05.2016 by which order the application filed by the petitioners under Order 7 Rule 11 CPC was dismissed.
2. The petitioners are the sons of the respondent. The respondent has filed the suit for permanent and mandatory injunction in respect of the property at Zakir Nagar, Okhla, New Delhi. It is contended by the respondent that the petitioners approached the respondent many times and sought permission to shift into the suit property which permission was reluctantly granted allowing the petitioner to move on the first and second floor of the property for some time. On account of various reasons, the respondent has now filed the suit for the aforementioned relief.
3. The petitioner has raised various preliminary objections stating that the suit is not property valued and that the plaint has to be valued as per the market value of the property as in effect the respondent is seeking the relief

of possession though as per the prayer clause the suit is for mandatory injunction. It is also urged that the suit for mandatory injunction is not maintainable.

4. The trial court by the impugned order relied upon the judgments of in the case of ***Padmavati Mahajan vs. Yogender Mahajan, 152 (2008) DLT 363*** and ***Oriental Trading Corporation vs. Punjab Spin Trading Company, 1976 RLR 650***. Based on the above judgments, the court held that where a plaintiff chooses to sue for injunction instead of possession, he would pay the court fees based on the relief as a suit for injunction and not for possession. The trial court concluded that prima facie the possession of the whole of the property can be said to that of the respondent and hence, the court fees affixed was appropriate.

5. I have taken a decision in this regard in a petition being CM(M) No. 663/2015 titled as “***Malik Mohd. Tanveer vs. Uzma Malik & Anr.***” in which this court held as follows:-

6. This court in the case of ***Mulk Raj Khullar vs. Anil Kapur & Ors. (supra)*** has already dealt with similar contentions relying upon the judgments in the case of ***Sant Lal Jain vs. Avtar Singh(supra)*** and ***Joseph Severance vs. Benny Mathew (supra)***. This court held as follows:

“13. Reference may be had to the judgment of the Hon’ble Supreme Court in the case of ***Sant Lal Jain versus Avtar Singh (supra)*** where the Hon’ble Supreme Court approved the judgment of the High Court in the case of ***Milka Singh vs Diana, AIR 1964 J&K 99*** and held as follows:-

“6. In Milkha Singh v. Diana, it has been

observed that the principle once a licensee always a licensee would apply to all kinds of licences and that it cannot be said that the moment the licence is terminated, the licensee's possession becomes that of a trespasser. In that case, one of us (Murtaza Fazal Ali, J. as he then was) speaking for the Division Bench has observed:

"After the termination of licence, the licensee is under a clear obligation to surrender his possession to the owner and if he fails to do so, we do not see any reason why the licensee cannot be compelled to discharge this obligation by way of a mandatory injunction under s. 55 of the Specific Relief Act. We might further mention that even under English law a suit for injunction to evict a licensee has always been held to be maintainable.

.... where a licensor approaches the court for an injunction within a reasonable time after the licence is terminated, he is entitled to an injunction. On the other hand, 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 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."

The above judgment has been cited with approval by the Supreme Court in the case of *Joseph Severance and Others versus Benny Mathew and Others (supra)*. The Hon'ble Supreme Court in the relevant portion of para 7 of the judgment held as under:

"....Strictly speaking the question is not a substantial question of law, but one whose adjudication would depend upon factual

adjudication of the issue relating to reasonableness of time. The correct position in law is that the licensee may be the actual occupant but the licensor is the person having control or possession of the property through his licensee even after the termination of the licence. Licensee may have to continue to be in occupation of the premises for some time to wind up the business, if any. In such a case licensee cannot be treated as a trespasser. It would depend upon the facts of the particular case. But there may be cases where after termination or revocation of the licence the licensor does not take prompt action to evict licensee from the premises. In such an event the ex-licensee may be treated as a trespasser and the licensee will have to sue for recovery of possession. There can be no doubt that there is a need for the licensor to be vigilant. A licensee's occupation does not become hostile possession or the possession of a trespasser the moment the licence comes to an end. The licensor has to file the suit with promptitude and if it is shown that within reasonable time a suit for mandatory injunction has been filed with a prayer to direct the licensee to vacate the premises the suit will be maintainable.”

7. The legal position that arises from the above two judgments of the Supreme Court is that a licensor is a person having control/possession of the property through the licensee even after termination of the license. Once it is held that the licensor is the actual person in possession of the suit property, there would be no need to seek the relief of possession and value of the suit accordingly as a suit for possession.

8. The Single Judge of this High Court in the case of Shri Puneet Chaddha vs. Shri B.K.Chaddha bearing No.CRP No.152/2009 dated 1st December, 2009 relying upon judgment of the Supreme Court in ***Sant Lal Jain vs. Avtar Singh, (supra)***

held as follows:-

“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.

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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.”

To the same effect is the judgment of another Single Judge of this Court in **Sunil Sharma and Anr. vs. Smt. Uma Sharma, MANU/DE/0792/2014**.

9. I may note that the settled legal position is that for deciding the question relating to the amount of Court Fees payable on a plaint, the averments in the plaint have to be looked into. This court in the case of **Oriental Trading Corporation vs. Punjab Skin Trading Co., MANU/DE/0252/1976** relying upon the Full Bench of the

Circuit Bench of the Punjab High Court at Delhi in ***Jai Krishna Dass vs. Babu Ram, 1967 Plrd 52*** stated as follows:-

“(1)...it was settled law that for deciding the question relating to the amount of court fee payable on a plaint, not only have the averments in the plaint alone to be taken into account but the said allegations are to be assumed to be correct and the decision can neither depend on the maintainability of the suit as framed nor upon the assumption that the court must somehow spell out of the plaint such a claim which is ultimately capable of being decreed and the Court has to take the plaint as it is without omitting anything material and without reading in it by implication what is not stated therein.”

10. If I were to look at the plaint in the present case it would be noticed that in para 1 itself the plaintiff/petitioner has stated that he is the owner and in possession of the suit premises constructed on the first and second floor of the property i.e. the suit property. The legal position being that the licensor is the actual occupant through his license, it would be clear that the relief of possession is not required to be pleaded or sought for. Accordingly, the suit would have to be valued for the purpose of mandatory injunction under Section 7(iv)(d) of the Court Fees Act and not under Section 7(v) of the Act. There would be no reason to pay ad valorem Court Fees on the market value of the suit property as held in the impugned order.

6. In the facts of the present case the aforesaid judgment of this court would be clearly applicable. In view of the above legal position, there is no merit in the present petition and the same is dismissed.

7. All pending applications also stand dismissed.

JAYANT NATH, J.

JULY 29, 2016/rb