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

+ CM(M) 808/2016

CHARANJIT MENDIRATTA Petitioner
Through Mr.Abhimanyu K. Singhla, Advocate.

versus

SUBHASH MUKHIJA & ANR Respondents
Through None.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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23.08.2016

CM Nos. 30561-30562/2016 (exemption)

Exemption is allowed subject to all just exceptions.

CM(M) 808/2016 and CM No. 30560/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 08.08.2016 by which the application filed by the petitioner under Order 7 Rule 11 CPC for rejection of the plaint was dismissed.
2. It was the submission of the petitioner that the suit has not been valued properly and if the suit is valued as per the market value, the court would have no jurisdiction to entertain the present suit. The trial court noted that as per the submission in the plaint, it is the contention of the plaintiff/respondent that the petitioner is a licensee in the suit property.
3. The suit has been filed for mandatory injunction against the petitioner who is stated to be a licensee. As the relief of possession has not been

prayed, the trial court dismissed the application.

4. The legal position that arises from the 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.

5. 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**.

6. 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.”

7. 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.

8. The above view was also stated by this court in the case of *Malik*

Mohd Tanveer vs Uzma Malik & Anr in CM(M) 663/2015 dated 18.07.2016.

5. In view of the said judgment of this court, the present petition has no merit and is dismissed.

JAYANT NATH, J

AUGUST 23, 2016
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