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

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Date of Decision: 10.11.2016

+ CM(M) 1039/2016

VINOD TRIVEDI

..... Petitioner

Through Mr. Alamgir, Advocate.

versus

ATUL JAIN & ORS

..... Respondents

Through Ms. Anju Lal and Ms. Shalu Lal,
Advocates for R-1 & 4.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

CM No. 38067/2016 (*exemption*)

Allowed subject to all just exceptions.

CM(M) 1039/2016 and CM No. 38066/2016 (*stay*)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to challenge the order dated 27.07.2016 by which his application under Order 6 Rule 17 CPC was dismissed.
2. The brief facts are that the petitioner claims that his father was a tenant in the suit premises since 1950. The plaintiff has filed the suit under Section 6 of the Specific Relief Act. The need arose to file the present application under Order 6 Rule 17 CPC as it is the contention of the petitioner that he has during the pendency of the suit come to know that defendant No.1/respondent No.1 has demolished the tenanted premises and hence, the need to amend his plaint as well as the prayer to add the relief of

compensation.

3. The trial court noted that the petitioner in his cross-examination on 07.10.2010 has deposed that he knew that the entire building has been demolished and re-constructed and he came to know about this when the case was started. The trial court also noted that he is seeking amendment by way of the present application which is filed on 17.02.2016 when the matter is at the stage of the defendant's evidence and PE was closed on 17.09.2014. The impugned order further notes that there is no reasonable justification furnished by the petitioners as to why he did not claim compensation or damages in the original suit when he already knew the fact about the demolition and re-construction at the time of filing of the suit itself.

4. I have heard the learned counsel for the parties.

5. Learned counsel for the petitioner has argued that he has received knowledge of demolition and re-construction after the suit was filed and the facts pertaining to the changed scenario need to be brought on record and the relief of damages has also to be brought on record. He submits that otherwise the suit will become infructuous.

6. Learned counsel appearing for the respondent has at the outset denied that the demolition and reconstruction has been carried out after filing of the suit. She submits that the admitted case of the petitioner is that the demolition and reconstruction was carried out prior to filing of the suit. She also relied upon the judgment of this court in the case of ***Dharam Dir & ors. vs. Ancha Devi, 53 (1994) DLT 191*** and ***Foujmal Manaji vs. Bikhilai & Anr., AIR 1937 Sind 161*** to contend that in a suit for possession under Section 6 of the Specific Relief Act, no relief for mense profits or damages can also be sought. Hence, she submits that the application filed by the

petitioner for amendment in any case is misconceived.

7. I may first see the judgment of this court in the case of *Dharam Dir & ors. vs. Ancha Devi (supra)*. This court held as follows:

“6. However, with respect, I do feel that since the right to possession of immovable property and the right to enjoy profits thereby are distinct causes of actions, a person who stands dispossessed of immovable property is entitled to sue for its possession under Section 6 and has to leave the question of damages/manse profits for another suit since that would depend on title, a matter which is beyond the pale of a suit under Section 6 of the Act. We can ill afford to ignore the object of Section 6 which clearly is to discourage forcible and unlawful possession and in order to grant relief the Court is required only to see whether the person seeking relief was dispossessed within six months of the date of the institution of the suit. It is not required to go into any other question. This being the position, I do feel that a Court cannot pass a decree for damages/manse profits under Section 6 of the Act Along with a decree for possession. The question, however, is that if that be so is the impugned decree liable to be set aside altogether?

(7) The two judgments referred to and relief upon by Mr.Lal have already been taken note of by me in the preceding paragraphs which do say that the entire decree must fall. However, although Nazir Ahmed's judgment is based upon an earlier Calcutta High Court's judgment, it appears that the Calcutta High Court itself, with the passage of time, had a rethinking over the matter. Reference in this connection may be made to Sona Mia and Another v. Parokash Chandra Bhattacharjya & Others, AIR1940Cal464 . In the said case, it so appears, besides a decree for possession under Section 9 the Court also directed the defendant to remove structure which they had erected on the land and even permitted the plaintiff to pull down the same. It was held that since in a suit under Section 9 the question of title of the respective parties was not to be adjudicated upon, Therefore, the Court was wrong in passing an order regarding the structures on the land. Was the

entire decree made to fall there by? No. The order of the learned trial judge ejecting the defendant from the land was maintained, but the order regarding the structure was set aside. This, however, is not the solitary judgment. In *Ma Nagwe Bwin & others v. Maung Po Maung* Air 1927 Ran 120 a decree had been passed not only relating to possession but also for mesne profits. While holding that a claim for mesne profits could not be joined with a claim under Section 9 of the Act of 1877, the Court set aside so much of the order as related to mesne profits, and significantly, it did so after noticing both the judgments relied upon by Mr.Lal. Same view was taken in '*Yalamanchili Puranyya v. Pama Ramaswamy* Air 1915 Mad 80 and in *AbdulKadi Rowther v. Uthumansa Rowther*, AIR 1927 Mad 722. Reference in support may also be made to a judgment from Mysore High Court in *Krishnaji Madhavaroo Khannukar v. Mahmed Husen Budansaheb and Other*, Air 1959 Mys 127 in which too besides a decree for possession under Section 9 of the Act mesne profits had also been awarded. The Court maintained the decree for possession but deleted that part of the decree by which the plaintiff was awarded mesne profits. To the same effect is the judgment from Goa, Daman and Diu in *Govind Babuji Naik Araundekar v. Shankar Babu Naik Araundekar* Air 1971 Goa 24.”

8. Similarly, the Division Bench of the Sindh High Court in the case of ***Foujmal Manaji vs. Bikhibai & Anr.(supra)*** held as follows:-

“Section 9, Specific Relief Act, provides a special and comparatively summary remedy for a person dispossessed without his consent, and the section relates only to possession. Hence, under this section a suit for possession and mesne profits will not lie. The court cannot pass a decree for mesne profits arising either prior or during pendency of the suit. Nor can the court appoint a receiver. Where therefore the court passes an order for appointment of a receiver for collection of mesne profits it is without jurisdiction and cannot be said to be passed in a suit instituted under Section 9.”

9. In the case of ***H.P.Vedavyasachar v. Shivashankara & Anr., (2009)***

8 SCC 231, the Supreme Court while dealing with the purview of Section 6 of the Specific Relief Act, 1963 held as follows:

“6. So far as the contention of the learned counsel for the appellant that the suit was instituted in terms of Section 6 of the Specific Relief Act, 1963 is concerned, in our opinion, the same cannot be accepted. The appellant has not only prayed for grant of a decree for permanent injunction but has also asked for passing a decree for mandatory injunction directing the respondents to hand over possession to it. Such prayers, in our opinion, would not come within the purview of Section 6 of the Specific Relief Act.”

10. Hence, the legal position as stated in the above judgments including the judgment of the Supreme court and this court is that the right to possession of immovable property and the right to enjoy property are distinct cause of action. The person who is dispossessed of the immovable property is entitled to sue for possession under Section 6 of the Specific Relief Act. In such an eventuality, the question of mesne profits and damages would depend upon the title and that question cannot be gone into in a suit filed under Section 6 of the Specific Relief Act. The petitioner would be free to take separate steps seeking such relief.

11. In the light of the above judgments de hors the reasoning of the trial court in the impugned order, it is manifest that the application filed by the petitioner which apart from the other facts also sought addition of the relief of mesne profits/damage is misplaced and is not bonafide, where an amendment sought is not bonafide, such an amendment cannot be allowed [Ref: Revajeetu Builder & Developers v. Narayanswamy & Sons & Ors., 2009(13) SCALE 241]

12. However, I may add that keeping into account the fact that the

original building has been demolished and fresh construction has been carried by the respondent, liberty needs to be given to the petitioner to file a fresh application confining his amendments to these averments simplicitor i.e., regarding the demolition of the original property and reconstruction.

13. I see no reason to interfere with the impugned order for the reasons as given above. However, the liberty is granted to the petitioner as noted above to file a fresh application for amendment. In case such an application is filed that would be decided as per law.

14. With the above observations, the petition and all pending applications stand disposed of.

15. Dasti.

JAYANT NATH, J

NOVEMBER 10, 2016/rb