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

**%** *Date of Decision: 18.07.2016*

\+ CM(M) 663/2015 and CM No. 12763/2015 (stay)

MALIK MOHD TANVEER ..... Petitioner
Through Mr.Pankaj Prasad, Advocate

versus

UZMA MALIK & ANR ..... Respondents
Through Mr.Arun K. Sharma, Advocate

**CORAM:**
**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J. (Oral)**

1. The present petition is filed seeking to impugn the order dated 18.03.2015 passed by the trial court.

2. The petitioner has filed the present suit for mandatory injunction and mesne profits. It is contended that the petitioner is the owner of premises No. 1457, Gali Masjid Syed Rafai, Bazar Chitli Qabar, Jama Masjid, Delhi comprising of portion constructed on the first and second floor of the said property. It is further stated that the petitioner added one room on the second floor as the respondents were in need of a residential accommodation. Inasmuch as respondent No.1 is the cousin sister of the petitioner, the said respondent No.1 was allowed to use the first and the second floor without any license fee. It is urged that license now stands terminated and hence, the present suit.

3. By the impugned order dated 18.03.2015, the trial court held that a

suit for mandatory injunction is maintainable against a licensee. The trial court, however, relied upon the judgment of the Division Bench of this High Court in the case of ***Ashok Chaudhary vs. Dr. (Mrs.) Inderjeet Sandhu, 1998 IV AD (Delhi) 917*** and ***Renu Nagar vs. Anup Singh Khosla & Anr., 2009 (156) DLT 723*** to hold that the petitioner has to value the suit for the purpose of jurisdiction at the market value of the suit property. Accordingly, a direction was passed to the petitioner/plaintiff to make necessary amendments in the plaint regarding valuation of the suit property and pay deficit court fees.

4. Learned counsel appearing for the petitioner has relied upon the following judgments to contend that a suit for mandatory injunction would lie and there is no requirement for valuing the property at market rate.

(i) ***Sant Lal Jain vs. Avtar Singh, 1985 (1) Current Civil Cases 1078.***
(ii) ***Joseph Severance vs. Benny Mathew, 2005 (8) JT 509.***
(iii) ***Gyan Chand & Ors. vs. Ram Chander, 2014 Legal Eagle (Del.) 476.***
(iv) ***Mulk Raj Khullar vs. Anil Kapur & Ors. MANU/DE/3495/2013***

5. Learned counsel appearing for the respondents has, however, contended that the suit is essentially for possession and hence, the petitioner would have to pay ad valorem court fees based on the market valuation of the suit property. He also submits that the suit is not maintainable inasmuch as respondent No.1 is also a co-owner of the suit property. Reliance is placed by the respondents on the following judgments to contend that there is no infirmity in the impugned order.

(i) ***Deepak Gupta vs. Praveen Kumar Gupta*** in CRP 194/2010 dated 11.07.2012

(ii) ***Jugal Kishore vs. Des Raj Seth, 4(1968) DLT 571***

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:-
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> > "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 it 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:
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> > > "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.
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> .... where a licenser 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 licenser had not been diligent and in that case the licenser 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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> ......
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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.

11. I may refer to the judgment of the Division Bench of this Court in ***Ashok Chaudhary vs. Dr.(Mrs.) Inderjit Sandhu 1998 (supra).*** This was the judgment primarily relied upon in the impugned order and by the learned counsel for the respondent. That was a case in which the Division Bench concluded that the plaintiff and defendant No.2 of that case were not said to be in joint possession of the suit premises and that the plaintiff was actually seeking relief of possession from defendant No.2. Hence it was held that the plaintiff could not secure the same by merely adding a prayer for mandatory injunction. The relief of recovery of possession of the suit premises was held to be a substantive relief claimed by the plaintiff and hence it was held that Section 7(v) (e) of the Court Fees Act is attracted. The said judgment of the Division Bench clearly was based on the facts of the case and does not apply to the present case. Further, the said judgment did not notice the judgments of the Supreme Court in ***Joseph Severance vs. Benny Mathew (supra) and Sant Lal Jain vs. Avtar Singh (supra).***

12. In view of the above, the impugned order is set aside. The

petitioner/plaintiff is liable to pay Court Fees with relief of mandatory injunction as per Section 7(iv) (d) of the Court Fees Act and not the market value of the suit property. The petition is accordingly allowed.

**JAYANT NATH, J.**

**JULY 18, 2016/rb**