

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

% **Date of decision: 11th July, 2017**

+ **C.R.P. 84/2013 & CMs No.6852/2013 & 6863/2013.**

SMT. RAJ AGGARWAL & ANR

..... Petitioners

Through: Mr. Arvind Kumar Gupta, Mr.
Gajanand Kirodiwal and Mr.
Sagar Gupta, Advs.

versus

SHASHI JAIN & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order and decree dated 8th February, 2013 of the Civil Judge, Delhi of dismissal of a suit under Section 6 of the Specific Relief Act, 1963 for recovery of possession filed by the two petitioners/plaintiffs namely Raj Aggarwal and Nikhil Aggarwal against the six respondents.

2. Notice of the petition was issued.

3. The order dated 17th October, 2014 in this petition records that respondents No.1&2 namely Shashi Jain and Vijender Jain had been served. The subsequent order dated 11th March, 2015 records that none had appeared for respondents No.1&2 despite service. The subsequent order dated 16th December, 2013 records that the respondent No.3 Memo Devi had refused to receive service and that the respondent No.4 Gian Wati had been served but none had appeared on her behalf. None appeared for the respondents No.3&4 thereafter also. The order dated 11th March, 2015 records that

respondents No.3&4 were *ex-parte* before the Trial Court also. Vide order dated 11th March, 2014, the respondents No.1 to 4 were proceeded against *ex-parte*. The respondents No.5&6 namely Jitender Kumar Jain and Sukhmal Kumar Jain appeared in response to the notice and have filed a reply to the revision petition. However today when the matter is called out, none appears for the respondents No.5&6 as well. The respondents No.5&6 are also proceeded against *ex-parte* and the counsel for the petitioners has been heard. The Trial Court record requisitioned vide order dated 17th October, 2014 has been received and perused.

4. It was the case of the petitioners/plaintiffs in the plaint (i) that one Hazaro Devi was the owner of property No.2294-95, Gali Paharwali (Bari), Dharampura, Chandni Chowk, Delhi; (ii) that Hazaro Devi died on 5th January, 1979 and the six respondents herein are the heirs/successors of heirs of Hazaro Devi; (iii) that Nem Chand Jain son of Hazaro Devi and predecessor of respondents No.5&6 namely Jitender Kumar Jain and Sukhmal Kumar Jain let out one shop in the aforesaid property to the two petitioners/plaintiffs at a monthly rent of Rs.40/-; (iv) that the petitioner No.1, after taking the shop on rent, with the assistance of her father-in-law was running a Halwai shop in the shop; (v) that the said Halwai shop was run from 1985 to 1987-88, since when it was lying closed; (vi) however rent was being continuously tendered to Nem Chand Jain; (vii) that after the death of Nem Chand Jain on 13th August, 1997, the rent though tendered, was not received owing to a dispute between the then heirs of Hazaro

Devi; (viii) that though the shop was lying closed (as the husband of the petitioner No.1 was employed in a Bank) but the petitioner No.1 used to visit the same regularly and last visited the shop in February, 2006 when she also tendered rent to respondent No.1 herein i.e. Shashi Jain daughter of Hazaro Devi (at this stage attention of the counsel for the petitioners/plaintiffs has been drawn to page 17 of the paper book where Shashi Jain is not mentioned as daughter of Hazaro Devi); (ix) that when the petitioners/plaintiffs visited the shop on 9th May, 2006 they found that “construction/addition/alteration was being done in the suit premises” and that the respondents (i.e. all the six respondents) had illegally taken over the possession of the shop and had merged the shop earlier in the tenancy of the petitioners/plaintiffs with an adjoining shop.

5. The respondents No.1&2 i.e. Shashi Jain and her husband Vijender Jain in their written statement, while denying the claim of the petitioners/plaintiffs, took a stand that the petitioners/plaintiffs are in collusion with the respondent No.3 Memo Devi (daughter of Hazaro Devi), respondent no.4 Gian Wati and respondent no.6 Sukhmal Kumar Jain. The respondent No.5 Jitender Kumar Jain, the respondents No.5&6 Jitender Kumar Jain and his brother Sukhmal Kumar Jain also denied the entire claim of the petitioners/plaintiffs.

6. The learned Civil Judge, on the basis of the pleadings, on 3rd January, 2007, framed the following issues:

“1. Whether the plaintiff has no locus standi to file the present suit?OPD

2. *Whether the present suit is bad for non joinder and mis joinder of necessary parties?* OPD
3. *Whether the suit is not properly valued for the purpose of court fees and jurisdiction?* OPD
4. *Whether the suit is barred by limitation?* OPD
5. *Whether the plaintiff is entitled for decree of possession as prayed?* OPP
6. *Whether the plaintiff is entitled for decree of permanent injunction?* OPP
7. *Relief.”*

7. The learned Civil Judge has in the impugned order, on the basis of the evidence led before him, found (a) that neither of the two petitioners/plaintiffs chose to appear in the witness box and only the husband of the petitioner/plaintiff No.1 and father of the petitioner/plaintiff No.2 namely Subhash Chand Aggarwal appeared as a witness; (b) that Subhash Chand Aggarwal proved the receipt in favour of the petitioners/plaintiffs of payment of rent of the said shop from 19th May, 1995 to 18th May, 1999 and some earlier rent receipts; (c) that the said Subhash Chand Aggarwal also proved as Ex.PW-1/7 list of tenants submitted by Nem Chand Jain in another suit; (d) however in the said list, the petitioners/plaintiffs were shown as tenant only till 18th May, 1999; (e) that the aforesaid documents did not show the possession of the petitioners/plaintiffs in the year 2006; (f) though the aforesaid witness also proved as Ex.PW-1/8, a report dated 22nd November, 2001 of a Local Commissioner in another litigation but the

said report was not conclusive proof of possession; (g) that no other document had been placed on record by the petitioners/plaintiffs to show their possession after 1999; (h) that no police complaint had been filed by the petitioners/plaintiffs of dispossession; (i) that the petitioners/plaintiffs had thus failed to prove being in possession of the property within six months prior to the institution of the suit.

8. Though the aforesaid findings were returned under Issue No.5 aforesaid but under Issue No.4, the finding is in favour of the petitioners/plaintiffs and against the respondents/defendants.

9. I have enquired from the counsel for the petitioners / plaintiffs that the petitioners having admittedly not used the tenancy premises since the year 1988 and having also admittedly not paid the rent of the tenancy premises since the year 1999, why should the discretion inherent in exercise of revisional jurisdiction should be exercised in favour of the petitioners / plaintiffs.

10. The counsel for the petitioners / plaintiffs on enquiry states that the petitioner no.2 who was also a tenant in the premises is in employment but he cannot tell where. He is also unable to tell as to why the petitioner no.2 could not use the premises or carry on business therein from 1987-88 onwards.

11. Therefrom it appears that irrespective of the merits of the case, the petitioners / plaintiffs, as per their own case, though not in use or need of the premises, were from 1988 to 2006 i.e. for nearly 20 years holding on to possession of a commercial premises, only to extract

consideration from the landlord for vacation of the same and taking advantage of the protection accorded from eviction under the Delhi Rent Control Act, 1958, the rent of the premises being Rs.40/- per month.

12. The counsel for the petitioners / plaintiffs states that though the petitioners / plaintiffs several times tendered rent of the premises for the period after 1999, but the same was not accepted owing to *inter se* disputes between the respondents.

13. Even if that were to be so, the least that was expected from the petitioners / plaintiffs as a tenant was to tender the rent by Money Order or under cover of a letter by Registered Post AD or under the provisions at the relevant time of the Punjab Relief of Indebtedness Act, 1934 (whereunder also prior to the judgment in ***Atma Ram Vs. Shakuntala Rani*** (2005) 7 SCC 211 the rent used to be accepted) or under Section 27 of the Delhi Rent Control Act, 1958 and nothing of this sort is pleaded.

14. Rather, from the non-appearance of the respondents before this Court and non-appearance of some of the respondents before the Trial Court, it appears that the petitioners / plaintiffs are making a claim taking advantage of the *inter se* disputes between the respondents.

15. Irrespective of the aforesaid facts, Section 6(3) of the Specific Relief Act bars an appeal and review from any order or decree passed in any suit instituted thereunder.

16. Though Revision Petition under Section 115 lies, but before this Court entertains Revision Petition against an order under Section 6 of the Specific Relief Act, a ground different from that of appeal is to be made out for exercise of revisional jurisdiction. This Court cannot re-appreciate any evidence led before the Trial Court. In fact Courts have held that the High Court will generally not interfere in revision as the proper remedy is to institute a regular suit for declaration of title and possession. Only in extreme cases where the High Court finds grave injustice to have been done or where there has been no trial at all or where the decision is vitiated by error of law and the like, has the remedy of revision against an order or decree under Section 6 of Specific Relief Act, 1963 been held to be maintainable. In the facts of the present case when the petitioners / plaintiffs were admittedly for about 20 years prior to the institution of the suit not in use of the premises, the question of any injustice lest grave having been caused to the petitioners / plaintiffs does not arise.

17. The Trial Court, under issue no.6 has held that the petitioners / plaintiffs failed to prove being in possession of the premises from 1999 till 2006. The counsel for the petitioners / plaintiffs has not been able to show as to how the said finding is perverse. Even if the report of the Local Commissioner aforesaid proved as Ex.PW1/8 and the list of tenants proved as Ex.PW1/7 is to be read, as the counsel for the petitioners / plaintiffs wants, the same also do not show the possession of the petitioners even till the beginning of the year 2006 or for that matter after the year 2001.

18. For the suit under Section 6 of the Specific Relief Act to succeed, it is essential for a plaintiff to prove that the plaintiff, within six months prior to the institution of the suit was in possession of the premises. Once the petitioners / plaintiffs failed to prove so, as has been rightly held by the learned Civil Judge on appreciation of the evidence, the issue no.6 supra also ought to have been decided against the petitioners / plaintiffs and the suit ought to have been dismissed as barred by limitation.

19. Though the counsel for the petitioners / plaintiffs has also contended that merely because the petitioners / plaintiffs had stopped paying rent did not entitle the landlords to take possession forcibly but the petitioners / plaintiffs having failed to prove being in possession of the premises within six months prior to the institution of the suit from which this petition arises, the petition is liable to be dismissed on that ground alone. In fact the petitioners / plaintiffs have not given any date of dispossession and what has been pleaded and stated in evidence is that the petitioners / plaintiffs on their visit in the month of February, 2006 were in possession and on the next visit on 9th May, 2006 found that they had been dispossessed. There is nothing to substantiate the visit of the petitioners / plaintiffs in the month of February, 2006. If the petitioners / plaintiffs had visited and tendered rent on that date and the same had not been accepted, the petitioners / plaintiffs instead of relying upon their oral version should have taken steps of tendering the rent by Money Order or by Registered Post AD or deposited the rent in Court.

20. A suit under Section 6 of the Specific Relief Act is not concerned with title. Thus, the title if any of petitioners / plaintiffs as tenant is not relevant for such a suit. What was relevant was possession of the shop within six months prior to institution of the suit and of which there is no evidence. Similarly, there is no evidence of date of dispossession.

21. The counsel for the petitioners / plaintiffs has also drawn attention to the averments made by some of the respondents in another *inter se* proceeding between themselves, of some of them having dispossessed the petitioners / plaintiffs. However the counsel for the petitioners / plaintiffs is unable to give the outcome of the said averments; without any finding in the other proceedings of some of the respondents having dispossessed the petitioners / plaintiffs, no reliance thereon can be placed.

26. Thus no ground for interfering with the order under the revisional jurisdiction is made out.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 11, 2017

‘bs/pp’..