

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

% **Date of decision: 4th September, 2017.**

+ **C.R.P. No.195/2017 & CM No.32105/2017 (for stay).**

POOJA MAAN

..... Petitioner

Through: Mr. Prabhjit Jauhar and Ms.
Aishwarya, Advs.

versus

DHANPATI MAAN & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.32106/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

CRP No.195/2017 & CM No.32105/2017 (for stay).

3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 4th May, 2017 in Counter Claim no.03/16, Judge Code: DL 0804 of the Court of Civil Judge-I, New Delhi District, New Delhi) of dismissal of the application under Order VII Rule 11 of the CPC of the petitioner / plaintiff for rejection of the counter claim of respondent no.1/defendant/counter claimant.
4. The counsel for the petitioner has been heard.
5. The petitioner has instituted a suit against the two respondents/defendants for permanent injunction restraining the respondents/defendants from dispossessing the petitioner from House No.4484, B-5&6, Gate No.3, Vasant Kunj, New Delhi – 110070, save by due

process of law. It is the case of the petitioner/plaintiff in the suit, (i) that she is married to the respondent no.2 Amit Maan and the respondent no.1/defendant/counter claimant is the mother-in-law of the petitioner and all of them along with two daughters of the petitioner/plaintiff and the respondent no.2/defendant are residing in the said house; (ii) that the respondents/defendants have treated the petitioner/plaintiff with cruelty; (iii) that some persons, who are property dealers, regularly visit the said house claiming to have purchased the property and threaten the petitioner/plaintiff to vacate the property; (iv) that the respondent no.1/defendant/counter claimant claims to be the owner of the house and claims to be free to sell or let out the said house to anyone; and, (v) that the said house was purchased with the funds given by the mother of the petitioner/plaintiff.

6. The respondent no.1/defendant/counter claimant, besides filing the written statement to the suit has also filed a counter claim (i) seeking mandatory injunction directing the petitioner / plaintiff to vacate the house and hand over vacant possession thereof to the respondent no.1/defendant/counter claimant; and, (ii) seeking permanent injunction restraining the petitioner/plaintiff from interfering with possession of the respondent no.1/defendant/counter claimant of the said house.

7. The petitioner / plaintiff applied under Order VII Rule 11 of the CPC for rejection of the counter claim on the grounds (i) that the counter claim is improperly valued for court fees and jurisdiction; the counter claim ought to have been valued as for the relief of recovery of possession, on the market value of the property; on the contrary the counter claim has been arbitrarily valued; and, (ii) that in the garb of counter claim for mandatory injunction,

possession is sought.

8. The learned Civil Judge, vide the impugned order has dismissed the application under Order VII Rule 11 of the CPC of the petitioner / plaintiff for rejection of the counter claim, reasoning (i) that as per the counter claim, the respondent no.1 /defendant/counter claimant is the sole and absolute owner of the house and in the settled, undisturbed and continuous possession thereof and had allowed the respondent no.2/defendant and the petitioner / plaintiff, being the son and daughter-in-law of the respondent no.1 /defendant/counter claimant to reside with her as licensees; (ii) that owing to the disturbances being caused, the respondent no.1 /defendant/counter claimant has withdrawn the permission granted by her to her son and daughter-in-law to reside in the house; (iii) that even if insufficient court fees has been paid on the counter claim, opportunity has to be first given to make up the said deficiency and no ground for rejection was thus made out.

9. The counsel for the petitioner / plaintiff has referred to (i) **Ashok Chaudhry Vs. Dr. Inderjit Sandhu** 1998 SCC OnLine Del 951; (ii) **Renu Nagar Vs. Anup Sing Khosla** 2009 (156) DLT 723; and, (iii) to **J. Vasanthi Vs. N. Ramani Kanthammal** (2017) 11 SCC 852.

10. The Division Bench of this Court in **Ashok Chaudhry** supra was dealing with a first appeal under Section 96 of the CPC and in that context held that the relief claimed in the suit squarely amounted to that of recovery of possession of immovable property; there is no provision in the Court Fees Act, 1870 with regard to recovery of immovable property from a person whose license in respect of that property had been determined and thus the court fees as on the relief of recovery of possession of immovable property

ought to have been paid.

11. A Single Judge of this Court in ***Renu Nagar*** supra held that the question relating to valuation should be decided at the initial stage only.

12. Supreme Court in ***J. Vasanthi*** supra held that a question of proper valuation stands on a different footing than a question of applicability of a particular provision of an Act under which court fees is payable and in such a situation it is not correct to say that it has to be determined on the basis of evidence and it is a matter for the benefit of the revenue and the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action.

13. Though undoubtedly the learned Civil Judge has held that the ground on which rejection of the counter claim is sought by the petitioner / plaintiff could not be decided at that stage and which appears to be inconsistent with the dicta of the Supreme Court in ***J. Vasanthi*** but considering the grounds on which rejection of the counter claim is sought, on merits also, I am unable to find a case for rejection of the counter claim on the said ground to have been made out.

14. The respondent no.1/defendant/counter claimant has sought the relief of mandatory injunction commanding the petitioner / plaintiff to vacate the house pleading the respondent no.1/defendant/counter claimant to be the owner in possession of the house and the petitioner / plaintiff having been allowed mere use of the house on account of being a daughter-in-law i.e. as a licensee. Such a relief is maintainable in law. Whether the presence of the petitioner / plaintiff in the house is as a licensee or in any other capacity, in which the relief of mandatory injunction may not be available and the relief

of recovery of possession may be required to be claimed, is a question of trial and cannot be a ground for rejection of the counter claim. If the presence of the petitioner / plaintiff in the house is as a licensee, the relief of mandatory injunction would be available and in which case it cannot be said that it should have been valued as for a relief of recovery of possession of immovable property.

15. A Division Bench of this Court in ***Prabhu Dayal Vs. Roop Kumar*** AIR 2005 Del 144, relying on ***Milka Singh Vs. Diana*** AIR 1964 J&K 99 and the judgment of the Supreme Court in ***Sant Lal Jain Vs. Avtar Singh*** (1985) 2 SCC 332 has held that in a suit by licensor for recovery of possession from licensee, merely a mandatory injunction can be claimed and it is not necessary to claim the relief of possession. The same view has subsequently been followed in ***Joseph Severance Vs. Benny Mathew*** (2005) 7 SCC 667. Reference may also be made to ***Mulk Raj Khullar Vs. Anil Kapur*** 2013 (139) DRJ 303, ***Gyan Chand Vs. Ram Chander*** (2014) 209 DLT 336, ***Om Prakash Singhal Vs. K.L. Kurian*** 2014 SCC OnLine Del 761, ***Malik Mohd. Tanveer Vs. Uzma Malik*** 2016 SCC OnLine Del 4515.

16. As far as the reliance by the counsel for the petitioner / plaintiff on ***Ashok Chaudhry*** supra is concerned, the Division Bench in that case was concerned with a first appeal under Section 96 of the CPC and expressly noted that it was not the case of the plaintiff therein that the defendant therein was in joint possession of the property along with the plaintiff. It was thus held that what the plaintiff in that case was claiming was in fact a relief of possession against a person in exclusive possession and it was in this context held that in the garb of mandatory injunction payment of requisite

court fees could not be avoided.

17. There is thus no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 4, 2017

‘pp’..

(Corrected and released on 7th February, 2018).

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