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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 357/2019 & CM APPL. 9434/2019**

M/S INDRAPRASTHA ICE & COLD STORAGE PVT LTD

..... Petitioner

Through: Mr. Jayant Mehta, Advocate.

versus

M/S CARDIFF ASSOCIATES PVT LTD

..... Respondent

Through: Mr. Lalit Gupta & Mr. Siddharth
Arora, Advocates.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **27.02.2019**

CAV 202/2019

Learned counsel for the caveator is present and has been heard.

The caveat thus, stands discharged.

CM APPL. 9435/2019 (Ex.)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CM(M) 357/2019 & CM APPL. 9434/2019

Vide the present petition, the petitioner assails the impugned order dated 06.12.2018 of the Court of the learned ADJ-14 (Central) in CS DJ No.614816/2016, vide which an application under Order XII Rule 6 of the CPC filed by the petitioner herein arrayed as the plaintiff of the said suit, was declined observing *inter alia* to the

effect:-

“7. In the case in hand, not only alleged admission is not unequivocal but also defendant has raised certain preliminary pleas which must be decided before the plaintiff can be allowed to be entitled to a decree. The preliminary objections raised by the defendant in this case, goes to the very root of the suit and are likely to non-suit the plaintiff, if these were found against the plaintiff. The ground for allowing the application under Order XII Rule 6 of the CPC is that the defendant herein had filed an application on 17-05-2018 in case bearing No. M-29/18 (116/18) under Order IX Rule 9 (typographical error: Rule7) r/w Order XII Rule 10 and Section 151 of CPC before the Rent Controller for restoration of the above Eviction Petition No.835/14/16 and has prayed that the defendant be substituted in place of the original petitioner claiming that after the execution of Sale-Deed dated 29-05-2013, it stepped into the shoes of the original petitioner and it shows that this is contrary to the stand taken in the written statement before this Hon’ble Court, in the aforesaid application and the defendant herein has accepted the relation of the landlord and tenant with itself and the plaintiff and therefore, in view of the above submissions of the defendant in the aforesaid application filed in eviction petition and mentioned above, it is admitted now by the defendant herein that even as on date the plaintiff is tenant in the suit property.

*8. In the WS, it has, nowhere been admitted that the plaintiff is in possession of the suit property. In view of the ratio of case-laws **Deepak Rastogi Vs Flexi Resource Solution Pvt. Ltd.** (supra) and **State Bank of India Vs. M/s Mildland Industries** (supra) and the fact that defendant has not categorically admitted the possession of the plaintiff. **I am of the view that there is no ground for allowing the application under disposal and the same is dismissed.**”*

The contentions that have been raised on behalf of the petitioner are to the effect that the petitioner being the legal tenant of the premises in suit, has been dispossessed by the respondent herein by putting locks to the tenanted premises inasmuch as the respondent herein had taken possession of the premises in question from the sub-tenants of the petitioner herein after the purchase of the premises in suit by the respondent from the erstwhile owner thereto i.e. **Sh. Surender Deo HUF**.

It has been submitted on behalf of the petitioner placing reliance on the application that had been filed by the respondent herein before the learned ARC concerned in relation to the eviction petition no.835/14/16 which had been filed by the erstwhile owner of the premises in suit which petition had been dismissed in default on 25.11.2014 in which the respondent herein sought to be substituted under XXII Rule 10 of the CPC submitting to the effect that the respondent is now the owner of the premises in question in which application which is stated to be still pending vide para 19 thereof, it was averred by the respondent herein as applicant of the said application to the effect:-

“19. During pendency of the above referred proceedings, the Applicant herein received legal advice from its Counsel handling the proceedings in the Hon’ble High Court that it may be in the interest of justice for the Applicant to step into the shoes of the original Petitioner to pursue the captioned petition and get the same restored so that the technical plea of mere legal possession taken by the Respondent No.1 herein in the above referred Civil Suit

No.429 of 2016 can be met, if so required. However, it is the Applicant herein who is in the physical possession of the entire property purchased by it vide above referred Sale Deed dated 29.05.2013.”

to contend that it had been stated therein that all that the petitioner herein seeks to contend is only the mere plea of legal possession. It has thus, been submitted on behalf of the petitioner that the same itself is an implicit admission of the respondent herein of the dispossession of the petitioner from the premises in suit.

Vide the impugned order, as observed vide para 7 thereof, already adverted to hereinabove it has categorically been observed by the learned Trial Court to the effect that there are preliminary objections that had been raised by the defendant i.e. the respondent herein that go to the root of the case and are likely to non-suit the plaintiff if found against the plaintiff. The said preliminary objections that have been raised by the defendant to the said suit, as averred in the written statement of the defendant i.e. the respondent herein read to the effect:-

“ 1. That the present suit is without any cause of action and is liable to be rejected under the provisions of Order 7 Rule 11(a) of Code of Civil Procedure.

2. That the Hon'ble Court has no pecuniary jurisdiction to entertain the present suit as the subject matter of the suit property is more than Rs.4.50 Crore, as is evident from the sale deed dated 29.05.2013.

3. That the present suit is also not maintainable under the provisions of Section 6 of The Specific Relief Act, so much

so the possession of the entire property including the alleged portion in possession of the plaintiff had been delivered to the defendant on 09.02.2013 at the time of the execution of the alleged sale deed and, therefore, possession of the premises having been taken over by the defendant more than 3 years from now, the provisions of Section 6 of the Specific Relief Act are inapplicable in the present suit. Without prejudice to the legal rights of the defendant, assuming through not admitting, even then the suit is not properly valued for the alleged share claimed by the plaintiff in the present suit and, therefore, the suit is liable to be rejected under the provisions of Order 7 Rule 11 (d) CPC.

4. That the suit is bad for mis-joinder and non-joinder of the parties. Subhash Aggarwal, Om Prakash Gupta, Radhey Shyam, Usha Chudhary, Smt. Poonam Gupta, Sh Ashok Kumar Gupta Sh. Arun Jain and Sh. Bal Mukund Gupta are the necessary parties to the suit, which were admitted by the plaintiff as sub-tenants and were in actual physical possession of entire suit premises at the time of the purchasing of the suit property by the defendant.

5. That the suit of the plaintiff is liable to be dismissed as the plaintiff has not approached this Hon'ble Court with clean hands. The plaintiff has concealed the material fact that it had never been in actual physical possession of the suit property after 1989 as it is admitted fact of the plaintiff that it had given actual vacant possession of the suit property to Sh. Om Prakash Gupta and Sh. Subhash Aggarwal, who claimed to be sub tenants of the plaintiff in 1989, when the sub lease was executed by the plaintiff which is even otherwise evident from the documents filed by the plaintiff.

6. *That the plaintiff has no locus stand to file the present suit. As admitted and evident by the lease deed of 1953, it was a condition that the lease deed should be renewed after every 10 years, but the plaintiff failed to get it renewed from the erstwhile owner. Moreover, the lease deed was executed for a period of 40 years, but neither the plaintiff got extended the lease deed after the year 1993 nor paid any lease amount, nor tendered the lease amount since the year 2004 and as such the plaintiff has no locus standi file the present suit.*

7. *That the suit of the plaintiff is liable to be rejected in the absence of necessary ingredients as contained under Order 7 Rule 11 CPC.*

8. *That the present suit is not maintainable as the same has not been signed, verified and instituted by a duly authorised person, as required under the provisions of Companies Act, 2013.*

9. *That the plaintiff is not entitled to equitable relief of injunction as it is guilty of concealment of material facts.”*

A perusal of the record further indicates that issues in the matter were framed by the learned Trial Court on 30.08.2017 which read to the effect:-

- “1. Whether plaintiff is entitled to a decree for possession as prayed for? OPP**
- 2. Whether plaintiff is entitled to a decree for recovery of damages, if yes, of what amount? OPP**
- 3. Whether this Court had pecuniary jurisdiction to try this matter? Onus on parties.**
- 4. Whether suit is not maintainable u/s 6 of Specific Relief Act? OPD.**

5. *Whether suit is bad for non-joinder of parties? OPD*
6. *Whether suit is barred by limitation? OPD*
7. *Whether suit is properly valued for the purposes of jurisdiction and court fees? Onus on parties.*
8. *Relief.”*

On a consideration thus, of the submissions made on behalf of either side and the objections that have been raised on behalf of the defendant of the said suit in relation to which there have been issues framed, it is not considered appropriate to exercise discretion under Article 227 of the Constitution of India to interfere in the impugned order dated 06.12.2018, which is a detailed reasoned order specifically observing to the effect that the preliminary objections raised by the defendant in the case go to the root of the matter and if, proved would non suit the plaintiff.

In the circumstances, it is not considered appropriate to exercise discretion even under Order XII Rule 6 of the CPC. The present petition and the accompanying application CM APPL. 9434/2019 are, thus declined.

Nothing stated hereinabove, shall however, amount to any expression on the merits or demerits of the case before the learned Trial Court.

ANU MALHOTRA, J

FEBRUARY 27, 2019/NC