

\$~12

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

%

+ CM(M) 961/2018 & CM APPL. 33609/2018

Date of Decision: 18.03.2019

PRATAP NARAIN VERMA

..... Petitioner

Through: Mr. Amit Khemka, Mr. Yogesh
Swroop, Mr. Rishi Sehgal &
Mr. Daksh Rathore, Advocates.

versus

BHARAT BHUSHAN GUPTA & ANR

.. Respondents

Through: Mr. V.K. Gupta, Sr. Advocate
with Mr. Surendra Kumar,
Advocate.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER (ORAL)

1. No notice of the petition is indicated to have been issued to the respondent no.2. It has been submitted on behalf of the petitioner and on behalf of the respondent no.1 that the respondent no.2 is *ex parte* before the learned Trial Court. No notice of the present petition is thus, being issued to the respondent no.2.

2. The petitioner assails the impugned order dated 11.07.2018 of the learned Trial Court of the Civil Judge, South West Dwarka in CS SCJ No. 427419/16, vide which an application under Order VI Rule 11 of the CPC filed on behalf of the present petitioner arrayed as the defendant no.2 to the said suit,- was declined. Vide the said application, which was filed under Order VII Rule 11 of the CPC by the defendant no.2 i.e. the present petitioner sought the rejection of the plaint filed by the plaintiff in view of the cross-examination of PW-1 put forth on behalf of the plaintiff which stated to the effect that the value of the suit property at the time of the institution of the suit was **Rs. 1 Crore 80 lakhs** and thus, a contention was raised on behalf of the petitioner i.e. the defendant no.2 that the suit was beyond the pecuniary jurisdiction of the learned Trial Court.

3. Vide the impugned order, it has been observed to the effect that as the Court can only look into the pleadings in the plaint at the stage of consideration of an application under Order VII Rule 11 of the CPC and not into the evidence that has been led by the parties and in as much as the plaint disclosed a cause of action, there could be no rejection of the plaint under Order VII Rule 11 of the CPC and thus, the application was declined observing to effect that the plaint had been properly valued as per the reliefs claimed in the plaint.

4. The copy of the plaint in the said suit instituted on 28.09.2016 is on the record which indicates that it is a suit that was filed for mandatory injunction directing the defendant no.1

and the defendant no.2 arrayed therein to remove themselves from portions in the suit property described with their article apart from seeking a permanent prohibitory injunction restraining both of them from creating any third party rights or raising any construction thereon and for payment of damages with interest and costs. The claim raised by the respondent no.1 i.e. the plaintiff of the said suit is averred in Para 1 of the plaint which reads to the effect:-

“1. That the Plaintiff is the owner of the Plot No. RZ-28, Indira Park Extension, Near Hanuman Mandir, Uttam Nagar, New Delhi- 110059 measuring 252 sq. yards, having purchased and same in 1981. The Plaintiff had raised a three-room tin shed on the said Plot in 1983-84”

5. As per the averments in paragraphs 2 & 3 of the plaint, it was further stated to the effect:-

“2. That the Plaintiff had been working in CPWD since 1976 and retired as Additional Director General in 2012. In 1985, the Defendant No.1 had approached the plaintiff and requested him that since the above-mentioned Plot was lying unutilized and he (the Defendant No, 1) being a building contractor required the space for storage of his material, and requested the Plaintiff to permit him to use and occupy the same for storage purposes till such time when the Plaintiff himself required the same. Since Defendant No. 1 happened to be the Plaintiff’s elder brother and the Plot was actually lying unutilized, the Plaintiff had agreed to his

request and permitted the Defendant No. 1 to use and occupy the same for storage purposes with the clear understanding that he will vacate the same as and when asked to do so by the Plaintiff. With this clear understanding, the Defendant No. 1 was admitted as a gratuitous licensee at will in the said Plot.

3. That later on sometime in the year 1989-90, the Defendant No. 1 had again approached the Plaintiff with the request to permit the Defendant No. 2 who was working as a Munshi of the Defendant No. 1 to reside in two rooms forming part of the three-room tin shed till such time when the Plaintiff himself required the same. The Plaintiff had agreed to their said request also and permitted the Defendant No. 2 to reside in the above-mentioned two rooms with the clear understanding that he will vacate the same as and when asked to do so by the Plaintiff. With this clear understanding, the Defendant No. 2 was also admitted as a gratuitous licensee at will in the above-mentioned two rooms forming part of the three-room tin shed existing on the said Plot. And with this development, the subject-matter of the licence in favour of the Defendant No. 1 was reduced to the rest of the said plot.”

6. The averments in paragraphs 7, 8 & 9 are to the effect:-

“7. That in the light of the above facts, the Plaintiff was constrained to get a Legal Notice dated 09.08.2016 issued to the Defendants through Regd. AD Post and Speed Post on 10.08.2016 and Courier on 11.08.2016 thereby expressly terminating their respective licences and directing both the Defendants to remove themselves with all their stuff

from the respective portions of the said Plot within a period of 15 days from the receipt of the said Legal Notice, failing which the Plaintiff would be compelled to initiate the appropriate proceedings against them before the appropriate court of law entirely at their risk and costs. It was also made clear and they were put to an express notice that after the expiry of the Notice period, the Plaintiff shall be entitled to claim damages at the market rate which was tentatively calculated at Rs. 1 lac per month for the unauthorized use and occupation of the said Plot.

8. That the said Legal Notices were delivered to the Defendants on 12.08.2016 as per the Acknowledgements received back and the tracking reports.

9. That after the service of the Legal Notice as stated above, it has been noticed by the Plaintiff during his visit on the said Plot on 25.09.2015 (Sunday) that the Defendants are planning to raise construction on the subject-matter Plot and create third party fights thereby jeopardizing the legal rights of the Plaintiff. The Plaintiff had seen some unknown persons taking measurements in the presence Of the Defendant No. 2. On enquiry the Defendant No. 2 told that the measurements are being taken at the asking of the Defendant No. 1. And when the Plaintiff tried to confirm it from the Defendant No. 1, he gave evasive response which has strengthened the suspicion of the Plaintiff about some clandestine plan being conceived by the Defendants in collusion with each other.”

7. As per the averments in Para 12 of the plaint, the suit was valued for the purpose of court fees and jurisdiction at Rs.250 for each relief for injunction and as Rs. 1 lakh for damages, and court fees having been paid to be Rs.3443.80.

8. On behalf of the petitioner herein i.e. the defendant no.2 to the said suit, reliance was placed on the testimony of the plaintiff examined as PW-1, wherein it was stated to the effect:-

“Q. What was the market value of the suit property at the time of filing the suit ?

A. The approximate value of the suit property was around Rs. 1.8 crores, at the time of filing of the suit.”

9. It has thus, been submitted on behalf of the petitioner placing reliance on the verdict of the Hon’ble Supreme Court in ***“M/s Commercial Aviation And Travel Company And Others Vs. Vimla Pannalal (1988) 3SCC 423”*** with specific reference to observations in Para 13 thereof, which read to the effect:-

“13. But, there may be cases under [section 7\(iv\)](#) where certain positive objective standard may be available for the purpose of determination of the valuation of the relief. If there be materials or objective standards for the valuation of the relief, and yet the plaintiff ignores the same and puts an arbitrary valuation, the Court, in our opinion, is entitled to interfere under order VII, Rule 11(b) of the Code of Civil Procedure. for the Court will be in a position to determine the

correct valuation with reference to the objective standards or materials available to it. In Urmilabala Biswas v. Binapani Biswas, AIR 1938 Cal 161 a suit was instituted for declaration of title to provident fund money amounting to a definite sum with a prayer for injunction restraining the defendant from withdrawing the said money. It was held that there was no real distinction between the right to recover money and the right to that money itself, and that the relief should have been valued at the provident fund amount to which title was claimed by the plaintiff. Thus, it appears that although in that case the suit was one under section 7(iv)(c) of the Court Fees Act, there was an objective standard which would enable the plaintiff and the Court too to value the relief correctly and, in such a case, the Court would be competent to direct the plaintiff to value the relief accordingly.”

to thus, submit that there cannot be any arbitrary valuation that is put by the plaintiff even in terms of Section 7(4) of the Court Fees Act, 1870 and it has thus, been submitted on behalf of the petitioner that the suit in any event is beyond the pecuniary jurisdiction of the learned Trial Court.

10. Reliance is also placed on behalf of the petitioner on a catena of verdicts in *“Maharaji Educational Trust And.. Vs. Punjab And Sind Bank and Anr.”* [AIR 2006 Delhi 226], *“Renu Nagar Vs. Anup Singh Khosla”* [2009 (156) DLT 723], *Rampur Distillery & Chemicals Co. Ltd. Vs. Union of India”*

*[1995 (32) DRJ], “Kashinath Oke and Others Vs. Tukaram Nilkanth Oke and Others” [AIR 1956 NAGPUR 195], “Purabi Ghosh & Anr. Vs. Mr. Asoke Kumar Ghosh & Ors. in FA No.259/2002”, “Jagdish Rai And Others Vs. Smt. Sant Kaur” [AIR 1976 Delhi 147], “Ashok Chaudhary Vs. Inderjit Sandhu” [1998 (4) AD (Delhi) 917], “Purshottam Dass And Ors Vs. Har Narain and Anr.” [AIR 1978 Delhi 114], with specific reliance on observations in Para 4 of the verdict “**Renu Nagar Vs. Anup Singh Khosla**” [2008 (156) DLT 723] which read to the effect:-*

“4. The observations of the trial court that the valuation of the suit is mixed question of law and facts in this case is very vague observations. The trial court had not given reasons nor those facts involved in the case affecting the valuation of the suit. The present suit has been filed by the plaintiff/ respondent seeking mandatory injunction for the petitioner to vacate the premises and hand over the same to the respondent. It is obviously a suit for possession and has to be valued accordingly. The judgment of Division Bench of this Court in Ashok Chaudhary v. Dr. (Mrs.) Inderjit Sandhu, 1998 AD Delhi 917 was brought to the notice of the trial court. The trial court mentioned this judgment in its order but did not follow the ratio of the judgment. It is categorically stated in this judgment that where a suit is filed by the owner against a licensee after termination of license, the suit has to be valued on the basis of market value of the property. The facts in Ashok Chaudhary's case (supra) were similar to the facts of the present case.

In Ashok Chaudhary's case also the licensee was a friend who occupied the premises with promise to vacate on demand but later on he refused to vacate the premises. This Court observed that the relief of recovery of possession and declaration in a suit for mandatory injunction cannot be considered a surplus- age but it was a substantive relief. Therefore, Section 7(v) (e) of the Court Fees Act would be attracted to the substantive relief and the suit has to be valued accordingly i.e. the market value of the property.”,

to contend that where the suit has been filed couched in the terms of it being for a mandatory injunction which in fact, was a suit for possession, in terms of the verdict of the Hon'ble Division Bench of this Court in *Ashok Chaudhary v. Dr. (Mrs.) Inderjit Sandhu, 1998 AD Delhi 917*, the suit has to be valued on the basis of the market value of the suit property in as much as the relief for recovery of possession and declaration in a suit for mandatory injunction, cannot be considered a surplus-age and is in fact a substantive relief and that Section 7(v)(e) of the Court Fees Act would be attracted to the substantive relief and that the suit has to be valued accordingly i.e. at the market value of the property.

11. The verdict of the Hon'ble Division Bench of this Court in *Ashok Chaudhary v. Dr. (Mrs.) Inderjit Sandhu*, (supra) vide paragraph 16 thereof, which read to the effect :-

“16. In Purushottam Dass and Ors. Vs. Harnarain and Ors., AIR 1978 Delhi 114 a Full Bench of this Court has held that the true criterion for determining the question of court fee in such cases is the substance of the relief claimed as disclosed by the plaint taken as a whole and not merely the form in which the relief claimed is expressed. Thus, the averments in the plaint alone have to be looked into for the purpose of determining the court fee payable in the plaint. It has to be borne in mind that it is not the case of the plaintiff that the defendant No. 2 was in joint possession of the suit premises along with the plaintiff. Reading the plaint as a whole, it becomes clear that the relief asked for the plaintiff squarely amounts to her having to get possession of the suit premises from the defendant No. 2, who is in possession thereof and the plaintiff cannot secure the same by merely adding a prayer for mandatory injunction of the kind asked for in the plaint. Thus, the relief of recovery of possession of the suit premises is not a surplusage but is a substantive relief claimed by the plaintiff. The relief for recovery of possession prayed for is not a consequential to the relief of the mandatory injunction prayed for and, therefore, Section 7(v)(e) of the Court Fees Act is attracted to the substantive relief claimed in the plaint.”,

with specific reference on the verdict of the Hon’ble Full Bench of this Court in ***Purushottam Dass and Ors. Vs. Harnarain and Ors., AIR 1978 Delhi 114*** with specific reliance on observations in paragraphs 21 and 33 and 34 of the said verdict, which read to the effect:-

“(21) We have already noticed the material averments in the plaint. Whether the suit is purely for permanent injunction is a matter of construction of plaint in each case. But in construing the plaint, the court has to look at the substance of the plaint rather than its mere form. If, on the whole and in substance, the suit appears to ask for some relief as stated, yet the court can look at the substance of the relief. It is clear from even one form that the suit is for declaration coupled with the consequential relief. But, we are to go into the substance of the plaint rather than mere form. In construing the substance of the plaint, it will be noticed that the plaintiffs do not claim to be in possession of the properties in dispute.

(33) The essential condition for the applicability of this clause is that apart from a declaratory relief which the plaintiff claims, the additional relief which the plaintiff asks for must constitute "consequential relief". As to what is the consequential relief has been the subject-matter of numerous decisions since the day the provision of Section 7(iv)(c) was enacted but the controversy has since been settled. One of the cases which settled the controversy was the case reported as this case received approval of the Supreme Court in the case reported as

(34) In the case of Mt. Zeb-ul-Nissa (supra) Bhide, J. speaking for the full Bench explained the meaning of the expression "consequential relief"

in Section 7(iv)(c) of the Court-fees Act. The Bench held: "THE expression 'consequential relief in Art. 7 (iv) (c) means some relief, which would follow directly from the declaration given, the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a 'substantial relief.'"

to contend that whilst construing the plaint the Court has to look at the substance of the plaint rather than its mere form and if, on the whole and in substance, the suit appears to ask for some relief as stated, yet the Court can look at the substance of the relief.

12. Reliance on the other hand, on behalf of the respondent no.1 is placed on the verdict of this Court in ***“Mulk Raj Khullar Vs. Anil Kapur & Ors.”*** in CS(OS) 1855/2011, a verdict dated 03.10.2013, which was in relation to the suit filed seeking the grant a relief of mandatory injunction seeking that the defendants thereof be directed to remove themselves from the suit property and suit for permanent injunction and mesne profits and damages was also sought. Reliance was placed on the observations in Para 13 of the said verdict which is related to the aspect that the issue involved in the said suit was whether on the pleadings in the plaint, a suit for mandatory injunction was maintainable and with reference also to the observations in paragraphs 14, 15 & 16 of the said verdict, which read to the effect:-

“14. 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:-

"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 is 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:

"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.

.... where a licensor 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 licensor 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."

"8. The respondent was a licensee, and he must be deemed to be always a licensee. It is not open to him, during the subsistence of the licence or in the suit for recovery of possession of the property instituted after the revocation of the licence to set up title to the property in himself or anyone else. It is his plain duty to surrender possession of the property as a licensee and seek his remedy separately in case he has acquired title to property subsequently through some other person."

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 licenser 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."

15. In *Padmavati Mahajan versus Yogender Mahajan and Anr* (supra), this Court held as follows:-

"29. I may however note, two objections which were raised in the written statement but with regard to which no issues were framed. The first contention in the written statement is with regard to maintainability of the Suit for mandatory injunction and the second contention is with regard to the court fees. I have quoted in detail the cross examination of the defendant no.1. In his cross examination he has admitted that he had shifted to the Property in question in his capacity as a son of his parents and then had voluntarily stated that he was also a partner in the Partnership Firm. His claim as a benami

owner has been rejected. Occupation of the defendant no.1 therefore was a permissive occupation or maximum as that of a gratuitous licensee. The defendant no.1 does not have any right in law to reside in the Property contrary to the wishes and desire of the plaintiff. The Suit for mandatory injunction is therefore maintainable in view of the decision of the Supreme Court in Joseph Serverence versus Benny Mathew reported in (2005) 7SCC 667 and decision in Delhi Gate. Services Pvt. Ltd versus Caltex (India) Ltd. reported in AIR 1962 P&H 370."

This is also a case where the plaintiff had filed a suit for mandatory injunction against her son the defendant and her daughter-in-law. As the said son and daughter in law were held to be licensees, it was held by this Court that a suit for mandatory injunction was maintainable.

16.The legal position that follows is that where a suit is filed with promptitude against a licensee whose licence is terminated, a Suit for mandatory injunction is maintainable. In the present case there is no submission or argument raised that plaintiff did not file the suit with promptitude or that there was any delay in filing the suit. Admittedly, the license was terminated on 25 June, 2011 and the suit is filed in August 2011."

and it was thus, sought to be contended on behalf of the respondent no.1 that the suit as filed for a mandatory injunction

was maintainable and the valuation placed was also not arbitrary nor whimsical.

13. Reliance is also thus, placed on behalf of the respondent no.1 on the verdict of the Hon'ble Supreme Court in ***“Sant Lal Jain Vs. Avtar Singh” 1985 AIR (SC) 857*** already adverted to through the proceedings in ***“Mulk Raj Khullar Vs. Anil Kapur & Ors.”*** (supra) with specific reference also to observations in Para 6, 7 & 8 of the said verdict, which reads to the effect:-

“6. Now the parties are bound by the following factual findings recorded by the learned Additional District Judge in the first appeal namely: (1) that the appellant who had become the sole proprietor of M/s Jain Motors in 1967 through at the time of the lease of the property by the original owner Lt. Col. Sadan Singh to M/s Jain Motors in 1963 he was only one of its partners, was the lessee of the property; (2) that the respondent had become a licensee of the suit shed under the appellant when the appellant was in possession of the whole of the demised premises including the suit shed as tenant under the original owner; (3) that the licence in favour of the respondent had been revoked before the institution of the present suit and (4) that subsequent to the decision in the first appeal on 7.12.1978, the respondent had purchased the entire property from the original owner by a sale-deed dated 27.8.1979. In these circumstances, there, is no merger of the lease of the whole property by its original owner in favour of the appellant by reason of the sale of the entire property by the original owner in favour of

the respondent or of the licence given by the appellant to the respondent which had been revoked prior to the date of the suit. The lease in favour of the appellant continues, and it is not disputed that under the Act of 1949 referred to above, even the tenant of a vacant land in Patiala town cannot be evicted therefrom except in accordance with the provisions of that Act. In K.K. Verma & Anr. v. Union of India & Anr. AIR 1954 BOM 358, Chagla, C.J. presiding over a Division Bench has observed that in India a landlord can only eject his erstwhile tenant by recourse to law and by obtaining a decree for ejectment. In Milkha Singh v. Dyna & Ors. AIR 1964 Jammu & Kashmir 99, it has been observed that the principle that once a licensee always a licensee would apply to all kinds of licences and that it cannot be said that the moment the licence is 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:

"After the termination of licence, the licensee is under 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.

Where a licensor approaches the court for an injunction within a reasonable time after the licence is terminated, he is entitled to the 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 licensor had not been diligent and in that case the licensor will have to bring a suit for possession which will be governed by s.7 (v) of the Court Fees Act."

7. In the present case it has not been shown to us that the appellant had come to the court with the suit for mandatory injunction after any considerable delay which will disentitle him to the discretionary relief. Even if there was some delay, we think that in a case of this kind attempt should be made to avoid multiplicity of suits and the licensor should not be driven to file another round of suit with all the attendant delay, trouble and expense. The suit is in effect one for possession though couched in the form of a suit for mandatory injunction as what would be given to the plaintiff in case he succeeds is possession of the property to which he may be found to be entitled. Therefore, we are of the opinion that the appellant should not be denied relief merely because he had couched the plaint in the form of a suit for mandatory injunction.

8. The respondent was a licensee, and he must be deemed to be always a licensee. It is not open to

him? during the subsistence of the licence or in the suit for recovery of possession of the property instituted after the revocation of the licence to set up title to the property in himself or anyone else. It is his plain duty to surrender possession of the property as a licence and seek his remedy separately in case he has acquired title to property subsequently through some other person. He need not do so if he has acquired title to the property from the licensor or from some one else lawfully claiming under him, in which case there would be clear merger. The respondent has not surrendered possession of property to the appellant even after the termination of the licence and the institution of the suit. The appellant is, therefore, entitled to recover possession of the property. We accordingly allow the appeal with costs throughout and direct the respondent to deliver possession of the property to the appellant forthwith failing which it will be open to the appellant to execute the decree and obtain possession.”

14. On behalf of the respondent no.1, reliance is also placed on the verdict of the Hon’ble Supreme Court in **“Kuldeep Singh Pathania Vs. Bikram Singh Jaryal” 2017 AIR (SC) 593** whilst placing reliance on the observations in Para 6 of the said verdict, which read to the effect:-

“6. Order XIV deals with settlement of issues and determination of suit on issues of law or on issues agreed upon. Order XIV Rule 2 provides for disposal

of a suit on a preliminary issue and under sub-Rule (2) of Rule 2, if the court is of opinion that a case or part thereof can be disposed of on an issue of law only, it may try that issue first, in case it relates to jurisdiction of the court or bar to entertaining the suit. After the 1976 amendment, the scope of a preliminary issue under Order XIV Rule 2(2) is limited only to two areas, one is jurisdiction of the court, and the other, bar to the suit as created by any law for the time being in force. The whole purpose of trial on preliminary issue is to save time and money. Though it is not a mini trial, the court can and has to look into the entire pleadings and the materials available on record, to the extent not in dispute. But that is not the situation as far as the enquiry under Order VII Rule 11 is concerned. That is only on institutional defects. The court can only see whether the plaint, or rather the pleadings of the plaintiff, constitute a cause of action. Pleadings in the sense where, even after the stage of written statement, if there is a replication filed, in a given situation the same also can be looked into to see whether there is any admission on the part of the plaintiff. In other words, under Order VII Rule 11, the court has to take a decision looking at the pleadings of the plaintiff only and not on the rebuttal made by the defendant or any other materials produced by the defendant.”,

to contend that it was only the contents of the plaint that can be considered at the stage of consideration of an application under Order VII Rule 11 of the CPC and not the rebuttal thereof that was made by the defendant.

15. Undoubtedly, there is no dispute to the proposition that qua the consideration of an application under Order VII Rule 11 of the CPC, it is only the contents of the plaint that would be considered. The contention however, raised on behalf of the petitioner herein is to the effect that the suit had not been valued correctly for the purpose of Court fees and jurisdiction as contended on behalf of the respondent no.1 and on a consideration of the verdicts relied upon, apparently as the plaintiff of the said suit has contended that it is the owner of the suit premises and that a license had been granted to the defendant no.1 and the defendant no.2 got inducted through the aegis of the defendant no.1 of the said suit, with the plaintiff having been terminated the licence of the defendant no.1 and the defendant no.2 vide termination of the licence on 09.08.2016, with the institution of the suit on the date 28.09.2016, in terms of the verdict of the Hon'ble Supreme Court in "***Sant Lal Jain Vs. Avtar Singh***" (supra), it is apparent that the suit that has been filed for mandatory injunction has not been filed after much delay of termination of the alleged licence.

16. It has been submitted on behalf of the petitioner by the learned counsel present now, that the petitioner has denied the factum of the licence. It has also been submitted on behalf of the petitioner that despite stated alleged creation of the said licence in the year 1990, the suit for termination of the said licence has been instituted in the year 2016 and that would itself

bring forth the falsity of the claim of the respondent no.1. The said contentions cannot be determined without trial.

17. However, it cannot be overlooked that the reliance that has been placed on behalf of the respondent no.1 on the verdict of this Court in ***“Mulk Raj Khullar Vs. Anil Kapur & Ors.”*** (supra) though in facts virtually in pari materia with the facts of the instant case, as a consequence of which, presently, the suit would have to be held to be one filed for a mandatory injunction and appropriately so instituted and thus, granting a discretion to the respondent no.1 herein to value the suit for the purpose of Court fees and jurisdiction, yet it cannot be overlooked that in the said verdict relied upon ***“Mulk Raj Khullar Vs. Anil Kapur & Ors.”*** (supra) itself vide para 30 thereof, it has been observed to the effect:-

“30. There is no argument stating that the plaintiff has not valued the suit for mandatory injunction in any whimsical manner. I hold that the plaintiff has properly valued the suit for the purposes of Court Fee and jurisdiction.”

18. In the facts and circumstances of the instant case, the testimony of the plaintiff has been recorded and the plaintiff has himself stated to the effect that the market value of the suit property was around Rs.1.8 crores at the time of the filing of the suit. It is apparent thus, that the valuation of the suit for the purpose of Court Fees and jurisdiction at Rs.250 for each of the reliefs of injunction is wholly arbitrary.

19. In view of the valuation of the property at being thus, at Rs.1.8 crores as per the testimony of the plaintiff himself, the plaint is directed to be returned by the learned Trial Court to the plaintiff of the said suit to be filed before a Court of appropriate jurisdiction.

20. The learned Trial Court that would be seized of the matter where the plaint is instituted after appropriate valuation within a period of 30 days from the date of return of the plaint by the learned Trial Court, shall proceed with the proceedings from the stage where the proceedings were last fixed before the learned Trial Court with all the evidence recorded therein, to be also read in the case.

21. The petition is disposed of accordingly.

22. Copy of the order be given Dasti under the signatures of the Court Master, as prayed.

ANU MALHOTRA, J

MARCH 18, 2019/NC