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

Date of Decision: 28th January, 2020

\+ **CM (M) 101/2020**

M/S CARDIFF ASSOCIATES PVT. LTD. ..... Petitioner

Through: Mr. Ravi Gupta, Senior Advocate with Mr. Lalit Gupta, Mr. Siddharth and Mr. Sachin Jain, Advocates. (M:9839211111)

versus

M/S INDRAPRASTHA ICE AND COLD STORAGE PVT. LTD. ..... Respondent

Through: Mr. Vijay Gupta and Ms. Gurmeet Bindra, Advocates. (M:9810155549)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 3513/2020 (exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM (M) 101/2020 & CM APPLs. 3511-12/2020

2. The present petition arises out of a suit for possession and recovery of Rs.50 lakhs as damages, filed under Section 6 of the Specific Relief Act, 1963 *(hereinafter, "Act").* The suit has been filed by M/s. Indraprastha Ice and Cold Storage Pvt. Ltd., i.e., the Respondent/Plaintiff *(hereinafter, "Plaintiff")* against M/s Cardiff Associates Pvt. Ltd., i.e., the Petitioner/Defendant (*hereinafter, "Defendant"*).

3. The plea in the suit is that the suit premises i.e., Municipal No. 10130, Katra Chhajju Pandit, Shidi Pura, opposite Model Basti, East Park Road, New Delhi – 110005 (*hereinafter, "suit property"*) was in possession of the

Plaintiff through its sub-tenant. The Defendant purchased the suit property vide a registered sale deed dated 29th May, 2013. Thereafter, the cause of action in the suit is pleaded as under:

> "*15. It submitted that the Plaintiff is unaware of the date and time when the said sub-tenants unlawfully instead of handing over the possession to the Plaintiff handed over the possession of the suit premises to the Defendant. It is imperative to submit that the Defendant has connived with sub-tenants named above to oust the Plaintiff from the tenanted premises without following the due process of law. However, said fact has come to the knowledge of the Plaintiff only when the representatives of Plaintiff went to said premises and found same locked, as mentioned above.*
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> *...*
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> *19. That the cause of action first arose when the suit property was leased to the Plaintiff on 08.09.1953 and it arose when the Plaintiff sub-let the suit premises to the sub-tenants. The cause of action again arose against the Defendant on 14.05.2013, when it purchased the suit property. The cause of action arose when the Defendant illegally took possession of the suit premises from the sub-tenants of the Plaintiff and damaged the property. It further arose on 4th February, 2016 when the Plaintiff came to know that the Defendant has illegally taken possession of the suit premises and has damaged the same. The cause of action subsists and continues.*"

The reliefs sought are as under:

> *In view of the above stated facts and circumstances it is prayed that this Hon'ble Court may kindly be pleased to: -*
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> *(a) Pass a decree for recovery of possession of suit property being Municipal No. 10130 at Katra Chhajju Pandit, Shidi Pura, Opposite Model Basti, East Park Road, New Delhi - 110 005 in favour of Plaintiff and*

against the Defendant;
(b) Pass a decree of Rs.50,00,000/- as damages against the Defendant for damaging the above property;
(c) Allow costs of the suit (including cost of counsel's fee) may be awarded in favour of the Plaintiff and against the Defendants;
(d) Pass such other and further order(s)/direction(s) may be passed as this Hon'ble Court deems fit and proper in the facts and circumstances of this case.

4. In its written statement, the Defendant took the plea that the possession of the suit property has been with the Defendant since 9th February, 2013. The plea in the written statement reads as under:

> "*3. That the present suit is also not maintainable under the provisions of Section 6 of The Specific Relief Act, so much so <u>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</u> and, therefore, the 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.*"

5. In the suit, issues were framed on 30th August, 2017. The same read as under:

> "*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 has 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."

6. The Plaintiff has led the evidence of two witnesses, one of whom is stated to have been cross-examined and discharged. It is submitted that the second witness is currently under cross-examination. There have been several rounds of litigation arising out of the various applications and orders passed by the Court. However, for the purposes of the present petition, the said orders are not relevant.

7. While the cross-examination of PW-1 was underway, the Defendant moved an application under Order VIII Rule 1A CPC seeking to place on record approximately 40 documents including electricity bills, retail invoices etc. The case of the Defendant in the application is that all these documents were with the Chartered Accountant of the Defendant and were thus not available with the Defendant, however, the same are relevant to show that the Defendant has been in possession of the suit property since 9th February, 2013. The said application was heard by the Trial Court and was dismissed on two grounds – one that the said documents are not relevant and the second was that exercise of due diligence has not been shown by the Defendant. The said order dated 17th December, 2019 is under challenge before this Court.

8. The submission of ld. Senior counsel for the Defendant is that the

finding of the Trial Court, that the documents are not relevant, is perverse as all these documents would show that the Defendant has been in possession since 2013, i.e., when the sale transaction took place. Ld. Senior counsel submits that this date is relevant as under Section 6 of the Act, the limitation for filing the suit is six months from the date of dispossession. Thus, according to him, if the Defendant is shown to be in possession since 2013, the suit itself would not be maintainable as it would be barred by limitation. Accordingly, it is submitted that the documents are liable to be taken on record. The following judgments are relied upon:

- ***Dr. Arun Nirula v. U.S. Bal (Through LRs) & Anr. [CM(M) No.738/2015, decided on 6th July, 2017]***
- ***Xerox Corporation & Anr. v. P. K. Khansaheb & Anr., 2019 (77) PTC 249***

9. On the other hand, ld. counsel for the Plaintiff submits that even as per the sale deed itself, only *symbolic* possession was handed over to the Defendant, which is clear from a reading of clause 5 of the sale deed, which reads as under:

> "*5. That the Vendor has handed over the symbolic possession along with the tenent M/s. Indraprastha Ice & Cold Storage Ltd., Shri Ashok Gupta, Mr. Subhash Aggarwal (HUF), Mr. Om Prakash Gupta (HUF), Usha Choudhary & Other person other person and all the previous original/concerned documents on the spot for the peaceful use of the said property to the Vendee.*"

10. It is therefore submitted that since 2013 the Defendant was only in *symbolic* possession, as per its own sale deed, and thus, the argument that all these documents would should physical possession in favour of the

Defendant is completely incorrect. It is further submitted that no averment has been made to show that despite exercise of due diligence these documents could not have been filed earlier as most of these documents relate to a period prior to the filing of the suit. Ld. counsel further relies upon the finding of the Trial Court on the irrelevancy of these documents.

11. In the impugned order, the Trial Court has held that the documents being not relevant, especially in a suit under Section 6 of the Act, such an application, which merely seeks to fill the loop holes in the cross-examination, is not liable to be allowed.

12. This Court has considered the pleadings, the impugned order as also the case law which has been placed on record. The first and foremost feature of this case is that it is a suit under Section 6 of the Specific Relief Act, 1963. The primary cause of action in a suit under Section 6 of the Act is forcible dispossession of the Plaintiff. This is clear from a perusal of paragraph 19 of the plaint itself, which shows that the cause of action pleaded was that it arose on 4th February, 2016, when the Plaintiff allegedly came to know that the Defendant had taken illegal possession from the sub-tenant of the Plaintiff. The cause of action paragraph also acknowledges the sale in favour of the Defendant and the purchase by the Defendant.

13. The written statement is very categorical and clear that the Defendant has been in possession of the suit property since 9th February, 2013. The reason for not filing the said documents earlier is, however, not clear. The Trial Court has clearly held that the documents are not relevant but that would not be a correct finding. If the Defendant is able to show that it has been in physical possession of the suit property prior to 2016, the limitation issue could tilt in favour of the Defendant. Thus, the finding of the Trial

Court with regard to irrelevancy of the documents is not correct. However, the question of lack of due diligence has rightly been raised by the Trial Court.

14. This Court had an opportunity to consider a similar situation in ***Dr. Arun Nirula (supra)*** and ***Xerox Corporation (supra)*** wherein a clear procedure has been laid down for filing documents both under CPC as also under the DHC (OS) Rules of 2018. Paragraph 20 of ***Xerox Corporation (supra)*** is set out below:

> "*20. A conjoint reading of the provisions of the CPC, the Commercial Courts Act and the DHC (OS) Rules 2018 (as notified w.e.f.1st November 2018) requires parties to broadly adhere to the following procedure in respect of documents, admission/denial, exhibit marking and during recordal of evidence.*
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> *a) All documents in the power of possession of parties are required to be filed with the pleadings* ***[Order VII Rule 14 and Order VIII, Rule 1A CPC, Order XI Rule 1 CPC as amended by the Commercial Courts Act, Chapter IV, Rule 1 and Annexure E of the DHC(OS) Rules, 2018, as amended by Notification No.722/Rules/DHC dated 16th October, 2018];***
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> *b) Filing of copies is sufficient* ***[Chapter IV Rule 1(a), as amended by Notification No.722/Rules/DHC dated 16th October, 2018];***
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> *c) If a party wishes to inspect original documents, notice ought to be given by the counsel and at a mutually convenient date, time and venue, inspection ought to be given within the time stipulated* ***[Order XI Rule 15 & 17 CPC, Order XI Rule 3 CPC as amended by the Commercial Courts Act, Chapter VIII of the DHC (OS) Rules, Chapter VII Rule 2(ii) of the DHC (OS) Rules as amended by Notification No. 722/Rules/DHC dated 16th October, 2018];***
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> *d) Affidavits/Statements of admission/denial have to be*

*filed with either the Written Statement or the Replication **[Chapter VII Rule 3, Rule 6 and Rule 7 of the DHC (OS) Rules];***

*e) After inspection is sought and given, a document schedule shall be filed before the Joint registrar, duly endorsed by counsels for all parties **[Chapter VII Rule 7A of the DHC (OS) Rules as amended by Notification No.722/Rules/DHC dated 16th October, 2018];***

*f) Exhibit marking shall be carried out by the Joint Registrar on the basis of the Document Schedule **[Chapter VII, Rule 16 of the DHC (OS) Rules as amended by Notification No.722/Rules/DHC dated 16th October, 2018];***

*g) If any party wishes to file any documents after Issues are struck and the matter has proceeded for evidence, leave has to be sought from the Court **[Order XI Rule 5 CPC as amended by the Commercial Courts Act];***

*h) Affidavits of evidence usually should not have any documents attached to them. Any objections raised in respect of the said documents are to be recorded subject to the orders of the Court. **[Order XVIII Rule 4 (1) CPC, Order XIX Rule 3 CPC as amended by the Commercial Courts Act, Chapter XI Rule 1(ii), Chapter XIX of the DHC (OS) Rules].** However, in respect of such documents attached with the affidavits in evidence, the witness ought to state reasons in the affidavit itself as to why the same were not filed earlier. The said documents have to be within the broad contours of the pleadings and the documents already on record. Advance copies of the same ought to be served.*

*i) At the time of examination in chief, objections can be raised, which shall be recorded by the Joint Registrar or the Local Commissioner and the trial will continue. No derailment of the trial is permitted, once the witness is present **[Order XVIII Rule 4(1) CPC,***

Chapter XI Rule 11 of the DHC (OS) Rules].”

15. The mere fact that the documents were with the Chartered Accountant does not mean that the documents were not available to the Defendant. Due diligence ought to have been exercised by the Defendant to file the documents at the time of filing the written statement. However, considering the fact that the pleading of being in possession since 2013 exists and considering the nature of the documents and the fact that the said documents could be crucial in deciding the issue of limitation, the same are held to be relevant.

16. On an overall conspectus of this case, the following directions are issued:

1. All the original documents filed by the Defendant are directed to be taken on record subject to payment of Rs. 2 lakhs as costs to the Plaintiff;
2. All the documents relate to the Defendant and do not concern the Plaintiff. Thus, the cross-examination of the Plaintiff's witness shall continue, without the said witness/es being confronted with any of the documents now being brought on record.
3. Along with the affidavit of evidence to be filed on behalf of the Defendant, these documents shall be exhibited, subject to the Plaintiff's objections, if any, as to mode of proof and admissibility to be adjudicated at the final stage.
4. The said documents shall be exhibit marked, subject to the objections with respect to mode of proof and admissibility.
5. The Defendant has filed a list of witnesses consisting of 18

witnesses. In order to reduce protraction of the trial, the Defendant is permitted to lead the evidence of one private witness and four official witnesses from the list of witnesses. In respect of other official witnesses, certified copies obtained from the authorities is permitted to be filed and exhibited.

6. Insofar as any judicial records are concerned, the Defendant is permitted to file certified copies of the same in order to ensure that repeated summoning of the witnesses does not cause delay in the recordal of the evidence before the Local Commissioner.
7. The costs shall be paid on or before the next date before the Local Commissioner. Subject to the costs being paid, the documents shall be taken on record.
8. Considering that the Local Commissioner was appointed in 2018, it is now directed that the trial in the suit shall be concluded on or before 30th April, 2020, by both the parties.

17. The present petition and all pending applications are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

JANUARY 28, 2020
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