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

+ **CM(M) 66/2017 & CM APPL. 2281/2017**

M/S SPECTRA BUSINESS CENTRE & ORS Petitioners

Through: Mr. K.K. Malhotra and Mr. K.K.
Bhalla, Advocates. (M:9250296423,
9811764624)

versus

VIJENDER MOHAN SEHRAWAT Respondent

Through: Mr. Chirag Jamwal and Mr. Ajay
Upadhyay, Advocates
(M:9971002798).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **11.02.2020**

1. The petition challenges the impugned order dated 24th August, 2016 by which the application under Order VI Rule 17 CPC filed by the Petitioners herein/Plaintiffs in the suit (*hereinafter* 'Plaintiffs') has been rejected by the Trial Court.
2. A suit was filed by the Plaintiffs against the Respondent herein/Defendant (*hereinafter* 'Defendant') in respect of 200 sq. ft area of property on the first floor bearing No. F-64, Bhagat Singh Market, New Delhi - 110001. In the suit, the case of the Plaintiffs was that the Plaintiffs are running a business centre in the said property and the Defendant was given 600 sq. ft. area on a licence to use the same. The Defendant, however, who was only given 600 sq. ft. area on a licence, as per the plaint, trespassed into further areas of 200 sq. ft including the common areas, on 30th May, 2011/2nd June, 2011. Accordingly, the suit was filed seeking a decree of

declaration and *mesne* profits. An application under Order VII Rule 11 CPC was filed by the Defendant. During the pendency of the said application the Plaintiffs moved an application under Order VI Rule 17 CPC seeking to amend paragraph 14 of the plaint by adding the following:

“14. That the plaintiff no.1 Shri Umesh Dutta was the tenant in the premises in dispute under Shri R.S. Gulati and after the death of Shri R.S. Gulati, the plaintiff no.1 by virtue of succession become the tenant of the legal heirs of Shri. R. S Gulati in the said portion. The tenancy premises was let out to the plaintiff no.1 for residential cum commercial purposes. The Plaintiff no.1 entered into a partnership with the plaintiffs no.2 and 3 and started running the business under the name and style of M/S Spectra Business Centre who was in possession of the premises till 02-06-2011 when the plaintiffs came to know that the plaintiffs have been dispossessed from the premises in dispute and the defendant has illegally trespassed over the same and did not allow the plaintiffs to enter the premises in dispute. Since the plaintiffs have been dispossessed from the suit premises and as such the plaintiffs have a right and locus standi to claim possession from the defendant. U/S 6 of the Specific Relief Act. The present suit is being filed under the provisions of section 6 of the Specific Relief Act.”

3. The impugned order rejecting the amendment, holds that the Plaintiffs seek to change the nature of the suit itself from a suit under Section 5 to a suit under Section 6 of the Specific Relief Act, 1963. The Trial Court has thus, observed that the Plaintiffs cannot be permitted to change the nature of the suit and in view thereof, the application has been rejected. Ld. counsel for the Plaintiffs submits that the amendment which is being sought by the

Plaintiffs is merely clarificatory/elucidatory in nature. He submits that in paragraph 14 of the plaint, the Plaintiff has clearly made a statement that he is the tenant in the suit property. Thus, only further details in respect of how the Defendant was given possession were sought to be expanded in the application under Order VI Rule 17 CPC. It is submitted that the Plaintiffs never claimed ownership rights in the property. He further relies upon the written statement to submit that it is admitted therein that the Plaintiff had given possession of the property to the Defendant. Further, the suit being at the inception, the amendment ought to have been allowed.

4. On the other hand, Id. counsel for the Defendant submits that it has not been stated in the plaint that it is a suit under Section 6 of the Specific Relief Act. It is in fact a simple suit for possession which is under Section 5 of the Specific Relief Act. For a suit under Section 5, the legal entitlement of the Plaintiff has to be proved. However, under Section 6, it is a summary procedure only for seeking possession. He submits that the Trial Court order is quite well-reasoned and in view of the fact that the nature of the suit is sought to be changed, the Trial Court has rightly rejected the amendment. Moreover, it is the submission of the Defendant that the application under Order VI Rule 17 CPC was filed only in order to obviate an order in the application under Order VII Rule 11 CPC.

5. The Court has seen the impugned order as also the plaint and the written statement. The plaint has clearly proceeded on the premise that the Plaintiff was the tenant in the property and the Plaintiff had handed over the possession to the Defendant. In the written statement, the Defendant admits that he had received possession from the Plaintiff, however, the Plaintiff was not the owner. This is clear from a reading of paragraph 14 of the plaint and

paragraph (ii) of the preliminary submissions in the written statement. The same are extracted below:

“Plaint

14. That the possession of the defendant over the portion shown in green colour in the plan attached is unauthorized, unjustified, malafide and is without any legal right, title or interest of any kind. The defendant is legally and morally bound to handover the vacant possession of the portion shown in green colour to the plaintiff who was earlier in possession of the premises being the tenant of Late Sh. R.S. Gulati. The possession of the defendant is of ranked trespasser in the premises but in these circumstance it is just deem fit and proper that the defendant may be directed to handover the physical and vacant possession of the portion shown in green colour in the site plan attached.

Written Statement

ii. That the plaintiffs were never in any type of possession upon any portion of the suit property or are in possession of any portion of the suit property and they do not run any alleged business from the suit premises as the whole suit premises is in the possession of the answering defendant since license given to him by the plaintiff No. 2 & 3 who misrepresented the defendant to be owner of the suit property whilst its owner was late Sh. R.S. Gulati who expired in 1991 and had hypothecated the suit property to Canara Bank, Connaught Place Branch, New Delhi - 110001 against a loan of around Rs 3 lacs for which the said loanee Bank filed a case before the Debt Recovery Tribunal. ...”

6. However, the further case of the Defendant is that the actual owner was Mr. R. S. Gulati who has since passed away. The Defendant has entered into an agreement to sell from the heirs of Mr. R.S. Gulati and hence the

Defendant is now in legal possession of the property in question. It is also submitted that there is a suit for specific performance which is being filed by the Defendant against the Plaintiff and the legal heirs of Mr. R.S. Gulati.

7. Thus, there are two suits pending in respect of the same property before the Trial Court. Insofar as the amendment sought is concerned, a perusal of the paragraph which the Plaintiffs seeks to add merely shows that the Plaintiffs wish to expand on how the Defendant came into possession of the property and how the Plaintiffs were in prior possession under a tenancy.

8. The Trial Court has dismissed the application on the ground that the nature of the suit is being changed. Perusal of the paragraph which is sought to be amended shows that this can be proved by means of leading evidence in the matter, inasmuch as in paragraph 14 of the plaint, the Plaintiff has already made a statement to the effect that the Plaintiff is the tenant in the suit property. Thus, this Court is of the opinion that the amendment would not be required. However, to prove the fact that the Plaintiff is the tenant, and how the Plaintiff was in prior possession of the property, the averments which are now sought to be added by way of an amendment can be incorporated in the evidence by way of affidavit to be filed in the suit. Thus, no further amendment is required to be made in the plaint. The suit can now proceed in accordance with law. The impugned order shall stand modified in terms of the present order.

9. Considering the fact that there are two suits pending in respect of the same property, the matter be placed before the District Judge so that both the suits can be listed before the same judicial officer and can be adjudicated together in order to obviate the chances of any conflicting judgments being rendered in the matter. The final adjudication in this matter would be

independent of the observations made in the impugned order.

10. With these observations the petition and all pending applications are disposed of with no orders as to costs. Copy of this order be sent to the District Judge (Patiala House) for listing both suit no. 56126/2016 and suit no. 58254/2016 titled as *Spectra Business Center and Ors. v. Vijender Mohan Sehrawat* and *Vijender Mohan v. D.S. Gulati and Ors.* respectively before the same Judicial Officer.

PRATHIBA M. SINGH, J.

FEBRUARY 11, 2020

Dj/A.S.