

\$~12

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

% **Date of Decision: July 27, 2021**

+ CM(M) 482/2021 & CM APPL. 22396/2021 (by the petitioner u/S 151 CPC for stay), 22397/2021 (Exemption), 22398/2021 (by the petitioner u/S 5 of the Limitation Act for condonation of delay)

SH. S.R DUGGAL (EX-DIRECTOR OF M/S ICRI PVT.LTD IN LIQUIDATION) Petitioner

Through Mr. Sunil Chaudhary, Advocate.

versus

SH. VIJAY PAL KAUSHIK Respondent

Through None

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

ORDER

[VIA VIDEO CONFERENCING]

CM APPL. 22397/2021 (Exemption)

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

CM(M) 482/2021, CM APPLs. 22396/2021 (by the petitioner u/S 151 CPC for stay)& 22398/2021 (by the petitioner u/S 5 of the Limitation Act for condonation of delay)

1. This petition under Article 227 of the Constitution of India has

Signature Not Verified CM (M) 482/2021

Signed By: MANJIVET KAUR

Signing Date: 29.07.2021
10:34:53

Page 1 of 4

been filed by the plaintiff before the learned Trial Court, being aggrieved by the rejection of his plaint under Order VII Rule 11 CPC by the Senior Civil Judge (South East District), Saket Courts, New Delhi.

2. The petitioner/plaintiff had filed a suit for possession under Section 6 of the Specific Relief Act claiming to have been illegally dispossessed from property bearing No.318, Sant Nagar, East of Kailash, New Delhi i.e. the suit premises. The learned Trial Court rejected the plaint on the ground that the petitioner/plaintiff had no *locus standi* to file the same.

3. Mr. Sunil Chaudhary, learned counsel for the petitioner/plaintiff submits that the view taken by the learned Trial Court was completely erroneous inasmuch as it had overlooked all the averments made in the plaint which clearly disclosed that the petitioner/plaintiff had filed the suit under Section 6 of the Specific Relief Act, 1963 in his personal capacity as also in the capacity of the Ex-Director of the company M/s. ICRI Research Pvt. Ltd. Learned counsel for the petitioner/plaintiff also drew attention to the Rent Agreement placed as Annexure 'C' in the e-file, to point out that the Rent Agreement had been signed by the petitioner/plaintiff as the Director of the said company. Therefore, the petitioner/plaintiff could maintain the suit, having been illegally dispossessed by the son of the respondent/defendant by snatching the keys from the employee of the petitioner/plaintiff, who had been called to the spot on the plea of cleaning and attending to the water logging in the suit premises. Learned counsel for the petitioner/plaintiff submitted that the petitioner/plaintiff was the one running an office from the premises in question, which had remained closed on account of the Covid-19. Thus, since, it was he, who had been illegally dispossessed, he alone could file

the suit under Section 6 of the Specific Relief Act, 1963 to be put back in possession immediately.

4. The learned Trial Court vide the impugned order observed that a suit under Section 6 of the Specific Relief Act, 1963 could be filed only by a person, who was in actual physical possession of the property and, if such person, who was in possession, was an agent or an appointee or depute of another, the actual physical possession would be of the person appointing or deputing him. Reliance was placed on the judgment of the Supreme Court in *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*, (2012) 6 SCC 430. It was also observed that the Rent Agreement had been executed between the company, M/s. ICRI Research Pvt. Ltd. and the respondent/defendant through the then Director i.e., the petitioner/plaintiff. It was held that on this score also, it could not be said that it was the petitioner/plaintiff, who was in possession of the suit property. It also noticed that the High Court of Delhi had vide order dated 25th September, 2018, appointed an Official Liquidator as the company, M/s. ICRI Research Pvt. Ltd admittedly, had gone into liquidation.

5. When queried as to how these observations were incorrect, learned counsel for the petitioner/plaintiff insisted that he had sued, not only in his individual capacity but also in the capacity of an Ex-Director of the company which was no doubt, under liquidation. There was no convincing answer as to why, the Official Liquidator was not before the Court. Learned counsel in the course of the arguments, did indicate that the Official Liquidator had visited the suit premises to take over all the documents and records.

6. It would therefore appear, that possibly, the dispossession is being claimed on account of the fact that now, the Official Liquidator is taking charge of all the assets of the company under liquidation.

7. Be that as it may, it is to be noted that the Rent Agreement nowhere records that the premises are to be used exclusively for the personal benefit of the petitioner/plaintiff. There is nothing on the basis of which, it could be inferred that though it was the company that was the tenant, the petitioner/plaintiff had a right independently of the company to remain in possession of the premises. Even if that clause had been included in the Rent Agreement, it appears that the petitioner/plaintiff would then have to come through the Official Liquidator to protect his possession so obtained through the company now under liquidation.

8. There is no merit in the present petition, which is accordingly, dismissed along with the pending applications.

9. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

JULY 27, 2021
ms/ck

