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

Date of Decision: 16th December, 2021

+ **C.R.P. 96/2021 & CM APPL. 45050/2021 (for stay)**

DR. RATIKA DATTA

..... Petitioner

Through: Mr. Sonam Sharma & Mr. Arjun
Rekhi, Advocates with Petitioner in
person (M: 8010537468)

versus

MRS VANDANA YOGESH BAKSHI

..... Respondent

Through: Mr. Manish Bhardwaj, Advocate
(M: 9971113591)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. This is a petition challenging the impugned order dated 26th November 2020 by the Ld. ADJ-04, South District, Saket Courts, New Delhi (*hereinafter "trial court"*) in **CS DJ/207577/2016** titled **Mrs. Vandana Yogesh Bakshi v. Ms. Ratika Datta**. Vide the impugned order the trial court dismissed the application filed by the Petitioner under Order 7 Rule 11 read with Section 151 for the rejection of the plaint. The suit was filed by the Respondent for possession and damages with respect of suit property bearing No. A-1 Hauz Khas, New Delhi- 110017 (*hereinafter "suit property"*).
3. It is the case of the Respondent that the father-in-law of the Respondent had inducted one Dr. Tripta Datta as the tenant and she passed

away on 25th January, 2016. The present occupant i.e., the Petitioner claims to be the adopted daughter of Dr. Tripta Datta by virtue of an adoption deed dated 11th May 2000. In the suit which was filed in 2016, the application in question under Order 7 Rule 11 CPC was filed by the Petitioner claiming that the suit is liable to be rejected as being barred under the Delhi Rent Control Act, 1958, improper valuation of the suit as per the prevailing circle rate, non-disclosure of the cause of action and also as being barred by limitation. The trial court, while dismissing the application held as under:

“As per the defendant, she is adoptive daughter of the Dr. Tripta Datta vide registered adoption deed and after her death, she is statutory tenant in the suit property. But as per the Plaintiff, said adoption deed is forged and fabricated and the defendant is trespasser not a tenant in the suit property. The defendant has also stated that the suit is barred under the provisions of the DRC Act and the Limitation Act, 1963, It is well settled that for deciding application under Order VII Rule 11 of the CPC, the Court has to see only plaint. The points/ grounds raised in the instant application require trial and cannot be decided without trial and therefore, application is dismissed with cost of rupees 2000/-.”

4. Ld. Counsel for the Petitioner submits that the admitted position is that the current rent which is stated to be deposited on a monthly basis by the Petitioner with the Rent Controller, Saket is Rs. 3,100/- + 3,100/- i.e., total of Rs.6200/- per month for the entire ground floor of the suit property which comprises of the front and the back portion.

5. A perusal of the O 7 Rule 11 application filed by the Petitioner shows that the only intention of the Defendant is to delay the adjudication of the

suit. Admittedly, the case of the Petitioner is that she claims right of possession of the ground floor of the suit property through the earlier tenant, Dr. Tripta Datta, of whom she claims to be the adopted daughter. The objection that the suit is barred and not maintainable due to the provisions of the DRC Act are completely untenable. The Petitioner is admittedly paying Rs. 6,200/- per month and the settled legal position is that the portions of the property and the rent cannot be bifurcated in order to bring it in the purview of the DRC Act as has been held by the Hon'ble Supreme Court in ***Charanjit Lal Mehra v Kamal Saroj Mahajan (2005) 11 SCC 279***. The relevant observations from the judgment are as under:

“Therefore, it clearly stipulates that this lease deed has been executed in favour of all the brothers jointly and it is a composite one and not individual one. Detailed perusal of the lease deed leaves no manner of doubt in the matter that this was a composite and joint tenancy and it was executed on behalf of the landlady on the one side and all the four brothers on the other side. The rent stipulated in the lease deed is RS. 2500/- in to to. It is not disputed that the total rent now payable is more than Rs. 3500/-. It cannot be split up into four portions so as to bring the building within the told of Rent Act Therefore, we are of opinion that the tenancy in question was a joint/ composite one and it is not an individual lease of the demised premises which is a show room and the defendants had to pay the rent jointly. This was the only basic question which needed to be determined and the learned Single Judge of the High Court has correctly appreciated the matter. The letters exchanged do not in any way demolish the admissions towing from the lease deed which is the primary document.”

6. The Petitioner is still in occupation of the suit property and thus, the

objection as to limitation is also liable to be rejected. In a suit for possession of this nature, the cause of action is a continuous one as held in judgment passed by this Court in **MEC India Pvt. Ltd. V. Inder Maira & Ors. 80 (1999) DLT 679**. The Court observed:

“58. This is how a suit for ejectment differs from a Title Suit for Possession. The 'cause of action' for such a suit is the termination of the tenancy with the expiry of a particular tenancy month. The termination for any subsequent month would be a separate and a distinct cause of action. The elapsing of each tenancy month, and service of a fresh quit notice gives a fresh cause of action. It is somewhat akin to a partition suit, where each demand for partition operates a fresh cause of action. Thus, none of the grounds would justify rejection of the plaint under Order 7 Rule 11.”

7. The suit for possession and damages is pending before the trial court since 2016. The trial court has rejected the application under Order 7 Rule 11 observing that grounds raised in the application require trial for adjudication. The Court had issued notice in this matter on the last occasion and had directed parties to appear. The Petitioner has joined in person and the Respondent has joined virtually.

8. As on today, the position of the ground floor of the suit property as per the respondent, is that it is lying locked. On the other hand, the Petitioner claims that her servants are living in the suit property and she is unable to live in the property as she is being harassed there.

9. In view of the above factual and legal position, the trial court was justified in dismissing the application. Accordingly, the present petition merits dismissal with costs of Rs. 25,000/- to be paid to the Respondent. The

costs shall be paid by the Petitioner within a period of four weeks. The learned ADJ, before whom, the suit is pending is directed to proceed in an expeditious manner in the matter.

10. The petition is dismissed. The pending application is also disposed of.

PRATHIBA M. SINGH
JUDGE

DECEMBER 16, 2021

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