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

+ **EX.F.A. 20/2023 & CM APPL. 31710/2023**

M/S ECONOMICS TRANSPORT ORGANISATION LTD

..... Appellant

Through: Mr. Salman Khurshid, Sr. Advocate
with Ms. Sommya Chaturvedi and
Ms. Richa Bais, Advocates

versus

**M/S MOHAN INVESTMENTS AND PROPERTIES PVT LTD &
ANR.**

..... Respondents

Through: Mr. Dhanesh Relan, Mr. Divyanshu
Bhandari and Ms. Brinda Admani,
Advocates for R-1
Mr. M.S.Khan, Ms. Niharika Rai and
Mr. Arshyan, Advocates for R-2

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Date of Decision: 3rd July, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 31709/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

EX.F.A. 20/2023 & CM APPL. 31710/2023

1. This appeal has been filed assailing the order dated 19.05.2023 passed by ADJ, Central District, Tis Hazari Courts, Delhi ('Executing Court') in Ex. No. 432/2021, whereby the Executing Court has dismissed the claim petition filed by the Appellant herein under Section 47 read with Order 21



Rule 97 of C.P.C.

2. The Respondent No. 1 herein is the decree holder and has obtained a decree of possession dated 06.12.2018 in civil suit i.e., CS No. 13865/2016 with respect to property bearing no. 1-E/6, Swami Ram Tirath Nagar, Jhandewalan Extension, New Delhi – 110055 ('subject property') against Respondent No. 2 herein i.e., the judgement debtor. The subject property was let out to Respondent No. 2 *vide* registered lease deed dated 25.03.1975. Respondent No. 2, assailed the decree of possession by filing an appeal i.e., RFA No. 123/2019. However, after arguments in the said appeal Respondent No. 2 gave an unconditional undertaking on 11.02.2019 to handover peaceful and vacant possession of the subject property by 15.05.2019. In this manner, the decree of possession dated 06.12.2018 has attained finality.

3. However, the Respondent No. 2 failed to hand over the possession of the subject property in terms of the undertaking given to this Court and addressed a letter dated 09.05.2019 to the Respondent No. 1 stating that the Appellant herein is in possession of the subject property and they are therefore, unable to comply with the said undertaking.

4. The Appellant herein, thereafter resisted handing over the possession of the subject property and initiated litigation against the Respondent No. 1 by filing a civil suit before this Court on May, 2019, asserting an independent claim of ownership in the subject property based on adverse possession. The said civil suit was however withdrawn by the Appellant *vide* order dated 12.02.2020 and costs were imposed by this Court while permitting the said withdrawal. The Appellant, however failed to vacate and hand over the possession of the subject property to Respondent No. 1.

5. In the aforesaid circumstances, Respondent No. 1 was constrained to



file the execution petition on 01.10.2021 i.e., Ex. No. 432/2021 seeking execution of the decree dated 06.12.2018 for recovery of possession of the subject property. The Executing Court issued warrants of possession on 14.10.2022 and appointed a bailiff for recovering the possession of the subject property with the assistance of the Police. However, on 14.11.2022 when the bailiff visited the property there was a religious ceremony organised in the subject property and therefore the bailiff did not deem it appropriate to execute the warrants of possession.

6. The Appellant herein thereafter filed a claim petition in November, 2022 before the Executing Court under Section 47 read with Order 21 Rule 97 of C.P.C. seeking a declaration of title in its favour solely on the basis of adverse possession. This claim petition as noted above has been dismissed by the Executing Court after perusing the record and concluding that the Appellant herein has no independent interest, separate from Respondent No. 2, in the subject property.

Arguments on behalf of the Appellant

7. Mr. Salman Khurshid, learned senior counsel for the Appellant states that the Executing Court has failed to appreciate the contentions of the Appellant raised in the claim petition wherein the Appellant has set up his claim of an independent title on the basis of adverse possession. He relies upon the assertions made at paragraph 13 of the claim petition, which reads as under:

*“13. That the Plaintiff/Claimant having open, continuous, uninterrupted and or hostile over the' suit property is crystal clear from the fact that since the Respondent/Defendant/JD No.1 had so claimed themselves to be the paper owner of the suit property has clearly failed to disposes the Plaintiff/Claimant from the suit property within stipulated period of 12 years from the date the-ownership is claimed. **The Plaintiff/Claimant having succeeded in earlier suits from being disposes at the hand of the Respondent/Defendant/JD No.1 which clearly entitle the***



Plaintiff/Claimant of claiming the title on the' basis of adverse possession
since they have their possession as "nec vi, nec clam, nec precario'."

(Emphasis supplied)

7.1 He states that the Appellant herein has never admitted to the ownership of the Respondent No. 1. He states that payments made by the Appellant to Respondent No. 1 are not an admission of the latter's ownership and the said payments were made under the orders of the Court during the pendency of the civil suit i.e., CS No. 618/1990 filed by Respondent No. 1 against the Appellant.

7.2 He states that the Appellant has filed on record along with the claim petition documents which evidence its continuous use and occupation of the subject property which evidence that Appellant's possession is hostile to the owner and the said documents need to be considered by the Executing Court by holding a proper trial in the execution proceedings. He states that the Appellant cannot be deprived of the adjudication of its claims in the subject property in this summary manner.

7.3 No other argument was addressed by the learned senior counsel.

Arguments on behalf of the Respondent No.1, owner

8. In reply, Mr. Dhanesh Relan, learned counsel for Respondent No.1 states that the Appellant in collusion with Respondent No. 2 has abused the legal process and successfully frustrated the execution of the decree dated 06.12.2018.

8.1 He states that the Appellant is the sister concern of Respondent No. 2 and had admittedly entered into the permissive possession of the subject property in pursuance of the registered lease deed dated 25.03.1975.

8.2 He states that the Respondent No.1 is the owner of the subject property having purchased the same on 14.01.1986 in an auction.

8.3 He states that the Respondent No. 1 herein has been compelled to file



the following proceedings against the Appellant and Respondent No. 2 for recovery of possession of the subject property, payment of unpaid rent and mesne profits. He states that prior to 06.12.2018, in the following proceedings, it was the consistent stand of the Appellant that the jural relationship with respect to the subject property only exists between Respondent No.1 and Respondent No. 2; and the Appellant is in possession of the subject property with the permission of Respondent No. 2. He relies upon the following proceedings initiated between the parties for recovery of the subject property:

- i. Civil Suit No. 618/1990 instituted before the High Court against the Appellant for seeking recovery of possession, unpaid rent and mesne profits. The said suit was subsequently, transferred to District Court on account of change in pecuniary jurisdiction.
- ii. In the written statement filed by the Appellant in the said civil suit, it was categorically asserted that the Appellant is enjoying possession of the subject property with the permission of Respondent No. 2, in terms of the clauses of the registered lease deed dated 23.05.1975 and it was further asserted that the said suit is bad for non-joinder of Respondent No. 2. There was absolutely no stand of adverse possession or independent title raised in the said written statement.
- iii. The said civil suit was dismissed by the District Court *vide* judgment dated 02.01.2014 as the Court accepted the stand of the Appellant and opined that Respondent No. 2 is the tenant in the subject property. The Court accepted the stand of the Appellant that no suit for recovery can be maintained against the Appellant, who was enjoying possession at the behest of Respondent No. 2. The said judgment



attained finality as neither the Appellant nor Respondent No. 1 assailed the said judgment.

- iv. He states that in view of the findings of the said judgment dated 02.01.2014, the Respondent No. 1 instituted a fresh suit on 02.08.2014 for recovery of possession, unpaid rent and damages with interest against Respondent No. 2 herein. The District Court passed a decree of possession on 06.12.2018 in favour of Respondent No. 1 and against Respondent No. 2, thereby directing the latter to handover the vacant and peaceful possession of the suit property.
- v. He states that Respondent No. 2 assailed the decree dated 06.12.2018 in RFA No. 123/2019; however, during the course of arguments on 11.02.2019, the Respondent No. 2 undertook to handover peaceful and vacant possession of the subject property by 15.05.2019. The order dated 11.02.2019 records the said undertaking.
- vi. He states that thereafter the Respondent No.2 *vide* letter dated 28.02.2019 addressed to Respondent No. 1 confirmed the undertaking given to the Court on 11.02.2019 and undertook to vacate on or before 15.05.2019.
- vii. He states that since the Respondent No. 2 failed to comply with the said undertaking and failed to wilfully vacate the subject property, the Respondent No. 1 was constrained to file a contempt petition before this Court and the same is pending. He states that Appellant and Respondent No.2 have colluded to wrongfully deny Respondent No. 1.
- viii. He states that Respondent No. 2 sought to wrongfully withdraw the undertaking give to the Court on 11.02.2019 by filing a CM. APPL.



5519/2020; however, the said application was unconditionally withdrawn on 01.09.2022 and Respondent No. 2 continues to remain bound by the undertaking dated 11.02.2019.

- ix. He states that Appellant on 15.05.2019, to obstruct the compliance of the undertaking given to the Court on 11.02.2019, filed an independent suit being C.S.(OS) No. 312/2019 before this Court seeking a declaration of independent title on the ground of adverse possession. He states after a detailed hearing the suit was withdrawn by the Appellant without seeking adjudication of its claims and subject to payment of costs of Rs. 1,00,000/-.
- x. He states that the Appellant has failed to pay the said costs imposed by the Court till date. He states on this ground alone the Appellant cannot be heard.
- xi. He states that in the aforesaid circumstances the Respondent No. 1 filed the execution petition on 01.10.2021 and after a bailiff was appointed in the said proceedings for execution of warrants of possession on 14.10.2022, the Appellant filed a claim petition belatedly in November, 2022 to obstruct the execution of the warrants of possession.

8.4 He states that the claims of the Appellant are dishonest and have been made in teeth of the pleadings contained in written statement filed by the said Appellant in CS No. 618/1990. He states that from 1990 to 2014 it was the consistent stand of the Appellant before the Civil Court that he has occupied the subject property in furtherance of the registered lease deed 25.03.1975 and is a permissive user under Respondent No.2. He states that therefore, the claim of adverse possession is false.



8.5 He states that the matter is listed before the Executing Court on 04.07.2023 for issuance of fresh warrants of possession. He states that as is evident from the record the Courts have adjudicated upon the claims and defences of the Appellant and Respondent No.2 at least four (4) times by detailed judgments and this claim petition alleging ownership is an abuse of process of law and is a mockery of law.

8.6 He has handed over a Convenience Volume ('CV') of the documents relied upon by him along with a brief list of dates. The said CV is taken on record.

Statement of Respondent no.2

9. Mr. M.S. Khan, learned counsel for Respondent No. 2 states that Respondent No. 2 is ready and willing to comply with the decree of possession dated 06.12.2018 as per the undertaking dated 11.02.2019 and he does not support the assertions made by the Appellant. He states that the present appeal is liable to be dismissed.

10. During the course of hearing, the Appellant has handed over to Respondent No.1 a cheque of Rs. 1,00,000/- towards the cost imposed *vide* judgment dated 11.02.2019. The learned counsel for the Appellant states on instruction that the said cheque will be honoured on presentation. The said statement is taken on record and the Appellant is bound down to the same.

Analysis and findings

11. This Court has considered the submissions of the parties and perused the record.

11.1 The only contention raised by the Appellant is that it has an independent right of possession in the subject property and the said independent right is that of an owner due to adverse possession.

11.2 In the opinion of this Court, the Appellant herein has failed to make



out even a *prima facie* case in its favour. The Trial Court after perusing the Appellant's written statement dated August, 1990 filed in C.S.(OS) 618/1990 rightly concluded that the Appellant has no independent right in the subject property. In this regard, it would be relevant to refer to the paragraphs of the said written statement filed by the Appellant which reads as under:

"B. That the suit is not maintainable against the answering defendants. The real tenants are M/s. ECONOMIC TRANSPORT ORGANISATION (Q.T.S.) PRIVATE LIMITED which is a Company incorporated under the Companies Act. It is evident file the agreement dated 25.03.75 (Twenty fifth March Nineteen hundred and seventy five) executed between E.T.O.(Q.T.S.) P.Ltd. and M/s. B.K. Khanna & Co. P. Ltd. A sum of Rs., 9,450/- (Rs. Ninty four thousand five hundred) was advanced to the said Ex. Owner vide clause No.5 of the Agreement which still unadjusted. The defendants vide clause No.14 of the said, agreement were only permitted to continue the business in the premises by the former Owner M/s. B.K.Khanna & Company Ltd. The rent was revised from Rs. 4,725/-(Rs. Four Thousand Seven Hundred and Twenty Five Only)."

"9. That the contents of the Para 10 are controverted. Since the defendants are not tenants of the Plaintiff or that of the original owner, as such service of notice on them under saction106 of the T.P. Act are illegal and not tenable in law. The tenancy of the real tenant i.e. E.T.O.(Q.T.S.) P. Ltd. Is still intact, because no notice under section 106 of the T.P. Act was served on them. The suit is liable to be dismissed for want of non-joinder of necessary party i.e. tenant and for want of legal notice under Section 106 of the T.P. Act of the real tenants. The notice being illegal, the defendants are not liable to comply with it.

XXX XXX XXX

13. The contents of the, Para 13 are controverted. As contents of the real tenants has not so far been terminated and the defendant continue to be in permissive legal possession of the premises in question by virtue of agreements dated 25.03.75 (Twenty fifth March Ninteen hundred seventy flve) and 23.07.79(Twenty third July, Nineteen hundred seventy nine) referred to in the beginning in the 'preliminary objections. They are in legal possession of the premises and are not liable to pay any amount on account of rent etc. as alleged by the Plaintiff.

XXX XXX XXX

15. The contents of this Para are also controverted in view of submissions made above. It is stated that the premises ws let for commercial purpose to M/s. E.T.O. (Q.T.S.) P. Ltd. By the original owner and not to the defendants."

(Emphasis supplied)



11.3 The Appellant in the aforesaid paragraphs of the written statement categorically asserted that Respondent No. 2 is the existing tenant in the subject property and Appellant is in the permissive use of the subject property having been permitted by Respondent No. 2 to occupy the same. The Appellant therefore, admitted that the legal possession of the subject property vested in Respondent No. 2 and Appellant was in permissive possession at the will of Respondent No. 2. The Appellant resisted the decree for possession and liability to pay rent and mesne profits in the said suit on the basis of these pleadings.

11.4 The District Court *vide* judgment dated 02.01.2014 relied upon the said written statement of the Appellant and the evidence led by the Appellant in the said civil suit to hold that Respondent No. 2 is the tenant in the subject property. The District Court accepted that the Appellant is in permissive possession through Respondent No. 2 and therefore, decree of possession can only be passed against Respondent No.2. Thus, till the date 02.01.2014 the Appellant continue to assert and admit that Respondent No. 2 is the tenant, who is in legal possession of the subject property and the Appellant's use and occupation of the tenanted premises is through Respondent no. 2 alone and in pursuance to the registered lease deed dated 25.03.1975.

11.5 The Appellant herein before the District Court itself relied upon clause no. 14 of the lease deed dated 25.03.1975 to assert that it continues to be in possession of the said premises in pursuance thereof. The relevant clause 14 of the lease deed and the judgment dated 02.01.2014 taking note of the Appellant's submissions reads as under:

Clause 14 of the lease deed dated 25.03.1975 reads as under:

"14. That the lessee shall not sublet, assign or part with the said



possession of the said premises. However, the lessee's subsidiary concerns, namely **Economic Transport Organization**, Economic Services Private Limited, Central Transport of India, Arya Marketing Company Private Ltd. And Foremost Haulage Enterprise, may use the said premises to which the lesser will have no objection provided always that none of the said concerns shall be deemed to be the sub-lessee or assignees and/or have any right or interest the said premises or any part thereof."

Paragraph 9 of the Judgment dated 02.01.2014 reads as under:

"9. It is further stated that the real tenants are M/s. Economic Transport Organisation (Q.T.S.) Pvt. Ltd. which is a company incorporated under the companies Act. M/s. Economic Transport Organisation (O.T.S.) Pvt. Ltd. was tenant of previous owner of property i.e. M/s. B.K. Khanna & Co. Pvt. Ltd. A rent agreement dated 25.03.1975 was also executed between M/S. Economic Transport Organisation (Q.T.S.) Pvt. Ltd. and M/s. B.K. Khanna & Co. Pvt. Ltd., as per which a sum of Rs. 9,45,000/- was given as advance to the said ex-owner vide Clause No. 5 of the rent agreement which is still unadjusted. **The defendants, vide Clause No. 14 of the said agreement were permitted to continue the business in the said premises by the ex-owner of the property.** The rent was revised from Rs. 4725/- per month to Rs. 9000/- per month and the defendants were allowed to continue the business as before vide Clause No. 2 of agreement dated 23.07.1979. The tenancy was for indefinite period and of permanent nature vide Clause No. 4 of agreement dated 23.07.1979. It is stated that the rent receipts were issued by the ex-owner of property i.e. M/s. B.K. Khanna & Co. P. Ltd. in favour of M/s. E.T.O. (Q.T.S.) Pvt. Ltd."

(Emphasis supplied)

11.6 The stand of the Appellant before the District Court was that the relief of recovery of possession, unpaid rent and mesne profits can be maintained by Respondent No. 2 only against Respondent No. 1 which defence of Appellant was accepted by the District Court after recording a finding to this effect *vide* judgment dated 02.01.2014. The relevant portion of the judgment reads as under:

"43. Therefore, in view of the above discussion, it is proved that M/s. Economic Transport Organisation (Q.T.S.) Pvt. Ltd. is a tenant in the tenanted premises.

44. In view of the above discussion, it is proved that there is no relationship of landlord and tenant between the parties and M/s. Economic Transport Organisation (Q.T.S.) Pvt. Ltd. is a tenant in the tenanted premises."



(Emphasis supplied)

11.7 The Appellant did not raise any claim of adverse possession in the said written statement. The Appellant accepted the judgment dated 02.01.2014.

11.8 The Respondent No. 1 also accepted the judgment dated 02.01.2014 and thereafter on 02.08.2014 instituted a suit for recovery of possession, unpaid rent and mesne profits against Respondent No. 2, wherein the decree of possession dated 06.12.2018 came to be passed after four (4) years. The said decree of possession as well attained finality on 11.02.2019 and an undertaking was given to this Court that Respondent No. 2 will peacefully vacate and hand over the vacant possession to Respondent No. 1 on or before 15.05.2019.

11.9 The Appellant raised the claim for adverse possession for the first time by filing a civil suit i.e., C.S. (OS) No. 312/2019. No claim of adverse possession was raised before the said date. The said suit was withdrawn on 12.02.2020 and not pursued until the filing of the claim petition before the Executing Court in November, 2022. In the opinion of this Court, the submission of the learned counsel for the Respondent No. 1 is correct that the said claim of ownership is dishonest as is evident from the record of C.S. No. 618/1990, the written statement filed therein and the judgment dated 02.01.2014.

11.10 The said claim of adverse possession made in the claim petition is a bald assertion. The contents of paragraph 13 of the claim petition relied upon by the senior counsel for the Appellant in support of the said assertion fails to give rise to any triable issue in favour of the Appellant which would require determination at trial. The pleading at paragraph 13 of the claim petition does not substantiate the claim of adverse possession. On the



contrary the Respondent No. 1 herein has been consistently agitating its right as an owner to recover the possession of the subject property from Respondent No. 1 and Respondent no. 2 uninterruptedly since the year 1986 till date. The Respondent No. 1 issued legal notices as early as on 21.01.1986, 03.02.1987 and 04.04.1987 for recovery of unpaid rent. It thereafter filed an eviction petition under Delhi Rent Control Act, 1958 for recovery of the subject property, which was withdrawn due to the amendment to the statute excluding properties where the lease rent was more than Rs. 3,500/-. The Respondent No. 1 thereafter filed a civil suit which remained pending from 1990 to 2014 against the Appellant, followed by the suit filed August, 2014 which was partially decreed on 06.12.2018.

11.11 Thus, it is evident that at all times the Respondent No. 1 consistently asserted its rights as an owner and was vigilant as against Appellant and Respondent No. 2. In these facts and circumstances, the claim of adverse possession is not made out.

11.12 This Court has also perused the documents filed by the Appellant along with the claim petition to assert adverse possession. The said documents on a bare perusal merely pertain to bills of utility companies and other statutory bodies which would arise only because of the fact that Appellant is in occupation of the tenanted premises. None of these documents are documents which would evidence ownership of the Appellant or any document which would show that Appellant was holding himself out as an owner to third parties. The said documents as stated above arise solely on account of Appellant's admitted possession of the subject property. In this regard, the Supreme Court in the case of **Karnataka Board of Wakf v. Government of India and Ors., (2004) 10 SCC 779**, has held as under:

"11. *In the eye of the law, an owner would be deemed to be in possession*



of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina [AIR 1964 SC 1254] , Parsinni v. Sukhi [(1993) 4 SCC 375] and D.N. Venkatarayappa v. State of Karnataka [(1997) 7 SCC 567] .) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession.

(Emphasis Supplied)

11.13 In the facts of this case, the Appellant has prior to filing the civil suit in May, 2019 never claimed its possession to be hostile to the owner. The period of twelve (12) years as alleged in the claim petition is without any basis and is falsified in the facts of this case where the Respondent No. 1 has been litigating since 1990 against Respondent No.2 and Appellant.

11.14 The Court has perused the findings of the Trial Court and finds no infirmity in the said findings which are based on correct appreciation of the documents on record.

11.15 The due process of law has been followed, the rights of Respondent No. 2 has been adjudicated by the Civil Court and the decree of possession dated 06.12.2018 has attained finality. So also, the Appellant's stand that it is a permissive user in the subject property claiming to Respondent No. 2



has been determined by the District Court *vide* judgment dated 02.01.2014. The Appellant by filing the claim petition is seeking to set at naught the adjudication process which began in 1990 and culminated in the judgments dated 02.01.2014 and 06.12.2018. This Court is therefore, of the opinion that the claim petition filed by the Appellant nothing but an abuse of process of Court.

11.15 It is a matter of record that the Appellant or Respondent No. 2 have not made any payment of rent since 06.11.1985 and have embroiled the Respondent No. 1 in multiple legal proceedings since 1990 till date. The Appellant has no legal right to continue to occupy the subject property and it is an unauthorized occupant.

12 Accordingly, the present appeal is dismissed with a cost of Rs. 1,00,000/-, payable to Respondent No. 1 within a period of fifteen (15) days, failing which the Respondent No. 1 will be at liberty to recover the said costs in the pending execution proceedings.

13 The statement made by learned counsel for Respondent No. 2 that Respondent No. 2 remains ready and willing to comply with the undertaking dated 11.02.2019 and has no objection to the recovery of the possession of the subject property from Appellant is taken on record and Respondent No. 2 is bound down to the said statement.

MANMEET PRITAM SINGH ARORA, J

JULY 3, 2023/rk/aa