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

Date of decision: 08.08.2023

+ CM(M) 1271/2023 & CM APPL. 40445/2023 (stay)

MOHD IRSHAD

..... Petitioner

Through: Mr. Pramod Kumar Ahuja, Advocate
with Mr. Umang Mittal, Advocate

versus

JAIN BROTHER SANITATION PVT. LTD. & ANR.

..... Respondents

Through: Mr. K.K. Aggarwal and Ms. Gayatri
Aggarwal, Advocates for R-1
Mr. Asheesh Jain and Mr. Mohit
Monga, Advocates for R-2

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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. 40446/2023(for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1271/2023

1. The present petition filed under Article 227 of the Constitution of India impugns the order dated 13.02.2023 passed by the District Judge, Commercial Court North, Rohini Courts, Delhi, ('Trial Court') in CS(COMM.) No. 168/2021 titled as "**M/s Jain Brothers Sanitation Pvt. Ltd. v. M/s Inspire Exim Pvt. Ltd. & Ors.**" ('commercial suit') whereby, the Trial Court dismissed the Petitioner's application filed under Order 1 Rule 10 Code of



Civil Procedure, 1908 ('CPC') seeking his impleadment in the commercial suit.

1.1. The Respondent No. 1 is the original plaintiff and Respondent No.2 is original defendant in the commercial suit.

1.2. The commercial suit has been filed by the Respondent No. 1 against Respondent No. 2, seeking recovery of possession of the property bearing No. 12, SSI, Jhangirpuri, Industrial Area, G.T. Karnal Road, Delhi ('subject property') on the averments of termination of the lease agreement and in addition for recovery of arrears of rent.

1.3. It is the case of Respondent No.1 in the commercial suit that the subject property had been leased out at Rs. 4,01,000/- in the year 2019 to the Respondent No.2 herein.

1.4. In the commercial suit a decree for possession has been passed by the Trial Court in favour of Respondent No.1 and against Respondent No.2 on 19.05.2023. The execution petition is listed on 09.08.2023.

2. The learned counsel for the Petitioner states that the Trial Court has committed an error in dismissing his application and not permitting him to be impleaded as defendant no. 2 in the commercial suit.

2.1. He states that the Petitioner herein was inducted as a tenant in the subject property by Respondent No. 1 on 18.12.2022; during the pendency of the commercial suit at Rs. 72,000/- per month.

2.2. He states that the Petitioner herein apprehends that he will be dispossessed from the subject property by Respondent No. 1 under the garb of decree of possession dated 19.05.2023, passed in the commercial suit against Respondent No.2.

2.3. He states that the Petitioner herein has already filed a criminal



complaint and also filed his independent suit for declaration of his tenancy rights mandatory and permanent injunction on 10.01.2023 before the Civil Judge and summons in the said suit has been issued on 18.01.2023.

3. In reply, the learned counsel for Respondent No. 1 states that the claims set up by the Petitioner herein are false. He states that the Petitioner has not been inducted as a tenant in the subject property by Respondent No.1; in fact, he has forcibly and criminally trespassed into the subject property. He states that it is the stand of the Respondent No.1 that the Petitioner trespassed into the subject property with the support of Respondent No.2.

3.1. He states in the impugned order dated 13.02.2023; the Trial Court has already taken note of the Appellant's collusion with the Respondent No. 2.

3.2. He states that the Petitioner has been propped up by Respondent No. 2 to frustrate the decree of possession dated 19.05.2023 which has been passed by the Trial Court.

3.3. He states that the Petitioner herein has never remitted any payment to the Respondent No. 1 towards rental for the alleged tenancy or any security amount.

3.4. He states in any event, the Petitioner herein has already instituted a substantive suit on 10.01.2023 for declaration and injunction; and his rights, if any, will be adjudicated in the said suit. He states that Petitioner is not a proper or a necessary party in the commercial suit.

4. The Respondent No.2 has also entered appearance through its counsel, Mr. Asheesh Jain, Advocate.

4.1. He states that the Respondent No. 2 herein disputes the stand of the Respondent No. 1 that the Petitioner herein was illegally inducted by Respondent No.2.



4.2. He states that Respondent No.2 has no privity of contract with the Petitioner; in fact, it is Respondent No.2 who was illegally dispossessed, and this fact Respondent No.2 learnt on 19.12.2023.

4.3. He states that the Respondent No.2 does not admit that the Petitioner is a proper or necessary party in the commercial suit.

4.4. He states that the Respondent No.2 has also instituted a suit for restitution of his possession by filing a separate suit under Section 6 of the Specific Relief Act, 1963.

5. This Court has considered the submission of the parties and perused the record.

6. It may be noted at the outset that the relief for possession has been decreed by the Trial Court on 19.05.2023 in an application filed by the Respondent No.1 under Order 12 Rule 6 CPC. In fact, the matter is listed before the Executing Court on 09.08.2023 for issuance of notice and warrants of possession.

7. The impugned order dismissing the Petitioner's application for impleadment was passed on 13.02.2023. The Petitioner herein was seeking to oppose the decree of possession. The said decree however has already been passed on 19.05.2023. No impleadment can therefore be allowed in a suit which already stands decreed.

8. This Court has perused the order dated 13.02.2023 passed by the Trial Court and is of the opinion that there is no infirmity in the order of the Trial Court in facts or in law. The relevant portion of the order dated 13.02.2023 read as under:

“(ii) Discussion on merits of the two applications: Having regard to entire facts and circumstances as coming out from the submissions of all the Ld. Counsels, I feel in agreement with the submissions of Ld counsel for the plaintiffs. It cannot be gainsaid that the plaintiffs are



following due legal recourse for recovery of possession of the tenancy premises from the defendants by filing the instant suit. They also filed an application under Order XII Rule 6 CPC seeking judgment on the admissions of the defendants, which application was heard on 16.12.2022. It is on 03.01.2023 when the orders were to be pronounced on the said application that the intervener came up with application under Order I Rule 10 CPC. On the subsequent date i.e 05.01.2023, the defendants filed application under Order XXXIX Rule 1 & 2 CPC. In these circumstances, it beats all imagination to think that the plaintiffs would break open the locks of the tenancy premises to take its possession forcibly as well as illegally and would induct the intervener as a tenant therein. It is also unconscionable to comprehend that the plaintiffs would let out the suit premises to the intervener for a paltry sum of Rs. 72,000/- as monthly rent when they had let out the same to the defendants for a monthly rent of Rs. 4,01,000/- in the year, 2019. The intervener claims to have paid Rs. 1,44,000/- in cash to the plaintiff towards security deposit as well as one month's rent but has not produced any document in this regard (this rate of rent is not disputed by the defendants in the written statement) It is difficult to believe that any person would pay such huge amount in cash without seeking a proper receipt. The source of this enormous amount of cash has also not been disclosed by the intervener anywhere in the application.

The falsehood of the story put forward by the intervener as well as by the defendants is also evident from the material contradictions in their statements. The defendants, in their application under Order XXXIX Rules 1 & 2 CPC, have claimed that the tenancy premises was trespassed on behalf of the plaintiffs on 19.12.2022. Intriguingly, the intervener in his application under Order I Rule 10 CPC has claimed to have been put in possession of the tenancy premises as tenant thereof by the plaintiffs on 18.12.2022, which was not possible at all for the reason that on that day, the suit premises was in possession of the defendants.

Thus, it becomes limpid that the defendants, upon getting impression that the decree for recovery of possession of the suit premises is going to be passed against them under Order XII Rule 6 CPC (which is manifest from the fact that some pertinent questions were put to their counsel during arguments on the said application to which he had no answer), did not actually intend to handover the possession of the premises to the plaintiff and thus, have conspired with the intervener by handing over the possession of the suit premises to him in order to deprive the plaintiffs from the same.

Thus, no merit is found in both the the applications and are hereby dismissed."

9. In view of the stand of the Petitioner herein that he was inducted in the



subject property by the Respondent No.1, the application seeking impleadment in a suit filed by Respondent No.1 against Respondent No. 2 is not maintainable.

10. The reliefs which are sought by the Respondent No.1 in the commercial suit are qua the Respondent No.2 and since the Petitioner is not claiming any rights from Respondent No.2; he is neither a necessary nor a proper party in the said commercial suit. For this additional reason, he cannot maintain this application for impleadment in the decreed suit, which is concerned with termination of lease executed between Respondent No. 1 and Respondent No.2 and the Petitioner herein, admittedly does not claim any interest under the said lease deed.

11. Further, the fact remains that the Petitioner has availed his own remedy by filing a substantive suit against Respondent No.1 and for this additional reason he cannot seek impleadment in the commercial suit.

12. The present petition is accordingly dismissed. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 8, 2023/hp/asb