



2023:DHC:9063



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

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Pronounced on: 12th December, 2023

+ C.R.P. 122/2022, CM APPL No. 36959/2022 & 29969/2023

MS INDRAPRASTHA ICE AND COLD STORAGE PVT LTD

..... Petitioner

Through: Mr. Gaurav Mitra, Mr. Gurmeet Bindra, Mr. Vaibhav Mishra and Mr. Ishan Choudhary, Advocates.

versus

MS CARDIFF ASSOCIATES PVT LTD

..... Respondent

Through: Mr. Sanjeev Sindhvani, Sr. Advocate with Mr. Lalit Gupta, Mr. Priyansh Jain and Mr. Anand Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The present petition has been filed on behalf of the petitioner under Section 115 of the Code of Civil Procedure, 1908, praying for the following reliefs:

“A. Pass necessary orders and directions to set aside the impugned Judgment dated 10.06.2022 in passed by the Additional District Judge-10 (Central District). Ms. Colette Colette Rashmi Kujur, in CS/DJ/ADJ No. 614816/2016 titled as M/s Indraprastha Ice and Cold Storage Pvt. Ltd. V. M/s Cardiff Associates Pvt. Ltd.



B. Pass any other order(s) or direction(s) as the Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

FACTUAL MATRIX

2. The petitioner company was inducted as a tenant at the property bearing Municipal no. 10130, at Kalra Chhajju Pandit, Shiddi Pura, Opposite Model Basti, East Park Road, New Delhi, 110005 (hereinafter "suit property"). The suit property was leased by Shri Jai Dev Sharma (since deceased) vide lease deed dated 8th September 1953.
3. The said lease deed *inter-alia* contained a clause, whereby, the petitioner was permitted to construct buildings, factories or residential quarters. The petitioner was also permitted to demolish the existing structure of the suit property and also sub-let the same.
4. Consequently, the petitioner constructed a heavy-duty cold storage building with insulation to use the suit property as a cold storage. Further, in the year 1989, the petitioner sub-let the suit property to Mr. Om Prakash Gupta and Mr. Subhash Aggarwal vide lease deed dated 1st November 1989, and the suit property was to be run as a godown.
5. In the year 1996, after the death of Shri Jai Dev Sharma, the co-owner, one Mr. Surinder Deo Gaur filed an eviction suit bearing No.RC ARC/0590835/2014, against the petitioner and its sub-tenants under Section 14 (1) (b) of the Delhi Rent Control Act (hereinafter "DRC"). The said suit was dismissed in default by the Court vide order dated 25th November 2014. The application for restoration of the said eviction proceeding is still pending before the Rent Controller, Delhi.
6. Thereafter, the petitioner served a legal notice dated 30th January



2016, upon the sub-tenants i.e., Mr. Om Prakash Gupta and Mr. Subhash Aggarwal for default in payment of rent.

7. Further, the petitioner discovered that the suit property had already been sold vide sale deed dated 29th May 2013, to the respondent by Mr. Surinder Deo Gaur.

8. Subsequently, upon being apprised of the sale of the suit property, on 21st March 2016, the petitioner filed a suit bearing CS/DJ/ADJ No. 614816/2016 for possession of the suit property and damages, thereby, pleading that he was dispossessed of the suit property without following the due process of law and the suit property had been locked by the respondent.

9. The learned Trial Court framed eight issues on the basis of the pleadings in order to adjudicate the suit.

10. In its evidence, the petitioner examined two witnesses i.e., Mr. Sanjay Aggarwal, Director of the petitioner company and Mr. Ajit Singh, whereby the latter testified to the effect that when he visited the suit property on 4th February 2016, the same was found to be in possession of the respondent company. The respondent examined a total of six witnesses before the learned Trial Court, and accordingly, the above said civil suit filed by the petitioner company was dismissed vide impugned judgement dated 10th June 2022.

11. Aggrieved by the dismissal of the suit, the petitioner has preferred the instant petition seeking revision of the impugned judgement.

SUBMISSIONS

(Qua the petitioner)

12. Learned Counsel appearing on behalf of the petitioner submitted



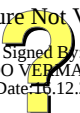
that the findings of the learned Trial Court are *prima facie* devoid of cogent reasons and are contrary to the well settled position of law which has resulted in miscarriage of justice to the petitioner.

13. It is submitted that the learned Trial Court has acted arbitrarily and erroneously in exercising its jurisdiction while adjudicating the suit.

14. It is submitted that the learned Trial Court has failed to appreciate that the legal status/right of the petitioner has been recognised by the respondent, despite which the petitioner has been illegally evicted. Moreover, the respondent had recognised the legal possession of the petitioner through the sale deed as well as by the application filed for restoration of the eviction suit by the erstwhile owner, which makes it evident that once the legal possession of the petitioner as a statutory tenant has been accepted, the learned Trial Court ought to have directed the respondent to handover the physical possession of the suit property to the petitioner.

15. It is submitted that the learned Trial Court erred in dismissing the suit merely on the ground of limitation as provided under Section 6 of the Specific Relief Act, 1963, since the period of limitation should have been calculated as given under Article 64 of the Limitation Act, 1963, is 12 years. Moreover, the learned Court below has failed to consider the said issue and has also failed to give any findings with respect to the same.

16. It is submitted that the learned Trial Court acted arbitrarily by not considering that the right to recover possession of the premises as under Article 64 of the Limitation Act is 12 years and even if the period of six months as contemplated in the Specific Relief Act, 1963, expires; the person wrongfully dispossessed from the suit property can file the suit





within a period of 12 years from the date of said dispossession. In order to substantiate the argument, the counsel appearing on behalf of the petitioner relied on cases titled ***G. Gururajan and Ors. V P. M. Duraisamy, (1998) SCC OnLine Mad 272*** and ***Kamal Kishore Gupta and Ors. Vs Prem Lata and Ors., 2006 (3) ShimLC 40.***

17. It is further submitted that the learned Trial Court erroneously held that the respondent came into possession of the suit property in February 2013, thereby, making the suit under Section 6 of the Specific Relief Act, 1963 not maintainable since the same is in contravention of Section 92 of the Evidence Act, 1872, whereby, any oral evidence which is contrary to the facts incorporated in an admitted document is barred.

18. It is submitted that the aforesaid finding of the learned Court below has been arrived at without appreciating the contents of the sale deed dated 29th May 2013, wherein, it is specifically stated that the tenants i.e., the petitioner and the sub-tenants are in possession of the suit property and only symbolic possession has been handed over to the respondent.

19. It is submitted that post 29th May 2013, i.e., the date of possession, no date has been mentioned in the written statement filed by the respondent, however, in the evidence, the respondent tried to show its physical possession in the suit property on the basis of the application filed for approval of the sanction plan to raise construction at the suit property, for which an official of the Municipal Corporation of Delhi (hereinafter “MCD”), was summoned. Despite the same, the learned Trial Court has not dealt with this aspect in the impugned judgement. .

20. It is further submitted that the above-mentioned MCD official



submitted an affidavit dated 9th June 2015, thereby, stating that the structure of the suit property was in fact in existence as on 9th June 2015.

21. It is submitted that in view of the aforesaid affidavit, the testimony of Mr. Sudhish Kumar/ DW1 cannot be relied upon, since as per him the suit property was demolished on 17th September 2014, which is in contravention to the said affidavit as provided by the MCD official.

22. It is also submitted that the respondent, has failed to show a singular date on which it claimed possession of the suit property as various dates have been mentioned, which are all in contradiction with each other, despite which the learned Trial Court has relied upon the statement given by Mr. Sudhish Kumar/ DW1, which has not been corroborated by any evidence on record.

23. It is submitted that the learned Trial Court has erred in holding that the petitioner herein has failed to produce any document or complaint made by the sub-tenants, thereby, proving that the sub-tenants have been forcibly thrown out of the suit property by the respondent, since the respondent has connived with the sub-tenants to circumvent the law and illegally occupy the suit property, thereby, forcibly evicting the petitioner, who is the principle tenant of the suit premises. In order to strengthen the aforesaid argument, learned counsel relied upon case titled *Sadashiv Shyama Sawant vs Anita Sawant*, (2010) 3 SCC 385 and *State of U.P. And Ors vs Maharaja Dharmader Prasad Singh and Ors*, (1989) 2 SCC 505.

24. It is further submitted that the learned Trial Court has erred in its findings by stating that the petitioner has failed to specify as to for which portion of the suit premises the petitioner has sought damages.



25. It is also submitted that the learned Trial Court has wrongly held that the sub-tenants were proper and necessary parties to the suit, without appreciating that the respondent was in connivance with the sub-tenants in order to seek physical possession of the suit property.

26. In view of the foregoing submissions, it is prayed that the impugned judgment dated 10th June 2022, may be set aside.

(Qua the respondent)

27. *Per contra*, learned counsel appearing on behalf of the respondent vehemently opposed the arguments advanced on behalf of the petitioner, thereby, submitting that the entire suit property had been delivered to it on 9th February 2013.

28. It is submitted that the petitioner was never in possession of the suit property after the year 1989, and moreover, the term of the lease deed dated 8th September 1953, was 19 years and the same was not extended after that.

29. It is further submitted that the suit property had other tenants as well and the area of alleged possession of the petitioner has not been stated in the plaint. Further, the petitioner was neither let-out the entire suit property, nor was given possession of the same.

30. It is submitted that Section 6 of the Specific Relief Act, 1963 is inapplicable since the petitioner was never dispossessed within a period of six months from the date of institution of the suit.

31. It is also submitted that the suit property was demolished in the year 2013, which is after the execution of the sale deed dated 29th May 2013, and well before filing of the suit.

32. It is further submitted that in light of the evidence and the



witnesses examined, the following issues stood proven:

- a) The respondent entered into the possession of the suit property on 9th February 2013.
- b) The North MCD had sanctioned the building plan in respect of the suit property pursuant to an application by the respondent.
- c) The respondent was granted permission for removal of trees at the suit property.
- d) The respondent had commenced construction at the suit property to the extent of 'stilt parking floor', much before the institution of the suit.
- e) The petitioner has failed to state the date of the alleged dispossession in the plaint.
- f) The petitioner has failed to disclose the description and extent of the premises from which it has been allegedly dispossessed.

33. It is submitted that the extent of letting out terms of the lease deed dated 8th September 1953, is itself in dispute as it states that some Ahata Nos. 1&2 quarters were let out by the landlord and the monthly rent was reduced by half to Rs. 400/- per month from Rs. 800/- per month since Ahata No. 3, quarter(s), courtyard and kothri(s) were retained by the landlord. Moreover, there is no site plan in support of the said lease deed, providing the description and extent of the area which was supposed to be let out to the petitioner. The lease deed is also silent on the fact of where and in which Ahata number the suit property is situated. Therefore, since the suit property has not been delineated, the suit is not maintainable.



34. It is also submitted that the extent of sub-letting stated in the sub-lease dated 1st November 1989, is only limited to some premises situated somewhere in Ahata No.1, thereby, making the case of the petitioner that Mr. Om Prakash Gupta (HUF) and Mr. Subhash Aggarwal (HUF) were sub-tenants of whole property, contrary and in violation of the said sub-lease deed.

35. It is submitted that as per the legal notice dated 30th January 2016, served by the petitioner upon the sub-tenants, the petitioner is claiming rent limited to Ahata No.1 and not for the entire suit property. Moreover, the said legal notice has been addressed to Municipal No. 10121/22 and not to Municipal No. 10130 i.e., the suit property. Further, the said legal notice has been addressed to Mr. Om Prakash Gupta and Mr. Subhash Aggarwal and not to Mr. Om Prakash Gupta (HUF) and Mr. Subhash Aggarwal (HUF) i.e., the lessees as per the said sub-lease deed.

36. It has also been submitted that the petitioner has neither used the suit property since the year 1989, nor has it paid any rent, thereby, being unable to prove itself being in possession of the suit property, six months prior to 4th February 2016, and since the petitioner has not been able to disclose a particular date for the alleged dispossession, the suit is barred by the law of limitation. In order to substantiate his argument, learned counsel on behalf of the respondent has relied upon case titled ***Raj Aggarwal vs Shashi Jain, 2017 SCC OnLine Del 9224.***

37. It is further submitted, while placing reliance on case titled ***Tajui Islam & Anr. Vs. Shariyatullah Mansoorali Sheikh***, reported as 1194 Mh.L.J. 1191, that it is incumbent upon the petitioner to prove its physical “previous possession” in the suit property and “wrongful

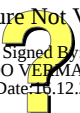


dispossession” from the suit property and since the physical possession of the petitioner is itself in dispute, the petitioner cannot seek shelter under Section 6 of the Specific Relief Act, 1963.

38. It is submitted that Section 6 of the Specific Relief Act, 1963 must be read in conjunction with Section 29(2) of the Limitation Act, 1963, whereby, it has been emphasised that by virtue of any special or local law, the period of limitation is different from the prescribed period in its Schedule, the provisions of Section 3 of the Act shall apply as if such period was the period prescribed by the Schedule to the Act.

39. It is submitted that it would be against the intent of the legislature to enlarge the period of limitation prescribed by Section 6 of the Specific Relief Act, 1963, by reading in the words “knowledge of” in Section 6(2)(a) of the Specific Relief Act, 1963. Rather, the provision mentions the words “date of dispossession”, clearly rendering the knowledge of dispossession as irrelevant.

40. It is submitted that the *Doctrine of Election* stops the petitioner from travelling beyond the provision of Section 6 of the Specific Relief Act, 1963, since the petitioner consciously chose to initiate the suit under the said section when it sought to recover possession from the respondent. The Doctrine of Election imposes an obligation on the petitioner to now confine its case only within the purview of the said section, since there has been a continuous interim injunction order against the respondent. Furthermore, the petitioner’s case before the learned Trial Court remained limited to Section 6 of the Specific Relief Act, 1963, thereby, implying that the petitioner has elected to pursue the remedies under the said section itself.





41. It is submitted that Section 6 of the Specific Relief Act, 1963 envisages that it is only where the petitioner has been dispossessed from the premise without its consent, it is only then an individual can recover possession thereof. However, in the present case, the building claimed by the petitioner no longer existed as on the date of the institution of the suit. Moreover, the respondent had purchased the property from the erstwhile owner under a registered sale deed and in the given circumstances, the occasion for invocation of the provisions of Section 6 of the Specific Relief Act, 1963 cannot arise as per the principle laid down in case titled *S Ashok Kumar Chowan & Anr. Vs. A.G. Anwar Ali & Anr.*, AIR 2010 Kar, 70.

42. It is further submitted that the petitioner is not entitled to any relief of possession since it has renounced its character by setting up the title in itself and the case of the petitioner is squarely hit by the rigours of Section 111(g) (2) of the Transfer of Property Act, 1882.

43. In conclusion, it has been submitted that the revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908 (hereinafter “CPC”) is not an appellate jurisdiction and a pure finding reached by the learned Trial Court cannot be interfered with.

44. In view of the foregoing submissions, it is prayed that the instant petition may be dismissed, being devoid of any merit.

ANALYSIS AND FINDINGS

45. Heard the arguments advanced on behalf of the parties in detail and perused the material on record.

46. It is the case of the petitioner that the petitioner was inducted as a predecessor-in-interest of the respondent in respect of the suit property



and the same was sublet to the various sub-tenants. An eviction petition was filed by the respondent against the petitioner and the sub-tenants bearing no. 835/14/16 titled as '*Surendra Deo Gaur HUF vs. M/s Indraprastha Ice & Cold Storage Pvt. Ltd. & Ors.*', before the Rent Controller, Delhi. The respondent purchased the property, of which the suit property is a part, from the successor in interest of Late Shri Jaidev Sharma vide sale deed dated 29th May 2013. It is contended that as per the sale deed, the petitioner is a tenant of the predecessor-in-interest of the respondents, however, the possession was taken by the respondent from the sub-tenants without the petitioner's consent and thus, amounting to dispossession under Section 6 of the Specific Relief Act, 1963.

47. In rival contentions, the instant petition has been opposed on the ground of being sustainable under Section 6 of the Specific Relief Act, 1963. It has been contended that the impugned judgment suffers from no illegality, infirmity or perversity. It has been further contended that the possession of the suit property was voluntarily handed over by the petitioner and the sub-tenants to the respondent, therefore there remains no question of dispossession. It has also been contended that the suit under Section 6 of the Specific Relief Act, 1963 is not maintainable, since the appropriate remedy for the petitioner would be to file a simple suit for possession, which is a mistake realised by the petitioner at a belated stage.

48. In view of the above facts and circumstances, this Court deems it imperative to adjudicate the present petition by deciding the issues framed hereinbelow:

I. Whether the petitioner can seek shelter under Article 64



of the Limitation Act, 1963 if the period of six months as contemplated in Section 6 of the Specific Relief Act, 1963, has expired?

II. Whether the petitioner has been able to establish sufficient cause *qua* the delay in filing the suit?

49. Since the issues flagged above, are interrelated, therefore, both the issues will be dealt with simultaneously in the discussions as under.

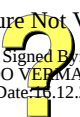
50. In order to adjudicate the instant petition, it is apposite to analyse the findings of the learned Trial Court with regards to the alleged dispossession. The relevant portion of the impugned judgment has been reproduced herein:

“1. This is a suit for a decree of possession of property being ‘Ahata’ bearing Municipal No. 10130 at Katra Chhajju Pandit, Shidi Pura, Opposite Model Basti, East Park Road, New Delhi-110005 (hereinafter referred to as ‘suit property’) and also for a decree of Rs.50,00,000/- as damages filed by plaintiff against the defendant.

X X X

15. I have heard the arguments on behalf of both the parties and have carefully gone through the material on record.

16. Written submissions have been filed by the plaintiff and plaintiff has argued that the relationship of landlord and tenant came into existence between the plaintiff and the sub tenants with the consent of erstwhile owner/landlord. There was no privity of contract between sub tenants and the erstwhile landlord. Plaintiff company continued to hold physical possession of suit premises through their sub tenants and continued to generate godown business income therefrom. It is further argued that the erstwhile landlord was not competent in law under the Delhi Rent Control Act to either receive rent or take possession of the sub tenanted

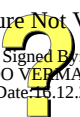




premises from the sub tenants by way of surrender of tenancy by them or otherwise under my arrangement.

17. It is further argued that the erstwhile landlord filed an eviction petition against the plaintiff company and sub tenants in July 1996 and while the eviction petition was sub judice before the court of Rent Controller, defendant purchased the suit premises vide sale deed dated 29.05.2013 and thus the defendant company stepped into the shoes of erstwhile landlord and plaintiff company continued to remain statutory tenant under Delhi Rent Control Act under the defendant pertaining to suit premises. No eviction order has been passed in the pending proceedings against plaintiff or otherwise. Sub tenants were not competent in law either under Delhi Rent Control Act or otherwise, to surrender sub tenancy or handover actual possession to defendant company before or after execution of sale deed. Ld. Counsel for plaintiff has relied upon *Sadashiv Shyama Sawant Vs. Anita Sawant* 2010 3 SCC 385, wherein it has been held that A person is said to have been dispossessed when he has been deprived of his possession, such deprivation may be of actual possession or legal possession - A landlord by letting out property to a tenant does not lose possession as he continues to retain legal possession although actual possession, user and control of that property is with the tenant - By retaining legal possession or in any case constructive possession, landlord also retains all his legal remedies - As a matter of law, dispossession of tenant by third party is dispossession of landlord - If a tenant is thrown out forcibly from tenanted premises by trespasser, landlord has implied right of entry in order to recover possession (for himself and his tenant).

Ld. Counsel for plaintiff has also relied upon ***State of U.P. and Ors. Maharaja Dharmander Prasad v. Singh and Ors., MANU/SC/0563/1989***, wherein it has been observed that a lessor, with the best of title, has no right to resume possession extra judicially by use of force. from a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited. The





Court also held that there is no question of government withdrawing or appropriating to it an extra judicial right of re-entry and the possession of the property can be resumed by the government only in a manner known to or recognized by law. It is argued that the plaintiff filed the present suit after discovering the aforesaid facts on 04.02.2016. Plaintiff had no knowledge of the sale deed dated 29.05.2013. It is further argued that suit property was not demolished till June 2015 whereas DW1 and written statement emphasized demolition of existing structure in February 2013 itself. Even the date of demolition of suit property has not been disclosed by defendant.

As per the plaintiff, two ingredients are required to be proved i.e. prior possession of six months and beyond, and dispossession without consent than in due course of law. Once these ingredients are fulfilled the court would be within its discretionary jurisdiction under Section 6 of S.R. Act to order restoration of possession. It is argued that the plaintiff has successfully proved these ingredients.

18. On the other hand, it is submitted by Ld. Counsel for defendant that the site plan in support of lease deed dated 08.09.1953 does not provide the description and extent of the premises which was supposed to be let out vide Lease Deed dated 08.09.1953. It also remains unknown as to where and in which Ahata number the suit property is situated. Premises let out to the plaintiff vide Lease Deed dated 08.09.1953 is not and cannot be the suit property by any stretch of imagination.

It is further argued that as per the Sub Lease Deed dated 01.11.1989 is only for some premises situated somewhere in Ahata No.1. The case of the plaintiff that Mr. Om Prakash Gupta and Mr. Subhash Aggarwal were the sub tenants of the plaintiff in the whole of the suit property is contrary to the covenants of the sub lease deed dated 01.11.1989. Sub Lease Deed dated 01.11.1989 states that there are already existing other 5-6 tenants apart from the lessees therein. It also remains unknown as to if where in Ahata No.1 the sub letting was done. Neither the premises/portion to which

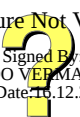


possession be restored to plaintiff is identifiable, nor the extent to which the possession could be restored to the plaintiff can be known. The legal notice dated 30.01.2016 shows that the rent is claimed to be due and payable for Ahata No.1 and not for the suit property and the legal notice has been addressed at Municipal No.10121/22 and not to Municipal No. 10130.

It is further argued that plaintiff has been unable to prove itself being in possession of the suit property six months prior to 04.02.2016. Plaintiff has not given any date of dispossession and what has been merely pleaded in the plaint that on visit of PW-2 prior to 04.02.2016 it was found that plaintiff was dispossessed. Since the previous physical possession of the plaintiff is itself in dispute, no relief under Section 6 of the Specific Relief Act can be granted to the plaintiff. It is further submitted that as per Section 6 of the Specific Relief Act, in order to succeed, the premises in question must be in existence and it is only in such an event that the plaintiff was dispossessed, can seek recovery of possession. In the present case, the building in which the plaintiff claims to be a tenant no longer listed on the date of institution of the present suit as it had been demolished by the defendant as the defendant had purchased the property from the erstwhile owner under registered sale deed.

Ld. Counsel for defendant has relied upon Raj Aggarwal v. Shashi Jain, 2017 SCC Online Del 9224, wherein it has been held that for suit under Section 6 to succeed, it is essential for plaintiff to prove that plaintiff, within six months prior to institution of suit was in possession of premises.

Ld. Counsel for defendant has also relied upon Tajul Islam And Anr.Vs. Shariyatullah Mansoorali Shaikh, 1995(1) Bom CR 313, wherein it has been observed that the question of proving wrongful dispossession will naturally arise if and only if the previous possession is proved. It is only persons who were in possession who can sue under this section. If the previous possession of the person claiming relief under this section is itself in dispute, the Court should attribute





possession to the person with better title. No relief can be given in such a case under this section to the person who alleges dispossession but fails to prove his previous possession itself. Section 6 is not intended to be invoked in such cases.

Ld. Counsel has further relied upon Ashok Kumar Chowan and Another Vs. A.G. Anwar Ali and Another, ILR 2010 KAR 903, wherein it has been observed that in order to succeed under Section 6 of the Specific Relief Act, the immovable property in question must be in existence and it is only in such an event that the person dispossessed can seek recovery of possession, whereas the case on hand is not the one where the premises in which the plaintiff was a tenant still existed as on the date of the suit but, by the very admission made by the plaintiff in the suit itself, the premises no longer existed as it had been demolished by the defendants and further, the petitioners herein purchased the property from the first defendant under a registered sale deed.

19. Submissions made on behalf of the parties are taken into consideration. My issue wise findings are as under:

ISSUE NO.1 & 2

Whether plaintiff is entitled to a decree for possession, as prayed for?

OPP

Whether plaintiff is entitled to a decree for recovery of damages, if yes. of what amount?

OPP

Onus to prove these issues lies upon the plaintiff. Both these issues are taken together being related to each other. As per the case of the plaintiff, the plaintiff is a tenant in respect of suit property in terms of lease deed dated 08.09.1953. The defendant vide registered sale deed dated 29.05.2013, has purchased the suit property and is not permitting the plaintiff to enjoy the same and has put its locks therein illegally and has also caused substantial damage to the building. It is further the case of the plaintiff that plaintiff at its own cost constructed the building on the suit land which was used by



it as a cold storage. However, in the year 1989, the plaintiff shifted its cold storage to Azadpur Mandi, Delhi and thereafter let out the building to various tenants. The defendant in connivance with sub tenants Sh. Om Prakash Gupta and Sh. Subhash Aggarwal, illegally removed the sub tenants and have put its lock at the suit property.

To prove its case, plaintiff examined PW-1 Sh. Sanjay Aggarwal who deposed in his cross examination that the new building as shown in photograph Ex. PW1/9 has been brought up by the defendant company after Sh. Ajit Singh's visit of 04.02.2016. From the photographs Ex.PW1/9(Colly) no habitable room, hall, office space can be seen to have been left undemolished by the defendant company. They never heard any complaint from any sub tenant regarding they being illegally ousted by the defendant.

PW-2 Sh. Ajit Singh deposed during his cross examination that he visited the suit premises first time in February, 2016. He further deposed that the building from the central area did not exist as it was already completely demolished. He further deposed that he asked the guard about Sh. Om Prakash Gupta and Sh. Subhash. The guard told him that there is no such person in the premises. The guard further told him that the earlier owner of the suit premises namely Sh. Surender Deo Gaur has sold the suit premises to the Cardiff Developers.

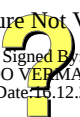
Defendant examined DW-1 Sh. Sudish Kumar who deposed in his cross examination that he personally visited the suit premises for the first time in December, 2012 in relation to taking possession of the said premises on the instructions of the owner Sh. Kishan Gupta. He met Sh.Om Prakash at the suit property who took him inside the suit premises from a small gate and later DW-1 put one lock on the main door of the suit premises. He further deposed that there was one occupant in one big room inside the suit premises when he entered the suit premises through the door. There was small machinery belonging to one Sh. Ankur which was lying there. DW-1 further deposed that since December, 2012 he got the suit premises vacated by other occupants and in this



regard he had been visiting the suit premises on regular basis. DW-1 further deposed that possession of one room occupied by Sh. Ankur situated in the suit premises was taken over by defendant company in February, 2013. In February, 2013 there was no machinery lying in the room of Sh. Ankur. DW-I has personally taken the possession of various portions through Sh. Om Prakash and Sh. Subhash. In the light of above evidence, I find it appropriate to look into the portion relevant for the purpose of present case of Section 6 of Specific Relief Act. Section 6(2) No suit under this section shall be brought (a) after the expiry of **six months from the date of dispossession.**

The plaintiff has stressed on the term "symbolic possession" mentioned in the sale deed, and that no date of actual handing over of possession is given therein, to argue that the sale deed of the defendant company proves beyond doubt that plaintiff has been a tenant even on the date of execution of sale deed. Thus, the whole process of taking over possession by defendant unscrupulously from the sub tenant is illegal and without due process of law. The prior possession is established as per law laid down in **S.R. Ejaz v. The Tamil Nadu Handloom Weavers Cooperative Society Ltd., [2002(2) SCR 31]**.

The plaintiff has nevertheless, failed to mention any specific date as to when he was dispossessed even through sub tenants. Further, the evidence of PW-2 Sh. Ajit Singh only shows that he visited the suit premises in February, 2016 when he found the same locked and also came to know that defendant has purchased the suit premises. It has come in the cross examination of DW-I Sh. Sudish Kumar that he personally visited the suit premises for the first time in December, 2012 in relation to taking possession of the said premises and put one lock on the main door of the suit premises. It has also come in the evidence of DW-1 that there was small machinery belonging to one Sh. Ankur which was lying there and possession of one room occupied by Sh. Ankur situated in the suit premises was taken over by defendant company in February, 2013. It has also come on





record that there was no forcible dispossession. Om Prakash (HUF), Subhash Aggarwal (HUF) and other occupants handed over the keys to the defendant company whereas lease was granted to individuals Om Prakash and Subhash. Plaintiff has not filed any document or complaint made by any of the sub-tenants showing that they have been forcibly thrown out of the suit premises by the defendant company.

Thus, from the evidence and documents on record it is established that plaintiff has failed to specify any date on which it had been allegedly dispossessed by the defendant from the suit premises. Further, as per evidence and material on record it is proved that the suit premises was got vacated by all the sub tenants without using any force from the defendant company finally in February, 2013. The plaintiff has filed the present suit in the year March, 2016. Hence, it cannot be said by any stretch of imagination that the plaintiff, even through its sub tenants, was in possession of suit premises six months prior to 04.02.2016.

Now coming to the point of damages. It is contended on behalf of the plaintiff that plaintiff at its own cost constructed the building on the suit land which was used by it as a cold storage. It is further contended that the defendant has also caused substantial damage to the property. However, the plaintiff has failed to specify as to for which portion of the suit premises he is seeking damages as the whole construction over the suit property was demolished. During the cross examination of PW-1, he deposed that the new building as shown in photograph Ex. PW1/9 has been brought up by the defendant company and from the photographs Ex. PW1/9(Colly) no habitable room, hall, office space can be seen to have been left undemolished by the defendant company. Further, plaintiff is not disputing the registered sale deed dated 29.05.2013 in favour of the defendant.

It is pertinent to mention here that on the date of filing of suit the suit premises was not in existence for which plaintiff is seeking possession and damages by way of present suit since



complete structure on the suit premises had already been demolished.

In view of above, both these issues are decided in favour of the defendant and against the plaintiff.

ISSUE NO.3 & 7

Whether this court has pecuniary jurisdiction to try this matter? Onus on parties.

Whether suit is properly valued for the purposes of jurisdiction and court fees? Onus on parties

Both these issues are taken together being inter related to each other.

The plaintiff has filed the present suit for possession as well as damages of Rs.50,00,000/- with respect to property being 'Ahata bearing Municipal No. 10130 at Katra Chhajju Pandit, Shidi Pura, Opposite Model Basti, East Park Road, New Delhi- 10005. As per the plaintiff. it claims itself to be tenant in the suit property and calculated the court fee on the basis of annual rent i.e. Rs.2220/- with regard to the suit property. Since plaintiff is claiming itself to be a tenant and not the owner and the suit property is small portion in property bearing No.10130 and further that no contrary evidence has been produced on behalf of the defendant, value of whole of the property cannot be seen for the purpose of pecuniary jurisdiction and court fee. Accordingly, both these issues are decided in favour of the plaintiff and against the defendant.

ISSUE NO. 4,5 & 6

Whether suit is not maintainable w/s 6 of Specific Relief Act?

OPD

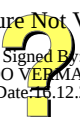
Whether suit is bad for non-joinder of parties?

OPD

Whether suit is barred by limitation? OPD

All these issues are taken together. Onus to prove these issues lies upon the defendant.

Before proceeding to decide these issues, I deem it appropriate to reproduce Section 6 of the Specific Relief Act, which reads as under:





Section 6. Suit by person dispossessed of immovable property.—

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person:[through whom he has been in possession or any person] claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought--

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

It has already come on record that plaintiff has failed to prove as to on which date it was dispossessed from the suit property. The contention of the plaintiff is that it has come to know about its dispossession from the suit property on 04.02.2016 when its official visited the suit premises. However, as per Section 6 of the Specific Relief Act, there is nothing mentioned about the knowledge of dispossession and it specifically speaks about the date of dispossession. It is further added that plaintiff itself has moved application under Order VI rule 17 CPC for treating the present suit from one under Section 6 of Specific Relief Act to a suit for possession under the general law. It is further pertinent to mention here that vide order dated 22.11.2021, said application was dismissed.

Further, it is contended on behalf of the plaintiff that proceedings under DRC Act were pending against the sub tenants. It is further the case of the plaintiff that sub tenants in connivance with the defendant company had handed over the possession of the suit premises to the defendant. Thus, the sub tenants, whomsoever they may be, would be the best



persons who could have come and state about the actual circumstances under which they had handed over the possession of suit premises to the defendant. Hence, sub tenants in the present case were proper and necessary parties.

It is the case of the plaintiff that he has come to know about his dispossession from the suit property on 04.02.2016 when its official visited the suit premises. Present suit has been filed by the plaintiff on 22.03.2016. It has already been observed, as above, that no suit can be filed under section 6 of Specific Relief Act after the expiry of six months from the date of dispossession. It does not say anything about knowledge of dispossession. The plaintiff has relied upon **G. Gururajan and Ors. Vs. P.M. Duraisamy, MANU/TN/ 1160/1998**. However, the facts and circumstances mentioned in the said case law are entirely different from the case in hand and, thus, not applicable. Further, it is quite surprising that plaintiff as well as the sub tenants have been appearing in proceedings under DRC Act, but still plaintiff did not know as to when they have vacated the premises. Apparently, no date of dispossession has been mentioned by the plaintiff and present suit has been filed on 22.03.2016, thus, it is not proved on record that present suit has been filed within period of limitation satisfying the ingredients of Section 6 of Specific Relief Act. Accordingly, all these issues are decided against the plaintiff and in favour of the defendant.

Relief

In view of above, plaintiff is held not entitled for any relief. Consequently, suit of the plaintiff stands disposed of as dismissed with no order as to costs.

20. Decree sheet be prepared accordingly.

21. File be consigned to record room after due compliance.”

51. A bare perusal of the impugned judgment dated 10th June, 2022 brings to light the issues so framed by the learned Trial Court which entail the following:



Whether plaintiff is entitled to a decree for possession as prayed for? **OPP.**

Whether Plaintiff is entitled to a decree for recovery of damages. If yes, of what amount? **OPP.**

Whether this Court has peculiarly jurisdiction to try this matter? **Onus on parties.**

Whether suit is not maintainable, u/s 6 of Specific Relief Act? **OPD.**

Whether suit is bad for non-joinder of parties? **OPD.**

Whether suit is barred by limitation? **OPD.**

Whether suit is properly valued for the purposes of jurisdiction and court fees? **Onus on parties.**

52. In order to adjudicate the aforesaid issues, the learned Trial Court analysed the evidence on record, including the examination of the witnesses. In order to decide the first two issues, the learned Trial Court relied upon the examination of Sanjay Aggarwal i.e., PW-1 and Ajit Singh i.e., PW-2. In his deposition, PW-1 stated that the new building, made in place of the suit property, as shown in the photographs has been further developed since the said premises was visited by PW-2 i.e., Ajit Singh. It was further stated that there was no space that was left undemolished or habitable by the respondent. Further, in his deposition, PW-2 stated that he visited the suit property for the first time in February, 2016 and found there to be no building in existence as the suit property had been completely demolished. It was further deposed that upon inquiring from the guard about the sub-tenants, he was told that the suit property had been sold by Mr. Surinder Deo Gaur to the respondent.

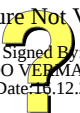
53. The learned Trial Court further analysed the examinations of Sh. Sudhish Kumar i.e., DW-1, who deposed that he had personally visited the suit property for the first time in December, 2012, on instruction of the



owner of the respondent company, whereby, he encountered one of the sub-tenants who took him through the suit property. It was deposed that the DW-1 put a lock on the main door of the suit premises. It was further deposed that since December, 2012, DW-1 got the suit property vacated and had been visiting the suit property regularly, thereafter in February, 2013 the suit property was completely in possession of the respondent.

54. The learned Trial Court, while relying on the aforesaid examinations of the witnesses concluded while stating that in order to adjudicate the petition as under Section 6 of the Specific Relief Act, 1963, the Court would have to delve into the term used by the petitioner i.e., “symbolic dispossession”. The learned Trial Court further held that the petitioner has alluded to the term “symbolic dispossession” as mentioned in the sale deed, however, has failed to disclose a date of actual handing over of possession in order to prove that the petitioner was a tenant even on the date on which the sale deed was executed, which makes the taking over of possession, illegal in its entirety since the taking over of possession by the respondent is illegal as the same is done without following the due process of law.

55. Having said the same, the petitioner has stressed on the term “symbolic possession” and further failed to disclose a specific date as on which he was dispossessed from the suit property. It was further observed that the PW-2 only visited the suit property in the year 2016, and upon the said visit, discovered that the suit property had been locked and came to know about the fact that the suit property had been purchased by the respondent. Further, while relying on the cross-examination of DW-1, the learned Trial Court observed that there was no forced dispossession from



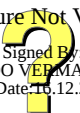


the suit property.

56. It was further observed that the sub-tenants, handed over the keys to the respondent without exerting any dominance or force. In conclusion, the learned Trial Court held that the petitioner has failed to specify a date on which it had been allegedly dispossessed by the respondent and that there was no alleged dispossession of the petitioner from the suit property even through the sub-tenants and therefore, it cannot be held that the petitioner was in possession of the suit property six months prior to 22nd March, 2016, i.e., the date of filing the suit.

57. In so far as the extent of damages is concerned, the learned Trial Court observed that the petitioner claimed to have built the building on the suit property in order to utilise it as a cold storage unit, however, the respondent substantially damaged the suit property in the midst of the takeover, however, the petitioner failed to specify the portion of the suit property which was damaged by the respondent.

58. The learned Trial Court analysed the said statement, while relying on the cross-examination of PW-1, whereby, certain photographs were put on record which showed that there was no habitable room left undemolished by the respondents, moreover, the petitioner did not dispute the sale deed dated 29th May, 2013 which was executed in favour of the respondent. Furthermore, it was observed that the date on which the suit was filed i.e., 4th February, 2016; the suit property had been demolished and hence the premises for which the petitioner was seeking possession, ceased to exist as on the date such possession was sought. Bearing in mind the aforesaid discussions, the learned Trial Court decided the issues in favour of the respondent.

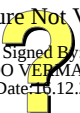




59. While adjudicating issues no. 3 and 7, which pertain to the pecuniary jurisdiction of the learned Trial Court as well as the value of the suit with regards to the jurisdiction and court fees, it was observed that the petitioner has filed the suit in the capacity of a tenant and not the owner of the suit property and hence the Court fees has been affixed on the basis of the annual rent of Rs. 2220/-, and the value of the entire suit property. In light of the discussions, the learned Trial Court decided the issues in favour of the petitioner.

60. Further, in order to adjudicate issues No. 4, 5 and 6, the learned Trial Court took up the maintainability of the suit as under Section 6 of the Specific Relief Act, 1963. It was observed that the said Section does not provide for the knowledge of dispossession and clearly indicates that there must exist a specific date of dispossession from the property in question. The petitioner claims to have received knowledge of the dispossession from the suit property on 4th February, 2016 when the first official visit was made.

61. It was further observed that the petitioner himself has moved an application under Order VII Rule 17 of the CPC, thereby, praying to treat the present suit from one under Section 6 of the Specific Relief Act, 1963 to a suit for possession as under the general law, however, the said application was dismissed vide order dated 22nd November, 2021. Further, the petitioner alleged that the sub-tenants were in connivance with the respondent and hence, handed over the possession of the suit property to the respondent, however they were not made necessary and proper parties to the suit. The learned Trial Court observed that since the sub-tenants were last in possession of the suit property, they would be the best judge





of the chain of events that had transpired under which they handed the suit property over to the respondent.

62. The petitioner further stated that he gained knowledge about the dispossession on 4th February, 2016 and filed the suit under Section 6 of the Specific Relief Act, 1963 on 22nd March, 2016, however, the learned Trial Court observed that a suit under Section 6 of the Specific Relief Act, 1963 cannot be filed after the expiry of six months from the date of dispossession and the said Section does not contemplate anything related to knowledge of the said dispossession. The learned Trial Court further observed that the proceedings under the Delhi Rent Control Act, 1958 were still pending adjudication and the petitioner and sub-tenants had been appearing for the said proceedings therefore, in light of the same, it is staggering that the petitioner was not intimated about the vacation of the suit property.

63. In conclusion it was held by the learned Court below that the petitioner has failed to disclose a specific date of dispossession, therefore, not fulfilling the ingredients as per Section 6 of the Specific Relief Act, 1963 and further, the petitioner has failed to prove on record that the suit had been filed within six months of dispossession. Therefore, issues no. 4, 5 and 6 were decided in favour of the respondent and against the petitioner.

64. As a preface to the discussion which follows, it is apposite for this Court to analyse Section 6 of the Specific Relief Act, 1963. The said Section has been reproduced herein:

“6. Suit by person dispossessed of immovable property.—
(1) If any person is dispossessed without his consent of



immovable property otherwise than in due course of law, he or any person 2[through whom he has been in possession or any person] claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

2) No suit under this section shall be brought—

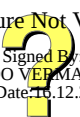
(a) after the expiry of six months from the date of dispossession; or (b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

65. A bare perusal of the aforesaid Section reveals that the purpose of the said provision is to provide summary relief to a person who is dispossessed from an immovable property, without his consent and without following the due process of law. However, certain conditions are attached to the relief sought such as issues of 'title' cannot be raised under Section 6 of a Specific Relief Act, 1963 suit.

66. All that is needed to be proved is: i) Possession; ii) dispossession, in accordance with law. In other words, even a real owner cannot dispossess another person without complying with the due process of law and if the owner does it, he/she can be compelled to restore possession, no suit can be brought under this section against Government of India; no suit can be brought after six months of dispossession; no appeal or review lies in any court of law against any order or decree passed under Section 6 of the Specific Relief Act, 1963. Only revision can be filed; that too in exceptional cases. The person unsuccessful under Section 6 Specific Relief Act, 1963 suit can file a regular suit establishing

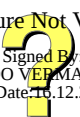




his title and in event of his succeeding, the said person is entitled to recover possession notwithstanding the adverse decision under Section 6 of the Specific Relief Act, 1963.

67. In view of the foregoing analysis of the said section, it deems imperative to analyse the term ‘dispossession’, which forms the very crux of the aforesaid section. In the case titled ***Dhondiram Tatoba Kadam v. Ramchandra Balwantrao Dubal***, (1994) 3 SCC 366, the Hon’ble Supreme Court discussed the meaning of the term ‘dispossession’ at length. The relevant paragraph of the same has been reproduced herein:

“4. Even then the question is if the appellant on facts found is entitled to the declaration that he became a purchaser of land by operation of law under Section 32(1-B). It has been found by the High Court that the appellant was in possession from 1952 to 1956, thus, he satisfied the first requirement of being in possession on the appointed date. But that alone was not sufficient as a tenant should have been dispossessed before the 1st day of April 1957. It was found by the High Court that the appellant surrendered sometime before August 1956 which was established by an entry in the revenue records made in December 1956. The Tribunal too found that the appellant had surrendered his possession as was clear from the mutation entry supported by absence of entries in favour of appellant from 1957-58 to 1968-69. The difference between the Tribunal and the High Court was in construction of the nature of surrender. The Tribunal found it to be invalid as no oral surrender could be effected after Amendment Act 13 of 1956 whereas the High Court was of opinion that in absence of any evidence as to the actual date of surrender, there was no reason not to accept the case of plaintiff that surrender was before December 1956 and, therefore, it was in accordance with law. In any case both the Tribunal and the High Court concurred on the surrender by the appellant. The effect of surrender was that the





appellant ceased to be tenant. Assuming that surrender was invalid and the appellant left the possession over land of his own accord, was he dispossessed as contemplated in Section 32(1-B) of the Act? Voluntary giving up of possession does not amount to dispossession unless the law provides for it. 'Dispossess' according to Black's Law Dictionary means:

"To oust from land by legal process; to eject, to exclude from realty." The dispossession should have been, therefore, either by legal process or by physical act of exclusion. It would not include leaving possession voluntarily or by surrender. If the words would have been that if such a person was not in possession before April 1, 1957 then a tenant who surrendered or left the possession voluntarily could be included in it. But the legislature having used a stronger word it should, in absence of any indication to the contrary, be understood in its normal sense. A tenant surrendering the land either in accordance with the provisions of law or leaving possession voluntarily would not be covered in the expression 'dispossessed'. The appellant, on the finding of the High Court, therefore, was not dispossessed. Even if the surrender was not valid as found by the Tribunal then the appellant shall be deemed to have left possession voluntarily. In either case it was not dispossession. The appellant therefore did not satisfy the second requirement. Consequently he did not become purchaser of the land under Section 32(1-B) of the Act."

68. A bare perusal of the aforesaid brings to light that the term 'dispossession', in the context of the Specific Relief Act, 1963, refers to the wrongful removal or deprivation of someone from their property or possession. The act provides remedies for situations where a person is wrongfully dispossessed of their immovable property and seeks to



recover possession. The affected party may approach the Court for specific relief, including the restoration of possession. In layman terms, it refers to, an individual being illegally removed, excluded or expelled from a real property. In this context, the term dispossession should result either from a lawful process or a physical act of exclusion. It does not encompass situations where possession is relinquished voluntarily or through surrender.

69. At this juncture, it also becomes prudent to analyse Article 64 of the Limitation Act, 1963. The relevant portion of the same has been reproduced hereunder:

<i>“Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
<i>64. For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.</i>	<i>Twelve years.</i>	<i>The date of dispossession.”</i>

70. Under the Limitation Act, 1963, the time limit for filing a suit for dispossession is governed by the applicable provisions of the Act. Generally, the period of limitation for filing a suit varies depending on the nature of the claim. For property-related matters, including dispossession, the relevant articles in the Limitation Act, 1963 are likely to be Articles 64 to 67. Article 64 of the Limitation Act, 1963,



specifically deals with suits by a person excluded from immovable property in possession of another. According to this Article, the limitation period is 12 years from the date of dispossession. In the event that someone has been wrongfully dispossessed of their immovable property, they need to file a suit within the stipulated limitation period mentioned in the relevant Article to seek legal remedies.

71. In order to analyse the flagged issues holistically, it is vital to read the aforesaid Article alongside Section 6 of the Specific Relief Act, 1963. The said Article is applicable to a suit for possession, which is based on previous possession and not on title. In order to seek shelter under the said Article, the plaintiff must have been in possession of the property and subsequently dispossessed thereof. If the same is not evident from the plaint, the said provision cannot be applied and therefore, it becomes essential to show dispossession from the said property through the plaint. So far as the term possession is concerned for the purposes of this Article, it either signifies actual possession or through attendant who paid rent.

72. Similarly, dispossession must be by the defendant of the suit, and if there is no dispossession by the defendant, the said article cannot apply. The Hon'ble Supreme Court in case titled *S. Subraigonda Patil v. R. Bhimagonda Patil*, AIR 1970 SC 453, reaffirmed the aforesaid principal i.e., dispossession by the defendant is a necessary ingredient in order to seek shelter under Article 64 of the Limitation Act, 1963.

73. As has been discussed above dispossession merely implies taking possession, without consent, or termination of ownership of possession of the original owner. Even though the limitation act does not explicitly define the term dispossession, its meaning is fairly well settled. There can



be no dispossession unless the previous possession has been terminated and subsequently, actual possession of the suit property has been taken by the dispossessor. It has been discussed that dispossession contains an element of force or fraud and implies the coming in of a person and his driving out another, from possession.

74. In the instant petition, the petitioner claims to have been dispossessed from the suit property by one Mr. Surinder Deo Gaur i.e., the erstwhile owner of the suit property. However, the petitioner has failed to fulfil the necessary ingredients to seek shelter under Section 6 of the Specific Relief Act, 1963. The learned Trial Court in the impugned judgment observed that the petitioner has been unable to specify a date of the alleged dispossession. It has been further observed that the petitioner filed the said suit upon gaining knowledge about the alleged dispossession. The learned Trial Court further observed that the petitioner was in possession of the suit property through sub-tenants, who were not made proper and necessary parties to the said suit. The petitioner has also failed to bring to light any evidence complementing the submission that it was dispossessed from the suit property and that any force was exerted by the erstwhile owner while the said dispossession occurred.

75. The petitioner's contention that it was dispossessed from the suit property has not been proved by it before the learned Trial Court that there was any forcible dispossession of it from the suit property. The suit property had been sub-let by the petitioner and was in possession of the sub-tenants. The petitioner has not been able to prove that there was dispossession either through itself or the sub-tenants.

76. The learned Trial Court has rightfully observed that given that

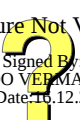


certain proceedings were ongoing under the Delhi Rent Control Act, 1958 against the sub-tenants for default in payment of rent, the petitioner ought to have been aware of the suit property being sold off in favour of the respondent since both parties were present at the time of the proceedings.

77. Further, the petitioner was unable to specify a date on which the alleged dispossession had occurred which is a necessary ingredient for a suit under Section 6 of the Specific Relief Act, 1963, therefore, the entire suit under Section 6 the Specific Relief Act, 1963 stands to be non-maintainable. Since, the suit under Section 6 of the Specific Relief Act, 1963 is non-maintainable, therefore the petitioner cannot seek shelter under Article 64 of the Limitation Act, 1963 as well, since the limitation period begins from the date of dispossession and as the very aspect of dispossession has not been established on behalf of the petitioner, there is no remedy available to the petitioner under either of the provisions. Moreover, the limitation period to file any suit under Section 6 of the Specific Relief Act, 1963 must be computed from the date of actual dispossession and not from the date of knowledge of dispossession.

78. In so far as issue no.2 is concerned, the petitioner has been unable to establish sufficient cause *qua* the delay in filing the suit. As has been rightly pointed out by the learned Trial Court, that proceedings under the Delhi Rent Control Act, 1958 were still pending adjudication and the petitioner and sub-tenants had been appearing for the said proceedings, which is staggering since the petitioner was not intimated about the vacation of the suit property.

79. The chain of events so pleaded by the petitioner do not fall coherently, since, the petitioner has been unable to firstly disclose a





specific date of dispossession and secondly, failed to prove forcible dispossession through its sub-tenants. The learned Trial Court has rightly observed that the petitioner ought to have been aware of the sale of the suit property since a case was filed before the Delhi Rent Control Act, 1958.

80. Since it is observed that there is no infirmity in the impugned judgment which is under the challenge before this Court, therefore at this stage; it becomes pertinent to examine the scope of the revisional jurisdiction of this Court under Section 115 of the CPC. The Hon'ble Supreme Court in *Ambadas Khanduji Shinde v. Ashok Sadashiv Mamurkar*, (2017) 14 SCC 132, propounded that the High Court cannot interfere with the factual findings of a Trial Court in exercise of its revisional jurisdiction. Such jurisdiction remains restricted to cases, wherein, there is an irregular exercise of jurisdiction by the subordinate Courts.

81. Similarly in the case of *ITI Ltd. v. Siemens Public Communications Network Ltd.*, (2002) 5 SCC 510, the Hon'ble Supreme Court vis-à-vis the scope of Section 115 of the CPC, held that the supervisory or revisional jurisdiction exercised by the High Court is limited to the purpose of correcting jurisdictional error, if any, committed by a subordinate Court.

82. Accordingly, both issues stand decided in favour of the petitioner.

CONCLUSION

83. In view of the above discussion of facts and law, and for the purposes of adjudication of the instant revision petition, the petitioner has not been able to make out a case which requires interference of this Court



2023:DHC:9063



with the impugned judgment.

84. Therefore, this Court is of the view that there is no infirmity with the impugned judgment dated 10th June, 2022, passed by the Additional District Judge-10 (Central District). Ms. Colette Rashmi Kujur, in CS/DJ/ADJ No. 614816/2016 titled as M/s Indraprastha Ice and Cold Storage Pvt. Ltd. V. M/s Cardiff Associates Pvt. Ltd.

85. Accordingly, this petition is thus, dismissed being bereft of any merits. Pending applications, if any, also stand dismissed.

86. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 12, 2023
gs/ds/ryp