



2024:DHC:7106



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 10th September, 2024**
+ **C.R.P. 86/2023 & CM APPLs. 16455/2023, 16457/2023**

BHANU PRATAP

.....Petitioner

Through: Mr. Ashutosh Gupta, Mr. Pulkit
Garg, Mr. Kartik, Ms. Akanksha
Yadav, Advocates.

versus

BABUL

.....Respondent

Through: Mr. Umesh Choubey, Advocate.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant civil revision petition under Section 115 of the Code of the Civil Procedure, 1908 ("CPC" hereinafter) has been filed on behalf of the petitioner challenging the judgment dated 10th May, 2022 ("impugned judgment" hereinafter), passed by the learned Additional District Judge-08, Central District, Tis Hazari Courts, Delhi ("learned Trial Court" hereinafter) in civil suit bearing CS no. 453/2019, titled as "***Babul vs. Bhanu Pratap***", wherein the aforesaid suit filed by the respondent under Section 6 of the Specific Relief Act, 1963 ("the Act" hereinafter) was allowed.
2. The brief facts as stated by the petitioner that led to the filing of the

Signature Not Verified

Digitally Signed
By: DAMINI YADAV
Signing Date: 17.09.2024
18:36:02

CRP 86/2023

Page 1 of 17



2024:DHC:7106



instant petition are as follows:

- (i) The respondent/plaintiff, being an encroacher, was in illegal possession of the property bearing no. 3914, ground floor, near Jagat Cinema, Jama Masjid, Delhi-110006, measuring 60 square meters (“suit property” hereinafter).
 - (ii) Moreover, it is stated that the ownership of the aforementioned property lies with the Municipal Corporation of Delhi (“MCD” hereinafter) for residential purpose of its employees, as the same was originally allotted to Sh. Roshan Lal, an employee of MCD and eventually got vacated after his retirement in the year 1997.
 - (iii) On 10th April, 2018, due to the illegal encroachment of the suit property by the respondent, the petitioner/defendant, who is a Junior Engineer with the MCD, on directions of the higher authority, got the suit property vacated which was being occupied by the respondent.
 - (iv) Aggrieved by the petitioner’s action, the respondent instituted a suit for recovery of possession under Section 6 of the Act on 19th May, 2019, which was decided in favour of the respondent *vide* the impugned judgment.
 - (v) In light of the same, the petitioner herein filed the instant revision petition seeking to set aside the impugned order.
3. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court erred in passing the impugned judgment by granting a relief in favour of the respondent, holding that he is entitled to a decree of



2024:DHC:7106



possession under Section 6 of the Act with respect to the suit property.

4. It is submitted that the learned Trial Court failed to appreciate that the respondent was an encroacher/trespasser of the suit property as the same is owned by the Government i.e., the MCD.

5. It is submitted that the petitioner, being a Junior Engineer with the MCD, while exercising the powers conferred upon him by the Commissioner of the MCD, acted in his official capacity to adopt measures for the purpose of getting the suit property vacated which was in illegal possession of the respondent.

6. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court failed to appreciate the fact that the ownership of the suit property lies with the MCD as the same is being used for residential purposes by its employees, whereas the respondent failed to show on record any document in his favour with regard to the ownership and therefore, the possession of the suit property by the respondent is illegal.

7. Learned counsel appearing on behalf of the petitioner further referred to the Memo of Parties and submitted to the effect that the learned Trial Court committed an error of law in allowing the said suit for possession in view of the fact that it is instituted against the petitioner, who is a Junior Engineer of the MCD, and the same is in violation of the provision of the Section 6(2)(b) of the Act, which clearly states that no suit filed under the said provision shall be brought against the government.

8. It is also submitted that the learned Trial Court passed the impugned judgment without appreciating the provision of Order XXVIII Rule 5A of



the CPC which mandates that the government be impleaded as a party to the suit for its proper adjudication when it is instituted against a public officer in respect of any act alleged to have been done in his official capacity.

9. It is submitted that the learned Trial Court failed to appreciate that the respondent deliberately with a *malafide* intent, did not implead MCD, which is a government body, as a party, in order to avoid the restriction imposed under Section 6 (2)(b) of the Act.

10. It is submitted that the learned Trial Court *vide* order dated 25th March, 2021 took into account the error in impleadment of MCD as a party to the suit, pursuant to which, an application under Order XXVII read with Sections 79 and 80 of the CPC was filed by the respondent for the impleadment of the North Delhi Municipal Corporation (NrDMC)/MCD as a party to the said suit, which was allowed to be withdrawn by the learned Trial Court *vide* order dated 29th November, 2021, without considering that the learned Trial Court has already proceeded *ex-parte* against the petitioner.

11. Learned counsel appearing on behalf of the petitioner further submitted that the institution of the said suit is time barred as per Section 6(2)(a) of the Act, which necessitates that the suit be filed within 6 months from the date of dispossession. It is submitted that the respondent was dispossessed from the suit property on 10th April, 2018 and the suit for recovery of possession is filed by the respondent only on 19th May, 2019, thereby exceeding the limitation of 6 months as required under Section 6(2)(a) of the Act.

12. Learned counsel appearing on behalf of the petitioner submitted that



2024:DHC:7106



all the aforesaid facts and submissions were not brought to the notice of the learned Trial Court as the respondent failed to appear before it and the suit was proceeded *ex-parte*. In light of the same, it is submitted that the learned Trial Court passed the impugned judgment merely on the contentions of the respondent and without granting the petitioner an opportunity of being heard, therefore, it is liable to be set aside and the matter may be remanded back to the learned Trial Court for proper adjudication.

13. It is also submitted that the objections raised on behalf of the petitioner before this Court are mixed questions of law as well as of the facts and the same warrants proper trial as the learned Trial Court failed to appreciate the same while passing the *ex-parte* impugned judgment.

14. Therefore, in view of the foregoing facts and submissions, it is prayed that the instant petition may be allowed and the impugned judgment may be set aside. It is further prayed that the instant matter may be remanded back for fresh adjudication, with a direction to the learned Trial Court to proceed after impleading the MCD, which is a necessary party to the suit, after which, the MCD may be allowed to file their written statement to bring on record their submissions and facts. It is also submitted that the arguments, submissions and contentions made before this Court may be allowed to be raised before the learned Trial Court.

15. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the submissions made in the instant petition and submitted that there is no illegality or error in the impugned judgment as the same was passed by the learned Trial Court after meticulously examining the



2024:DHC:7106



evidence placed on record and therefore, the instant petition is filed with a *mala fide* intent, thereby abusing the process of law.

16. It is submitted that the respondent is a poor scrap dealer and was using the suit property for earning his livelihood in a continuous and uninterrupted manner for more than 14 years and the same was within the due knowledge of the NrDMC officials as the respondent had been regularly paying commercial tax with respect to the suit property as well as the fine imposed by the MCD from time to time and there was no obstruction against his possession. Hence, the ownership of the suit property was correctly adjudicated by the learned Trial Court.

17. It is submitted that the learned Trial Court rightly allowed the suit for possession as it was the petitioner who abused his official power and harassed the respondent in order to yield illegal demands for his wrongful gain. It is submitted that the petitioner had been harassing many people of the area where the suit property is located, and, on many occasions, demanded an illegal gratification of Rs.5,00,000/- as bribe from the respondent and further threatened to lock the suit property in the event of non-payment. Therefore, when the respondent refused to pay the same, the petitioner illegally dispossessed him from the suit property.

18. It is also submitted that the learned Trial Court rightly adjudicated the issue of limitation as the respondent was dispossessed from the suit property on 12th April, 2018 and again on 26th December, 2018, pursuant to which, the suit was instituted on 9th May, 2019, hence, submitted to the effect that the suit was instituted within the stipulated time as per the Section 6(2)(a) of



2024:DHC:7106



the Act.

19. It is further submitted that the respondent was impleaded as a party in the civil suit and numerous notices were issued by the learned Trial Court to appear before the same but he deliberately did not contest the matter, and in view of the same, the proceedings were rightly initiated *ex-parte* by the learned Trial Court.

20. Learned counsel appearing on behalf of the respondent submitted that the said suit was filed under Section 6 of the Act *qua* the petitioner as an individual instead of a government official as the petitioner took the possession of the suit property illegally in his personal capacity and dispossessed the respondent from the same without the approval of the MCD, therefore, the learned Trial Court was right in appreciating the law in terms of Section 6(2)(b) of the Act while passing the impugned judgment.

21. It is further submitted that this Court has limited scope under its revisional jurisdiction *qua* Section 115 of the CPC to interfere with the impugned judgment as there is no error or illegality in the same.

22. It is submitted that while passing the impugned judgment, the learned Trial Court has rightly appreciated the facts and circumstances of the instant case as Section 6 of the Act provides for grant of immediate and speedy relief to a person who has been illegally and forcibly dispossessed. The purpose of the said provision is settled as it aims to provide a summary relief to a person who has been in possession of a suit property and whose right to the same has been curbed by way of illegal dispossession without his consent or due process of law.



2024:DHC:7106



23. Heard learned counsel appearing on behalf of the parties and perused the documents on record.

24. For proper adjudication of the instant petition, this Court has perused the impugned judgment, plaint as well the orders dated 13th April, 2021 and 29th November, 2021.

25. It is the case of the petitioner that the learned Trial Court erroneously passed the impugned judgment without delving into the merits of the case by proceeding *ex-parte* against the petitioner and allowing the suit under Section 6 of the Act as the same is barred by Sections 6(2)(a) and 6(2)(b) of the Act. Therefore, it is prayed that the impugned judgment may be set aside and the matter be remanded back to the learned Trial Court for proper adjudication of the same.

26. In rival submissions, the learned counsel appearing on behalf of the respondent contended that the learned Trial Court meticulously examined the facts and circumstances of the instant case and accordingly passed the impugned judgment, therefore, the instant petition is bereft of any merits as the same amounts to abuse of process of law.

27. Therefore, the limited question for adjudication of this instant petition is whether the learned Trial Court correctly adjudicated the issue of limitation and the restoration of possession of the suit property in favour of the respondent.

28. At this juncture, this Court deems it necessary for adjudication of the instant petition to reproduce and analyze the findings of the learned Trial Court passed in the impugned judgment, the relevant excerpts of which are



stated hereinbelow: -

“8. The first question which arises herein is to decide whether the suit has been filed within six months from the alleged date of dispossession. The suit of the plaintiff was filed on 09.05.2019 and the suit came up for hearing for the first time on 10.05.2019. In the plaint the plaintiff pleaded that in March, 2018 plaintiff had gone to his native place and returned on 12.04.2018 and found that a lock was put on his property. Thereafter, he persuaded the defendant and he was given back the possession of the suit property. Although no date of re possession is mentioned by the plaintiff. Plaintiff further reveals that in first week of December 2018 he went to see his ailing father at his native place and when he returned on 26.12.2012 he found a lock on his property and his goods were misappropriated. The plaintiff deposed the same in his affidavit Ex.PW-1/A. The defendant remained ex parte and these positive averments in the testimony of the plaintiff remained unchallenged and unrebutted. Therefore, the court has no reason to disbelieve the aforesaid deposition of the plaintiff. This court is of the opinion that the sui of the plaintiff is within limitation as it has been filed within six months from the date of dispossession.

9. The plaintiff in his testimony has proved his Aadhar Card Ex.PW-1/P2, the copy of assessment U/S 123-D of MCD Act Ex.PW 1/P3, whereby the property of the plaintiff was assessed to tax. Plaintiff further proved the copy of BSES Bill and Telephone Bill Ex.PW-1/P3A (Colly). Plaintiff has also proved as many as nine challan receipts as Ex.PW-1P4. The aforesaid documents are on the address of the suit property. The assessment U/S 123-D proved as Ex.PW-1/P3 shows that the suit property was inspected through Area AZI and a report also corroborated the statement of the plaintiff. It was the plaintiff who had filed an application for the assessment of tax and on his application the property was



assessed for the purpose of tax. Plaintiff has also deposed on the same lines. The aforesaid documents ably demonstrate that the plaintiff was in the possession of the suit property.

10. In view of the aforesaid discussion this court is of the considered opinion that the plaintiff on the yard stick of preponderance of probability has proved that he was in possession of the suit property and dispossessed therefrom without following the due procedure of law. The suit has been filed within six months from the alleged dispossession. The defencant, despite the notice of the suit did not appear and choose to remain ex parte. Resultantly no rebuttal to the case of the plaintiff has come on record. The case of the plaintiff has not been challenged by the defendant. There is no reason to disbelieve the deposition and evidence of the plaintiff in this regard. There is no legal hindrance either.

11. It is well settled principle of law that right to property is an important facet of fundamental right of right of life. No person can be deprived of his property without following the due process of law even if the person is in unlawful possession of the property. The purpose of Section 6 of the Specific Relief Act is to promote the sense of lawfulness amongst the citizen with a view to maintain law and order and to avoid the chaos in the society.

12. In the conclusion it is held that the plaintiff has been successful in proving his case.”

29. A bare reading of the impugned judgment transpires that the learned Trial Court took into consideration that the limited question of law before it is to decide whether the said suit was filed within the stipulated time as per the provision of Section 6(2)(a) of the Act and whether the respondent was



dispossessed illegally from the actual and physical possession of the suit property as the scope of relief under Section 6 of the Act is limited.

30. While deciding the issue of possession in favour of the respondent, the learned Trial Court conjointly perused the evidence placed on record by the respondent, consisting of his Adhaar Card, copy of assessment under Section 123-D of the MCD Act, copy of BSES bill, telephone bill as well as challan receipts, which reflects the address of the suit property, thereby proving that the respondent was in actual and physical possession of the suit property.

31. Furthermore, while dealing with the issue of limitation as provided under the Section 6(2)(a) of the Act, the learned Trial Court took into consideration the fact that the respondent had gone to his native place in March, 2018 and upon his return, he was apprised of his dispossession from the suit property on 12th April, 2018. It is further noted by the learned Trial Court that the respondent got his possession over the suit property, however no such date was on record. Thereafter, the respondent left to his native place in December, 2018, however taking advantage of his absence, he found that the petitioner had put a lock on the said suit property on 26th December, 2018, thereby dispossessing him from the suit property. In view of the same, the suit was filed on 10th May, 2019 and it was held by the learned Trial Court that the respondent filed the said suit in question within the stipulated time of six months from the date of dispossession.

32. Before delving into the merits of the case, this Court deems it imperative to mention the scope of the revisional jurisdiction of the Courts under Section 115 of the CPC. Although this Court is having supervisory



power over the findings of the learned Trial Court, it is a trite law that the interference be made only when the Court below has exceeded its jurisdiction below in dealing with the issues and passing the impugned judgment or when there is an error or illegality on the apparent face of it.

33. The aforesaid position of law *qua* Section 115 of the CPC has been enunciated by the Hon'ble Supreme Court in the judgment passed in ***Pandurang Dhondi Chougule v. Maruti Hari Jadhav, 1965 SCC OnLine SC 83***, the relevant extract of which is as follows:

“10. Judicial decisions have examined the provisions of Section 115 of the Code on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may be, or even errors of law, unless the said errors have relation to the jurisdiction of the court to try the dispute itself. As clauses (a), (b) and (e) of Section 115 indicate, it is only in cases where the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court, and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the



2024:DHC:7106



subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under Section 115.”

34. Upon perusal of the abovementioned extract, it is made out that the settled law *qua* the exercise of the revisional jurisdiction under the provision of Section 115 of the CPC is discretionary and the Courts are not bound to interfere with the findings of the learned Trial Court. Moreover, parties cannot pray for a relief of reappreciation of evidence and merits of the case under the cloak of a revision petition.

35. Now onto the merits of the instant petition.

36. It is pertinent to note here that the learned counsel appearing on behalf of the petitioner raised three contentions before this Court during its course of arguments. Firstly, it is contended that the learned Trial Court failed to take into consideration the fact that MCD is a necessary party in the above said proceedings and therefore, liable to be impleaded as a party. Further, the learned Trial Court ignored the facts that the respondent filed an application under Order XXVII and Sections 79 and 80 before the learned Trial Court, which was later withdrawn with liberty.

37. Secondly, it is the case of the petitioner that no documents or evidence were placed on record to prove that the respondent was dispossessed by the petitioner from the suit property or took the possession of the same in his personal capacity.

38. Thirdly, it is contended that the learned Trial Court failed to take into consideration that the said suit is barred under Section 6(2)(b) of the Act as



2024:DHC:7106



the same is filed against the government. Moreover, the suit is time barred under the provision of Section 6(2)(a) of the Act as the respondent was dispossessed on 10th April, 2018 while the suit for possession was filed on 10th May, 2019.

39. On the other hand, it is contended on behalf of the respondent that the suit instituted under Section 6 of the Act *per se* is against the petitioner who acted arbitrarily in personal capacity and without due sanction/orders from the MCD by abusing his official powers to illegally and forcibly dispossessed the petitioner from his peaceful and continuous possession of the suit property and to that extent, no case is made out against the MCD, and therefore, the contention of the petitioner that the suit is barred as per the said provision does not arise.

40. In view of the contentions raised on behalf of the petitioner in the instant petition, this Court is of the considered view that the abovementioned issues require proper adjudication and the impugned judgment has been passed without delving into the above said merits, which *prima facie* seems irregular.

41. At this juncture, it is pertinent to understand the objective of Section 6 of the Act, which aims at restraining a person from adopting illegal and forceful measures to dispossess another person from having peaceful possession of a suit property without their consent or due process of law. In other words, while claiming the recovery of possession under the aforesaid provision, it is crucial for the aggrieved person to show on record firstly, that he was in possession of the said property at the relevant time and secondly,



that he was subsequently dispossessed from the same without his consent or due process of law. It is only after the establishment of the twin requirements that a case under Section 6 of the Act for recovery of possession is made out. It is, however, pertinent to note that the time specified for institution of such suit is limited to 6 months from the date of such dispossession. Moreover, it is also evident from a bare reading of the aforesaid provision that no suit shall be instituted under this provision against the State or Government.

42. In light of the same, it is observed by this Court that the learned Trial Court decided the issue of limitation based on the respondent's contention that the respondent was dispossessed twice, first on 12th April, 2018 and again in his absence on 26th December, 2018. The learned Trial Court took into consideration that after the first dispossession, he got repossession of the suit property upon persuading the petitioner for the same. However, it is pertinent to note that no evidence with respect to the date of the alleged repossession has come on record.

43. Despite the lack of evidence, the learned Trial Court failed to hear the merits of the petitioner, and proceeded *ex-parte* against the petitioner, thereby deciding the said suit under Section 6 of the Act in favour of the respondent. Accordingly, the matter was adjudicated on the yardstick of preponderance of probability, without hearing any contentions made on behalf of the petitioner, thereby, curbing his right to be heard, which is a violation of the principle of "*Audi Alteram Partem*".

44. Therefore, this Court is of the view that for adjudication of the



aforesaid issues raised by the petitioner, a proper trial is warranted and the findings of the matter by the learned Trial Court via its impugned judgment are *prima facie* unjust and biased as the learned Trial Court proceeded *ex-parte* against the petitioner, even when there is a lack of evidence.

45. The law with respect to Section 115 of the CPC is also clear that exercising revisional jurisdiction conferred upon the Courts, is discretionary, and the Courts shall only interfere with the findings of the learned Trial Court when there is a jurisdictional error or legal irregularity in the same.

46. Therefore, taking into consideration the revisional jurisdiction under Section 115 of the CPC and bearing in mind the contentions raised by the counsel for both the parties, this Court is of the considered view that various issues have not been dealt with by the learned Trial Court as the above said suit was proceeded *ex-parte*.

47. Thus, in light of the submissions made in the foregoing paragraphs as well as the position of law, this Court deems it necessary to remand back the instant matter back to the learned Trial Court as the adjudication of the same warrants a fresh trial, in view of the fact that the impugned judgment was passed *ex parte* and without a thorough examination of the merits of the petitioner's case.

48. Hence, this Court is of the view that the learned Trial Court erroneously decided the instant matter in favour of the respondent by allowing the suit for possession as it is *prima facie* apparent that the issues before the learned Trial Court have not been adjudicated on the merits of the case and therefore, warrants for proper adjudication.



2024:DHC:7106



49. Taking into consideration the aforesaid discussions and without entering into the merits of the case, while setting aside the impugned judgment and decree dated 10th May, 2022, passed by the learned Additional District Judge-08, Central District, Tis Hazari Courts, Delhi in civil suit bearing CS no. 453/2019, the matter is remanded back to the learned Trial Court for fresh adjudication of the said suit by giving fair opportunity to the parties. Further, the learned Trial Court is directed to decide the aforesaid civil suit expeditiously, preferably within six months, in accordance with law.

50. In view of the above facts and circumstances, the instant petition is disposed of along with pending applications, if any.

51. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 10, 2024

NA/sm/mk