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

+ C.R.P. 144/2023 and CM APPL. 29227/2023

RITU MAKHIJA Petitioner

Through: Mr. Tarun Parmar, Adv.

versus

NEERAJ MAKHIJA Respondent

Through: Ms. Jyotika Kalra, Mr. Ayushi Chugh and Mr. Shakti Sagar, Advs.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

01.02.2024

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1. This hearing is being conducted through hybrid mode.
2. Having heard learned counsels for the parties and on perusal of the record, I find that the present civil revision petition is bereft of any merits.
3. The petitioner is assailing the impugned order dated 15.03.2023, whereby the learned Trial Court allowed the respondent/plaintiff to amend the plaint and pay *ad valorem* court fees as per Section 7(iv)(c) of the Court Fees Act. In view of the same, the application moved by the petitioner under Order VII Rule 11 CPC was disposed of.
4. It would be relevant to refer to the operative portion of the order which goes as under paragraph (08):-

“8. The plaintiff has stated that he purchased the suit property the plaintiff has stated that he purchased the suit property in the name of the defendant but from his own funds, therefore, he is the actual



owner of the said property and by way of this suit he is seeking declaration to the effect that he be declared owner of the suit property. He has also sought consequential reliefs of mandatory and permanent injunction to the effect that defendant be directed to handover the possession of the suit property to him and she be also restrained from creating third party interest in the property. As per plaintiff he is actually owner of the suit property since it was purchased by him from his own funds but in the name of the defendant, therefore, the latter is only a licensee in this suit property in the suit for mandatory injunction filed by him seeking possession of the property is maintainable. The contention of the plaintiff is untenable since the defendant by no stretch of imagination can be termed as licensee in the suit property as she has registered sale- deed of the property in her own name which is also not so disputed by the plaintiff. The plaintiff has nowhere in the entire plaint has stated that he is in the joint possession of the suit property but has claimed himself to be in the constructive possession of the same being its actual owner. It is true that for deciding the application u/0 7 rule II CPC, the Court only has to consider the plaint and the documents annexed with it but a clever or innocent drafting cannot help the plaintiff any other party to evade from the settled Principle of Law. **The registered sale deed of the suit property is in the name of defendant, therefore, the present suit filed by the plaintiff seeking possession of the suit property in the form of mandatory injunction is not maintainable as the relief of possession sought by the plaintiff in the garb of mandatory injunction/possession is essentially a relief of possession of an immovable property. The plaintiff is also required to value its suit properly for the purpose of jurisdiction as well as Court fees. He is given two weeks' time to amend the plaint in regard to the relief of mandatory injunction/ possession and valuation of the suit and to pay ad valorem Court fee as per Section 7 (iv) (c) the Court Fees Act."**

5. Ex facie, there appears to be nothing wrong with the impugned order and a correct approach in law has been adopted by the learned Trial Court. Having regard to the peculiar facts and circumstances disclosed in the plaint, the plea that the plaint lacks cause of action cannot be sustained. It appears to be a case of 'reverse domestic violence' wherein the husband appears to have been thrown out of the marital home.

6. However, without commenting upon the merits of the case and



for the reason that an amended plaint has already been filed, the parties should rather endeavour to expedite the trial, instead of rushing up before this Court.

7. Hence, the present civil revision petition is dismissed. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case.

DHARMESH SHARMA, J.

FEBRUARY 1, 2024

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