



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

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Judgment reserved on: 01.02.2024
Judgment pronounced on: 26.04.2024

+ CM(M) 755/2022

AJAY MEDI

..... Petitioner

Through: Mr. Arjun Anand, Ms. Priyam
Wadhawan along with petitioner in
person.

versus

HEMANT MEHTA

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The petitioner is aggrieved by the order dated 15.04.2021 passed by the learned Civil Judge-03, South-West, Dwarka Courts, Delhi (hereinafter referred to as "Trial Court") in CS SCJ no. 117/20, titled as "*Ajay Medi vs. Hemant Mehta*" whereby the learned Trial Court allowed the application filed by the respondent under Section 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") seeking stay of the aforementioned suit. The petitioner aims to challenge the aforesaid order by way of the present petition filed under Article 227 of the Constitution of India invoking the supervisory jurisdiction vested in this Court.

2. The relevant facts culminating into filing of the present petition are that on 03.02.2011, Mrs. Pramila Devi, deceased mother of Mr. Ajay Medi, the petitioner herein entered into an agreement with Mr. Hemant Mehta,



the respondent herein to sell a property located at C/4F-9, Janakpuri, New Delhi-110058 (hereinafter referred to as “suit property”) for a total consideration amount of Rs. 1,89,00,000/- to be paid on or before 03.06.2011.

3. It is the contention of the petitioner that despite being fully informed of the terms and conditions as specified and agreed in the agreement, the respondent failed to adhere to them by not making the full payment of the outstanding consideration amount within the stipulated time. Out of the total consideration, the respondent paid only Rs. 80,00,000/- to the petitioner as on date 03.06.2011. Consequently, this constituted a breach of the contract, resulting in the automatic termination of the agreement to sell between the parties.

4. As a result of breach of the terms of the agreement by the respondent, late Mrs. Pramila Devi sent a legal notice dated 23.06.2011 to the respondent and his close friend, Mr. Ajay Babbar terminating the aforesaid agreement and calling upon the respondent to pay a penalty of Rs. 20,00,000/- in terms of the said agreement. Thereafter, the petitioner acting as a legal representative of his mother, issued a legal notice dated 09.01.2012 reiterating all the details and expressing the intention to deposit the money in the Court.

5. Further, it is the contention of the petitioner that both the respondent and Mr. Babbar requested him not to proceed with the deposit as it was their unaccounted money. In the meanwhile, late Mrs. Pramila Devi got the termination of agreement published in Dainik Jagran and sent another legal



notice dated 31.10.2012 to reconfirm the termination of the agreement. After the death of late Mrs. Pramila Devi, the respondent refrained from taking his money back from the petitioner. Instead, both the respondent and Mr. Babbar made considerable efforts to persuade the petitioner to enter in a new agreement with them.

6. On 31.01.2018, while residing in the USA, the petitioner received a call from the Janakpuri Police Station, informing him that an FIR bearing no.48/18 has been lodged against him and his family members on behest of the respondent. It is the case of the petitioner that thereafter, on 03.02.2018, the respondent along with Mr. Ajay Babbar and their accomplices unlawfully took adverse possession of a portion of the ground floor of the suit property. Furthermore, they trespassed into the property by cutting the hinges of one of the metallic doors, took possession of the petitioner's belongings and installed a new lock on the property in the presence of the police with the intent to claim the aforesaid premises to be in their possession.

7. Subsequently, on 17.02.2018, the respondent filed a suit bearing CS/ADJ/164/2018 for specific performance, declaration, possession, mesne profits, permanent and mandatory injunction against the petitioner. Thereafter, on 27.07.2018, the petitioner filed a suit numbered CS/ADJ/749/2018 against the respondent seeking possession of the property in question under Section 6 of the Specific Relief Act (hereinafter referred to as 'SRA').



8. On 22.01.2020, the petitioner filed another suit bearing CS/SCJ/117/2020 against the respondent seeking a relief of declaration along with a relief of injunction based on the assertion that the receipt cum possession letter dated 05.12.2012 is forged and fabricated. Consequently, the respondent filed an application under Section 10 of CPC for the stay of the proceedings of suit bearing CS SCJ 117/2020.

9. Vide impugned order dated 15.04.2021, the learned Trial Court stayed the proceedings in the said suit and held that the petitioner has already filed a suit for possession i.e. CS/ADJ/749/2018 which is pending adjudication before the learned ADJ, Dwarka Courts, Southwest, Delhi. Further, the learned Trial Court was of the view that the petitioner should have prayed for the relief of injunction in the said suit itself but has omitted to do so. The impugned order dated 15.04.2021 forms subject matter of challenge in the present petition.

10. Learned counsel for the petitioner submitted that the learned Trial Court has committed grave error by ignoring the fact that the previously instituted suit bearing CS/ADJ/749/2018 seeking possession under Section 6 of the SRA has a different cause of action from the cause of action in the subsequent suit filed by the petitioner bearing CS/SCJ/117/2020.

11. Learned counsel for the petitioner also submitted that the reasons and findings of the learned Trial Court are illegal and erroneous and therefore the impugned order dated 15.04.2021 is liable to be set aside as Section 6 of SRA deals with special categories of cases where a person is dispossessed without due process of law and cannot be clubbed with any



other relief. Reliance placed upon *Hoshiari Devi & Ors. vs Jagat Singh & Anr.*, 2006 SCC ONLINE DEL 1364.

12. Learned counsel placed reliance on the judgment of this Court in *Qayamuddin & Ors vs. Jamil-Ud-Din & Ors.*, (2013) 201 DLT 758 and submitted that law has been settled that the remedy under Section 6 of the SRA is a summary remedy against dispossession. In such cases, the only matter to be adjudicated is the dispossession itself, without delving into any title-related questions, which typically require more time for adjudication.

13. It is submitted that the learned Trial Court overlooked the well-established legal principle that a suit filed under Section 6 of SRA pertains to a suit of specific nature. Subsection (3) of Section 6 of SRA clearly states that no appeal lies from any order or decree passed in any suit instituted under this section nor shall any review of any such order of the decree be allowed. Therefore, considering this fact, the relief of declaration of the forged and fabricated document dated 05.12.2012 was not pressed along with Section 6 of SRA as it is barred by law.

14. On the other hand, the learned counsel for the respondent vehemently controverted the submissions made by the petitioner and submitted that one of the reliefs claimed in the present suit i.e. CS/SCJ/117/2020 is directly and substantially an issue in a previously instituted suit i.e. CS/ADJ/164/2018 and therefore the learned Trial Court has rightly stayed the proceeding in the present suit.

15. Section 10 of CPC enables concept of *res subjudice*. The purpose is to deter conflicting judgments on a similar set of issues. It prevents



duplication of legal processes involving same parties from facing parallel suits before Courts of concurrent jurisdiction. Needless to say, the provision can be invoked when the whole subject matter in both the suits is identical. For ready reference, Section 10 of CPC is reproduced herein below:

“10. Stay of suit.—No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India have jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.”

16. Pertinently, the petitioner has filed two suits against the respondent, one bearing No. CS/ADJ/749/2018 seeking the relief under Section 6 of SRA. Subsequently thereto, he filed another suit bearing CS/SCJ/117/2020 on 22.01.2020 seeking relief of declaration and injunction. It is in the second suit that the respondent had filed an application under Section 10 of CPC for stay of proceedings which has been allowed by the learned Trial Court vide impugned order.

17. It would also be apposite to refer to Section 6 of Specific Relief Act which is as under:

*“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 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.”

18. In ***East India Hotels Ltd. Vs. Syndicate Bank: 1992 Supp (2) SCC 29***, the Hon’ble Supreme Court observed that the purpose behind Section 6 of Specific Relief Act is to restrain a person from using force to dispossess the other without his consent, otherwise than in due course of law.

19. It is to be appreciated that the scope of inquiry in a suit under Section 6 of SRA is limited as suit under Section 6 of SRA is of a special nature. It has to be considered whether the plaintiff was formally in possession and whether he was dispossessed without his consent, otherwise than the due process of law within six months immediately preceding the date of institution of the suit. Be it noted, in such a suit, the Court is not to try the question of title. It is further relevant to note that sub-section 3 of Section 6 of the SRA provides that the case of dissatisfaction with the judgment on conclusion of the trial, the remedy of appeal is barred and the only remedy available is by way of a revision petition. Against the decree of declaration and permanent injunction, the remedy available to impugn



the judgment is that of appeal. In the case titled as ***Jaswant Singh vs. Punjab Agricultural University & Ors.*** vide ***SLP (C) diary no.24044/2018*** decided on 27.08.2018, the Hon'ble Supreme Court held that Section 6 of the Specific Relief Act is a summary procedure and that no appeal lies against it.

20. Therefore, if along with the relief under Section 6 of SRA, other reliefs are clubbed, in case of challenge to such a decree, separate remedies of revision against the decree insofar as under Section 6 and of appeal as with respect to the other reliefs will have to be availed. In fact, such a situation may lead to conflicting decisions which is impermissible in law. Thus, making it more logical that other reliefs could not be clubbed in the suit under Section 6 of SRA.

21. The legal position was considered by the Andhra Pradesh High Court in the case of ***Adapa Tatarao Vs. Chamantula Mahalakshmi, AIR 2007 AP 44*** wherein it was held as under:

“(i) that the proceedings in a suit under Section 6 are summary in nature; (ii) that the Trial Court in that case had not addressed this basic requirement of Section 6 and had framed issues totally unrelated to adjudication to be undertaken in a Section 6 suit; (iii) that the suit also suffered from the infirmity of the plaintiff having incorporated the relief of perpetual injunction in respect of another item, in a suit filed under Section 6 of the Act and which is totally impermissible; (iv) that the parameters for adjudication of claim under Section 6 on the one hand and for perpetual injunction under Section 38 of the Specific Relief Act on the other hand, are totally different; (v) while for adjudication of a Section 6 suit, the trial is summary in nature and the decree is not appealable, in contrast, a detailed trial has to be conducted in a suit for perpetual injunction and a first appeal



and second appeal is provided against a decree therein; (vi) it is impossible and impermissible to mix up such divergent types of adjudication; and, (vii) that the judgment and decree of the Trial Court was liable to be set aside on that ground alone and the matter needed to be adjudicated afresh on proper lines.”

22. In the case titled as “**Qayamuddin Vs. Jamil-ud-Din (2013) 201 DLT 758**, the learned Single Judge of this Court while dealing with first appeal against the order of rejection, held that “*first appeal against an order of rejection of plaint in a suit for declaration, possession under Section 6 of the Specific Relief Act, damages and injunction on the ground of the other reliefs being not entitled to be clubbed with the relief under Section 6. It was held that the appeal, qua the rejection of plaint with relief under Section 6 was not maintainable. It was further held that the appeal, qua rejection of plaint for other reliefs also was not maintainable because the reliefs of declaration, damages and injunction were closely intertwined to the relief of possession and rather incidental or consequential to the main relief claimed of possession under Section 6 of the Act. It was further held that the suit for the said reliefs, without the relief of possession, would not even be maintainable.*”

23. It is to be appreciated that in the previous suit bearing CS/ADJ/749/2018, the petitioner is seeking possession of the property under Section 6 of SRA as he has been allegedly dispossessed forcibly. In the subsequent civil suit, he is seeking relief of declaration that the receipt-cum-possession letter dated 05.12.2012 is forged and fabricated. In addition, he has also prayed for injunction. Admittedly, the aforementioned



reliefs, the petitioner could not have included in the previous suit filed by him under Section 6 of SRA.

24. Having considered the aforementioned submissions, the impugned order is set aside and the learned Trial Court to proceed with the trial of the suit CS/SCJ/117/2020 as per law.

25. Consequently, the petition is allowed and disposed of.

SHALINDER KAUR, J.

APRIL 26, 2024/ab