



2024:DHC:9175



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision: 06th November, 2024***

+ C.R.P. 182/2019

VINOD KUMAR AHLUWALIA

.....Petitioner

Through: Mr. C.M.Grover and Mr.
Kashish Dhawan, Advocates.

versus

MANISH SHARMA

.....Respondent

Through: Mr.Bharat Deep Singh,
Mr. Dipanshu Tomar, and Ms. Nisha
Rajbhar, Advocates.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. Revision Petition under *Section 115* of the CPC has been filed against the order dated 08.10.2018 *vide* which the suit of the Petitioner (Plaintiff) for possession, has been dismissed.
2. ***Briefly stated*** the case of the Petitioner (Plaintiff) is that he had filed the *Civil Suit No. 883/2018 titled Vinod Kumar Ahluwalia vs. Manish Sharma* seeking possession of the Suit Shop bearing property No. No.2/122, Geeta Colony, Delhi-110031.
3. The facts in brief as stated in the Complaint were that Shri Puran Chand Sharma, father of the plaintiff was inducted as a tenant in the Suit Shop on a monthly rent of Rs.300/- per month *vide* Agreement-cum-Rent Deed dated 18.07.1991. The Plaintiff was running his Transport business from the said property till April, 2018 i.e. the date on which the Petitioner was dispossessed without due process of law.

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The Plaintiff alleged that he had been regularly paying the rent to the father of the Defendant and after his demise, to the Defendant regularly.

4. In 2016, Defendant got constructed the entire property i.e. 2/122, Geeta Colony, Delhi-110031 and thereafter, the Petitioner (Plaintiff) continued his business. However, the business of the Plaintiff suffered for 1 to 1½ years due to the construction by the Defendant of the aforesaid property, but the Plaintiff did not protest as he had been provided with a well furnished office by the Defendant.

5. After the construction of the property in question, Defendant started creating pressure on the Plaintiff to increase the rent to Rs.10,000/- per month but the Plaintiff was not in a position to agree to this enhancement which led to bitterness in the relationship between the parties.

6. The Plaintiff further asserted that apart from doing the business from the Suit Shop, he also had a branch office at Shop No.2,3 Mukhiya Market, Sector-35, Morna, Noida, U.P. In order to take care of the business from the property, he appointed one Ashok Mahajan who used to look after his day to day business. The Plaintiff in the meanwhile, suffered serious injuries in his spine and suffered from several other health problems. In the month of June, 2017 he was advised by the doctor for bed rest. Mr. Ashok Mahajan unfortunately expired on 02.01.2018. The Petitioner himself was not in a condition to look after the business and he thus, put a lock on the Suit Shop and also put a Flex Board mentioning the name of the Firm of the Plaintiff

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on the shutter of the property.

7. The Defendant took advantage of the condition of the Petitioner and in his absence, broke the lock of the property which came to the knowledge of the Petitioner in the month of April, 2018. He somehow arranged to visit the suit property to take out some documents but was shocked to find that in his absence the locks of the property have been broken and the wall of the property has also been removed.

8. The Plaintiff approached the Defendant for repair of the walls and for restoration of the property to its prior condition, but Defendant avoided the request of the Plaintiff and when he told him that he would make a complaint in the local Police Station, the Defendant retorted that he had enough influence in the Police Station and nothing would come out from any such complaint. He has already taken possession and nobody can do anything. The Plaintiff was disheartened on hearing these words of the Defendant and did not make any complaint to the police. He, thereafter, filed the Civil Suit seeking recovery of possession from the Plaintiff in respect of the suit property.

9. The Suit was dismissed vide the impugned order dated 08.10.2018.

10. Aggrieved by the dismissal of the Suit, the present Revision has been filed to challenge the impugned order on the ground that the medical record filed by the Plaintiff along with the plaint, to show that he was bed ridden and not in a condition to attend his office, have not been considered.

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11. The case of the Plaintiff is squarely covered under Section 6 of Specific Relief Act and the plaint could not have been rejected outrightly without any trial. It is, therefore, submitted that the impugned Order be set aside.

12. Learned counsel for the Respondent has contested the present Revision and has claimed that the suit of the Plaintiff was dismissed by the Trial Court on the first day for cogent reasons as stated in the impugned Order. There is no merit in the present Revision which is liable to be dismissed.

13. **Submissions Heard.**

14. The first aspect for consideration is that the Suit had not been filed by the Plaintiff under Section 6 of the Specific Relief Act which requires that specific averments of dispossession from the property are required to be made and the Suit is also mandated to be filed within six months of dispossession.

15. The learned Trial Court has rightly observed that there are vague assertions in the plaint that the Plaintiff came to know in April, 2018 that he has been forcibly dispossessed and the Defendant has taken over the possession. The suit has been filed on 05.09.2018 i.e. within six months of his coming to know about his illegal dispossession and the Suit, therefore, could not have been dismissed without a trial.

16. The plaint has neither been filed under Section 6 of the Specific Relief Act nor is there any averment of such a nature. Had it been so, then it is not the title which becomes pertinent; only the question of



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possession of the Plaintiff and his alleged forcible dispossession are the two significant facts to be considered in such a suit. Unfortunately, no clear date of dispossession has been given.

17. Learned Trial Court has rightly observed that it has been vaguely averred that the factum of dispossession from the Suit premises came to his knowledge sometime in April, 2018 when the Plaintiff, as claimed, went to the shop in April, 2018. There is no reason why he is unable to give the specific date. There is complete ambiguity about the date in the month of April, 2018 when he visited the premises and found himself to be dispossessed from the suit shop.

18. Pertinently, no complaint has been made to the Police Authority which is the natural conduct of any person forcibly dispossessed. The Plaintiff has sought to cover this by giving an explanation that when he confronted the Defendant that he would go to the police, the Defendant retorted by saying that he has already taken possession and no one can do anything in this regard.

19. The averments made in the plaint show that the Plaintiff was aware that he had a right or a remedy available to approach the police; however he chose not to do so. Such conduct of the Plaintiff leads to the inference of there being no truthfulness in these assertions.

20. It is also pertinent to observe that the averments made in the plaint show that he has sought restoration of possession on account of his being a tenant in the suit premises since 1991. It is pertinent to observe that the Plaintiff himself has mentioned in his plaint that he was a tenant in respect of one shop in the property in question which

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got reconstructed in 2016 and it took about 1½ years for completion. Pertinently, he also mentions that he had his Branch office running from a shop in Noida. He also asserts that on account of his poor health he had appointed one Sh. Ashok Mahajan to take care of his business since he was completely confined to bed, but unfortunately he also died in January, 2018.

21. He also states that when he approached the Defendant for repair of the walls and restoration of the suit property to its prior condition, the Defendant started avoiding the Plaintiff.

22. Pertinently, the holistic meaning of the plaint makes it evident that way back in 2016 when the property was reconstructed, the Plaintiff could not have been in possession. Moreover, his own submissions show that the dimensions of the alleged Suit Shop was completely changed and he was not put in possession of the alternate shop after reconstruction of the property in question. The entire plaint is based on vague facts and it is essentially on his title of having been a tenant once upon a time in the property, that the suit for possession was filed.

23. The learned SCJ has, therefore, rightly rejected the plaint as there is no cause of action made out in the plaint. **There is no merit in the present Revision petition, which is hereby dismissed.**

24. In the order dated 21.08.2024 it has been observed that there is a SLP pending in the Supreme Court where similar issue is pending. However, learned counsel for the Revisionist has clarified that no SLP in which either of the parties is a party, is pending in the



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Supreme Court in regard to the suit property.

NEENA BANSAL KRISHNA, J

NOVEMBER 6, 2024

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