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

% ***Date of decision: 22nd October, 2024***

+ **CM(M) 3681/2024 & CM APPL. 62108-62109/2024**

JAGDISH KUMAR ARORA

.....Petitioner

Through: Mr. Vishal Bhatnagar with Ms. Lata
Walia and Ms. Reena Khunger,
Advocates.

versus

DINESH MITTAL

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner is defending two suits filed by respondent Sh. Dinesh Mittal.
2. The first suit was registered as CS(DJ)05/2020 on 21.09.2020 and the second suit was registered as CS(DJ)126/2022 on 17.02.2022.
3. The plaintiff (defendant) had filed the first suit seeking recovery of arrears of rent, damages, *mesne* profit, recovery of pending electricity bills and for seeking permanent injunction. He did not seek any decree of possession.
4. By virtue of the above said second suit, the plaintiff is seeking recovery of possession of the same tenanted premises i.e. property bearing No.C-3/122, Ashok Vihar, Phase-II, Delhi.
5. Learned counsel for the petitioner (defendant) moved an application under Order II Rule 2 CPC before learned Trial Court in



relation to second suit, claiming that such second suit was barred in view of above said provision as the relief of possession should have also been included in the first suit.

6. Order II Rule 2 CPC reads as under:-

“2. Suit to include the whole claim.—(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish and portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim.—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs.—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”

7. Order II Rule 4 CPC reads as under:-

“4. Only certain claims to be joined for recovery of immovable property.—No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property, except—

(a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;

(b) claims for damages for breach of any contract under which the property or any part thereof is held; and

(c) claims in which the relief sought is based on the same cause of action:



Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.”

8. This Court has gone through the averments made in the above said suits. The issue contained in the aforesaid Rules have to be appreciated in the backdrop of the averments made in the plaint.

9. According to defendant, there was never any formal execution of the lease agreement between the parties and it is also claimed that the defendant is, even otherwise, not in the possession of the suit property.

10. Be that as it may, it is up to the concerned landlord/lessor to choose as to when such lessor wants to terminate the lease/tenancy and wants to seek possession. At an earlier point of time, when a simplicitor suit for recovery of rentals was filed, the plaintiff had not terminated the tenancy and was not interested in reclaiming the possession. Thus, there was no cause of action entitled him to include relief of possession in first suit.

11. The averments made in the second suit is also very clear and it has been mentioned as under in para 43 of the above said suit which reads as under:-

“43. That in terms of the Rent Note dated 11.02.2020, the lock-in period qua the lease was two years. However, the said term of lock-in period was reduced to one year vide Rent Note/Written Memo dated 14.02.2020 and the fitment period was agreed from 14.02.2020 to 14.03.2020. Thus the rent was agreed to commence from 15.03.2020. In view of such facts and circumstances, the lock-in period qua the tenanted premises had ended on 14.03.2021.”

12. It is, thus, very obvious that according to the plaintiff, the lock-in period had only ended on 14.03.2021 and it is only subsequent to that, he was competent to file a suit for possession.



13. Be that as it may, when the legal notice was issued to the defendant, prior to the institution of the first suit, even in such legal notice, the petitioner had never terminated the tenancy or sought for any possession and, therefore, it cannot be said that the subsequent suit filed by the plaintiff was barred under Order II Rule 2 CPC.

14. This Court, therefore, does not find any merit in the present petition.

15. The same is, hereby, dismissed.

(MANOJ JAIN)
JUDGE

OCTOBER 22, 2024
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