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

+ C.R.P. 235/2018 & CM APPLs. 45773/2018, 36628/2019

VIJAY KUMAR SHARMA

.....Petitioner

Through: Mr. Tara Chand Sharma, Advocate
through VC.

versus

MANOJ KUMAR GARG

.....Respondent

Through: Mr. Shiv Charan Garg & Ms. Jahanvi
Garg, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

04.10.2024

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1. The present *Revision Petition under Section 115 of the Code of Civil Procedure, 1908* (hereinafter referred to as “CPC, 1908”) has been filed on behalf of the revisionist (*defendant in the Suit*) - challenging the impugned Order dated 27.08.2018 passed by the learned Trial Court *vide* which, in Application under Order VII Rule 11 of CPC, 1908 filed by the petitioner-defendant, and the two *Preliminary Issues* have been decided against the Revisionist/Defendant.

2. The learned Trial Court, in Suit No. 2260/2017 for *recovery of Mesne Profits* filed by the plaintiff/Respondent, framed three Issues on 08.03.2018, out of which the following two issues were treated as *Preliminary Issues* which read as under: -

“(i) *Whether the suit is barred by Order II Rule 2 CPC? OPP/OPD.*

(ii) *Whether the plaintiff has no cause of action to institute*



the suit? OPP/OPD.”

3. Both the aforesaid issues were decided by the Ld. Trial Court in favour of the respondent/plaintiff and the matter was fixed for recording of the evidence of the parties on the third issue. The petitioner/defendant aggrieved by the findings on the two preliminary issues, has preferred the present Revision Petition.

4. The respondent-plaintiff had filed the *Suit bearing No. 50/2012* before the Civil Judge, Tis Hazari, seeking *Recovery of Possession and Arrears of Rent and Mesne Profits/Damages @ Rs. 15,000/- per month* in regard to Suit Property bearing Private No. 33-34, in Property No. 1/1300 to 1318, known as Balaji Motor Market, Sultan Singh Building, Kashmere Gate, Delhi-110006 (*hereinafter referred to as Suit Property*) from the petitioner-defendant. The Suit was decreed *vide* Order dated 03.09.2015 for recovery of arrears of rent for the period of 01.05.2011 till 30.08.2011.

5. The petitioner-defendant then filed the second Suit bearing *No. 26/2015* for *Possession of the Suit Property* against the defendant/ Revisionist, which was decreed *vide* Order dated 27.08.2018 against which R.C.A. No. 156/2018 was filed by the defendant. However, the Appeal was dismissed *vide* Order dated 27.10.2018. Thereafter, RSA No. 132/2022 was filed and this Court *vide* Order dated 18.10.2022 stayed the operation of the Judgment dated 02.09.2022 as well as of the Order dated 27.10.2018, which is pending adjudication before this Court.

6. Thereafter, the third *Suit bearing No. 2260/2017* was filed by the respondent-plaintiff for *Recovery of Mesne Profits for the period 01.05.2014 to 30.04.2017*, has been made even though the relief of mesne profits had



been abandoned in earlier Suit bearing No. 26/2015 for Possession. Therefore, the relief claimed in the third Suit should have been claimed in the second Suit, and the present Suit was barred under Order II Rule 2 of CPC, 1908. The finding of the learned Civil Judge, to the contrary is erroneous and the impugned Order is liable to be set aside.

7. Further, it is submitted that there is no cause of action in the present Suit No. 2260/2017 on account of earlier instituted Suit bearing No. 26/2015. Therefore, this suit was liable to be dismissed on the grounds agitated as *Preliminary Issues*.

8. ***Learned counsel for the respondent***, on the other hand, has contested the Revision Petition by submitting that Suit No. 50/2012 was filed for *Recovery of Possession and Arrears of Rent and Mesne Profits/Damages @ Rs. 15,000/- per month*. However, as the requisite Slum Permission had not been taken, the Relief of Possession and Mesne Profits were withdrawn *vide* Order dated 02.04.2013 with liberty to file afresh after having obtained the Slum Permission. The *Suit bearing No. 26/2015 for Possession* was then filed after obtaining the requisite Slum Permission.

9. This the Suit No. 26/2015 *for Possession* was decreed *vide* Order dated 27.08.2018 against which R.C.A. No. 156/2018 was filed by the Defendant/ revisionist; however, the same was dismissed *vide* Order dated 27.10.2018. Thereafter, RSA No. 132/2022 was filed and this Court *vide* Order dated 18.10.2022 stayed the operation of the Judgment dated 02.09.2022 as well as of the Order dated 27.10.2018, which is pending adjudication before this Court.

10. Thereafter, *the Suit bearing No. 2260/2017* was filed by the respondent-plaintiff *for Recovery of Mesne Profits for the period 01.05.2014*



to 30.04.2017.

11. The Ld. counsel for the Plaintiff/ respondent has placed reliance on Bharat Petroleum Corporation Ltd and Ors. vs. ATM Constructions Pvt. Ltd., 2023 SCC OnLine SC 1614, to submit that the *relief of Possession* and the relief of *Mesne Profits* are independent, and thus the third Suit was not barred under O.II Rule 2 CPC, as has been rightly held by the Ld. Trial Court. For the same reason the third Suit discloses a cause of action. The Preliminary Issues have been rightly decided and the Present Revision Petition is liable to be dismissed.

12. Submissions Heard.

13. There were three Suits filed by the Plaintiff, as has been explained above. There is no challenge to the **First** Suit bearing No. 50/2012 was filed for *Recovery of Possession and Arrears of Rent and Mesne Profits/Damages @ Rs. 15,000/- per month*. However, as the requisite Slum Permission had not been taken, the Relief of Possession and Mesne Profits were withdrawn *vide* Order dated 02.04.2013 with liberty to file afresh after having obtained the Slum Permission. The **Second** Suit bearing No. 26/2015 for Possession was then filed after obtaining the requisite Slum Permission, to which there is no challenge.

14. The first grievance of the revisionist/ defendant is that the relief of *mesne profits* should also have been sought in the second Suit bearing No. 26/2015 which was filed for Possession of the suit Property and a fresh **third** Suit No. 2260/2017 for *Recovery of Mesne Profits for the period 01.05.2014 to 30.04.2017*. Since the Plaintiff failed to claim this Relief in the second Suit even though it was available, the third Suit was barred under O. II Rule 2 CPC.



15. It may be stated that the relief of Possession/ Mesne Profits was sought in the first Suit, but had to be withdrawn with permission to file afresh, on the technical ground of Slum Permission not having been taken. The Second Suit for Possession thus, got filed after taking the requisite Slum permission and has even been decreed. Admittedly, the plaintiff did not claim Mesne Profits in the second case, but that does not deprive him from filing the separate Suit since right to recover rent/ Mesne Profits is a continuing cause of action; there is no bar to institution of separate Suit for Possession and for Mesne Profits but it can only be confined to the period for which it is not barred by limitation.

16. The Supreme Court in the case of Bharat Petroleum Corporation Ltd and Ors. vs. ATM Constructions Pvt. Ltd., 2023 SCC OnLine SC 1614, has held that the *relief of Possession* and the relief of *Mesne Profits* are independent. It was observed that the suits for possession and mesne profits involve different causes of action, with mesne profits being a continuing cause of action accruing day to day.

17. The respondent-plaintiff may have chosen not to seek mesne profits in the Suit bearing No. 26/2015 for Possession of the Suit Property, but that does not debar him from subsequently filing a separate Suit for Mesne Profits in case the defendant/occupant/tenant continues to be in the premises despite the termination of the tenancy. *The learned Civil Judge has rightly observed that the bar to Order II Rule 2 of CPC, 1908 shall not be applicable.*

18. *The second preliminary objection is that there was no cause of action for grant of mesne profits.*

19. In RSA No. 233/2016, vide Order dated 09.03.2017, it is merely



observed that rate of rent was Rs. 8,000/- p.m. and this in no manner, prevents the petitioner from claiming the mesne profits as he has alleged the termination of tenancy. The Plaint seeks relief of *Mesne Profits* which is predicated by the termination of tenancy and it cannot be said that there is no cause of action disclosed in the Suit bearing No. 2260/2017. It has been rightly held that the Suit discloses the Cause of Action.

20. Conclusion:

21. In view of above, it is held there is no infirmity the impugned Order dated 27.08.2018 vide which the learned Trial Court has rightly decided the two *Preliminary Issues* against the defendant/ Revisionist.

22. Accordingly, the present Revision Petition along with pending applications is dismissed.

NEENA BANSAL KRISHNA, J

OCTOBER 4, 2024

S.Sharma