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

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Date of Decision: 21th March, 2025

+ CM(M) 531/2025 & CM APPL. 16617-16618/2025
SH. BIJINDER SAXENA & ANR.

.....Petitioner

Through: Mr. B.S. Chauhan, Advocate.

versus

SH. MOHINDER KUMAR SHARMA @ MOHINDER SHARMA

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioners are defending a Commercial Suit and are aggrieved by the order dated 07.02.2025 whereby their application moved under Section 10 CPC has been dismissed.
2. According to defendants, the plaintiff has filed two different suits and the issue in the subsequent suit is also an issue in the first suit and, therefore, the proceeding of the subsequent suit i.e. Commercial Suit (C.S.(Comm.) No.959/2024) should be stayed.
3. This Court has seen the averments made and the reliefs sought in both such suits.
4. The plaintiff is seeking recovery of rent and damages against the same defendants in CS/SCJ/893/2022 and the relief claimed in such first suit is based on following assertions:-

“10. That the defendants thus became liable to pay a total sum of Rs 3,20,000/- on account of the abovestated rent and damages for use and occupation as per following particulars:

*Rent for the period 1.10.2019 to 31.12.2021 @ Rs 10,000/- per month:
Rs 2,70,000/-*

Damages for use and occupation for period 1.1.2022 to 28.2.2022 @



Rs 25,000/-:Rs 50,000/-

Total: Rs 3,20,000/-

However, the plaintiff in the present suit are restricting his right to recover damages for use and occupation to Rs 30,000/- only and foregoes the claim for the remaining Rs 20,000/-."

5. The second suit, which is commercial in nature, not only seeks recovery of damages for use of occupation for subsequent period but also seeks possession. The relief in the abovesaid second suit is as under:-

"20. That it is prayed that:

a) The decree of recovery of possession of shop on the ground floor of property bearing no. 150-154, Ghee Mandi, Gali Mochiyan (Gali Halwai), Pahar Ganj, New; Delhi- 110055 more specifically shown in Red Color in the Site Plan annexed with the plaint may kindly be passed in favour of the plaintiff and against the defendants.

b) Decree for recovery of Rs 7,25,000/- may be passed in favour of the plaintiff and against the defendants on account of damages for use and occupation for the period upto 31.7.2024.

c) Decree for recovery of damages and use of occupation from 1.8.2024 till recovery of possession may be passed in favour of the plaintiff @Rs.25,000/- per month or at any such higher rate as the court deems fit in favour of the plaintiff and against the defendants.

d) Interest at the rate of 18% per annum may be awarded on the amount due to the plaintiff against the defendants from the date of suit till realization.

e) Interest at the rate of 18% per annum may be awarded to the plaintiff against the defendants on the future damages for use and occupation month to month from the date of suit till realization.

f) The cost of the suit may be awarded to the plaintiff.

g) Any other relief that the Court deems fit and proper may be granted."

6. Admittedly, the first suit is pending adjudication and is, reportedly, at the stage of trial.

7. Learned counsel for petitioners, though, does not dispute the factum of relationship of landlord and tenant between the parties but submits that since the first suit is already pending, the plaintiff could have easily incorporated such prayers by moving appropriate application, by seeking amendment in the



previous suit.

8. Be that as it may, fact remains that Section 10 CPC comes into play when it becomes very much evident that the suit is between the same parties and the matter in issue in the subsequent suit is also directly and substantially in issue, in a previously instituted suit.

9. Admittedly, the relief of possession has not been sought in the previous suit and, moreover, the rent/user charges being sought in the subsequent suit is for a different period and, therefore, there is no illegality of perversity in the impugned order. Undoubtedly, the plaintiff could have prayed for amendment in his previous suit but merely because it was not done so, it cannot be said that filing of the subsequent suit was either bad in law or that such proceedings need to be stayed.

10. The learned Trial Court also observed that since the relief sought by the plaintiff in Commercial Suit and the previous suit were different in nature and in the previous suit, the plaintiff was in a no position to obtain any decree of possession, it refused to stay the proceedings.

11. Keeping in mind the averments made in two suits, this Court does not find any reason to interfere. Finding no merit in the present petition, the petition, along with all the pending applications, stands dismissed.

(MANOJ JAIN)
JUDGE

MARCH 21, 2025/ss/SS