



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

% *Pronounced on: 28th February, 2025*

+ **C.R.P. 372/2024, CM APPL.71943/2024**

1. **SALAHUDDIN AYUBI**
S/o Shri Nasiruddin,
R/o H.No.12A/11, Vijay Mohalla,
Galin No.8, Maujpur,
Delhi-1100053.

2. **SAGHEER AHMAD**
S/o Sh. Noor Hasan,
R/o K-44, Abul Fazal Enclave,
Road No.4, Jamia Nagar,
Delhi.

..... Petitioners

Through: Mr. Anurag Jain, Advocate.

versus

BHUSHAN KUMAR
S/o Shri Ram Chander Sharma
R/o N-142-143, Abul Fazal Enclave,
Jamia Nagar, Okhala,
New Delhi-110025.

..... Respondent

Through: Mr. Desh Raj, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Civil Revision Petition under Section 115 read with



Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) has been filed on behalf of the Petitioners/Defendants for setting aside the Judgment dated 26.09.2024 whereby Decree of Possession under Section 6 of the Specific Relief Act, 1963 has been granted against the Petitioners/Defendants.

2. ***Briefly stated***, the Plaintiff/Bhushan Kumar (*Respondent herein*) filed Civil Suit No. 1313/2009 titled "*Bhushan Kumar vs. Salahuddin Ayubi and Ors.*" under Section 6 of the Specific Relief Act, 1963 and Permanent Injunction in respect of property bearing No.N-141, Abul Fazal Enclave, Jamia Nagar, Okhla, New Delhi-25 (*hereinafter referred to as "Suit Property"*).

3. According to the Plaintiff, he had purchased the Suit Property from Defendant No.1/ Salauddin Ayubi (*Petitioner No.1 herein*) in the year 2002 for a total sale consideration of Rs.1,20,000/-, out of which he paid Rs.40,000/- to Defendant No.3/Noor Hassan (*since deceased*) at the instance of Petitioner No.1 and 2. The balance amount was paid in cash and the documents of transfer namely GPA, Receipt etc were executed in his name. Furthermore, Salahuddin Ayubi, Petitioner No.1 handed over the physical possession of the property along with the chain documents to the Plaintiff. He has been living in the Suit Property in the capacity of an owner and has various documents namely Driving License, Passport, Voter's Identity Card, Bank Account at the address of the Suit Property.

4. According to the Plaintiff/Respondent, on 23.03.2009 at around 02:15 P.M., the Defendants/Petitioners along with their goons forcibly broke open the locks of the Suit Property and removed his valuables and trespassed into



the Suit Property. When the Respondent tried to enter into the property, he was physically prevented from entering into the house. He made a Complaint to DCP, South East, Sarita Vihar, about the incident and he again made a Complaint dated 24.03.2009 to DCP, South East, but no action was taken.

5. The Petitioners/Defendants filed a Complaint under Section 156(3) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C"*) against the Plaintiff, wherein a **Status Report** was filed in which it was categorically stated that Plaintiff/Respondent was in possession of the Suit Property, prior to 23.03.2009.

6. He thus, filed the Suit seeking Possession under Section 6 of Specific Relief Act.

7. The *Petitioners along with the Defendant No.3/Noor Hassan filed a joint Written Statement*, wherein a preliminary objection was taken that the Suit has been instituted in first week of August, 2011 i.e. beyond a period of six months from the alleged date of dispossession and the Suit is barred under law. Furthermore, the Plaintiff had no right, title, interest in the Suit Property and the Plaint did not disclose any cause of action.

8. It was asserted that Bhushan Kumar (*Plaintiff/Respondent herein*) was on visiting terms with the Defendants/Petitioners and used to visit them as a guest. He was allowed to stay in the common room sometimes for a week or a month and at times he used to leave his daily articles in the room. He last visited the property on 15.03.2010 and left the premises on 16.03.2010 and took away his articles.

9. It was further asserted in the *Written Statement* that the Suit was not



properly valued and there was suppression and mis-representation of material facts.

10. ***On merits***, the Defendant No.1/Salahuddin Ayubi asserted that he was the owner of the Suit Property by virtue of legal documents and in occupation of the Suit Property along with other Defendants. He denied having ever sold the property to the Respondent.

11. It was further stated that Respondent/Bhushan Kumar had got some furniture prepared for Rs.44,500/- from Defendant No.2/Sagheer Ahmed and Defendant No.3/Noor Hassan who were running their business of wooden furniture from the Suit Premises, and payment of Rs.40,000/- *vide* Cheque dated 15.12.2003 was made to Defendant No.3 for purchase of furniture for which a Bill was duly issued to him.

12. Furthermore, when Plaintiff/Respondent himself admitted that Petitioner No.1 was the owner of the Suit Property, there was no question of making a payment of Rs.40,000/- to Defendant No.3, who had no concern with the Suit Property. The falsity of the averments, therefore, is evident.

13. The Defendant No.1/Salahuddin Ayubi had also deposited Development Charges of Rs.1200/- on 16.07.2008 along with his Application for Electricity connection in the Electricity Department. He had also given a photocopy of GPA and other documents in proof of his ownership. The Electricity Department after making due inquiry and verification, installed Electricity Meter in the name of Defendant No.1 in the Suit Premises on 25.02.2009.

14. It was further claimed that the Plaintiff was a Police informer and in connivance with the local Police had got registered a false FIR. It was thus,



submitted that the Suit of the Plaintiff was liable to be dismissed.

15. Issues were framed by Learned District Judge on 21.05.2012 as under :

- (i) *Whether on 23.03.2009 at around 2:15 pm, the plaintiff was dispossessed forcibly by the defendants from the suit property N141, Abul Fazal Enclave, Jamia Nagar, Okhla, New Delhi-25? OPP*
- (ii) *Whether the suit under Section 6 of the Specific Relief Act is within the prescribed period? OPP*
- (iii) *Whether the plaintiff has locus standi to file the present suit? OPP*
- (iv) *Whether the plaintiff is entitled for decree of possession of suit property in his favour and against the defendants, as prayed in clauses (i) and (ii) in the plaint? OPP*
- (v) *Whether the plaintiff is entitled for decree of permanent injunction against the defendants, as prayed in clause (iii) in the plaint? OPP*
- (vi) *Relief.*

16. The learned District Judge in the impugned Judgement dated 26.09.2024, held that from the evidence and the contentions of the parties and the admissions made by Defendant No.1 in his evidence that Plaintiff was in exclusive possession of the Suit Property in the capacity of a Tenant, established that he was in possession of the Suit Premises till 23.03.2009



and that he had been forcibly dispossessed from the Suit Property.

17. In so far as the contention of the Suit being barred by limitation was concerned, it was observed that the Plaint was returned in exercise of powers under Order VII Rule 10A of CPC by learned Civil Judge and a date was fixed for appearance before learned District & Sessions Judge. It is only by way of amendment of the valuation of the Suit Property that the learned Civil Court got divested of its jurisdiction and ordered the return of Plaint. In such a situation Plaintiff was entitled to benefit of *Section 14 of Limitation Act, 1963* and consequently, it was held that the Plaintiff was entitled to exclusion of the period before the learned Civil Judge till the date of return of Plaint while calculating the limitation. It was consequently held that the Suit had been filed within a period of limitation.

18. The Suit was decreed and it was *held that the Plaintiff/Respondent was entitled to Decree of Possession of Suit Property under Section 6 of the Specific Relief Act.*

19. The Defendants/Petitioners being aggrieved by the Judgment, have filed the present Revision Petition under Section 115 of CPC.

20. The **grounds of challenge** are that despite claiming ownership in the Suit Property, the Plaintiff/Respondent has failed to bring even a single document in proof thereof. The Plaintiff had claimed that the Sale document got executed in the year 2002 for a consideration of Rs.1,20,000/- out of which he paid Rs.40,000/- by way of Cheque dated 15.12.2003 Ex.PW2/1 in favour of Defendant No.3. It is asserted that it has not appeared to reason that the consideration for the property allegedly purchased in the year 2002 would be made in December, 2003. Moreover, no documents/chain



documents of ownership as claimed by the Plaintiff/Respondent, have been brought on record in proof of the ownership.

21. The Respondent/Plaintiff has failed to even remotely establish in what capacity he was in possession of the Suit Property. He never claimed that he was a licensee or a tenant making it evident that he has no right, title or interest to be in possession of the suit property. Further, it is contended that the documents produced by Defendant No.1/Petitioner No.1 Ex.DW1 to DW21 clearly show the ownership and actual possession of the Petitioner Salahuddin Ayubi in the Suit Property, but all these documents have been ignored.

22. The learned Trial Court itself observed that “*there seems to be no convincing evidence that he had purchased the Suit Property...*”, despite which the Decree of Possession has been made in his favour. The Judgment is based on assumptions and presumptions and grave error has been committed in concluding that possession of the Plaintiff was fully established as on 23.03.2009.

23. The learned Trial Court has observed that DW3/Noor Hassan had admitted that Plaintiff was in possession of the Suit Property since 1999. However, the case of the Plaintiff was that he came in possession of the Suit Property only in the year 2002 after purchasing the same from Plaintiff No.1. The testimony of DW3/Noor Hassan, who used to run the business of *furniture making* from the suit premises, is an illiterate person and his testimony does not establish in any manner that the Respondent/Plaintiff was in possession of the Suit Property.

24. Learned Trial Court has erroneously and illegally relied on the cross-



examination dated 13.08.2018 of DW1 to come to the conclusion that DW1/Salahuddin Ayubi had admitted in his pre-arrest Bail Application DW1/X1 that the Plaintiff/Respondent was a tenant in the Suit Property. There was a typing error in the Application which was withdrawn and a new Application was filed. The finding in this regard is contrary to record and is even against the case of the Plaintiff as set out in the Plaint.

25. The Plaintiff never claimed that he was earlier in occupation of the Suit Property as a tenant and subsequently he purchased it. No Rent Agreement/Rent Receipt had ever been placed on record by the Plaintiff to show that he was ever a tenant and the observations of the Trial Court in this regard are totally contrary to record.

26. Furthermore, there is no evidence at all to show that the payment of Rs.40,000/- was towards the part sale consideration which was allegedly purchased in 2002.

27. Moreover, the learned Trial Court completely ignored the documents including installation of Electricity Meter in the name of Defendant No.1 in the year 2009. There is overwhelming evidence to prove that Plaintiff was not in possession of the property as was alleged by him and, therefore, Decree of Possession under Section 6 of Specific Relief Act, could have been made in favour of the Respondent.

28. It is further contended that the benefit of *Section 14 of Limitation Act* has not been given correctly to the Plaintiff. After the Plaint was returned under Order VII Rule 10A of CPC, the Plaint was again presented with the amendment in the *valuation clause*, but no Application under Section 14 of Limitation Act was filed. Subsequent filing of this Application is of no



consequence and the Plaintiff was not entitled to the benefit. The Suit of the Plaintiff was not presented within six months of alleged dispossession on 23.03.2009 and, therefore, the Suit was barred by limitation. It is, therefore, submitted that the impugned Judgment dated 26.09.2024 is liable to be set aside.

29. **Learned counsel for the Respondent has submitted** that the learned District Judge has rightly appreciated that he has been illegally dispossessed from the Suit Property of which he was in possession since 2002. Furthermore, the issue in regard to the limitation and grant of benefit under Section 14 of the Limitation Act, has been appreciated in the right perspective. The defence taken by the Petitioners herein, has been rightly rejected. There is no infirmity in the impugned Judgment and the present Petition is liable to be dismissed.

30. **Submissions heard and record perused.**

31. There were *two issues for consideration*, namely: (i) *Whether the Respondent was in possession of the Suit Property on 23.03.2009 on which date he was allegedly illegally dispossessed by the Petitioners;* and (ii) *Whether the Suit of the Plaintiff has been filed beyond a period of six months from the date of alleged dispossession.*

Possession and Dispossession of the Respondent:-

32. **The first aspect** for consideration is whether the Plaintiff was in possession of the Suit Property allegedly having purchased it from Defendant No.1 in the year 2002 for a sale consideration of Rs.1,20,000/- and was in possession since then till the date of alleged dispossession, on 23.03.2009.



33. Before considering the respective contentions of the parties, it is pertinent to observe that to be successful under Section 6 of Specific Relief Act, the only material fact which needs to be proved are that the Plaintiff was in lawful possession of the property and had been illegally dispossessed there from.

34. In the present case, while the Plaintiff/Respondent has asserted that he had allegedly purchased the property in the year 2002 and since then he has been in possession, the learned District Judge in detail had considered the various aspects to conclude that there was no evidence to prove that he had purchased the property in 2002 as had been claimed by him. The most significant factors for that conclusion were that *firstly*, no alleged GPA, etc. had been produced or proved by the Plaintiff. *Secondly*, the sale consideration claimed to have been paid was Rs.1,20,000/-. Pertinently, he alleged that Rs.40,000/- was paid to Defendant No.3 *vide* Cheque dated 15.12.2003. It had been considered that for the alleged purchase of property in 2002, it was not believable that Rs.40,000/- would be paid by Cheque to third party in December, 2003, who has no concern with the Suit Property.

35. Admittedly, the Defendant No.1/Petitioner No.1 was the owner of the Suit Property. The Petitioner/Defendant No.1 in his Affidavit of Evidence had explained in detail that since he was the owner of the Suit Property, he deposited Development Charges of Rs.1200/- on 16.07.2008 and the Receipt issued by Delhi Electricity Board is dated 21.08.2001 along with Application Ex.DW1/12 for installation of Electricity Meter. The Meter Change Receipt is Ex.PW1/P3 and the Bill dated 12.12.2002 is Ex.DW1, though Bill dated 08.12.2007 and dated 13.01.2015 are Ex.PW1/15 to 1/17



respectively. He had even furnished his documents of ownership along with his Application. After due enquiry and verification, the Electricity Meter was duly installed in the suit premises in his name on 25.02.2009.

36. The Plaintiff/Respondent in his cross-examination also admitted that the Electricity Connection was installed in the name of Defendant No.1 and the Development Charges were paid *vide* Receipt dated 21.08.2001 Ex.PW1/X1. He further admitted that Defendant No.1 had given an Application dated 29.04.2002 Ex.PW1/X2 in regard to malfunctioning of the Electricity Meter. All these documents clearly reflected that the Defendant/Petitioner No.1 had a superior title than the Plaintiff.

37. In the end, the learned District Judge referred to the defence of Defendants in the Written Statement that Plaintiff used to visit them in the Suit Property and at times stayed as a guest and was also keeping his belonging in the room which he finally vacated on 16.03.2010, to conclude the lawful possession of the Respondent.

38. Further, Defendant No.1 in his cross-examination conducted on 13.08.2018, was confronted with his Application for Bail, wherein he had mentioned that the Plaintiff was a tenant in the Suit Property and the owner thereof, was Sagheer Ahmed (*Defendant No.2*). He tried to explain the contents of the Application by alleging that there was a typing error and subsequently the Application was withdrawn and a fresh Application was filed. Pertinently, the Application may have been withdrawn but the status of the Plaintiff as a tenant in the property, was mentioned in the Bail Application, again establishing his possession in the Suit Property.

39. Similarly, DW3 in his cross-examination dated 25.03.2009 deposed



that “it might be correct that the Plaintiff was residing in the Suit Premises since 1999. It is correct that he was residing there till 23.03.2009 ... It is correct that the Plaintiff was in possession of the premises in question from 2002 till 23.03.2009. (Vol.) he was in unauthorized occupation.” Learned District Judge thus, rightly referred to these admissions along with the vague defence taken by the Defendants in their Written Statement trying to assert that the possession was that of a visiting guest, to conclude that in fact that Defendant was in the occupation of the premises since 1999 and had been forcibly dispossessed on 23.03.2009. Even if the admissions of DW1 and DW3 in the cross-examination about the Plaintiff being a tenant in the suit premises is ignored, it is still established that he was in occupation of the property from 2002 till 23.03.2009 on the date when he was illegally dispossessed.

40. While considering a Suit under Section 6 of the Specific Relief Act, it is not necessary that the capacity of the Plaintiff in which he is occupying the property needs to be considered, but all that needs to be ascertained is that he was in lawful possession of the Suit Premises. The learned District Judge thus, from the evidence on record has rightly, concluded that the Plaintiff was in lawful possession of the Suit Property on 23.03.2009 when he has been illegally dispossessed by the Plaintiffs. ***The requirements of Section 6 Specific Relief Act are fully established entitling the Plaintiff/Respondent to restoration of his possession under Section 6 of the Act.***

Assessing the Exclusion of Time under Section 14 of the Limitation Act:-



41. *There is, however, the **second aspect** in regard to Limitation and the accrual of benefit under Section 14 of the Limitation Act to the Petitioners.*

42. It is argued on behalf of the Petitioners that no Application for exclusion of the period during which the case was pending before the Civil Judge, had been filed on behalf of the Plaintiff and, therefore, the benefit of Section 14 of the Limitation Act could not have been granted by the learned District Judge while considering whether the Suit has been filed within a period of six months from the date of dispossession.

43. It is the case of the Plaintiff that he got illegally dispossessed from the Suit Premises on 23.03.2009. He filed his Suit before the learned Civil Judge on 18.09.2009 which is within a period of six months from the date of dispossession. Thereafter, the Suit was returned under Order VII Rule 10A of CPC on 11.07.2011 on account of the amendment in the valuation of Suit Property and the Plaint was re-filed before the learned District Judge on 10.08.2011.

44. The Plaintiff is entitled to the benefit of exclusion of the period from 18.09.2009 till 11.07.2011 during which period the case was pending before the learned Civil Judge. The Suit has been re-filed on 10.08.2011. Even if the period during which the case was pending before the learned Civil Judge is excluded under Section 14 of Limitation Act, then too from the date of return i.e. 11.07.2011, the Plaintiff had six days left out of six months, when the Suit was first instituted on 18.09.2009. However, the Suit has been re-filed on 10.08.2011 i.e. beyond the period of six months.

45. Even if it is accepted that while returning the Suit under Order VII Rule 10A of CPC learned Civil Judge had directed the parties to appear



before the Court concerned on a fixed date, but then too it did not prevent the Plaintiff from re-filing his Plaint within the period of limitation.

46. It is well settled law that limitation in filing a Suit is not subject to any kind of condonation or waiver. The limitation period if calculated from the date of cause of action to the date of filing of the first Civil Suit and thereafter, from the date of return to the re-filing of the same before the District Judge, *it is beyond the period of six months as mandated under Section 6 of the Specific Relief Act*. Therefore, on this ground of Limitation, the Suit of the Plaintiff is liable to be dismissed.

47. It may be an unfortunate case where initially the Suit got filed well within time as prescribed under Section 6 of the Specific Relief Act, but because of the procedural technicalities the Suit had to be returned and re-filed before the learned District Judge and in this procedural rigmarole the Suit got filed beyond the mandated period of six months. However, period of limitation for filing Suits is not condonable. The Suit of the Plaintiff is therefore, liable for rejection.

Conclusion:-

48. *In view of the aforesaid discussion, the impugned Order dated 26.09.2024 is hereby set aside and the Suit of the Plaintiff for Possession under Section 6 of the Specific Relief Act, is dismissed.*

49. The Revision Petition stands disposed of along with the pending Application(s).

(NEENA BANSAL KRISHNA)

2025:DHC:1434



JUDGE

FEBRUARY 28, 2025

va