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

% *Date of Decision: 13th February, 2023*

+ C.R.P. 38/2023

MOINUDDIN

..... Petitioner

Through: Mr. Javed Khan, Advocate.

versus

MR. WASEEM AHMED AND ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

C.R.P. 38/2023 & CM APPL. 6253/2023 (delay of 32 days in filing)

1. Present revision petition has been filed by the Petitioner assailing the impugned judgment dated 30.08.2022 passed by the Trial Court, dismissing the suit for possession filed by the Petitioner under Section 6 of the Specific Relief Act, 1963 (hereinafter referred to as the 'Act') as well as for permanent injunction. Petitioner before this Court was the Plaintiff before the Trial Court and Respondents herein were the Defendants and parties are referred hereinafter by their litigating status before the Trial Court.

2. Facts necessary for disposal of the revision petition, as they emerge from a reading of the plaint are that Plaintiff was inducted as a tenant in the first floor of H. No. 7130, Gali Madarse Wali, Beri Wala Bagh, Azad Market, Delhi (hereinafter referred to as 'Suit Property'), consisting of two rooms, kitchen, bathroom and a store at a monthly rent of Rs.800/-, later enhanced to Rs.1,000/- per month by Defendant

No.2 in the month of May, 2018 and a Rent Agreement was also executed between Plaintiff and Defendant No.2 for himself and on behalf of his mother. Security of Rs.2,30,000/- was furnished by the Plaintiff along with the Rent Agreement.

3. According to the Plaintiff, he had been paying rent of the suit property to Defendant No.2, from time to time, though no rent receipt was ever issued by Defendant No. 2 in favour of the Plaintiff. Plaintiff also got the electricity connection installed separately for his tenanted premises which he claims continues to exist in the name of the Plaintiff.

4. Plaintiff received summons from the Court of the Additional Rent Controller on 16.08.2013 in eviction proceedings filed by Saida Khatoon under Section 25B of the Delhi Rent Control Act, 1958. Plaintiff filed an application for leave to defend and appeared on 09.12.2013, on the date of hearing but Ms. Saida Khatoon was not present. Thereafter, the matter was adjourned to 24.03.2014, on which date Ms. Saida Khatoon appeared with her counsel and sought time to file reply to the leave to defend application.

5. As per the averments made by the Plaintiff, on 26.02.2015, counsel for Ms. Saida Khatoon appeared in the Court of learned ARC and submitted that Ms. Khatoon had received vacant and peaceful possession of the tenanted premises from the Plaintiff. Based on this statement, the eviction petition was dismissed as withdrawn.

6. It is stated that due to busy schedule of Plaintiff's counsel, he could not appear to inform that the possession continued to be with the Plaintiff and that a wrong statement had been made by Ms. Khatoon. On receiving the news that such a statement had been made in the Court, Plaintiff reached the suit property, where the Defendants attempted to break open the locks and take forcible possession. In the

night of 26.02.2015 itself, the Defendants affixed a notice on the outer wall of the suit property stating that possession of the premises had been taken over by the Power of Attorney Holder of Ms. Khatoon. This led to the Plaintiff filing the present suit for possession and injunction under Section 6 of the Act.

7. On receipt of summons, written statement was filed on behalf of Defendants No.1, 3 and 4, while no one appeared on behalf of Defendants No.2, 5 and 6, who were therefore proceeded *ex-parte*.

8. In the written statement, Defendants took an objection to the maintainability of the suit on the ground that possession of the premises had been handed over to Defendant No.1 peacefully on 21.02.2015 by his wife. The Plaintiff was not a tenant with respect to 1st floor of the suit property but only with regard to one room of 75 sq. yds. in the entire property. The wife of the Plaintiff Ms. Nazia had rented out the property to one Mohd. Mudassir on 19.01.2015, who was in possession and both of them handed over the possession of the suit property to Defendant No.1 on 21.02.2015, which was clearly in the knowledge of the Plaintiff.

9. On the basis of the pleadings of the parties, *vide* order dated 11.01.2016, following issues were framed:-

“1. Whether the present suit is not maintainable in the present form?
OPD

2. Whether the present suit is bad for mis joinder and non joinder of necessary parties? *OPD*

3. Whether the plaintiff is entitled for possession as prayed for?
OPP.

4. Whether the plaintiff is entitled for decree of permanent injunction as prayed for? *OPP.*

5. Relief.”

10. Plaintiff examined himself as PW-1 and one Shri Rahul Vishvakarma, DEO, Election Office, Gulabi Bagh as PW-2.

11. Despite several opportunities, Defendants No. 1, 3 and 4 did not cross-examine the Plaintiff's witnesses and their right to cross-examine was closed *vide* order dated 23.11.2019.

12. On the basis of the evidence led by the parties, the Trial Court dismissed the suit for possession filed by the Plaintiff and having perused the impugned judgment, this Court finds no infirmity, for the reasons that follow. Section 6 of the Act, reads as under:-

"6. Suit by person dispossessed of immovable property.— (1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person through whom he has been in possession or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought –

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof."

13. A reading of the provision shows that a person, who is dispossessed from an immovable property without his consent, may file a suit for recovering the possession within six months from dispossession. The intent behind the legislation is to ensure that a person, who is illegally dispossessed, can seek redressal and his possession can be restored by a proceeding which is summary in nature. The keyword in the provision is, therefore, 'dispossessed' and it is from this point that the six months period commences. The question that therefore emanates in the present petition is the triggering point of the cause of action to file the suit i.e. the date of 'dispossession'. In this context, I may refer to a judgment of the

Supreme Court in *Sudhir Jaggi and Another v. Sunil Akash Sinha Choudhary and Others*, (2004) 7 SCC 515, wherein it was held that dispossession would mean not only actual physical dispossession but also violation of symbolic possession. Black's Law Dictionary, 8th Edition, defines the word 'dispossess' to mean 'oust or evict someone from property'.

14. In the light of Section 6 of the Act, as extracted above, the Trial Court correctly posed the question to itself as to when was the Plaintiff dispossessed, entitling him to relief under Section 6 of the Act. As noted by the Trial Court, the Plaintiff has set out in the plaint that he was in possession of the first floor of the suit property where he was inducted as a tenant by Defendant No. 2 and a Rent Agreement was executed. Plaintiff placed on record electricity bills dated 05.06.2013, 29.06.2013 and 30.04.2014, which are Ex.PW-1/1 (colly.). Plaintiff also placed on record certified copies of the petition and order-sheets before the ARC, where an eviction petition was filed against him by Ms. Khatoon on 17.07.2013. The last electricity bill is dated 30.04.2014, which is two months prior to the institution of the eviction proceedings. Besides the said document, as rightly noted by the Trial Court, nothing has been placed on record by the Plaintiff to establish either his settled possession prior to the institution of the suit or forced dispossession within six months prior to the suit and was, therefore, unable to discharge the initial burden under Section 101 of the Indian Evidence Act, 1872. According to Section 101, whoever desires any Court to give judgment as to any legal right or liability dependent on existence of facts which he asserts, must prove that those facts exist.

15. Plaintiff did not implead Ms. Khatoon, as a party to the suit, although it was at her instance the eviction petition was filed. Plaintiff

examined PW-2, who was summoned from the Election Office, to prove the Voter ID Card of the Plaintiff, however, the summoned witness deposed that the record being old could not be traced. Therefore, the Plaintiff was unable to place any material on record to show that he was in settled possession of the suit property upto a date which fell within the last six months of the institution of the suit. In fact, in the plaint, it is not even spelt out as to on what exact date, Plaintiff was dispossessed from the suit property. Therefore, going by the electricity bills which were the only piece of evidence on record to show possession of the suit property, at the highest, Plaintiff was in possession upto 30.04.2014. The cause of action, if any, arose on 01.05.2014 and the suit was filed on 22.08.2015 and was thus beyond the period of limitation of six months prescribed under Section 6(2)(a) of the Act. No infirmity can therefore be found with the impugned judgment on this score.

16. Revision Petition is accordingly dismissed along with the pending application, being devoid of merit.

JYOTI SINGH, J

FEBRUARY 13, 2023/shivam