



2024: DHC: 3777



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

JUDGMENT RESERVED ON: 03.04.2024

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JUDGEMENT PRONOUNCED ON:08.05.2024

+ CS(OS) 223/2021, I.A. 17318/2023

SHRI HARDEEP SINGH SAFRI Plaintiff

Through: Mr. Kundan Mishra, Adv.
(VC) with Mr. Awnish
Kumar, Mr. Rajiv Ranjan,
Mr. Jitendra Kumar, Advs.

Versus

SHRI MANAV BAJAJ Defendant

Through: Mr. Tarang Gupta, Mr.
Kartikeya Sharma, Advs.

+ CS(OS) 643/2021, I.A. 15839/2021

SHRI HARDEEP SINGH SAFRI Plaintiff

Through: Mr. Kundan Mishra, Adv.
(VC) with Mr. Awnish
Kumar, Mr. Rajiv Ranjan,
Mr. Jitendra Kumar, Advs.

Versus

SARDAR GURDYAL SINGH Defendant

Through: Mr. Tarang Gupta, Mr.
Kartikeya Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

JUDGMENT



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DINESH KUMAR SHARMA, J:

I.A. 17325/2023 in CS(OS) 223/2021

I.A. 15840/2021 in CS(OS) 643/2021

1. The present applications have been filed on behalf of the plaintiff under Order XXXIX Rule 10 read with Order XVA read with Section 151 of CPC, 1908 praying therein that the defendants who are in illegal and unauthorized occupation of the premises be directed to pay / deposit the sum of Rs. 54,574/- per month in the Court as use and occupational charges for the suit property.
2. The averments, in brief, are that the present suit filed by the plaintiff for possession, damages, mandatory and permanent injunction in respect of the suit property i.e. being the area admeasuring 14'.6"x 58' in the property bearing no. 76, M.M. Road, Motia Khan Dump Scheme, Jhandewalan, New Delhi-110055 and the area admeasuring 483.33 sq. yds. in the above said property.
3. Learned counsel for the plaintiff has submitted that in CS No 281/2004 bearing title *Shri Manav Bajaj and others v Sardar Mehal Singh and others* the learned court of Additional District Judge vide order dated 02.01.2010 has declared the defendant as illegal and unauthorised occupants. It has further been submitted that the defendants are enjoying the property without paying any charges and the plaintiff has legal and equitable right for realization use and occupation charges for the said property.
4. Learned counsel for the plaintiff has submitted that there is a report of certified Chartered Engineer & Approved Valuer. The Chartered



Engineer & Approved Valuer after taking into account all the attended circumstances has assessed the user charges as Rs. 54,574/- per month.

5. The defendant in its reply has denied all the averments made in the application and has submitted that the application is liable to be dismissed as earlier I.A. 5586/2021 on the same cause of action was disposed of as withdrawn without granting any liberty.
6. Plaintiff has claimed that there exists a relationship of landlord and tenant between the parties. It has been submitted that the defendant was inducted as a tenant by the late Sardar Dal Singh at a monthly rent of Rs. 350/- per month. The defendant submits that there are ample number of documents showing the possession of the defendant since 1977. It has further been submitted that an appeal against the order of the learned Additional District Judge in CS 281/2004 is pending for consideration before this court and in RFA 409/2010.
7. It has been submitted that the plaintiff cannot place any reliance upon the said judgment of the said suit. The defendant submitted that they are willing to deposit the rent at Rs. 350/- per month. The report of the certified valuer has also been denied as being a self-serving document. It has been submitted that there is no independent document to show the user and occupation charges.
8. In the rejoinder, the plaintiff has submitted that the defendant is not denying its possession over the suit premises. It has been submitted that the possession has already been held to be illegal in CS 281/2004 and therefore the defendant is liable to take the payment of



user charges. It has been submitted that the report of the certified valuer cannot be rest aside. Learned counsel submitted that after the judgment of learned Additional District Judge in CS 281/2004 any plea regarding the tenancy is baseless and liable to be rejected out rightly.

9. Learned counsel submits that all the pleas raised by the defendant has already been considered and rejected by the learned Additional District Judge. It has been submitted that in RFA 409/2010 the only protection granted to the defendant is that they shall not be dispossessed without due procedure of law.
10. Learned counsel for the plaintiff submitted that though the provision under Order XVA has not been mentioned. However, the pleadings meet the spirit of the said provision. Learned counsel submitted that the property is of very high value situated in the heart of the city.
11. It has further been submitted that the title of the plaintiff cannot be disputed by the defendant in view of the unassailable material on record and the judgment of the civil court in CS 281/2004. It has been submitted that since the defendants are unauthorised and illegal occupants, they are liable to make the payment of user and occupation charges.
12. Learned counsel for the defendant submits that there exist relationship of landlord and tenant and the same was admitted by the father of the plaintiff late Sardar Mahal Singh in his written statement filed in Suit No. 464/1998 titled as '*S. Tehal Singh v. S. Mehal Singh & Ors.*'. It has further been submitted that Sh. Surjeet Singh nephew of late Sardar Mahal Singh used to collect the rent. It



has been submitted that on account of judicial admission of the father of the plaintiff, the same is binding upon the same. Reliance has been placed upon *Naginadas Ramdas vs. Dalpatram Icharam*, 1974 1 SCC 242.

13. Learned counsel also submitted that the father of the plaintiff also admitted the defendant to be their tenant in their legal notice dated 06.12.1991 which was duly responded by reply dated 23.12.1991.
14. Learned counsel for the defendant also submitted that there are documents to show the possession of the defendant in the suit property dating back to 1977. Learned counsel submitted that the plaintiff has made false and frivolous averments in the present suit contrary to the plaintiff's father's suit No. 464/1998.
15. Learned counsel for the defendant submitted that since there exists a relationship of landlord and tenant the defendant can only be directed to pay the rental amount at the rate of Rs. 350/- per month. Reliance has been placed upon *Raghubir Rai vs. Prem Lata* (DB) 2014 SCC Online Del 3045.
16. Learned counsel also submitted that the plaintiff cannot place reliance upon the judgment in CS 281/2004 as the same has been challenged before this court and is pending for adjudication.
17. Learned counsel submits that the plaintiff has procured the evaluation report to justify its untenable claim of Rs. 54,574/- per month as use and occupational charges. Learned counsel submits that the valuation report has gone beyond the mere valuation and is even commented upon the relationship of the landlord and tenant



knowing fully well that the dispute was pending for adjudication before this court.

18. Admittedly, the plaintiff has filed the present application under Order 39 Rule 10 read with Order 15A with Section 151 CPC. Order 15A provides that if a suit has been filed by an owner/lessor for eviction of an unauthorised occupant/lessee or for the recovery of rent and future mean profit from him. The defendant shall deposit such amount as the court will direct on account of arrears up to the date of the order. The defendant shall further be obligated to continue in each succeeding month the rent claimed in the suit as the court may direct or till the decision of the suit unless otherwise directed. The non-compliance of such an order may result in the striking of the defense of the defendant. Thus any order passed under Order 39 Rule 10 may invite very serious consequences including striking of the defense of the defendant.
19. In the present case, admittedly, the question of the issue as to the status of the defendant in the suit property is pending for consideration before this court in RFA 409/2010. The learned Additional District Judge in CS 281/2004 has held the defendant to be the illegal occupant. However, the first appeal which is a matter of right is pending for consideration before this court.
20. I consider that till the issue is decided by this court in RFA 409/2010, any order in the present application may prejudice either of the parties. The documents as raised by the defendant claiming its tenancy are pending scrutiny before the first Appellate Court. The evidence in the present case is also yet to be recorded. Therefore, in



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the interest of justice, the present applications are disposed of with a direction to await the decision of the Court in RFA No.409/2010. However, the plaintiff shall be at liberty to take appropriate legal steps in RFA No. 409/2010.

MAY 08, 2024/AR/HT

DINESH KUMAR SHARMA, J