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

% *Date of Decision: 13th January, 2025*

+ **C.R.P. 211/2024 & CM APPL. 39499/2024**

SHAUKAT ALIPetitioner

Through: Mr. V.K. Mishra, Adv.

versus

SMT. KAILASH RANI
AND ORSRespondents

Through: Mr. G.S. Yadav &
Mr. Siddharth Tripathi,
Adv.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
13.01.2025

1. The petitioner challenges the order dated 21.05.2024 (hereafter '**impugned order**') passed by the learned Civil Judge, Tis Hazari Courts, Delhi, pursuant to which the application filed by the respondent under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('**CPC**') was allowed and the suit filed by the petitioner under Section 6 of the Specific Relief Act, 1963, was rejected.

2. The petitioner had filed a suit bearing No. CS SCJ 898/2024, for possession of the premises bearing No. 5657/10, Gali Hanuman Mandir, Nabi Karim, Swami Ram Tirath Nagar,



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Delhi-110055 (hereafter ‘**the suit premises**’), claiming that he was inducted as a tenant in the month of January, 1982.

3. It is claimed that the suit premises were let out for commercial purposes by the predecessor-in-interest of the respondents, namely Sh. Somnath.

4. After the death of Sh. Somnath, Respondent No. 1 had been collecting the rent of the premises from the petitioner, on behalf of the legal heirs of Sh. Somnath.

5. In the plaint, it is stated that Respondent No. 1 had sent a legal notice dated 08.06.2022 to vacate and hand over the peaceful possession of the suit premises and also to clear the arrears of rent.

6. It is claimed that the respondents have not been allowing the petitioner to use the suit premises, which has also led to filing of the complaint at Police Station- Nabi Karim, however, no action was taken by the Police.

7. The petitioners pleaded that on 27.03.2023, the respondents started throwing the petitioner’s material on the road and were successful in putting two locks on the gate of the suit premises.

8. The petitioner claimed that he had also put one lock on the gate along with the two locks hanging in the handles of the gate.

9. The petitioner, had earlier, filed a suit for permanent and mandatory injunction bearing No.804/2023, before the Senior Civil Judge, Central District, Tis Hazari Courts, Delhi, praying for a decree of permanent injunction thereby restraining the respondents from interfering into the peaceful use, occupation and enjoyment of the petitioner’s possession of the suit premises.



He also prayed that the respondents be directed to remove the locks put over the gate of the suit premises.

10. While the said suit was pending, the petitioner filed the subject suit No. CS SCJ 898/2024 on 03.05.2024, praying for a decree of possession. In regard to the cause of action it was pleaded as under:

“22. That the cause of action arose in favour of the Plaintiff and against the Defendants firstly on the date when the Plaintiff was inducted as a tenant in the suit premises. The cause of action further arose on 08.06.2022, when the legal notice was sent to the Plaintiff by the Defendant No.1 and reply thereto was sent by the Plaintiff to the Defendants No. 1 vide reply dated 08.07.2022. The cause of action further arose on 15.02.2023, when a complaint was sent by the Plaintiff to the S.H.O., P.S. Nabi Karim against the illegal activities of pouring water and garbage etc. by the Defendants in the suit premises. The cause of action further arose on 27.03.2023, when the Defendants tried to illegally dispossess the Plaintiff from the suit premises. It again accrued on 10.04.2023, when a complaint against the said illegal action of attempt to dispossess the Plaintiff was sent to the ACP Paharganj and S.H.O. P.S. Nabi Karim, but no action was taken upon the same. The cause of action further arose on 26.04.2024, when the Defendants broke open the locks of the Plaintiff put upon the door of the suit premises and removed the entire goods and articles lying over there and took over the forceful possession of the tenanted premises from the Plaintiff. The cause of action further arose on 29.04.2024, when the Plaintiff made written complaints to the Commissioner of Delhi Police, Dy. Commissioner of Delhi Police and SHO, P.S. Nabi Karim, but no action has been taken by them till date. The cause of action continues to accrue against the Defendants as long as the possession of the premises is not handed to the Plaintiff and his material is not returned by the Defendants to him.”

11. The respondents, thereafter, filed an application under Order VII Rule 11 of the CPC, seeking dismissal of the suit on the ground that the same has been filed beyond a period of six months from the alleged date of dispossession and, therefore, is



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not maintainable under Section 6 of the Specific Relief Act, 1963.

12. The learned Trial Court, by the impugned order, allowed the application filed by the respondents and rejected the plaint, holding that the same is filed beyond the period of six months from the date of dispossession which would be taken as 27.03.2023.

13. The learned counsel for the petitioner submits that while deciding the application under Order VII Rule 11 of the CPC, the averments made in the plaint are to be taken on a demurrer. He submits that the issue of limitation is a disputed question of fact and can only be decided after the evidence is led by the parties.

14. He submits that the plaintiff had categorically pleaded that it is only on 26.04.2024, when the notice of the application filed by the petitioner / plaintiff in CS No. 804/2023, seeking appointment of Local Commissioner, was served upon the respondents when they removed the lock which was put by the petitioner on the gate of the suit premises, and therefore the date of dispossession be taken as 26.04.2024.

15. He submits that prior to the said date, the petitioner was in possession of the property since he had put his lock on the gate of the suit premises.

16. *Per Contra*, the learned counsel for the respondents submits that the petitioner had vacated the premises after the receipt of the legal notice dated 08.06.2022. He submits that frivolous suit was filed by the petitioner only to harass the respondents and extract illegal money out of them.



17. He submits that it is the petitioner's own admitted position that after 27.03.2023, he was not in a position to use the suit premises since the locks had been put by the respondents.

ANALYSIS

18. The subject suit No. CS SCJ 898/2024 was filed by the petitioner under Section 6 of the Specific Relief Act, 1963, which 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 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.”

19. It is well settled that in order to succeed in a suit under the said provision, the plaintiff must establish that he was in possession of the suit premises, six months prior to the institution of the suit.

20. In ***Sanjay Kumar Pandey v. Gulbahar Sheikh, (2004) 4 SCC 664***, the Hon'ble Apex Court discussed the scope of the above-mentioned provision while dealing with an appeal filed by the plaintiffs/ appellants, against the judgement passed by the High Court in a revision petition dismissing the suit, as under:

“4. A suit under Section 6 of the Act is often called a summary suit inasmuch as the enquiry in the suit under



Section 6 is confined to finding out the possession and dispossession within a period of six months from the date of the institution of the suit ignoring the question of title. Sub-section (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this section. No review of any such order or decree is permitted. The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. Thus, as against a decision under Section 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the Act except on a case for interference being made out within the well-settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code.”

21. In ***Kishore v. Sarang***, 2011 SCC OnLine Bom 1013, the Hon’ble Court while dealing with the issue of the nature of possession in terms of Section 6 of the Specific Relief Act, 1963, dismissed a revision petition application filed by the defendant in the suit, on the ground that the possession must be exclusive and continuous. The relevant portion of the judgement reads as under:

“6.Shri M.P. Khajanchi, the learned Counsel appearing for the applicant/defendant, has relied upon two judgments, reported in (1) Mahabir Prasad Jain v. Ganga Singh, (1999) 8 SCC 274, to urge that for the purposes of considering the plea of limitation in a suit under section 6 of the Specific Reliefs Act, it is necessary to consider the question whether the plaintiff was in exclusive possession as claimed by him, (2) Tajul Islam v. Shariyatullah Mansoorali Sheikh, 1994 Mh.L.J. 1191, for the proposition that the plaintiff must prove the “previous possession” and “wrongful dispossession”.

7.The propositions laid down in both the judgments cannot be disputed. The questions involved in this case are whether the plaintiff was in continuous possession of the suit property till the date of dispossession and whether the suit



was filed within a six months from the date of dispossession. These are the questions of facts and required to be established and it depends upon the facts circumstances of each case. Here, the findings on these questions are recorded in the affirmative. Hence, the judgments cited are not applicable.”

(emphasis supplied)

22. A bare perusal of the impugned order reveals that since the goods of the petitioner/ plaintiff were removed from the suit premises and locks were put by the respondents/ defendants on 27.03.2023, the same is taken to be the date of dispossession.

23. Even as per the Complaint dated 10.04.2023 and 29.04.2024 to the Police, the suit for permanent and mandatory injunction and the suit for possession filed by the petitioner, it is the petitioner’s admitted position that on 27.03.2023, the belongings of the petitioner/ plaintiff were removed from the suit premises and locks were put by the respondents/ defendants.

24. The Hon’ble Apex Court in *M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das: (2020) 1 SCC 1*, while discussing the requirement of long, uninterrupted and peaceful enjoyment of an incorporeal right for the applicability of the doctrine of lost grant, described the general interpretation of the term ‘possession’, which reads as under:

“312. In *Supt. and Remembrancer of Legal Affairs v. Anil Kumar Bhunja [Supt. and Remembrancer of Legal Affairs v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038]*, this Court observed that “possession is a polymorphous term” and, therefore, it was not possible to ascribe a meaning which would apply in every context. Drawing sustenance from Salmond's Jurisprudence, the Court noted that possession implies a right and a fact; the right to enjoy annexed to the right to property and the fact of the real intention. Possession as a concept comprehends “corpus possessionis and animus possidendi”. The former embraces the power to use the thing in possession and the



existence of a ground of expectation that the use of the possession shall not be interfered with. The latter postulates the intent to appropriate to oneself the exclusive use of the thing which is possessed.”

(emphasis supplied)

25. From the facts mentioned above, it is apparent that the petitioner/ plaintiff lost the possession of the suit premises, admittedly on 27.03.2023, as on the said date, he lost the peaceful use, occupation and enjoyment of the suit premises and therefore was not in possession of the same. The subject suit No. CS SCJ 898/2024 for possession was filed by the petitioner/ plaintiff on 03.05.2024, which is well beyond the six months period prescribed under Section 6 of the Specific Relief Act, 1963.

26. The petitioner has failed to prove filing of the suit within the limitation period as provided under the provision invoked by him before the learned Civil Judge in Suit No. CS SCJ 898/2024. The learned Civil Judge has rightly formed an opinion that the date of dispossession will be taken as 27.03.2023, and there is no infirmity in the impugned order.

27. As held in *Sanjay Kumar Pandey v. Gulbahar Sheikh (Supra)*, the scope of revisional jurisdiction of the High Court, under Section 115 of the CPC remains restricted to cases wherein there is an irregularity in the order of the Trial Court, and is limited to the purpose of correcting jurisdictional error committed by the Trial Court. The High Court cannot interfere with the factual findings of a Trial Court apart from exceptional cases.



28. This Court in ***Raj Aggarwal v. Shashi Jain, 2017 SCC OnLine Del 9224***, while dealing with a similar petition under Section 115 of the CPC against the decree of dismissal of a suit under Section 6 of the Specific Relief Act, 1963, held as under:

“16.Though Revision Petition under Section 115 lies, but before this Court entertains Revision Petition against an order under Section 6 of the Specific Relief Act, a ground different from that of appeal is to be made out for exercise of revisional jurisdiction. This Court cannot re-appreciate any evidence led before the Trial Court. In fact Courts have held that the High Court will generally not interfere in revision as the proper remedy is to institute a regular suit for declaration of title and possession. Only in extreme cases where the High Court finds grave injustice to have been done or where there has been no trial at all or where the decision is vitiated by error of law and the like, has the remedy of revision against an order or decree under Section 6 of Specific Relief Act, 1963 been held to be maintainable. In the facts of the present case when the petitioners/plaintiffs were admittedly for about 20 years prior to the institution of the suit not in use of the premises, the question of any injustice lest grave having been caused to the petitioners/plaintiffs does not arise.

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18.For the suit under Section 6 of the Specific Relief Act to succeed, it is essential for a plaintiff to prove that the plaintiff, within six months prior to the institution of the suit was in possession of the premises. Once the petitioners/plaintiffs failed to prove so, as has been rightly held by the learned Civil Judge on appreciation of the evidence, the issue no. 6 supra also ought to have been decided against the petitioners/plaintiffs and the suit ought to have been dismissed as barred by limitation.”

(emphasis supplied)

29. From a bare perusal of the present petition filed by the petitioner, it is evident that no new ground has been made therein. In view of the same, this Court finds no grounds to interfere with the impugned order under revision, passed by the learned Civil Judge in the subject suit No. CS SCJ 898/2024.



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30. The present petition is dismissed in the aforesaid terms.
31. Pending application(s) is disposed of.

AMIT MAHAJAN, J

JANUARY 13, 2025
"SS"