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

% Judgment delivered on: 05.08.2025

+ CS(COMM) 549/2021

VINAY KUMAR DATT

.....Plaintiff

Through: Mr. Sandeep Bajaj, Mr. Soayib
Qureshi and Mr. Rishabh Dua, Advs.

versus

SHRI SUDHIR SACHDEVA & ORS.

.....Defendants

Through: Mr. Hemant Chaudhri and Ms.
Ranjan Vyas, Advs.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

I.A. 15508/2022 (under Order XIII-A of the Commercial Courts Act and/or under Order VII Rule 11 read with Section 151 CPC for dismissal of the suit)

1. The present application has been filed by the defendants under Order XIII-A read with Order VII Rule 11 CPC.
2. The brief facts as noted from the amended plaint are that the plaintiff no.1 is a senior citizen and landlord of the property being 29, South Patel Nagar, New Delhi – 110008 [hereinafter, 'suit premises']. It is averred in the plaint that father of the plaintiff no.1 had let out the suit premises to late Trilok Nath Sachdeva and Surendra Kumar Sachdeva *vide* lease agreement dated 10.12.1968 on a monthly rent of Rs.1450/-.
3. It is further averred that the said premises was let out for the purpose of running a college. It is the case of the plaintiffs that since May 2020 the



defendant no.1 has failed to pay the rent. Thus, the arrears of rent as on date of filing of the present suit comes to Rs.14,99,994/-.

4. It is stated that when the suit premises was let out to the defendants, it was without unauthorized construction, encroachment and alteration. However, the defendants have altered the suit premises without intimation to the plaintiffs. Resultantly, L&DO had marked and recorded the misuse/unauthorized construction and claimed dues payable from the plaintiffs.

5. In order to save the suit premises, the plaintiffs cleared the outstanding dues payable to L&DO to the tune of Rs.1,17,93,538/-. Therefore, it is averred that the defendants are liable to pay the said charges to the plaintiffs.

6. It is because of the aforesaid disputes which have arisen between the plaintiffs and the defendants, the plaintiffs have filed the present suit seeking eviction and possession of the suit premises; arrears of rent amounting to Rs.14,99,994/-; amount of Rs.1,17,93,538/- towards unpaid L&DO charges; permanent injunction restraining the defendants from creating any third party interest in the suit premises and *mesne profits* @ Rs.10,000/- per day towards unauthorized occupation by the defendants *qua* the suit premises, or in the alternative direction to the defendants to pay enhanced rent @ Rs. 4,00,000/-per month.

7. During pendency of the present suit, the defendants have filed the present application seeking following reliefs:

“a. Pass a summary judgment in favour of the Defendants and against



the Plaintiffs thereby dismissing the suit; and / or

b. Pass a judgment thereby rejecting the Plaint as being barred under law.”

8. As set out in the application, the defendants have stated the following facts to show that the plaintiffs have no real prospect of succeeding on the claim made in the suit:

- i. The plaintiffs have not paid the requisite court fee and not properly valued the suit;
- ii. There is no valuation of the suit for the purpose of possession and eviction;
- iii. The dispute does not come within the definition of commercial dispute as contemplated under Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 [hereinafter, ‘the Act’];
- iv. Suit is liable to be dismissed being barred under the provisions of Delhi Rent Control Act, 1958 [hereinafter, ‘DRC Act’];
- v. Entire amended plaint contains vague and legally untenable pleadings and lacks material particulars; and
- vi. In para 25 of the amended plaint, though the plaintiffs assert that they have given details of amount recoverable from the defendants in Schedule A attached to the plaint, however, in the entire pleadings and documents supplied by the plaintiffs, the defendants have not come across any such Schedule, therefore, the amount claimed is not ascertainable as required under Order VII Rule 2 CPC.

9. Mr. Hemant Chaudhri, learned counsel appearing on behalf of the defendants submits that as per the provision of Section 7 of the Courts-Fees Act, 1870 [hereinafter ‘Court-Fees Act’] the value of the relief for the purpose of recovery of possession from a tenant is the amount of rent of the immovable property to which the suit refers payable for the year next before



the date of presenting the plaint. In the present case, no valuation for the purpose of possession and eviction has been stated in the amended plaint. Accordingly, no court fee has been paid thereupon.

10. He submits that the dispute involved is not a commercial dispute as the suit premises was a residential property at the time it was let out and it is the case of the plaintiffs themselves that a portion of the suit property is being occupied by the family members of the plaintiffs for their residence and the plaintiffs also wish to reside in the suit premises alongwith their family members. Reliance in this regard has been placed on decision of this Court in ***Soni Dave & Ors. v. Trans Asian Industries Expositions Pvt. Ltd., AIR 2016 Delhi 186.***

11. He further places reliance on decision of the High Court of Calcutta in ***Sri Sandip Bazaz HUF v. Armstrong Investment Private Limited, C.O. No. 765/2021***, to contend that the disputes arising out of refusal to comply with Section 106 of the Transfer of Property Act, 1882 [hereinafter, 'Act of 1882'] do not come under the purview of the Act. He submits that the said decision of High Court of Calcutta was challenged by one of the respondents therein by preferring ***SLP (C) No. 11418/2021*** titled as ***Armstrong Investment Private Limited v. Sri Sandip Bazaz HUF***, which was eventually withdrawn, therefore, the view of High Court of Calcutta has remained undisturbed.

12. He submits that as averred in the plaint, the suit premises had been initially let out at a monthly rent of Rs.1450/-, which as per the plaintiffs, was enhanced to Rs.2000/- per month in the year 1990. There is no written



agreement, document or any other proof to substantiate the assertion of the plaintiffs that the current rent of the suit premises is Rs.1,66,666/- per month, therefore, tenancy of the defendant no.1 is protected under the provisions of DRC Act, and the suit is liable to be dismissed.

13. He submits that the entire amended plaint contains vague and untenable pleadings and also lacks material particulars because of the following reasons:

- i. In paras 1 and 2A of the amended plaint, the plaintiffs have asserted that the plaintiff no. 1 is the landlord of the suit premises and the same had been let out to the defendant no.1 for the purpose of running the college, whereas, in para 9 of the plaint, the plaintiffs assert that what had been let out to the defendants was 4 bedrooms, 1 dinning and drawing hall, basement, kitchen, pantry, 3 WC's and bath, combined *verandah* on front and back excluding garage and annexe;
- ii. In paras 10 and 11 of the plaint, the plaintiffs have averred that the defendants have altered the suit premises and committed misuse / unauthorized construction / encroachment on the government land. However, no specification of the alleged misuse / unauthorized constructions / encroachment has been given;
- iii. There is no specification as to how much and which portion/floor of the suit premises is under the occupation of the defendants;

14. *Per contra*, Mr. Sandeep Bajaj, learned counsel appearing on behalf of plaintiffs submits that the defendants have failed to establish that their



case falls within either Order XIII-A CPC for passing of summary judgment or under Order VII Rule 11 CPC.

15. He submits that the plaintiffs have valued the reliefs properly and have paid the requisite court fee with respect to prayer (i) and (ii), which is for eviction and possession.

16. He submits that the present dispute is a commercial dispute and comes within the meaning of Section 2(1)(c)(vii) of the Act, inasmuch as, the suit premises is admittedly being used by the defendants for running a college, which demonstrates that the premises is being used for commercial exploitation. He submits that only test which is required to be satisfied is whether the immovable property is being utilized for the purposes of trade or commerce. He further submits that it is not the case of defendants that the suit premises has not been put to commercial use, rather from the time of its possession, the defendants have used the suit premises for commercial use. This is clear from the contents of the lease agreement dated 10.12.1968 which states that the suit premises would be used for the purpose of running a college and publication. Thus, the suit premises is admittedly being used to run a college.

17. In respect of defendants/applicants' submission that the suit is barred under the provisions of DRC Act, Mr. Bajaj submits that rent of the premises admittedly exceeds the upper limit set forth for applicability of said Act. He invites attention of the Court to an order dated 21.09.2022 passed in this case, where defendants' counsel has admitted that the rent being paid by the defendants to the plaintiff was to the tune of Rs. 1,66,666/-. He submits



that the bank statements and the TDS certificates which have been placed on record as additional documents by the plaintiffs clearly reflects that the defendants had been paying rent until April, 2020.

18. He submits that the plaintiffs have relied upon L&DO report which clearly specifies the location and details of the illegal alterations / unauthorized construction on the suit premises. Further, it is submitted that the lease deed clearly states that only the ground floor of the suit premises was leased out to the defendants, whereas the family members of the plaintiffs were residing on the first floor. Therefore, it is clearly evident from the lease deed about the details of the portion of the ground floor which was under the occupation of the defendants for which the plaintiffs are seeking a decree of eviction and possession. Further, from the site plan filed with the plaint, it is evident that the suit premises is the ground floor of the property. He thus, contends that there are valid and substantial pleadings in the plaint along with evidence to support the case of the plaintiffs with a real prospect of successfully defending the objections.

19. I have heard the learned counsel for the parties and gone through material on record.

20. There is an apparent contradiction in the application. On one hand, the applicants/defendants are praying for summary judgment in terms of Order XIII-A CPC, as applicable to the commercial disputes, whereas on the other hand, an objection has been taken that the dispute which is subject matter of the suit is not a 'commercial dispute' within the meaning of Section 2(1)(c)(vii) of the Act. Therefore, to resolve the conundrum, at the outset it



would be apposite to deal with the controversy as to whether the dispute involved in the present suit is a commercial dispute or not.

21. In support of the contention that the dispute involved in the present suit is not a ‘commercial dispute’, the applicants / defendants have placed reliance on the decision of this Court in ***Soni Dave and Ors.***¹ (supra). A Coordinate Bench of this Court in the said decision has observed that where property’s prescribed user as per law is residential even if it is let out for use exclusively in trade or commerce, or when without being so let out, it is used exclusively in trade or commerce, the same would still not qualify as an immovable property used exclusively in trade or commerce within the meaning of Section 2(1)(c)(vii) of the Act. The reasoning given by the Court behind such an observation was that the legislature could not have intended to bring disputes arising out of the transaction relating to immoveable property illegally used exclusively in trade or commerce, within the ambit of commercial disputes.

22. Notably, the Division Bench of this Court in a subsequent decision in ***Jagmohan Behl vs. State Bank of Indore, 2017 SCC OnLine Del 10706***², while interpreting Section 2(1)(c)(vii) of the Act, held that immoveable property must be used exclusively for trade or business and it is not material whether renting of immoveable property was the trade or business activity carried on by the landlord. Use of the property as for trade and business is determinative. The relevant excerpts from the decision reads thus:

¹ Decided on 19.07.2016.

² Decided on 22.09.2017.



*“11. Clause (c) defines the “commercial dispute” in the Act to mean a dispute arising out of different sub-clauses. The expression “arising out of” in the context of clause (vii) refers to an agreement in relation to an immoveable property. The expressions “arising out of” and “in relation to immoveable property”¹ have to be given their natural and general contours. These are wide and expansive expressions and are not to be given a narrow and restricted meaning. **The expressions would include all matters relating to all agreements in connection with immoveable properties. The immoveable property should form the dominant purpose of the agreement out of which the dispute arises. There is another significant stipulation in clause (vii) relating to immoveable property, i.e., the property should be used exclusively in trade or commerce. The natural and grammatical meaning of clause (vii) is that all disputes arising out of agreements relating to immoveable property when the immoveable property is exclusively used for trade and commerce would qualify as a commercial dispute. The immoveable property must be used exclusively for trade or business and it is not material whether renting of immoveable property was the trade or business activity carried on by the landlord. Use of the property as for trade and business is determinative. Properties which are not exclusively used for trade or commerce would be excluded.***

*12. **The explanation stipulates that a commercial dispute shall not cease to be a commercial dispute merely because it involves recovery of immoveable property, or is for realisation of money out of immoveable property given as security or involves any other relief pertaining to immoveable property, and would be a commercial dispute as defined in sub-clause (vii) to clause (c). The expression “shall not cease”, it could be asserted, has been used so as to not unnecessarily expand the ambit and scope of sub-clause (vii) to clause (c), albeit it is a clarificatory in nature. The expression seeks to clarify that the immoveable property should be exclusively used in trade or commerce, and when the said condition is satisfied, disputes arising out of agreements relating to immoveable property involving action for recovery of***



immovable property, realization of money out of immovable property given as security or any other relief pertaining to immovable property would be a commercial dispute. The expression “any other relief pertaining to immovable property” is significant and wide. The contours are broad and should not be made otiose while reading the explanation and sub-clause (vii) to clause (c) which defines the expression “commercial dispute”. Any other interpretation would make the expression “any other relief pertaining to immovable property” exclusively used in trade or commerce as nugatory and redundant.

13. Harmonious reading of the explanation with sub-clause (vii) to clause (c) would include all disputes arising out of agreements relating to immovable property when used exclusively for trade and commerce, be it an action for recovery of immovable property or realization of money given in the form of security or any other relief pertaining to immovable property.

14. In the context of the present case, it is not disputed that the immovable property was being used exclusively in trade and commerce. The said issue does not arise for consideration.”

(emphasis supplied)

23. Thereafter, Hon’ble Supreme Court in ***Ambalal Sarabhai Enterprises Ltd. vs. K. S. Infraspace LLP and Anr.***, (2020) 15 SCC 585, in unequivocal terms held as under:

“37. A dispute relating to immovable property per se may not be a commercial dispute. But it becomes a commercial dispute, if it falls under sub-clause (vii) of Section 2(1)(c) of the Act viz. “the agreements relating to immovable property used exclusively in trade or commerce”. The words “used exclusively in trade or commerce” are to be interpreted purposefully. The word “used” denotes “actually used” and it cannot be either “ready for use” or “likely to be used” or “to be used”. It should be “actually used”. Such a wide interpretation would defeat the objects of the Act and the fast tracking procedure discussed above.”



(emphasis supplied)

24. Reference in this regard may advantageously be had to yet another decision of a Division Bench of this Court in ***Brij Mohan Sarna v. Sushma Chawla***, 2023 SCC OnLine Del 5718, wherein it was observed that the nature of property, whether residential or commercial, is not relevant for deciding that the dispute fall within the definition of “commercial dispute”. For the purpose of determining whether the dispute falls within the definition of Section 2(1)(c)(vii) of the Act, the requirement is that the immoveable property is exclusively used in trade or commerce. The relevant portion of the decision reads as under:

“5. Mr. Dutt, on the issue that the suit is not a commercial suit as the suit property is a residential property, and even otherwise even if the suit property is situated in a mixed land use, without there being conversion charges, the nature of property continues to be residential, and usage according to the respondent is commercial still the same being a contrary law, shall not fall within the definition of “Commercial dispute” defined under Section 2 (1) (c) (vii) of Commercial Courts Act, 2015 (‘The Act of 2015’, for short). In support of this submission, Mr. Dutt has relied upon the judgment in the case of Mrs. Soni Dave v. Trans Asian Industries Expositions Pvt. Ltd., 2016 SCC OnLine Del 4282.

6. We are not impressed by the said submission of Mr. Dutt for the reason that, Section 2 (1) (c) (vii) clearly contemplates that, commercial dispute means a dispute arising out of agreement relating to immovable property being used exclusively in trade or commerce. The finding of the Commercial Court, in this regard is in paragraph 9 of the impugned order, which we reproduce as under:—

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7. For the purpose of determining whether the dispute falls within the definition of Section 2 (1) (c) (vii) of the Act of 2015, the requirement is that the immoveable property is exclusively used in trade or commerce. The relevant evidence placed on record; do indicate that the suit property is exclusively being used for commercial purpose, as the appellant is running a shop in the name and style of M/s. Pawan Motors. No evidence has been placed by the appellant to show otherwise.”

(emphasis supplied)

25. Likewise, a co-ordinate bench of this Court in ***Jairaj Developers LLP through its partner Mr. Ankur Arora v. Mrs. Fauzia Sultana & Anr.***, [Date of Decision 08.02.2023 in CS(COMM) 543/2020], held that the fact whether the immoveable property is used or utilized for the purposes of trade or commerce would be the correct test to apply while answering the question whether the dispute is a ‘commercial dispute’. The relevant excerpts from the decision are as under:

“6. Both Bucon and Toshiaki hold that Section 2(1)(c)(vii) cannot be conferred a restricted meaning and merely because an immoveable property may form subject matter of a suit, that in itself would not be sufficient to hold that it does not relate to a commercial dispute. As was noted in those decisions, if clause (vii) were to be interpreted otherwise, it would remove from its ambit disputes that may arise from large scale construction contracts or development projects that may be undertaken over immoveable property. What needs to be emphasized is that the test of whether the subject matter of a suit constitutes a commercial dispute cannot be answered in the negative merely because the immoveable property is residential, a submission which was advanced by learned counsel for the petitioner. It must also be borne in mind that clause (vii) reads as “agreements relating to immoveable property used exclusively in trade or commerce.” It is thus manifest that disputes arising out of agreements relating to



immovable property are not per se excluded from the ambit of the 2015 Act. In the considered opinion of this Court, the fact whether the immovable property is used or utilized for the purposes of trade or commerce would be the correct test to apply while answering the question whether the suit falls within the scope of clause (vii). The Court would thus be called upon to consider whether the dispute pertains to immovable property which is used for commercial or trade purposes.”

(emphasis supplied)

26. In view of the above enunciation of law, it is no more *res integra* that it is the actual user, rather legally permissible user, of immovable property which will be the determining factor for ascertaining whether it is a commercial dispute or not.

27. A conjoint reading of plaint and written statement suggests that the suit premises was let out for commercial purpose, and even at the time of filing of present suit, it was being used by defendants for the purpose of running the college. In the plaint, plaintiffs have averred to the effect that defendant no.1 to the knowledge of the plaintiffs is running a college at the suit premises through defendant nos. 2 and 3. Likewise, defendants in their written statement have also taken a categorical stand that the suit premises was given by the plaintiffs to the defendants for running a college to impart coaching to students aspiring to clear various competitive examinations. Moreover, the resolution filed by the defendants with the written statement to institute or defend the suit, is on the letter head of defendant no.3 i.e. Sachdeva College Limited, which fortifies the position that the suit premises was being used for commercial purpose.



28. Besides that, defendants in unequivocal terms have stated in the written statement that suit premises which is situated on the main road has already been declared as mixed land use/commercial road.

29. The relevant excerpts from the written statement are reproduced herein-below for ready reference:

“8. That the correct facts of the case are as under:

*i. That a portion of the suit premises i.e. property bearing No.29, South Patel Nagar, New Delhi **had been let out** by the father of the Plaintiff No.1 to the predecessors in interest of the Defendant No.1 at a monthly rent of Rs.1,450 **for running a College** by giving coaching to students aspiring to clear various competitive exams.*

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*iv. That the premises is situated on a Main Road around 60 meters wide and the entire Road has already been declared a mixed land use /commercial Road by the MCD (Municipal Corporation of Delhi) I Government Authorities and therefore there was no question of any penalty being levied for use of the suit premises for Commercial purposes. **In the immediate adjoining row of houses, various commercial buildings are legally operating. Earlier also the L&DO vide a notification office order had permitted running of teaching/ coaching classes in the suit premises. As such, running of the College for coaching classes, was permissible and could not be treated as a breach by the L&DO.**”*

(emphasis supplied)

30. The expression used by the defendants in the written statement that ‘entire road has already been declared as mixed land use/commercial road by the Municipal Corporation of Delhi/Government Authorities’ and ‘in the immediate adjoining row of houses, various commercial buildings are



legally operating’ indubitably suggests that even legally prescribed user of suit property was commercial at the time of filing of the suit.

31. The above discussion leaves no manner doubt that present is a case of ‘commercial dispute’ within the meaning of Section 2(1)(c)(vii) of the Act.

32. Reliance has been placed by Mr. Chaudhri on decision in **Sri Sandip Bazaz HUF** (supra). In the said decision the High Court of Calcutta has held that dispute arising out of refusal of lessee to comply with notice issued by lessor under Section 106 of the Act of 1882, does not have direct nexus with the lease agreements in respect of the immovable property, therefore, the precondition of the applicability of Section 2(1)(c)(vii) of the Act, that is, the emanation of the dispute is out of the lease agreement, is not satisfied.

33. The reliance placed on **Sri Sandip Bazaz HUF** (supra) is misplaced since the controversy in the present case arises out of a lease, which is not in dispute. The lease could either be oral or in writing. The expression ‘agreements’ in Section 2(1)(c)(vii) of the Act would also include oral agreements. Further, in **Jagmohan Behl** (supra), a Division Bench of this Court has held that explanation³ to Section 2(1)(c) of the Act stipulates that a commercial dispute shall not cease to be a commercial dispute merely because it involves recovery of immovable property. The Division Bench further observed as under:

³ Explanation.—A commercial dispute shall not cease to be a commercial dispute merely because—
(a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;
(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;



“13. Harmonious reading of the explanation with sub-clause (vii) to clause (c) would include all disputes arising out of agreements relating to immoveable property when used exclusively for trade and commerce, be it an action for recovery of immoveable property or realization of money given in the form of security or any other relief pertaining to immoveable property.”

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“18.... Noticeably, sub-clause (vii) to clause (c) in Section 2 of the Act does not qualify the word “agreements” as referring to only written agreements. It would include oral agreements as well. The provisions of the Transfer of Property Act deal with the effect of non-payment of rent, effect of holding over and most importantly the determination of the leases or their termination. It cannot be disputed that action for recovery of immoveable property would be covered under sub-clause (vii) to clause (c) when the immoveable property is exclusively used in trade or commerce.....”

(emphasis supplied)

34. Insofar as the defendants’ prayer for passing a summary judgment in their favour is concerned, the same is predicated on various grounds mentioned in para 2 of the application. However, such grounds as noted in para 8 above make amply clear that the same are, in fact, the grounds available for seeking rejection of plaint in terms of Order VII Rule 11 CPC, and not for seeking summary judgment. For passing a summary judgment the application must meet the twin test laid down in Order XIII-A Rule 3 of CPC which provides that the Court may give a summary judgment against the plaintiff or defendant on a claim if it considers that– (a) the plaintiff has no real prospect of succeeding on the claim or the defendant has no real



prospect of successfully defending the claim, as the case may be, and; (b) there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

35. The defendants in the application have though averred that the plaintiffs have no real prospect of succeeding on the claim for the reasons enumerated in para 2 of the application, but it has not been spelt out in the application that there is no other compelling reason why claim should not be disposed of before recording of oral evidence. Neither in the application nor during the course of arguments defendants have elaborated as to why the suit should be disposed of without recording of oral evidence, rather from the perusal of pleadings it appears that the disputed questions of fact are involved which give rise to issues like:

- (i) whether notice under Section 106 of Act of 1882 was validly served upon the defendants leading to determination of tenancy?
- (ii) whether the defendants are tenants or unauthorized occupants of the premises?
- (iii) whether the plaintiffs are entitled to *mesne* profit as prayed?
- (iv) whether the defendants have carried out any unauthorized construction in the suit property making them liable to pay damages as claimed by the plaintiffs?

36. All above issues in the considered opinion of this Court are triable and contentious for which recording of oral evidence is imperative. In that view of the matter, the prayer of applicants/defendants for passing of summary judgment is rejected.



37. Now coming to the prayer made by the applicants/defendants for rejection of plaint. One of the grounds pleaded for the same is that the averments made in the plaint are vague inasmuch as in the prayer seeking decree of possession, plaintiff has claimed possession of the entire property i.e. 29, South Patel Nagar, New Delhi, whereas in para 9 of the plaint, the averment made is that four bed rooms, one dinning and drawing hall, basement, kitchen, pantry, three WC's and bath, combined *verandah* on front and back, excluding garage and annexe were let out. Likewise, in para 26, it is asserted that some of the family members of plaintiffs are residing at first floor of the suit premises. Therefore, there is no specification as to which portion of the suit premises is under the occupation of the defendants for which the plaintiffs are seeking a decree of eviction and possession. To buttress this contention, Mr. Chaudhri has placed reliance on the decision of the Hon'ble Supreme Court in ***Mary Pushpam v. Telvi Curusumary and Ors.*, (2024) 3 SCC 224**, as well as decision of High Court of Madhya Pradesh in ***Laxman Singh v. Jagannath*, 1999 SCC OnLine MP 271** and of this Court in ***Saroj Salkan v. Huma Singh*, 2022 SCC OnLine Del 3788**.

38. Though it is true that in the plaint, the suit property has not been described in clear terms, however, if the averments made in the plaint are read in conjunction with the site plan as well as a copy of the lease deed which has been filed along with the plaint, it becomes luminously clear that the suit premises comprises of four bedrooms, one dining and drawing hall, basement, kitchen, pantry, three WCs and baths, combined *verandah* on front and back on the ground floor, excluding garage and annexe.



39. The law is well settled that all documents filed along with the plaint are part of the plaint. Reference in this regard may be had to the decision of this Court in ***K. K. Manchanda v. S.D. Technical Service (P) Ltd., 2009 SCC OnLine Del 1732*** wherein it was held “...that all annexures attached to the plaint or written statement become part of the pleadings. In order to bring on record the pleadings of a party in another case, it is not necessary that the annexures should have been exhibited or proved. A document filed by a party as a part of plaint can always be read against the party even if it is not proved.”

40. In the present case, it is not in dispute that the property in question has a municipal number. The only objection raised by the applicants/defendants is that property lacks material particulars. As noted above, the property can be clearly identified on the basis of the averments made in the plaint read with lease deed as well as site plan.

41. The decision in ***Mary Pushpam*** (supra) is not applicable to the facts of the present case. In the said decision, the property was not identifiable, and in this factual backdrop the Hon’ble Supreme Court observed that a suit for possession has to describe the property in question with accuracy, failing which the same is liable to be dismissed on the ground of its identifiability, but such is not the case here.

42. Likewise, decisions in ***Laxman Singh*** (supra) and ***Saroj Salkan*** (supra), are also not applicable as suit property in the present case is clearly identifiable.



43. In regard to the objection of the applicants/defendants to the effect that suit has not been properly valued and requisite court fee has not been paid, following needs to be noted:

- (i) the plaintiffs have prayed for a decree of eviction as well as possession, which in effect is a prayer for possession. In terms of Section 7(xi)(cc) of the Court-Fees Act, for the relief of possession in case of tenanted premises post determination of tenancy, the court fee has to be affixed on the rent payable for the year next before the date of presenting the plaint, and the relief has to be valued accordingly. As per the averment made in the plaint, monthly rent of the suit premises at the time of filing of plaint has been stated as Rs.1,66,666/-. Therefore, relief is to be valued at Rs. 19,99,992/- and the court fee payable as per the schedule to the Court Fees Act, comes to Rs.21,864/- approx.
- (ii) Another relief sought is for a decree of payment of arrears of rent amounting to Rs.14,99,994/- with interest. Accordingly, court fee payable on the said amount is Rs.16,984/-.
- (iii) Further, a decree for a sum of Rs. 1,17,93,538/- with interest has been prayed on account of L&DO charges and the court fee computed on the said amount comes to Rs.1,17,512/-.
- (iv) The fourth prayer is for permanent injunction and the said relief has been valued at Rs.200/- on which fee of Rs.20/- would be payable.



- (v) The fifth relief sought is for *pendente lite* and *mesne* profits, on which court fee payable will be decided after the said relief is decreed.

44. Therefore, the total court fee payable on the reliefs sought comes to Rs.1,56,380/-. Whereas, the plaintiff has paid composite court fee of Rs.2,38,000/-. In the prayer clause (iv) yet another figure of Rs.2,27,46,846/- has been mentioned without elaborating on the same. However, there is no decree prayed for the said amount, therefore, the same is being ignored for the time being. Even if the said figure is taken as total claim made by the plaintiffs, the court fee payable on the same would be Rs.2,24,394/-. Still the composite court fee of Rs.2,38,000/- paid by the plaintiff is on the higher side. Therefore, the valuation done is proper and there is no deficiency in the court fee affixed.

45. As regards Mr. Chaudhary's submission that the plaint does not state the precise amount claimed in terms Order VII Rule 2 CPC, suffice it to observe that in the plaint the plaintiffs have claimed precise amount as is evident from the prayer clause.

46. Lastly, it had been argued by Mr. Chaudhary that the plaint is liable to be rejected as the suit is barred by the provisions of DRC Act. The contention is that the suit premises was let out on a monthly rent of Rs.1,450/- in 1968. The said rent was enhanced in the year 1990 by an amount of Rs.2,000/- per month. Accordingly, monthly rent is Rs.3,450/-, therefore, the rent being less than Rs.3,500/-, the provisions of DRC Act are



47. For the purpose of deciding the objection under Order VII Rule 11(d) CPC⁴, the averments made in the plaint have to be seen. A perusal of the plaint shows that the plaintiffs have alleged in no uncertain terms that the monthly rent of the suit premises at the time of filing of the suit was Rs.1,66,666/-. Even this Court in its order dated 21.09.2022 has recorded the statement of learned counsel for the defendants that the rent being paid by the defendants to the plaintiff was to the tune of Rs.1,66,666/-. Therefore, there is no substance in the contention that the suit is barred by the provisions of DRC Act.

VIKAS MAHAJAN, J

⁴ Order VII Rule 11(d) – Rejection of plaint. - The plaint shall be rejected in the following cases: —
 XXXX XXXX XXXX
 (d) where the suit appears from the statement in the plaint to be barred by any law;