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

% Judgment Pronounced on: 10.08.2011

**+ CS(OS) 2213/2003**

SANJEEV KUMAR JAIN **..... Plaintiff**
Through: Mr Ankit Jain, Adv.

**versus**

RAGHUBIR SARAN CHARITABLE TRUST **..... Defendant**
Through: Mr Simran Mehta, Adv.

**CORAM:-**
**HON'BLE MR JUSTICE V.K. JAIN**

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

**V.K. JAIN, J. (ORAL)**

1. This is a suit for grant of permanent and mandatory injunctions. It is alleged in the plaint that the plaintiff is a tenant in respect of shop No. 11-E (Mezzanine Floor) forming part of building situated on units No. 13 to 29, Block E-, Circle-D, Connaught Place, New Delhi with entrance from the inner circle Connaught Place. The plaintiff also claims to be tenant in respect of Flat No. 4,

which is the first floor immediately above the mezzanine floor, forming part of the aforesaid building. The case of the plaintiff is that when late Shri Prem Narain Aggarwal was approached for the change of tenancy in respect of the mezzanine floor, he was offered the tenancy of the first floor and he agreed to the creation of tenancy in respect of the first floor only on the condition that he will have direct access to the first floor via staircase leading from the ground floor of the mezzanine floor, from the front of the building abutting the inner circle of Connaught Place. This, according to the plaintiff, could have been possible only by constructing a staircase leading to the first floor from the mezzanine floor. It is further alleged that Shri Prem Narain Aggarwal agreed to the proposal and his lease deed dated 1st July, 1986 was accordingly executed. This is also the case of the plaintiff that he was made to write two letters to the effect that he would be entitled to construct a staircase integrating the mezzanine floor with the first floor.

2. It is stated in the plaint that the first floor has access from the service lane, but that is a common staircase for two separate buildings No. E-10 and E-11 and, therefore, it was specifically agreed between the parties that

the access from the mezzanine floor would form integral part of the tenancy of the first floor. The plaintiff claims to have accordingly constructed the staircase leading from the mezzanine floor to the first floor at his own cost with the approval of the landlord. As regards the access through the service lane, it is alleged in para 13 of the plaint that the service lane access to the first floor was closed more than 17 years ago.

3. Eviction proceedings were initiated against the plaintiff in respect of the mezzanine floor and the suit filed against the plaintiff for possession of the aforesaid premises was decreed. It is alleged that though warrant of possessions were sought to be executed on 16th December, 2003, the decree could not be executed on that date and possession could not be taken.

4. It is specifically stated in para 11 of the plaint that the plaintiff is still in possession of the mezzanine floor. It is claimed that defendant No. 2 and his fellows were attempting to obstruct the right of ingress and egress of the plaintiff to the first floor. The plaintiff has accordingly sought mandatory injunction, restraining the defendants from obstructing the staircase leading from the ground floor

to the first floor via mezzanine floor and preventing access of the plaintiff and his customers, etc. to the showroom on the first floor, through the aforesaid staircase. He has also sought mandatory injunction directing the defendants to remove the junk and disused furniture which they have put in the staircase leading to the first floor.

5. Vide IA No. 10153/2010 under Order 6 Rule 16 r/w Order 7 Rule 11 CPC, the plaintiff has sought rejection of the plaint and dismissal of the suit. It is claimed in the application that the following averments made in the plaint are frivolous and vexatious, amounting to an abuse of the process of the Court and are an attempt to re-litigate issues which have already been settled between the parties right up to Supreme Court in several rounds of litigation;

(i) In the first paragraphs of the plaint, the plaintiff has stated that he is an existing tenant of the mezzanine floor.

(ii) In paragraph No. 8 of the plaint the plaintiff has averred that the only access to the first floor is from front, through the mezzanine floor.

(iii) In paragraph No. 11 of the plaint, the plaintiff has categorically asserted that he is in possession of the

mezzanine floor.

It is further stated in this application that on 30th December, 2003, when the suit was filed, the plaintiff was not a tenant in the mezzanine floor and was not in its possession, he having already been evicted and dispossessed on 16th December, 2003 in execution of a judgment and decree passed by the Civil Judge, Delhi on 23rd August, 2003.

6. The admitted facts in this case are as under:

(i) The defendants filed a suit against the plaintiff seeking possession of the mezzanine floor forming part of building situated on units No. 13 to 29, Block E-, Circle-D, Connaught Place, New Delhi, which was decreed by the learned Civil Judge on 23rd August, 2003;

(ii) a warrant of possession of the mezzanine floor was issued by the learned Civil Judge in execution of the decree passed by him;

(iii) an appeal was filed by the plaintiff against the judgment and decree dated 23rd August, 2003, which was dismissed by the learned Additional District Judge vide order dated 23rd April, 2004;

(iv) the order of the learned Additional District Judge

was challenged by the plaintiff by way of CM(M) No. 118/2005 which was dismissed by this Court on 13th October, 2006. A Special Leave Petition was then filed by the plaintiff against that order, which was dismissed by Supreme Court vide order dated 19th February, 2007.

(v) objections were filed by the plaintiff in Execution No. 74/2003 which the defendants had filed seeking execution of the judgment and decree dated 23rd August, 2003. A perusal of the order passed by the learned Civil Judge on the objections of the plaintiff would show that one of the pleas taken by him was that the defendant could not deprive him from access to the first floor through the staircase leading from the ground floor from the front. The objections were dismissed vide order dated 20th September, 2004.

(vi) order of the learned Civil Judge dismissing the objections was challenged by the plaintiff before this Curt vide CRP No. 469/2004 which came to be dismissed on 25th October, 2004. While dismissing CRP No. 469/2004, this Court, inter alia, observed as under:

> "On 30th September, 2003, the Respondent initiated execution proceedings and on 16th December, 2003

the decree was executed. The report of the Bailiff shows that the representative of the Petitioner, Ram Sukhani, Manager, wanted one month's time to vacate the suit premises but the Respondent did not agree to give time to the Petitioner. Accordingly, the Petitioner removed its goods and handed over vacant possession of the suit property to the Respondent. However, certain fixtures in the wall, some a r-conditioners and three counters were kept in the premises for being removed a little later. There is no dispute that possession of the suit premises was peacefully handed over to the Respondent but the items above-mentioned were kept back.....In this regard, it was pointed out that both the Bailiff as well as the Executing Court have specifically recorded that the Respondent has received possession of the suit property through the Bailiff and only some goods are lying in the suit premises. As already mentioned above, it appears that the Petitioner could not immediately take away those goods and had arranged with the Respondent to have them removed at a mutually convenient time. The Respondent could very well have thrown out the goods but did not do so perhaps out of humanitarian considerations. The Petitioner cannot be permitted to take advantage of this situation. In fact, apparently realizing this, even the Executing Court gave fifteen days time to the Petitioner to remove its goods failing which they would be dispatched to the Malkhana of the concerned police station. There is more than sufficient material on record to reach the conclusion that possession of the suit property was peacefully handed over by the Petitioner to the Respondent and it was in this

> spirit that the Respondent permitted the Petitioner to leave some goods in the suit premises for being removed on a later date at a mutually convenient time."

The order dated October 25, 2004 was challenged before Supreme Court by filing SLP(C) No. 23325/2004 which was dismissed on 25th November, 2004.

7. During the pendency of the suit, this Court vide order dated November 8, 2004, vacated the ad interim order dated 30th December, 2003, whereby the defendants were restrained from obstructing or preventing access of the plaintiff to the showroom on the first floor through the staircase leading to the opening on the inner circle and leading the mezzanine shop and first floor. During the course of the order, this Court, inter alia, observed as under:-

> "…As has already been mentioned above the Lease Deed dated 1.7.1986 makes no mention which staircase is to be used for ingress and egress to the suit premises. The annexed plan, however, shows the rear and not front staircase. Since the Mezzanine and First Floor were not interconnected at the inception of the tenancy of the suit premises the Lease Deed could not have conceivably granted the right of use of the front staircase which does not lead to the suit premises. Logically, the Lease Deed could also not have made any mention of this fact for

> the simple reason that it had not been anticipated that the Plaintiff would be evicted from the Mezzanine Floor only……
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> ….If it was already within the contemplation of the parties that the Mezzanine and First Floor would be interconnected they could easily have mentioned it in the Lease Deed itself, thereby rendering this controversy completely otiose. It would then not have been dealt with separately in the two letters dated 4.7.1986…"

8. An appeal was filed by the plaintiff against the order dated 8th November, 2004 which was dismissed by a Division Bench of this Court on 20th January, 2010. During the course of its decision, the Division Bench, inter alia, observed as under:

> "Be that as it may, learned counsel for the parties have shown to us the plan attached to the lease deed dated 1 st July, 1986 as well as various photographs, which form a part of the record, which very clearly suggest that the Appellant has independent access from the service lane in the ground level to the leased premises on the first floor. There is, therefore, absolutely no need for the Appellant to access the leased premises on the first floor via the internal staircase. There is also nothing to suggest in the lease deed dated 1st July, 1986 or anywhere else, that access to the leased premises on the first floor could only be through the shop on the mezzanine floor or was intended to be only FAO (OS) No. 244/2004 Page 10 of 18 through the

> shop on the mezzanine floor. In this context, it may be noted that the lease deed for the shop on the mezzanine floor as well as the deed for the leased premises on the first floor are self-regulating documents and they stand independent of each other. It is nobody's case before us that the two leases are intertwined. The only inter- connection between the two properties is through the internal staircase which, as we have noted above, appears to have been constructed by the Appellant for his convenience since at the relevant time he was a tenant of both properties.
>
> We may look at the matter from another point of view. Since the Respondents are in possession of the shop on the mezzanine floor they are entitled to benefit from it either for their own purpose or by renting it out to somebody else. Consequently, it would be rather odd, if not strange, if the Appellant, its representatives and customers are made entitled to walk through somebody else's shop to access the leased premises on the first floor. This would not only create an impossible situation for whoever is in possession of the shop on the mezzanine floor but would also create a clear hindrance to the full commercial exploitation of that shop."

9. Since an eviction order had admittedly been passed against the plaintiff on 23rd August, 2003, he was no more a tenant in respect of the mezzanine floor when this suit was instituted on 30th December, 2003. If the definition

of tenant, given under Section 2(l) of Delhi Rent Control Act, is adopted, a decree for possession having already been passed against the plaintiff, he was not covered under the aforesaid definition of tenant. If, however, the definition as given in Section 2(l) is not adopted since the tenancy was not governed by the provisions of Delhi Rent Control Act, the plaintiff would still not be a tenant since a decree for his dispossession had already been passed much prior to filing of this suit by him on 16th December, 2003. Thus, it cannot be disputed that the averment made in para 1 of the plaint, wherein the plaintiff claims to be a tenant in respect of the mezzanine floor, is totally false and frivolous.

10. Since possession of the mezzanine floor had also been taken from the plaintiff on 16th December, 2003, his averment claiming to be in possession of the mezzanine floor on 30th December, 2003, when he filed this suit, is also false and frivolous.

11. The averments made in the plaint claiming tenancy in and possession of the mezzanine floor being false and frivolous are liable to be struck off under Order 6 Rule 16 of Code of Civil Procedure which permits the Court to strike off pleadings which are frivolous/vexatious or are otherwise

abuse of the process of the Court.

12. The learned counsel for the plaintiff has relied upon the decision of Supreme Court in **Abdul Razak vs. Mangesh Rajaram Wagle and Others** *JT 2010 (1) SC 508* and **Sathi Vijay Kumar vs. Tota Singh and Others** *(2006) 13 SCC 353*, in support of his contention that the plaintiff having not sought striking off pleadings for more seven years, the application is highly belated and should not be entertained. In the case of **Abdul Razak** (supra), Supreme Court find that additional written statement was filed by the legal representatives on 03rd March, 2004 which had been taken on record without any objection from respondents No. 1 and 2, who did not even seek the leave of the Court to file further pleadings in the light of additional written statement. The Court also felt that respondents No. 1 and 2 had led evidence keeping in view the pleadings contained in the additional written statement. It was in view of these facts that the Court noticing the application for striking off the additional written statement having been filed after gap of 3½ years, without explaining as to why respondents No. 1 and 2 did not object to the taking on record the additional written statement and framing of additional issues in 2005

and they having chosen to lead evidence knowing fully well that after their impleadment the legal representatives had pleaded that they had become owners of the property, was of the view that it ought not to have been allowed at that stage. The facts of this case are altogether different. This is not a case of filing of additional written statement, but is a case of making averments which were false and frivolous to the knowledge of the plaintiff and were made at the very threshold when this suit was filed. Considering the conduct of the plaintiff as is evident from the facts and circumstances noted in the preceding paragraphs, I am of the view that the application ought not to be rejected on the ground of delay alone. In the case of **Sathi Vijay Kumar** (supra), the Court reiterated the otherwise settled proposition of law that normally the Court cannot direct the parties as to how they should prepare their pleadings and if they have not offended the rule of pleadings while making averments or raising arguable issues, the Court would not order striking out pleadings. It was also observed that power to strike out pleadings is extraordinary in nature and must be exercised by the Court sparingly and with extreme care, caution and circumspection. However, it can hardly

be disputed that when the pleadings are found to be false, frivolous and vexatious, to the knowledge of the person making those pleadings, they ought to be struck off, so as not to allow the party to go to trial on the basis of such pleadings.

13. As noted earlier, the possession of the mezzanine floor is with the defendants, the same having been taken from the plaintiff in execution of the decree passed against him. The admitted position is that there is one staircase in the front leading from the ground floor to the mezzanine floor and another staircase which starts from the mezzanine floor and goes up to first floor and which admittedly was constructed by the plaintiff himself. There is no way the plaintiff can have access to the staircase leading from the mezzanine floor to the first floor except by passing through the mezzanine floor premises which are in lawful possession of the defendants. The plaintiff will necessarily have to enter the mezzanine floor premises, in order to access these stairs and will also have to use the staircase leading from the ground floor to the mezzanine floor on the front side. The only substantive relief claimed in the suit is that the defendant should not obstruct the plaintiff from accessing

the first floor through the staircases one of which leads from ground floor to the mezzanine floor and the other from the mezzanine floor to the first floor. The plaintiff absolutely has no right to interfere in the use and enjoyment of the mezzanine floor premises by the defendants or by their tenants/licensees, as the case may be, even for the purpose of accessing the first floor premises taken by him on rent which otherwise has an access from the rear side. During the course of hearing of FAO(OS) No. 244/2004, a Division Bench of this Court noted that page 246 of the paper book showed an entrance to the first floor (suit premises) from the rear of the suit building, but that was locked. It was agreed by the parties that their client will jointly break open the lock shown on page 246 of the paper book so that there is direct access from the ground floor to the first floor of the suit property from the rear of the building. It was directed the Division Bench that after the lock is broken, access to the first floor (suit premise) should be made available to the appellant (plaintiff before this Court) from the rear staircase. When the matter was taken up by the Court on 14th December, 2009, the learned counsel for the appellant (plaintiff before this Court) stated that the lock appearing in

the photographs on page 246 of the paper book had broken. It was noted that behind the iron grill, there was a door and behind that door, there was a shutter and behind that shutter, there was a window panel and behind that window panel, there was a rack. The learned counsel for the appellant in FAO admitted that key of the shutter was available with the appellant. Accordingly, the appellant was directed to open the shutter after dismantling the wooden panel and rack so that access to the first floor premises was possible through the staircase appearing on page 246 of the paper book. The learned counsel for the appellant stated before the Division Bench that needful would be done within two days. It is thus quite clear that even if the plaintiff is not able to access the first floor through the staircase in the front of the building, he can definitely access them through the staircase in the rear portion of the building. The relief claimed by the plaintiff, if granted, would create the anomalous and rather impossible situation, where the plaintiff and/or his employees/visitors, etc. would have unhindered access to the premises occupied by other persons on the mezzanine floor of the building. The occupant of the mezzanine floor cannot be denied the right

to close and lock the premises occupied by him. If the plaintiff is to be granted unhindered access to the first floor through the staircase which starts from the mezzanine floor and goes up to the first floor, that would mean that the occupants of the mezzanine floor would not close and/or lock the premises or the plaintiff and those seeking to visit him on the first floor, would have a right to insist upon the occupants of the mezzanine floor opening the door of the mezzanine floor premises and then allowing them access to the first floor through the internal staircase starting from mezzanine floor and going up to the mezzanine floor. This will amount to disrupting the lawful permission of the mezzanine floor by its occupant. Even if the defendants at the time of creation of the tenancy in respect of the first floor had agreed to the plaintiff constructing a staircase from mezzanine floor to the first floor and use of that staircase for having access to the first floor, that permission/licence by its very nature perishes with the eviction order being passed against the plaintiff in respect of the mezzanine floor and is no more available thereafter to the plaintiff. There is no way the relief sought by the plaintiff can be granted to him.

14. Though issues were framed in this case on 06th December, 2005, considering the facts and circumstances of the case, as explained above, I am of the view that the suit can be finally disposed of without recording evidence since in view of the admitted facts and situation, the relief sought by the plaintiff cannot be granted to him. No useful purpose will be served from recording evidence when the Court is of the view that the suit cannot culminate into passing of a final decree of nature sought by the plaintiff. Allowing such a suit to continue would not only be an exercise in futility but also an abuse of the process of the Court. Such an attempt needs to be thwarted at this very stage instead of prolonging the matter by permitting the parties to lead evidence, which would not serve any purpose, but would consume the otherwise precious time of the Court.

15. In **K.K. Modi vs. K.M. Modi & Ors** *AIR 1998 SC 1297*, Supreme Court, inter alia, observed as under:

> "Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted.

> Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

Relying upon the aforesaid decision of Supreme Court, this Court in **Pamela Kumar vs. Chandrashekhar & Ors,** *2007(99) DRJ 475*, was of the view that the discretion to stop the proceedings should be exercised if the Court is satisfied that there is no chance of the suit succeeding.

16. In the case before this Court, since I am of the view that the relief sought by the plaintiff cannot be granted to him, no useful purpose is likely to be served from continuing further proceedings in this suit.

The suit is accordingly dismissed, without any orders as to costs.

**(V.K. JAIN)**
**JUDGE**

**AUGUST 10, 2011**
**'Bg'**