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**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE  
HON'BLE SHRI JUSTICE PRANAY VERMA**

**CIVIL REVISION No. 480 of 2023**

**BETWEEN:-**

1. **ABBAS S/O AJAJ HUSSAIN BOHRA NAHARGARHWALA, AGED ABOUT 32 YEARS, OCCUPATION: BUSINESS, R/O: 16 17 BOHRA BAKHAL LAMBI GALI KASAMJI MOHALLA DISTRICT MANDSAUR (MADHYA PRADESH)**
2. **ABDUL KADIR S/O AJAJ HUSSAIN BOHRA, AGED ABOUT 28 YEARS, OCCUPATION: BUSINESS, R/O: HOUSE NO. 16,17 BOHRA BAKHAL, LAMBI GALI, KASAMJI MOHALLA, MANDSAUR, DIST. MANDSAUR (MADHYA PRADESH)**
3. **SAIFUDDIN S/O AJAJ HUSSAIN BOHRA, AGED ABOUT 22 YEARS, OCCUPATION: BUSINESS, R/O: HOUSE NO. 16,17 BOHRA BAKHAL, LAMBI GALI, KASAMJI MOHALLA, MANDSAUR, DIST. MANDSAUR (MADHYA PRADESH)**
4. **FEMIDA WD/O AJAJ HUSSAIN BOHRA NAHARGARHWALA, AGED ABOUT 56 YEARS, OCCUPATION: HOUSEWIFE, R/O: HOUSE NO. 16, 17 BOHRA BAKHAL, LAMBI GALI, KASAMJI MOHALLA, MANDSAUR, DIST. MANDSAUR (MADHYA PRADESH)**

**.....PETITIONERS**

***(BY SHRI VINAY GANDHI - ADVOCATE FOR THE PETITIONERS)***

**AND**

**TAJAJJUL S/O ASGAR ALI BOHRA MANDSAURWALA, AGED ABOUT 63 YEARS, OCCUPATION: BUSINESS, R/O: BOHRA BAKHAL MANDSAUR DISTRICT MANDSAUR CURRENT ADD. 128 ABDUL REHMAN STREET 2ND FLOOR SHAIKH BUILDING MANDVI B.P. LANE MUMBAI (MAHARASHTRA)**

**.....RESPONDENT**

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Reserved on :- 12.07.2023

Pronounced on :- 26.07.2023

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*This revision having been heard and reserved for orders coming on for pronouncement this day, **HON'BLE JUSTICE PRANAY VERMA** pronounced the following:*

**ORDER**

By this revision preferred under Section 115 of the CPC, the applicants/defendants have challenged the orders dated 15.09.2022 and 06.05.2023 passed by the trial Court whereby their application under Order 7 Rule 11 of the CPC for rejection of the plaint on the ground that the valuation put by plaintiff/non-applicant on the same and the Court fee payable thereupon is inadequate has been rejected.

2. The plaintiff initially instituted an action against defendants for possession of the suit house and mesne profits by contending them to be his licensees and submitting that their license has been terminated by notice dated 23.09.2019 yet they have not delivered possession of the suit house. Relief of mesne profits at Rs.10,000/- per month was also claimed. Defendants raised an objection as regards valuation of the suit on which by order dated 09.03.2021, the trial Court observed that since plaintiff's claim is for possession, he is liable to pay ad valorem Court fee on such relief whereas he has valued the claim at Rs.200/- and has paid Court fee of Rs.100/- only thereupon.

3. The said order was not challenged by plaintiff nor did he comply with the same and instead filed an application under Order 6 Rule 17 of the CPC for amendment of the plaint to delete the relief as regards mesne profits which has been allowed by the trial Court by impugned order dated 15.09.2022.

Thereafter, the Trial Court held that the valuation as put by plaintiff on the plaint is correct and rejected an application under Order 7 Rule 11 of the CPC which had been filed by defendants for rejection of the plaint on the ground of non-compliance of order dated 09.03.2021.

4. Thereafter, defendants filed another application under Order 7 Rule 11 of the CPC submitting that plaintiff has not complied with the order dated 09.03.2021 and has not valued his claim and paid Court fee as directed therein hence the plaint deserves to be rejected. The said application has been rejected by the trial Court by the impugned order dated 06.05.2023 holding that plaintiff's claim is for mandatory injunction and he has paid adequate Court fee thereupon and that the issue as regards adequacy of Court fee can be framed and decided at an appropriate stage.

5. Learned counsel for defendants has submitted that plaintiff did not comply with the order dated 09.03.2021 nor challenged the same before any higher forum hence the same has attained finality and is binding upon him. For non-compliance of the same, the plaint has to be necessarily rejected whereas the trial Court has illegally passed the order dated 15.09.2022 holding that subsequent to order dated 09.03.2021, plaintiff has deleted the relief of mesne profits and now the claim is only for mandatory injunction hence is properly valued and adequate Court fee has been paid thereupon. In doing so, it has grossly misread its own earlier order whereby it had directed plaintiff to value the claim and pay Court fee on the market value of the suit property.

6. I have heard the learned counsel for the applicants/defendants at length.

7. Though, the claim was initially instituted by plaintiff for mandatory injunction directing the defendants to deliver possession of the suit property

and for mesne profits but thereafter the relief of mesne profits has been deleted and now the claim remains to be only for mandatory injunction. As per plaintiff, the defendants were his licensees in the suit property and upon termination of their license by notice dated 03.09.2019, the suit has been instituted. It has been categorically held by this Court in **Abdul Hussain and Others Vs. Mansoor Ali and Others, 2009 (4) MPLJ 672** and **Smt. Saraswati @ Jaya Bichpuria Vs. Smt. Archana Bichpuria, 2007 (4) MPHT 131** that in a suit for mandatory injunction directing delivery of possession of the disputed property, ad valorem Court fee on the market value of the property is not liable to be paid, if the claim is instituted promptly after termination of license of the licensee. In the present case, license of defendants was terminated by plaintiff by a notice dated 23.09.2019 served upon them on 03.10.2019 and the suit was filed on 16.10.2019 which was promptly after termination of license. In such circumstances, the plaintiff was not required to value his claim for possession on the basis of market value of the suit property and to pay ad valorem Court fee thereupon.

8. While it is true that earlier the trial Court by order dated 09.03.2021 had directed the plaintiff to value the claim on the basis of market value of the suit property and to pay ad valorem Court fee thereupon but that order is apparently incorrect and contrary to the principles as laid down in the aforesaid mentioned cases. Though, the said order has not been challenged by plaintiff but subsequently orders have been passed by the trial Court on 15.09.2022 and 06.05.2023 in which it has been held that since the claim is for mandatory injunction directing delivery of possession upon termination of license, the same is not required to be valued on the basis of market value of the suit property

and ad valorem Court fee to be paid thereupon. The same are perfectly legal and in accordance with law.

9. In **Firm New Afghan Company and Another Vs. Firm Sadhu Singh Thakor Singh and Others AIR 1962 Punjab 168**, it was held that exercise of revisional powers under Section 115 of the CPC is undisputably discretionary and when the impugned order does not disclose any grave injustice or irreparable injury and indeed does substantial justice between the parties, the power of revision should neither be invoked nor exercised. In **Union of India Vs. Baburam AIR 1962 Allahabad 52** also it was held that the High Court is not bound to interfere in the exercise of its power under Section 115 of the CPC if substantial justice has been done. Reliance was placed on a similar decision of the **Allahabad High Court in Harprasad and another Vs. Bhagwati Prasad Ram Sarup AIR 1933 Allahabad 924**. In **Yashodanand Garg Vs. Hindustan Commercial Bank Kanpur and Others AIR 1986 Allahabad 215** also it was held that even when an error of jurisdiction is committed by the Court below, but the action taken by it is not proved to have resulted in injustice, the High Court would be loath to interfere with it. The supervisory jurisdiction contained in Section 115 of the CPC is intended to ensure that justice is done between the parties. The absence of substantial injury to an applicant, irrespective of an error in procedure or in exercise of jurisdiction by the Court below should be enough to decline relief to him. Thus, it has been well settled that where substantial justice has been done though there may be an error of jurisdiction committed by the Court below, the High Court would refrain from exercising jurisdiction under Section 115 of the CPC.

10. While exercising powers under Section 115 of the CPC, the High

Court may make such order as it may think fit when the trial Court by the order under revision appears to have failed to exercise jurisdiction vested in it, exercised jurisdiction not vested in it or in exercise of its jurisdiction acted illegally or with material irregularity. While exercising such power the High Court shall not be bound by any other order which has been passed by the Court below which is apparently illegal though not challenged by the party against whom it was passed. The intent and purpose of Section 115 of the CPC is to ensure proper exercise of jurisdiction by the Court below. If a perfectly legal order is challenged then the same is bound to be affirmed even though the same may be contrary to a previously un-challenged but apparently illegal order. Section 115 of the CPC does not limit the power of the High Court to exercise its jurisdiction only in respect of the order which has been challenged before it but empowers it to take into consideration the entire proceedings of the case and to pass such order as may be deemed fit to ensure legality of proceedings and proper exercise of its jurisdiction by the Court below.

11. In the present case, the impugned orders passed by the trial Court are perfectly legal and justified. The earlier order dated 09.03.2021 was apparently illegal though the same was not challenged by plaintiff but only for the said reason the impugned orders cannot be faulted with. Setting aside the impugned orders merely on the ground of earlier order dated 09-03-2021 not having been challenged would result in a just and legal order being set aside and permitting an illegal order to stand which would not be proper exercise of jurisdiction under Section 115 of the CPC.

12. Thus, in the available facts of the case, I do find there to be any necessity for interfering with the impugned orders. The same are hereby

affirmed and the revision is accordingly dismissed.

Shilpa

**(PRANAY VERMA)**  
**JUDGE**

