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THE HIGH COURT OF DELHI AT NEW DELHI

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R.C.REV. No. 14/2011

Date of Decision: .21.08.2012

KUSUM JAIN

..... Petitioner

Through: Mr. Sunil Malhotra, Advocate.

Versus

RAJESH KUMAR SINGH

..... Respondents

Through: Mr. M.L. Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This revision petition assails judgment dated 03.12.2010 whereby the eviction petition filed by the petitioner against the respondent seeking eviction of the tenanted premises being shop No. 1/196/1 Sadar Bazar, Delhi Cantt., was dismissed.

2. The respondent is a tenant in the aforesaid shop under the petitioner. The petitioner has sought eviction of the respondent from the tenanted shop on the ground of her needing the same for her son Sachin. It was her case that she has no other alternative accommodation available for setting up business of her son Sachin who is physically

handicap and cannot move properly. Sachin is a qualified BBA and intended to settle by establishing a readymade garments business. As he was unable to do the business independently and would require the assistance, the petitioner being his mother would be assisting him in his business. They are residing on the first floor, the tenanted shop, which is just below their residence, was stated to be more suitable for setting up business for her son Sachin. It was her case that there was one shop available with them adjoining the tenanted shop; but that was too small in width and not suitable for readymade garment showroom. She thus required the tenanted shop to have proper width and where they can have two tailors and two try rooms.

3. After obtaining leave to defend, the respondent filed written statement. Beside others, it was alleged that the petitioner and her husband and son have several other properties. The description was given of as many as six such properties. In addition, it was also averred by the respondent that the suit premises measured 21'.10" x 59'.6" and that the shop in his possession measured 10'6" x 18' feet and the rest of the ground floor as also the first floor was with the petitioner. It was also alleged that Sachin was doing the business of steels at shop

No. 2140/12 and also imparting tuitions. It was denied that the shop available with the petitioner was small in width and not suitable for readymade garments. It was specifically stated that the rear wall of this shop has already been removed and the rear portion of the ground floor has been joined with the shop which is lying vacant and which is more than sufficient to run the business.

4. In replication, the petitioner denied that Sachin was doing the business of steel works at 2140/12 or that the rear wall on the ground floor was removed and joined with the shop in their possession and that it was lying vacant and was sufficient.

5. Both the parties led their evidence. Learned ARC returned a finding that the petitioner and her son could very well run readymade garment showroom from the shop already in their possession and that the need of requiring the tenanted premises was not bona fide. He accordingly dismissed the petition.

6. I have heard learned counsel for the parties and perused the records. The learned counsel for the petitioner placed reliance on certain judgments to contend that it was the prerogative of the owner of decide as to how and which premises would be suitable for his/her

requirement and that the tenant could not dictate his terms. He also contended that the owner was within his rights to provide an accommodation to his/her son to set up his independent business. There does not appear to be any dispute with regard to the legal propositions which are enunciated in various judicial pronouncements. However, this is also undisputed settled proposition of law that the requirement sought to be projected by the owner has to be bona fide and also that he was not having any other alternative suitable accommodation. In the given facts, this is undisputed that the petitioner has one shop on the ground floor of the premises. As per the site plan, which has been filed, the width of the said shop is 9' x 16' which is also the width of the tenanted shop. The petitioner desires her son to set up a showroom of readymade garments by joining the tenanted shop with the shop already in her possession on the ground floor of the premises. She also desires to have two tailors and two try rooms in the showroom. Though, it was not specifically stated in the petition, but it is gathered that the petitioner and her family was residing on the first floor of the premises. It was averred by her that the tenanted shop would be more suitable for running readymade garments business as it was just below their

residence and her son being physically handicap. The respondent tenant had taken a specific plea that except the tenanted shop, which measured approximately 19' x 6', the entire ground floor was in the possession of the petitioner. This was nowhere denied by the petitioner. It was also specifically alleged by the respondent that the rear wall of the shop in the possession of the petitioner was removed and joined with the shop making it a bigger space available with the petitioner for running readymade garments shop. The petitioner has denied having removed the said wall or joined the said portion with the shop already in her possession. It was nowhere her case that the rear portion of the ground floor premises was being used by her for residence. As is noted earlier, her case was that they are residing on the first floor of the premises. It was in fact mentioned in the petition that the petitioner was in possession of the rear portion of the premises, which was about 2/3rd of the entire ground floor premises. During the course of arguments, the learned counsel appearing for the respondent showed few photographs of the removed rear wall and joined rear portion with the shop and this entire space lying vacant. This could not be controverted by the learned counsel for the petitioner. The learned counsel for the petitioner

tried to urge that this rear portion was also being used for residential purpose, which was neither her case before the trial court nor before this court. Even the site plan which was filed along with the petition, was not filed by the petitioner in this court. It was during the course of arguments and at the instance of the court that the copy of the same was filed. From the said site plan, it is seen that except the two shops of the size of 9'x16, the entire rear portion was shown as built up hall. In the site plan it was shown as built up portion. As per plan the size of the entire ground floor is about 1080 sq. feet (18x60'). That being so, excepting the tenanted portion of 9' x 16' say about 144 sq. feet, the entire area measuring about 936 sq. feet comprising of 144 sq. feet of vacant shop and 792 sq. feet of rear portion was available with the petitioner. It has been observed by the ARC, and rightly so, that there was no requirement of tailors in the case of readymade garments showroom. The requirement in this regard seems to have been pleaded only to exaggerate the need of the bigger space. Assuming that the petitioner needs the space for tailors as also for try rooms, the shop in her possession and the adjoining back rear portion which has been joined, is certainly suitable and sufficient for establishing a showroom.

Though the court is not required to dictate such terms to the owner/landlord, but while examining, evaluating and adjudicating the requirement projected by the petitioner, the facts which have not been truthfully presented by the landlord, have to be considered.

7. Without going into the other alleged properties in different places, which are alleged by the respondent to be in the possession of the petitioner or her husband or whether her son Sachin was engaged in steel business and also tuitions, I am of the view that the petitioner is in possession of sufficient and suitable accommodation on the ground floor of the premises which can be used for setting up a readymade garments showroom by her son. She along with her family is residing on the first floor. The petitioners requirement of the tenanted premises does not seem to be bonafide. Having regard to the nature and extent of revisionary powers of this court U/s 25-B (8) of the DRC Act and in view of the discussion as above, I do not see any infirmity or illegality in the impugned order of the ARCT. The same does not call for any interference by this court. The petition has no merit and is hereby dismissed.

M.L. MEHTA, J.

AUGUST 21, 2012/pkv