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

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Date of judgment: 24.4.2012

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RC.REV. 18/2012 & CM No.806/2012

RAJBIR SHARMA & ORS Petitioners
Through Mr. M.N.Kural, Adv.

versus

SUDHIR SARAN BHATNAGAR Respondent
Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J (Oral)

1 Impugned judgment is dated 19.7.2011. Eviction petition filed by the landlord Sudhir Saran Bhatnagar seeking eviction of his tenant Rajbir Sharma and other from a shop (private no.1), Municipal No.1/1089, Harsaran Niwas, Railway Road, Shahdara, Delhi had been decreed; the application filed by the tenant seeking leave to defend had been declined.

2 This petition has been filed on the ground of bonafide

requirement. Contention of the petitioner is that he is the owner and landlord of the suit premises which has been tenanted out to the tenant. The petitioner has served as an officer with the Delhi Civil Services up to 30.9.2002 and thereafter he had been superannuated; he was appointed as Special Metropolitan Magistrate by the Delhi High Court and retired from there on 08.9.2007; he is enrolled as an advocate in the year 1963 and he now wishes to commence private legal practice as an advocate for which he had got his advocate licence renewed w.e.f. 26.9.2007 and this is evident from the letter issued by the Bar Council of Delhi on 06.10.2007. Both the aforementioned documents are the part of the eviction petition. Contention being that the petitioner does not own any other reasonable suitable accommodation from where he can carry out his legal practice; therefore the premises are required for himself for the said purpose.

3 Leave to defend was filed. No triable issue has been raised as is evident from the averments made in the said application. Contention is that the petition has been filed only with respect to one part of the premises; petition is not maintainable; some other person is the owner of the said premises but name is not known; in para 8 properties have been

detailed which are seven in number; contention of the tenant is that the aforenoted properties are alternate accommodation which are available with the landlord and these have not been fully disclosed by him; this amounts to a concealment and as such no decree could have been passed in favour of such a dishonest landlord.

4 Reply of the landlord filed to the application for leave to defend has also been perused. These details are contained in para 8. There has been a vehement denial of all these aforenoted submissions. It is denied that property No.234, Farsh Bazar, Mohalla Doongar, Shahdara has a total 15 rooms; contention is that the first floor is for the residence where the petitioner and his family members are living and on the ground floor there is one drawing room and a servant quarter and a pooja room; premises is located in a gali which cannot be put to commercial use as it is residential in nature; qua the property no.234-236 at Farsh Bazar, Delhi it is stated that the said property belongs to Sunil Kumar Bhatnagar the younger brother of the petitioner with which the petitioner has no concern; qua property No.8/108, 109,110,111,116 and 117, Circular Road, Shahdara, Delhi, it is submitted that this property has been sold about 15-20 years ago and is not in any manner

connected with the petitioner; Flat No.1/1100 on the first floor Harsaran Niwas, Railway Road, Shahdara, Delhi is in occupation of a tenant who is widow of Shanker Lal and now living there and this fact is fully known to the petitioner. Property No.1/1087 was disposed of by Babita Jain in October, 2006 and the same is no longer connected with the landlord. Property bearing No.1/1084 was under the old tenancy of Gurnam Singh and was sold to him in December 2004. Contention of the landlord is that the tenant is trying to build up one ground or the other a defence when he is fully aware of the fact that the landlord has no other reasonably suitable accommodation from where he can carry out his legal profession for which he had got his licence renewed w.e.f. 26.9.2007 to which factum there is no dispute. In this background it can in no manner be said that any triable issue has arisen.

5 The question of ownership and the status of the landlord as owner also stands fully established. The submission made by the tenant that the landlord is not the owner of the suit premises is only a bald statement; in fact the tenant has qualified this statement by stating that some other person is the owner of the suit property but the name of the that other person has not been disclosed. In these circumstances the

question of the status of the respondent as owner/landlord cannot be questioned.

In (1987) 4 SCC 193 Smt. Shanti Sharma & Ors. Vs. Ved Prabha & Ors.

“The word 'owner' has not been defined in this Act and the word 'owner' has also not been defined in the Transfer of Property Act. The contention of the learned Counsel for the appellant appears to be is that ownership means absolute ownership in the land as well as of the structure standing thereupon. Ordinarily, the concept of ownership may be what is contended by the counsel for the appellant but in the modern context where it is more or less admitted that all lands belong to the State, the persons who hold properties will only be lessees or the persons holding the land on some term from the Govt. or the authorities constituted by the State and in this view of the matter it could not be thought of that the Legislature when it used the term 'owner' in the provision of Section [14\(1\)\(e\)](#) it thought of ownership as absolute ownership. It must be presumed that the concept of ownership only will be as it is understood at present. It could not be doubted that the term 'owner' has to be understood in the context of the background of the law and what is contemplated in the scheme of the Act.”

The petitioner has been able to establish that he has no other reasonably suitable accommodation from where he can carry out his legal profession. It is not in dispute that he has retired after his tenure of work in the Delhi Civil Services and thereafter he has served as a Special Metropolitan Magistrate; his licence to carry out legal practice

has also been renewed by the Bar Council in September 2007; eviction
RCR No.18/2012

petition has been filed in February 2010; he has no other reasonably suitable accommodation except the premises occupied by the tenant. It has been established that the premises which is in occupation of the tenant is the only viable accommodation which can suit to the landlord to carry out his legal practice; all the aforementioned accommodations are either been sold long ago; only one property bearing Flat No.1/1100 on the first floor Harsaran Niwas, Railway Road, Shahdara, Delhi which is under the tenancy of widow of Shanker Lal is also owned by the landlord. The petitioner has been able to establish that he has no other reasonably suitable accommodation. It is not for the tenant to dictate terms to the tenant. The landlord is the best judge of his own requirement.

The Supreme in Prativa Devi (Smt.) Vs. [T.V. Krishnan](#) (1996)

5SCC 353 had held in this context inter alia noted as:-

“The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.”

Unless and until a triable issue arises leave to defend should not be

granted in a routine manner.

In this background the impugned judgment having decreed the eviction petition and dismissing the application seeking leave to defend suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

APRIL 24, 2012
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