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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC. REV. 254/2014

1st August, 2014

NARESH GUPTA

.....Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr.
Satyendra Kumar and Mr.
R.K.Sanghi, Advocates.

VERSUS

RAJINDER KUMAR

..... Respondent

Through: Mr. Rajeeve Mehra, Sr. Adv. with
Mr. Rajat Aneja and Mr. Rajiv
Aggarwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Section 25-B(8) of the Delhi Rent Control Act, 1958 impugns the judgment of the Additional Rent Controller dated 28.2.2014 by which judgment the Additional Rent Controller has dismissed the leave to defend application filed by the petitioner/tenant and has decreed the eviction petition with respect to the tenanted premises being Shop No. 129, Plot No.1, Block No. 88, Baird Road (now known as Bangla Sahib Road), admeasuring about 588.7 sq. ft. The *bonafide* necessity petition was

filed by the respondent/landlord on the ground that he needs the premises for opening of a business of restaurant/eatery shop by his son Deepanshu Aggarwal who has got a graduation degree in Hotel Management. It is said that the tenanted premises are situated in a very valuable area and the same are ideally suited for opening of the business of a restaurant/eatery shop by his son Deepanshu Aggarwal. It was pleaded that except the premises in question, there is no other commercial premises which is available/vacant and which can be used for opening of a restaurant/eatery shop by the son Deepanshu Aggarwal and hence the *bonafide* necessity petition.

2. Petitioner filed leave to defend application and contested the eviction petition on various grounds, including the grounds which are stated below, and only which grounds have been argued before this Court:-

(i) Respondent/landlord is not the owner of the suit premises and therefore eviction petition is not maintainable on behalf of the respondent.

(ii) The son Deepanshu Aggarwal is already the owner of a business in the adjacent shop to the tenanted premises bearing no. 125, Plot no. 1, Block No. 88, Baird Road (Bangla Sahib Road), New Delhi, and therefore since the son Deepanshu Aggarwal is already having his business which he is

conducting from that property which is owned by him, there is no need for the suit premises.

(iii) Since the entire petition is only for an additional accommodation for the son to start his independent business, there arises a triable issue to decide the aspect of *bonafide* necessity.

(iv) The son Deepanshu Aggarwal if he wants to start his business he can start his business from the premises bearing no. 123, Plot No.1, Block No. 88, Baird Road, New Delhi belonging to the Smt. Kritika Aggarwal wife of Sh. Amit Aggarwal who is the daughter-in-law of the respondent/landlord, inasmuch as, this property bearing no. 123 is lying vacant.

3. So far as the aspect that the respondent is not the owner of the suit premises is concerned, this argument urged on behalf of the petitioner has no substance because the respondent/landlord has filed on record the registered sale deed dated 20.8.1993 by which the suit premises was purchased by the respondent from one Sh. Ramesh Chander. Sh. Ramesh Chander had inducted the father of the petitioner/tenant namely Sh. Mitthan Lal in the suit/tenanted premises. It is settled law that negative defences cannot create a triable issue and mere self-serving denial of ownership of the respondent/landlord cannot create a triable issue once the

respondent/landlord has filed the sale deed by which the property was purchased and there is nothing on record that the original owner has in any manner disputed the sale deed or is disputing the ownership of the respondent/landlord. The Additional Rent Controller has exhaustively dealt with this aspect from paras 13 to 21 of the impugned judgment in which the Additional Rent Controller besides referring to the sale deed has also referred to the fact that it is not the case of the petitioner/tenant that there is any fraud in execution of the sale deed. Therefore, I reject the argument that the respondent is not the owner of the suit premises and that this aspect creates a triable issue.

(i) The next argument which is urged on behalf of the petitioner is that the son of the respondent Deepanshu Aggarwal is already carrying on business of a pastry shop called as M/s Bangla Pastry Shop which is adjacent to the tenanted premises as averred in sub para F of para-6 of the leave to defend application and which para contains the grounds for seeking leave to defend. In this para 6(F), petitioner/tenant states that Deepanshu Aggarwal is stated to be engaged in the existing family business and he has been regularly looking after and managing the Bangla Pastry Shop which is adjoining to the tenanted premises and allegedly owned by the brother Sh.

Ved Prakash of the respondent/landlord, and hence the suit premises are not required by the respondent.

(ii) This argument which is urged, in my opinion, does not create a triable issue inasmuch as the respondent/landlord in reply to the leave to defend application has taken up a specific case that adjacent shop to the tenanted premises where the business of Bangla Pastry Shop is being carried out is not owned by the respondent or his son but is owned by his brother Sh. Ved Prakash and who is the owner of M/s Bangla Pastry Shop.

(iii) In my opinion, once the adjoining premises are said to be owned not by the respondent/landlord but by his brother Sh. Ved Prakash, merely because the son of the respondent/landlord namely Deepanshu Aggarwal is said to be regularly looking after and managing the Bangla Pastry Shop as stated in para-6(F) of the application of the leave to defend will not make the son Deepanshu Aggarwal as the owner of the business of Bangla Pastry Shop. In fact, a reading of para 6(F) of the leave to defend application shows that the averment of the petitioner only is that the business of Bangla Pastry Shop is said to be the 'family business' which is being looked after and managed by Deepanshu Aggarwal, and, the line which is averred in this paragraph 6(F) however is "allegedly owned by the brother of

the petitioner” i.e it is not even the case of the petitioner that the adjacent premises where Bangla Pastry Shop is run is owned by Deepanshu Aggarwal or the respondent/landlord. To clarify the issue further, I have put a query to the counsel for the respondent/landlord that whether in the income tax returns of the Deepanshu Aggarwal, he is showing any income as having been earned from the business of Bangla Pastry Shop, and it is informed to this Court that as per the income-tax returns of Deepanshu Aggarwal existing on record of the Additional Rent Controller, there is no income which is shown from the earnings of Bangla Pastry Shop. It is argued that in fact it could not have been that Deepanshu Aggarwal was carrying on business of Bangla Pastry Shop because Deepanshu Aggarwal graduated only in the year 2012 by taking Hotel Management degree and therefore there can at best be only a very small period for which Deepanshu Aggarwal could have started earning as owner from Bangla Pastry Shop, because, the eviction petition itself was filed in the year 2013.

(iv) In view of the aforesaid discussion, in my opinion, there is nothing except a self-serving averment of the petitioner/tenant that the Bangla Pastry Shop belongs to Deepanshu Aggarwal and on the contrary it is more or less admitted in the leave to defend application in para 6(F) that

the premises in which the Bangla Pastry Shop is being run belongs to the brother of the respondent/landlord namely Sh. Ved Prakash because the expression used is 'allegedly' without there being any denial/stand categorically that the Bangla Pastry Shop does not belong to the respondent's brother Ved Prakash Aggarwal.

(v) Learned senior counsel for the petitioner during the course of hearing sought to draw the attention of this Court to an alleged Facebook page of Deepanshu Aggarwal on the internet which shows that Deepanshu Aggarwal has referred himself as the owner of Bangla Pastry Shop, however, to consider this document being the Facebook page of Deepanshu Aggarwal only filed for the first time in this Court is fraught with uncertainties and danger, for the same being considered to allegedly create a triable issue for many reasons. Firstly, the Supreme Court has observed in the case of *Prithipal Singh Vs. Satpal Singh (dead) through LRs (2010) 2 SCC 15* that 15 days statutory period for filing of the leave to defend application is inflexible and sacrosanct and there cannot be condonation of delay even of one day in filing of the leave to defend application. Impliedly therefore every event which has transpired prior to the expiry of the 15 days statutory period can and must be necessarily stated only in the leave to

defend application and there cannot be filing of subsequent affidavits or documents with respect to events which existed prior to the expiry of the period of 15 days, and, the Additional Rent Controller dealing with the leave to defend application cannot be asked to consider affidavits and documents filed beyond the period of 15 days for filing of the leave to defend application once the affidavits and documents do not deal with subsequent events happening after the period of 15 days of filing of the leave to defend application. The object of the ratio in *Prithipal Singh's case (supra)* is because that for *bonafide* necessity there is a strict procedure including the strict period of filing of the leave to defend application within a period of 15 days and it is upon the tenant to plead in this period only all necessary facts with supporting documents so required for grant of leave to defend on the ground that triable issues are found. The 15 days period being sacrosanct cannot be violated because if once affidavits and documents beyond the period of 15 days can be considered, there is no reason why more than once and repeatedly affidavits cannot be filed urging various grounds and repeatedly documents cannot be filed in support of the new grounds. If such an elongated and elastic procedure is accepted, the same will destroy the sanctity of the 15 days statutory period.

(vi) I therefore refuse to look into the Facebook page which is filed for the first time in this petition filed in this Court and with respect to which admittedly there is no pleading within the 15 days statutory period. I may also state that it is not uncommon for a person to informally puff off facts, more so just on a Facebook page, but courts need not consider certain statements in the Facebook page on their face value that the same should be taken as a final truth, more so in the facts of the present case not only because there is no pleading made in the court below and which therefore could have been responded to by the respondent/landlord in the reply filed to the leave to defend application, but also because of the facts which are stated above with respect to graduation of the Deepanshu Aggarwal in 2012 and whereafter immediately in 2013 the eviction petition was filed. This argument therefore urged on behalf of the petitioner is rejected.

4. It was next argued that since the present case is a case of additional accommodation or business, this aspect has necessarily to be tested only during trial of the case. The Additional Rent Controller has rightly rejected this aspect in para 37 of the impugned judgment and in which it is observed that merely because income tax returns of Deepanshu Aggarwal show considerable income of Deepanshu Aggarwal, and even if

assuming that he is gainfully employed, yet the same cannot mean that after obtaining specific degree of Hotel Management he cannot be expected to open a business of his own and that he must necessarily only join the businesses which are run by his father. Para 37 of the impugned judgment reads as under:-

“37. Thus it is well settled law that the requirement or need not be fanciful or unreasonable. It cannot be a mere desire and must be something more than a mere desire but need not certainly be a compelling or absolute or dire necessity. It may be a need in praesenti or within a reasonable proximity in the future. Petitioner has categorically stated that his son Deepanshu Aggarwal has completed his course in Hotel Management and wants to start his business of restaurant and eatery in the tenanted premises. The fact that Deepanshu Aggarwal has completed his course and obtained degree in Hotel Management in the year 2012 is not disputed, It is natural that after doing the course in Hotel Management, Deepanshu wants to take relation to Hotel Management. He after obtaining the specific degree in Hotel Management cannot be expected to do some other business or probably join to partnership firm of his father i.e M/s. Capital Metal Industries. It is quite natural that the petitioner would like to settle his sons in separate businesses without interference of each other. Respondent has only placed on record the ITRs of Deepanshu for the year 2012-2013 and not before that. The reason for the same might be that he was studying and pursuing his course of Hotel Management. Merely because he has filed the income tax returns for the year 2012-2013 does not lead to the inference that he is gainfully employed or cast any doubt on his bonafide as stated in the petition or he is not dependant on the

petitioner. Petitioner has categorically stated that his son Deepanshu Aggarwal is dependent upon him for his livelihood and for accommodation. Respondent himself has admitted that sons of petitioner are engaged in the family business/ occupation. Even if its assumed that son of petitioner is gainfully employed, that does not mean that his claim for starting the new business be rejected on the ground that it is a false claim. Further joblessness or being unemployed is not a pre-condition to show the bonafide. In the absence of any substantial material brought before the court or pointed out by the respondent in the affidavit, it cannot be said that present petition for eviction is actuated by malafide or has not been made with bonafide intention. Further, the bonafide requirement of petitioner is established from the fact that despite purchasing the property in the year 1993, he has filed the present petition now when his son has completed the course of Hotel Management and wants to open his own restaurant. The bonafide requirement is further established from the fact that he wants to open restaurant/eatery for his son on the tenanted premises as he has obtained necessary experience in the same field. On the fact of it and from the above discussion, the case of bonafide requirement is made out.”

- (i) I therefore reject the argument that since the present is a case of additional accommodation or business for the need of the son Deepanshu Aggarwal, this very aspect creates a triable issue. In my opinion, in order to create a triable issue, it was necessary to show that there were some vacant alternative premises available to the respondent/landlord or Deepanshu Aggarwal from which Deepanshu Aggarwal could carry on the business of a restaurant and only in which case there would arise a triable issue, however,

it is not shown what is the vacant alternative premises which would be available to Deepanshu Aggarwal, except of course a property belonging to the daughter-in-law of the respondent Smt. Kritika Aggarwal (bhabhi of Deepanshu Aggarwal) and which aspect has been dealt with hereinafter.

5. The final argument which was urged before this Court was that the respondent/landlord has an alternative premises for being given to Deepanshu Aggarwal inasmuch as admittedly, the daughter-in-law Smt. Kritika Aggarwal, wife of the respondent's son Sh. Amit Aggarwal, is owning the property no. 123, Plot no.1, Block no.88, Baird Road and which premises being vacant should be considered as an alternative premises.

(i) It is settled law that unless and until premises that are available to the respondent/landlord or to Deepanshu Aggarwal as of right, such premises cannot be considered as an alternative suitable accommodation. It is not the law that a *devar* (brother in law) can force his *bhabhi* (sister-in-law) to give up the commercial premises belonging to the sister-in-law. The issue of *bonafide* need is settled law and can only be looked at with respect to an alternative premises which are available as of right to the landlord and the person for whom *bonafide* need is pleaded, and this Court cannot force the sister-in-law to give possession of her premises to Deepanshu Aggarwal

and hold that a property of a sister-in-law is alternative accommodation.

This argument urged on behalf of the petitioner is also therefore rejected.

6. No other issue or argument is urged before this Court.

7. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

AUGUST 01, 2014
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VALMIKI J. MEHTA, J.