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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.Rev. No. 376/2014

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23rd December , 2014

NORTH DELHI MUNICIPAL CORPORATION Petitioner
Through: Mr. Sanjay Poddar, Sr. Adv. with
Mrs. Mini Pushkarna, Standing
counsel for NDMC.

VERSUS

MRADUL CONSTRUCTION PVT. LTD. Respondent
Through: Mr. Ajay Kumar Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM No. 19278/2014 (Exemption)

Exemption allowed subject to just exceptions.

CM stands disposed of.

CM No. 19279/2014 (delay of 22 days in refiling)

Delay in refiling is condoned. CM stands disposed of.

RC.Rev. No. 376/2014 & CM No. 19277/2014 (stay) & CM No. 20344/2014 (for taking on record the additional affidavit)

1. This rent control revision petition is filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') by the petitioner/tenant impugning the judgment of the Additional Rent Controller (ARC) dated 30.4.2014 by which the ARC has decreed the *bonafide* necessity eviction petition with respect to the suit property bearing nos.328 and 329, Kucha Ghasi Ram, Chandni Chowk, Delhi-06 as shown in red colour in the site plan annexed along with the eviction petition. The eviction petition has been decreed after trial.

2. As per the eviction petition the respondent company stated that in the suit/tenanted premises the respondent company wants to run the business of departmental store/lodging house/restaurant. The need was also projected for the respondent company for use of the suit/ tenanted premises for its office. It is pleaded in the eviction petition that the respondent/landlord company is presently carrying on its business from a rented premises and since the suit premises which are owned by the respondent/landlord company are available therefore there is no need for the landlord company to pay rent and carry on business from a rented premises.

The relevant averments in this regard of the eviction petition are contained in paras 18(ii) to (v) and which paras read as under:-

“

(ii) That the Petitioner Company does not have any business place from where Petitioner Company could have run its business presently Petitioner Company is doing the business of real estate and of the construction activities but Petitioner company due to paucity of accommodation is not able to run its business.

(iii) That the only accommodation which is available to the Petitioner Company in its name is the only property in question where the tenanted premises is situated.

(iv) That the tenanted premises is situated in busy vicinity of Chandni Chowk from Petitioner Company is planning to run the business of departmental store or to start run a lodging house/restaurant. It is worthwhile to mention that the property in question is situated in the heart of the city where various merchants and customers from different states use to come and stay in Chandni Chowk as the Chandni Chowk is situated near by old Delhi Railway Station as well as ISBT. Needless to say that the area of Chandni Chowk is adjoined with various wholesale market of different items and as submitted hereinabove the Petitioner is interested to run the business of restaurant or of the departmental store and the premises is bonafidely required to the Petitioner to stand the business.

(v) That only accommodation which available to the Petitioner is very small space of an office which is also at a rented accommodation from where Petitioner Company is doing its business and since the accommodation is rented accommodation, the landlord thereof is interest to get it vacated from the Petitioner. The portion which is available to the Petitioner Company has been more clearly shown in red colour in Site Plan attached as **Annexure A-1.**”

3. Before me, the only ground on the basis of which the petitioner impugns the judgment of the ARC is that as per the case pleaded and proved there is only a desire of the respondent/landlord company and there is no *bonafide* need, and that a mere desire is not a *bonafide* need so as to bring about eviction of a tenant. Learned senior counsel for the petitioner has drawn my attention to para 4 of the affidavit by way of evidence filed by PW-1 (respondent's/landlord's witness) which as per the senior counsel only shows that the respondent/landlord company wants to carry on any business which is legally permissible from the suit/tenanted premises, and which as per the petitioner is not sufficient proof of *bonafides* but it is a mere desire which is expressed. Learned senior counsel for the petitioner also draws the attention of this Court to the admission made in the cross-examination of PW-1 that PW-1 has not stated in the affidavit by way of examination-in-chief as to why and for what the company requires the suit/tenanted premises.

4. Before I turn to deal with the arguments urged on behalf of the petitioner, let me at this stage refer to the relevant findings of the ARC on the aspect of the *bonafide* need and which read as under:-

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BONAFIDE NEED

c. The Petitioner contention is that the Suit Property is the only Property of which it is the owner and the position being so, it require the Suit Property for the purpose of carrying out the business of lodging house/restaurant/departmental store, besides being used as a office as at present it is running its office from a tenanted premises, if the same is vacated and put into its possession for the furtherance of its financial interest.

The Respondent on the other hand challenged the said projected need of the Petitioner on the ground that the Suit Property being a declared Heritage Property, for the purpose of carrying out any addition/alteration in the said Property, necessary prior permission is to be obtained from the Competent Authority.

i. It is nowhere the case of the Petitioner that the said proposed business is the only business to be run by it. The law is very well settled on this point that in a case u/s 14(1)(e) the Petitioner even need not disclose any particular business he wants to set up in the premises. Infact it has been held so time and again and more specifically in the judgment cited as (2005) 8 SCC 252, 2008(4) CCC 442, AIR 1995 SC 576.

ii. The declaration of the Property as a heritage Property does not stop its owner to use the same in any manner it like **but** within the frame work of the guidelines/restrictions so imposed by the relevant Act keeping in view its Heritage status. Hence the Respondent contention that the said Property being a Heritage Property cannot be used in any manner by the Petitioner is not tenable in the eyes of law.

iii. Also the plea that for the purpose of running any business in a Heritage Property like the Suit property, prior approval from the Concerned Authorities is to be obtained which has not been obtained by the Petitioner till date, is a plea which has got no meaning at this stage.

iv. The Petitioner is not expected to seek approval for its proposed use of the property when it itself is not sure as to whether he will get an Eviction Order in its favour or not. The petitioner cannot by any stretch of imagination be expected to run from Pillar to Post for obtaining such permission without anything in its hand like in the present case. The question of applying for permission will arise only when the Petitioner will get the possession of the property.

v. The question as to what use the property can be put to within the four corners of the Relevant Laws will be a question to be proposed and answered by the Concerned Authority at the relevant time only.

vi. Besides the Respondent has also failed to prove by virtue of its evidence which infact is not at all any evidence w.r.t the countering the projected bona fide need of the Petitioner, that the Petitioner is not in bonafide need of the Suit Property, but rather on the other hand the Petitioner has proved the same that besides intended commercial use, it requires the same for running its office also which at present is being run from a tenanted premises.”

(underlining added)

5. A reading of the aforesaid paras shows that the ARC has rightly relied upon various Supreme Court judgments which hold that there is no legal requirement that a landlord must first decide the business which he will carry on in the tenanted premises and only thereafter he can seek to evict the tenant. It has been held by the Supreme Court in catena of judgments that what is the business which is to be carried out from the tenanted premises for which eviction is sought can be decided after the tenanted premises are vacated. In fact, Supreme Court has also consistently held that no prior experience of any nature whatsoever is required for starting of the business

which is proposed to be carried out by evicting the tenant. The aforesaid aspect of carrying on any business has to be noted with the fact that the respondent/landlord is a company ie a company is brought into existence only for carrying on of one or the other business. The memorandum of association of the company has been proved and exhibited as Ex.PW1/2. This memorandum, as is usual with all memorandums of companies which are registered, contains hundreds of businesses which the respondent/landlord company can carry on, and therefore, I cannot agree with the arguments urged on behalf of the petitioner that there is only a mere desire and no *bonafide* need of the respondent/landlord company. Surely a respondent-company is incorporated to carry on business and which businesses are stated in detail in the memorandum of association Ex. PW1/2, and therefore it cannot be argued on behalf of the petitioner that the respondent-company only has a desire and not a *bonafide* need. This argument urged on behalf of the petitioner is therefore rejected.

6. I may also at this stage state that besides the aspect that respondent/landlord company requires the tenanted premises for carrying on business, both in the eviction petition and in the affidavit by way of evidence it is pleaded and proved that the respondent/landlord company also wants to

run its own office from the suit/tenanted premises inasmuch as presently the respondent /landlord company is carrying on business from a rented premises bearing no. 445, Kucha Brij Nath, Chandni Chowk, Delhi-06. Once the respondent/landlord company is carrying on its business from a premises which is not its own, then surely the respondent/company is entitled not to carry on its business from a rented premises belonging to someone else and the respondent/landlord company can require the suit/tenanted premises for its use as an office and also for the business activities of the respondent/landlord company.

7. So far as the argument that PW1 in cross examination has admitted that affidavit of evidence does not contain the purpose for use of the tenanted premises, this argument is misconceived as a wrong admission cannot take away the actual fact that in the affidavit by way of evidence it is duly stated that respondent company wants to open its office in the suit/tenanted premises.

8. No other issue is urged or pressed except as discussed above.

9. 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.

DECEMBER 23, 2014
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VALMIKI J. MEHTA, J.