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HIGH COURT OF DELHI AT NEW DELHI

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RC. REV. 70/2015 & C.M. No.2551/2015

Decided on: 17th December, 2015

KISHAN CHAND

..... Petitioner

Through: Mr. Rakesh K. Sharma, Advocate with
Mr. Satya Prakash, Advocate &
Mr. Deepak Chauhan, Advocate.

versus

MEERA

..... Respondent

Through: Mr. K.B. Rohatgi, Advocate with
Mr. Mahesh Kasana, Advocate.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. By virtue of the present revision petition, a challenge has laid to the order dated 30.09.2014 passed by the learned Additional Rent Controller-1, (Central), Tis Hazari Courts, Delhi in Eviction Petition No.E-109/12, titled *Meera v. Kishan Chand* by virtue of which the leave to defend application of the petitioner was rejected and an order of eviction was passed.
2. It has been contended by the learned counsel for the petitioner that the order of rejection of leave to defend is being assailed

essentially on two grounds. Firstly, that during the pendency of the present petition, the respondent-landlady has been able to obtain eviction order in respect of the front portion of shop No.93, situated in Old Rajinder Nagar, New Delhi on the ground of second default on account of non-payment of rent. Though the appeal against the said eviction order has already been dismissed, it has been stated that the respondent-landlady has still not filed execution petition for retrieval of possession of the front portion but still the said accommodation can be considered to be an alternative suitable accommodation available to the respondent-landlady and consequently, the present order of eviction is bad in law as it has not taken into consideration the availability of an alternative suitable accommodation to the respondent-landlady to carry on her business.

3. It has also been stated by the learned counsel that for this very front portion of shop, the respondent-landlady had also filed an eviction petition on the ground of bona fide requirement which has also been allowed, therefore, the respondent-landlady is at a very advantageous position in seeking eviction of the tenant who is in

front portion of the shop in question which is almost the same in measurement.

4. The second objection which has been raised by the learned counsel for the petitioner is to the effect that the respondent-landlady has certain accommodation available to her on the first floor of the suit property wherefrom a boutique can be run by her and it has to be considered as a suitable alternative accommodation available to the respondent-landlady and consequently, the eviction order against the present petitioner could not have been passed.
5. I have carefully considered the submission made by the counsels and have also gone through the impugned order.
6. I do not find that there is any illegality, impropriety or jurisdictional error in the order of eviction passed against the present petitioner after rejection of his leave to defend application. This is on account of the fact that so far as the eviction of the present petitioner from the shop in question is concerned, it forms part of the larger shop situated on the ground floor of the suit property. The respondent-landlady has stated in the eviction petition that she requires the premises in question for the purpose

of setting up a boutique along with her daughter with the help of a relative, namely, Mrs. Kamal Bhatnagar. It has also been admitted by her that she has no personal knowledge about the running of a boutique and therefore, she would be dependent on the expertise of said Mrs. Kamal Bhatnagar.

7. It has also been stated that the respondent-landlady has only one daughter, namely, Shama, who is married and having an infant son. It has been admitted by the respondent-landlady that during the period when her daughter goes to office she leaves her son with the respondent-landlady. The respondent-landlady has also stated in the eviction petition that her daughter would be also assisting her in the running of the business of boutique.
8. The petitioner has raised objection to this and stated that both the daughter of the respondent-landlady as well as her husband are employed and therefore, their need cannot be considered to be the need of the respondent-landlady.
9. I do not agree with the submission that the need of the daughter cannot be considered as the need of the mother who owns the property. This is because of the fact that admittedly it is not in

dispute that the respondent-landlady has only one daughter and no son and therefore, she wants to do some business where she can actively assist her mother also. In any case, the daughter of the respondent-landlady is leaving her son with the respondent-landlady in the morning, if that be so, it would be more beneficial and convenient for her to leave the job and do the business as she will be able to attend to her children also. Therefore, this plea of the learned counsel for the petitioner is bereft of any logic.

10. Last but not the least is the fact that the petitioner has alleged that there is some accommodation available to the respondent-landlady on the first floor but this accommodation on the first floor cannot be considered to be conducive for the purpose of running the kind of business which she intends to do. No boutique which run from the first floor in the residential areas will ever attain success because the customers are reluctant to climb up the stairs and go to an isolated showroom of boutique, therefore, I feel that the boutique ought to be run on the ground floor and the entire shop is appearing as one property as is evident not only from the property details but also from the fact that there is no *pacca* wall inside the

shops. Both the shops being equal in measurement, I feel even if the respondent-landlady is able to retrieve possession of the first half of the portion of the shops even then she would require additional back portion because for a boutique, the area of 13 ft. x 20 ft. would not be sufficient enough to meet her requirements.

11. I feel that the requirement of the respondent-landlady is genuine and bona fide and it cannot be doubted.
12. I accordingly feel that the present petition filed by the petitioner is totally misconceived and accordingly, the same is dismissed and the impugned order dated 30.09.2014 rejecting the leave to defend and passing of the eviction order is upheld.
13. The period of six months has already expired long back. The petitioner is given time till 31.01.2016 to vacate the premises in question, failing which the respondent can seek execution of the order of eviction.
14. With these observations, the petition is dismissed.
15. Pending application also stands disposed of.

V.K. SHALI, J.

DECEMBER 17, 2015

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