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HIGH COURT OF DELHI AT NEW DELHI

Decided on: 3rd November, 2015

+ **RC.REV. 172/2015**

ASHOK KUMAR GUPTA Petitioner

Through: Mr. R.L. Kohli, Advocate with
Ms. Shikha Goyal, Advocate

Versus

RAJESH KUMAR AND ANR. Respondents

Through: Mr. Sunil Malhotra, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioner against the order dated 16.01.2015 by virtue of which leave to defend of the petitioner was dismissed and an order of eviction was passed.
2. Briefly stated the case which has been set up by the respondents-landlords in the eviction petition was that they have become owners of the property in question bearing No.120, Hari Nagar, Ashram, New Delhi. It is alleged that there are four shops in the said premises out of which three are let out to the tenants while one of the shops is with respondent No.1 (Rajesh Kumar). It is alleged in the petition that the present petitioner was in occupation of Shop No.2 in the suit premises and the said shop was required bona fide

by respondent No.2 (Sudesh Kumar), who is currently working as a Plant Manager with V.A. Tech. Kondly, Mayur Vihar, Phase-III, New Delhi. It has been alleged that he intends to start his own business of Sucker Machines used for sewerage purposes and wants to open an office in the said shop. It is further stated that on the back side of the suit property there are five residential rooms, two of the rooms are in occupation of tenant Talwinder Singh, one is in occupation of one Inderjit Singh and one with Trilok Chand and the remaining one room is in occupation with the respondents-landlords. It is further stated that respondent No.1 intends to shift his residence from the current place, that is, from 27, Bazar Lane, Jangpura, Bhogal, New Delhi to the said room and occupy the same himself. This is a broad parameter on the basis of which retrieval of the shop which is under the occupation of the present petitioner was sought.

3. The petitioner-tenant filed his leave to defend and challenged the bona fides of the respondents-landlords seeking his eviction from the shop in question. His contention was that apart from property in question, the respondents-landlords owns property bearing

No.27, Bazar Lane, Jangpura, Bhogal, New Delhi. They also own property in Aali, Village Badarpur, New Delhi, another property in Village Dadri, U.P. as well as a property in Nehru Place, New Delhi. It has been also stated that a shop which is adjoining to the shop of one Banwai Lal in the suit premises is also lying vacant. These facts were denied by the respondents-landlords in their reply Affidavit except that they admitted property bearing No.27, Bazar Lane, Jangpura, Bhogal, New Delhi as owned by them but it was claimed to be purely a residential property. The property in Village Aali, Village Badarpur, New Delhi was also admitted but it was stated that it was acquired by govt., however, the ownership of the property at Village Dadri, U.P. and Nehru Place, New Delhi was denied. It was also denied that they have a shop adjoining to the shop of Banwari Lal lying vacant.

4. On the basis of these broad parameters, the learned Additional Rent Controller (ARC) rejected the leave to defend of the petitioner and on 16.01.2015 passed the order of eviction.
5. I have heard Mr. R.L. Kohli, the learned counsel for the petitioner as well as Mr. Sunil Malhotra, the learned counsel for the

respondents-landlords.

6. Mr. Kohli, the learned counsel for the petitioner has raised one main issue for grant of leave to defend by contending that the requirement of the respondents-landlords is not bona fides and in order to challenge the same, it has been contended that when the notice was given in the month of May, 2014 for vacation of the shop in question it was stated that the shop is required for the bona fide purpose by respondent No.1. But when the petition itself is filed, the requirement of respondent No.2 was set up which clearly proves that it was not genuine and bona fide. In addition to this, it has been stated that the requirement of the respondents is not immediate requirement reason being respondent No.2 is already working in a private company and therefore, his requirement is not genuine and he is gainfully employed. It was accordingly prayed that the present petitioner be granted leave to defend to contest the eviction petition.
7. Mr. Sunil Malhotra, the learned counsel for the respondents-landlords has contested this and justified the order which has been passed by the learned ARC. It has been stated that moment the

shop is vacated respondent No.2 will resign from his service and would start his business.

8. I have carefully considered the rival contentions and gone through the record. I feel that the order which has been passed by the learned ARC rejecting the leave to defend application on 16.01.2015 at least on one aspect cannot be sustained. This is on account of the fact that the legal position is that the bona fide requirement of the landlord must be in praesenti. It is not to be a deferred requirement in future. In the instant case, the case which has been set up by the respondents-landlords is that the shop in question is required for the benefit of respondent No.2 who admittedly is working in a private company, therefore, if he is working in a private company his requirement is not in praesenti. One can understand that it is not necessary that a person must come on to the road but at least he could have shown his bona fide by tendering his resignation from his job in advance and pleaded before his employer that his resignation be deemed to be from a future date, *i.e.*, a specific date fixed by him, especially, in the light to the fact that the eviction order has been passed on 16.01.2015,

still petitioner No.2 originally, who is respondent No.2 in the present revision petition, has not resigned and continue to be in employment which clearly shows that his need is not in praesenti. Therefore, it cannot be a ground on the basis of which the leave to defend should have been rejected by any reasonable person and more so when the law is in favour of the petitioner herein on this aspect.

9. The bona fides of the respondents with regard to the requirement is also suspect because of the fact that the notice is not disputed having been given by the respondents before the process of eviction was initiated. In this notice, it was specifically stated that the shop is required for the benefit of respondent No.1, that is Rajesh Kumar, which later on goes into oblivion and the requirement of respondent No.2, that is, Sudesh Kumar is set up. The reason for setting up the requirement of Sudesh Kumar in the eviction petition later is not far to seek. The reason for this is that one of the shops is already being used by respondent No.1, that is, Rajesh Kumar. Therefore, if at all he had to seek retrieval of the shop from the present petitioner, it would have been a case of

additional accommodation and, therefore, in a case of additional accommodation, petitioner would have been granted leave to defend and contest the matter because the requirement for additional accommodation has to be proved.

10. All these things clearly show that the order of rejection of leave to defend by the learned ARC cannot be sustained in the eyes of law as no reasonable person could have arrived at this conclusion. I, therefore, set aside the order of rejecting leave to defend and grant leave to defend conditioned only with regard to the bona fide requirement only.
11. The present petitioner shall file his written statement within a period of four weeks from today with advance copy to the respondents, who may file rejoinder within one month thereafter.
12. Parties to appear before the learned Additional Rent Controller on 01.12.2015.
13. With these directions, the revision petition is allowed.
14. Pending applications also stand disposed of.

V.K. SHALI, J.

NOVEMBER 03, 2015

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