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

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Date of Judgment on : 03.5.2016

+ R.C.REV No.95/2015

RAVI KUMAR GARG

..... Petitioner

Through Mr.R.Aggarwal, Advocate.

versus

SEEMA GUPTA AND ORS.

..... Respondents

Through Mr.Pankaj Gupta, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J (oral)

1 Order impugned before this Court is the order dated 23.9.2014 wherein in the eviction petition filed by the landlord Mukesh Kumar seeking eviction of his tenant Ravi Kumar Garg under Section 14(1)(e) read with Section 25 B of the Delhi Rent Control Act (DRCA) stood decreed. This was after trial.

2 Petitioner/tenant is aggrieved by this finding. This Court has been informed that in the course of these proceedings execution of the decree had been effected and suit property had been taken over by the landlord on 17.9.2015.

3 Record discloses that an eviction petition had been filed by the landlord under Section 14(1)(e) of the DRCA. The petitioner claimed himself to be the owner of the premises. The premises have been described as premises no.3649, Gali Rura Achar Wali, Chawri Bazar, Delhi comprising of two rooms bearing no.3649/14 and 3649/16; these two properties had been let out by two separate rent agreements entered inter se the parties. There is no dispute about the landlord-tenant relationship. The landlord has described his bona fide need in para 18(a) of the petition. His bona fide need is encompassed on the facts that his daughter-in-law who is a law graduate requires the premises to establish her practice as an advocate; her husband is also an advocate; both of them wish to carry on the same profession; her husband is carrying out chamber practice from the same floor of the building in an adjacent room.

4 Leave to defend had been filed by the tenant. It had been granted. This was primarily on the issue that there might be alternate reasonable accommodation available with the landlord. Trial had progressed.

5 In the course of trial two witnesses were examined on behalf of the landlord. The son of the petitioner (Pankaj Gupta) was examined as PW-1 and his advocate wife namely Rimpay Gupta was examined as PW-2).

The bona fide need is for the need of PW-2 to start her chamber practice as an advocate from the aforementioned suit property. Per contra, the evidence of the respondent/tenant was also recorded through the testimony of tenant Ravi Kumar Gupta which was examined as RW-1.

6 Learned counsel for the petitioner submits that the ground on which the eviction petition premises is the need of his daughter-in-law to set up her own independent practice. The impugned order had recorded a finding to the contrary. The impugned order had noted that the daughter-in-law of the petitioner wishes to set up an independent practice away from her husband and not in collaboration with her husband. This is based on incorrect facts. Attention has been drawn to the testimony of PW-1, PW-2 as also their cross-examination to substantiate this submission. Learned counsel for the petitioner additionally submits that the site plan Ex.PW-1/7 depicts that there is sufficient accommodation available with the landlord. It is pointed out that on the ground floor there are 11 shops of which 7 shops already stand vacated and are in possession of the landlord. This fact is not in dispute. Additional submission being that the landlord after the vacation of these shops could have used these shops for the purpose of the need which has been projected in the eviction petition. It was not necessary for him to obtain

the possession of the second floor of the property from the tenant to fulfill this need. The need in fact is not genuine; it is mala fide; it has been created. It is pointed out that even on the first floor there is enough accommodation which is being used by the landlord only for the purpose of a godown. He has adopted a pick and choose policy. The first floor can be used for the purpose of running the chamber practice of the daughter-in-law of the landlord. The need is in fact mala fide; it is not genuine. Impugned order is liable to be set aside.

7 Respondent has controverted these arguments. His submission is that the daughter-in-law of the petitioner is admittedly an enrolled advocate; she was enrolled in the year 2005 at the Punjab and Chandigarh High Court and then she shifted to Delhi where she wishes to practice along with her husband but because of paucity of place as he is practicing from only one room which is not a sufficient accommodation for both the professionals to carry out their work.

8 The status of the landlord as owner/landlord is however not disputed. Additional submission being that there were other properties available with the landlord which can fulfill this projected need. Submission being that he is also owner of an industrial plot allotted by the DSIDC at Bawana besides

owning a property at Sita Ram Bazar, property bearing no.1090 as also property bearing no.3663, Chawri Bazar.

9 In the replication filed by the landlord, it had been stated that the industrial plot at Bawana will not be suitable for the purpose of establishing practice as an advocate by the daughter-in-law of the petitioner. The property bearing No.1090, Sita Ram Bazar was a residential property used by the petitioner and his family; property bearing no.3663 at Chawri Bazar is being used by the petitioner for business purpose.

10 Arguments have been heard. Record has been perused.

11 The eviction petition discloses that the petitioner is the owner of the suit property i.e. the property bearing no.3649, Gali Rura Achar Wali, Chawri Bazar, Delhi. The tenant had been given two rooms bearing no.3649/14 and 3649/16 on the second floor of the property by two separate rent agreements. The petition had been preferred under Section 14(1)(e) of the DRCA projecting a bona fide need which was for the daughter-in-law of the petitioner who is stated to be a law graduate and requires the premises for the purpose of establishing her practice as an advocate.

12 In the course of the evidence, apart from the oral testimony certain

documents were exhibited which included the “Advocate on Record slip” of the PW-1 showing that he is an advocate on record; this was proved through Ex.PW-1/1 to Ex.PW-1/2; enrolment of PW-2 (wife of PW-1) through her Identity Card of the Bar Council of Delhi was proved as Ex.PW-1/6. The photographs depicting the suit property including the ground, first floor and the third floor as also the report of the local commissioner showing that the entire ground, first and third floor were occupied by the goods of the petitioner {as was his submission that he was carrying on his business from the aforementioned premises was proved through Ex.PW-1/12 to Ex.PW-/65 (collectively)}

13 PW-2 was the daughter-in-law of the petitioner; she was also examined on oath. Nothing has been elicited in the cross-examination either of PW-1 or PW-2 to discredit this version as was contained in the eviction petition and which has been reiterated on oath in their deposition. In fact, a specific query has been put to the learned counsel for the tenant on this score to which he has candidly replied that there is no contradiction which had appeared in their testimony.

14 RW-1 is tenant; he had also been examined on oath. He had disputed the bona fide need. Submission being that the need of the landlord is not

bona fide. The cross-examination of RW-1 has been perused. He admitted that from the shop no.1 on the ground floor business of M/s M.K.Enterprises is being run. He also admitted that a local commissioner had been appointed at his request to inspect the first floor of the suit property wherein it was revealed that goods were stored therein. He did not file any document to show that prohibited items were stored there or that they cannot be stored. He admitted that the plot at Bawana is an industrial plot and industrial activities have in fact been stopped in those premises in view of the order passed by the Competent Authority.

15 Pleadings of the parties as also oral and documentary evidence was marshelled by the Trial Court in the correct perspective. A categorical fact finding had been returned that the need of the landlord is in fact bona fide. The aforementioned two rooms i.e. room nos.3649/14 and 3649/16 are adjacent to the room where PW-1 is already carrying on his law practice. The fact that his wife is an enrolled advocate and earlier was carrying on her practice at Punjab and Haryana High Court is an admitted fact. Her enrolment card shows that she is a professional and her submission that she wants to set up her own independent practice in conjunction with her husband is adequately proved through aforementioned oral and documentary evidence. For fulfilling

this need the aforementioned two rooms in the suit property are imminently required by the petitioner/landlord for his daughter-in-law. The need projected by the landlord in these circumstances become genuine and the fact that there is no other alternate accommodation has been proved. The four shops on the ground floor are tenanted out; the other seven shops are those where the goods of the business activities of the petitioner and his other sons are stored. The report of the local commissioner who had visited the property at the ground floor, first and the third floor had answered this in the documentary evidence which is the report of the local commissioner. RW-1 in his cross-examination had admitted that there is no document which he has placed on record to support the argument that these stored goods were either prohibited or that they cannot be stored. This is the business house of the landlord; the business being of hardware. The accommodation on the ground floor, first and the third floor is being used by him for storing prohibited goods. At the cost of repetition this has been established through the relevant piece of evidence which has been adduced in the report of the local commissioner and which stands unrebutted. This Court cannot ignore this fact finding.

16 It is thus established that the second requirement of Section 14(1)(e)

of the DRCA also stands met with. The landlord has no other reasonably suitable accommodation which can fulfill the need of his daughter-in-law to set up her own independent practice.

17 The impugned order in this background had correctly decreed the eviction petition. There is no infirmity in this finding. It is as per the record.

18 That apart this Court is sitting in its power of revision. Unless and until there is a patent illegality or a glaring perversity in the fact finding returned by the court below interference is not called for. This Court has been informed that the suit property has already been taken over by the landlord.

19 The impugned order calls for no interference. This petition is without any merit. It is dismissed.

INDERMEET KAUR, J

MAY 03, 2016
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