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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 165/2012 & C.M. No.6883/2012**
JAIN JEWELLERS & ORS

..... Petitioners
Through Mr. Kamal Mehta and Mr. Sumit
Sharma, Advs.

versus

OM PRAKASH AGGARWAL

..... Respondent
Through Respondent in person.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **01.03.2016**

The petitioner is aggrieved by the impugned judgment dated 07.09.2012 wherein his application seeking leave to defend in an eviction petition filed under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) stood dismissed.

Record discloses that eviction proceedings had been filed by the landlord (Om Prakash Aggarwal) for a property bearing No.1403, First Floor, Gali Jhajhar Wali, Chandni Chowk (as depicted in red colour in the site plan). It was a single tenancy at the rate of Rs.200/- per month. The bonafide need of the landlord was disclosed in para 18(a) which is to the effect that the tenant (M/s Jain Jewellers) who is an old tenant in the suit property and although the original tenancy had been created in the name of Jain Jeweller, after his death, their legal heir namely Tilak

Chand Jain and after his death, Sumitra Devi Jain had inherited the tenancy; after her death, the tenancy was created in the name of M/s Jain Jewellers. The tenanted portion comprises of a big hall along with an office, two shops, a kolki under the staircase and an open veranda. This space is required by the landlord who is a practicing Advocate having been enrolled with the Bar in the year 1965; at present, he has a lawyers' Chamber at Tis Hazari, Civil Wing which is very small to keep his 700 files. The landlord being an eminent lawyer has a widespread practice at Tis Hazari, Patiala House, Rohini, Karkardooma as also the Delhi High court. There is no proper accommodation with the landlord to have meeting with his clients; office space is also required for a library. It has further been stated that his wife Saroj Gupta had filed eviction proceedings for the bonafide requirement qua one shop No. 1399, Chandni Chowk, Delhi and this was for the bonafide need of their sons. The petitioner is a resident of 169-170, Gali No. 1, Chanderlok, Mandoli Road, Shahdara which property is owned by his sister Angoori Devi and he is living as a tenant there and as and when his property at Bazar Sita Ram is vacated (which property is also under a tenancy and owned by his wife Saroj Gupta) he will adjust there. The petitioner has no other alternate accommodation for his office space as a lawyer; the chamber at Tis Hazari being small and insufficient to accommodate his work profile; his practice has grown over the years and being 60 years of age has well established practice. The chamber located at Tis Hazari is far from his residence; the petitioner being a resident of Mandoli,

Shahdara and the present premises (under the tenancy of the tenant) located at Chandni Chowk would be viable for an office space of the petitioner. It is reiterated that he has major clients. He has also no other suitable accommodation to solicit them. Eviction petition was accordingly filed.

The averments contained in the application seeking leave to defend have been perused. Orally, learned counsel for the tenant vehemently submits that three triable issues have arisen. The first relates to concealment of facts made by the landlord. Submission being that Saroj Gupta had already filed an eviction petition for her Sita Ram Bazar property wherein she had stated that the said accommodation (Bazar Sita Ram) is required bonafide for the business of her two sons; it is also required for the office space of her husband who is an Advocate; attention has also been drawn to that eviction i.e. (E.P. No.01/2009 titled Saroj Gupta Vs. Shyam Sunder) to support a submission that the landlord cannot file two eviction petitions on the same ground; this amounts to dishonesty; further submission being that in that eviction petition, it had been stated that there is a property at Chandni Chowk also which has been tenanted out to tenants but that property is unsuitable as an office space for her husband. Submission being that in that eviction petition (E.P.No. 01/2009) it had been stated that the shops at Chandni Chowk are not suitable for an Advocate's office. The petitioner has not come to the Court with clean hands. Submission being that this is a contradictory statement and this amounts

to a triable issue. To support this submission, learned counsel for the petitioner has placed reliance upon 2014 (142) DRJ 262 Bharat Glass and Plywood Co. Vs. Sushant Pal Soni. Submission being that the duty is always cast upon the landlord to disclose true facts in his petition for eviction; in the absence of which he is not entitled to the discretionary relief contained in this summary procedure engrafted under Section 25-B of the DRCA.

Needless to state that this argument has been refuted. Even otherwise, this Court notes that this argument which has been noted supra does not find mention anywhere in the application seeking leave to defend. The application seeking leave to defend is silent on this submission made before this Court that the landlord has come to the Court on concealment of facts and the eviction petition filed by Saroj Gupta has not been disclosed; further submission that Saroj Gupta in that petition had stated that the shop at Chandni Chows (present property) is not suitable for an Advocate's office is also missing in the application seeking leave to defend. Relevant would it be to note that to support this submission, learned counsel for the petitioner has drawn attention of this Court to para 2 (k) of his application seeking leave to defend. The averments contained in para 'k' only makes a mention of a property bearing No. 2133-2135 situated in Sita Ram Bazar being a double storey building is vacant. No other submission i.e. (in the eviction petition filed by Saroj Gupta qua the property at Sita Ram Bazar), her version that the shop at Chandni Chowk is not suitable for

an Advocate office finds mention. The application seeking leave to defend is totally silent on this.

Be that as it may, in the eviction petition itself the landlord has disclosed that his wife has a property at Bazar Sita Ram for which an eviction petition has been filed which is pending and as and when the property is vacated, the landlord who is presently living in a rented accommodation at Mandoli, Shahdara will shift to Bazar Sita Ram. In E.P.No.01/2009 (a petition filed by the wife), the need for the business needs of sons of the landlady (Saroj Gupta) and office space for her Advocate husband has been disclosed. That eviction petition (EP No. 01/2009) had been filed in the year 2008. The present eviction petition had been filed in the year 2012. The need of the landlord is not a static; it changes over the years; it cannot remain constant. The need at that point of time in the year 2008 was the need of the landlady for the property of Sita Ram Bazar for business purposes for her two sons as also the office space for her Advocate husband. This Court notes that that eviction petition is still pending and is yet to culminate. This is an admitted fact. The need in the present case was for the landlord to have an office space for himself as in the preceding years, his practice grown and escalated and it has escalated to such an extent that the briefs which he now holds (700) cannot be accommodated in his small chamber at Tis Hazari; besides that he also has to maintain a library, has to meet his clients; in that accommodation this may not be possible; his further submission that the present premises located at Chandni Chowk is more

closely located to his residence (which is at Mandoli, Shahdara) than his Tis Hazari chamber is yet another reason for the prayer in the present eviction petition.

Thus the first submission of the learned counsel for the petitioner that the landlord has not come to the Court with clean hands is an argument without any merit; besides the fact that this argument (noted supra) does not find mention in the application seeking leave to defend, even otherwise this Court notes that the landlord has disclosed the factum of an eviction petition having been filed by his wife; there is no dishonesty which has been noted. There is also no contradiction in the averments in that petition (EP No. 01/2009) qua this petition. That was a petition filed by the wife of the landlord; it was in the year 2008 the present petition has been filed by the husband for his bonafide need and this has been filed four year later i.e. in the year 2012.

The second submission of the learned counsel for the petitioner is that the petitioner is a resident of 169,170,173, Mandoli, Shahdara; he also as an office space at property No. 173, Mandoli Shahdara and these properties are owned by him. To support this argument, learned counsel for the petitioner has drawn attention of this Court to the legal notice sent by the landlord to his tenant wherein the landlord had disclosed his residence-cum-office address as 169, 170 & 173, Mandoli, Shahdara; submission being that although in the reply filed to this averment, the

landlord had stated that property No. 169-170 is owned by Angoori Devi who has rented out these premises to him and there is no property having No. 173; yet there is no document to support this stand.

Pleadings filed by the landlord qua this submission have been perused. The averments made in the application seeking leave to defend and the corresponding para of the reply have been also perused. The landlord in his reply has clearly stated that property No. 169, 170 & 173 are a single property. Premises No. 169 & 170 had been taken by the landlord from Angoori Devi for his residence in June, 1990. Property No. 173 is a part of property No. 169 & 170 and there is no separate property bearing No. 173. The back side of that property has been numbered at 173; this property is even otherwise not occupied by him.

This Court is of the view that this submission of the learned counsel for the petitioner is also without any merit. It does not raise any triable issue. Admittedly property No. 169 & 170 is owned by Angoori Devi and it has been tenanted out to the landlord. A copy of the rent deed is also a part of the record. The fact that the landlord is a tenant in that property is also an admitted fact. The rent deed dated 18.08.2000 executed between Smt. Angoori Devi and Smt. Saroj Gupta (wife of the landlord) shows that what has been rented out to the landlady is a built up property measuring 150 sq. yards comprising of big hall and two rooms on the ground floor and two rooms on the first floor. The submission of the landlord that the back portion of property is numbered as 173 has not been specifically disputed by the tenant; the

tenant has also brought nothing on record to suggest that this is an independent property.

No other argument has been pressed. The triable issues sought to be raised by the tenant are bereft of any merit.

The twin requirements of a petition to succeed in proceedings under Section 14 (1)(e) of the DRCA had been culled out by the Supreme Court in Satyawati Sharma (Dead) by LRs. Vs. Union of India (UOI) and Anr. (2008) 5 SCC 287; they read as under:

- i) *that the premises are required bona fide by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held; and*
- ii) *that the landlord or such person has no other reasonably suitable accommodation.*

The petitioner has been able to establish that he has a bonafide need for an office space as his practice has grown over the years and his chamber at Tis Hazari is very small to accommodate his growing professionalism. The size of the chamber at Tis Hazari measures 7” X 10” feet. The measurement of the chamber is not in dispute. It is a small space and definitely not conducive to a lawyer who has a practice of more than 4 decades and having brief of 700 files. To accommodate so many files, to run a library, to accommodate an office table for clerk, a steno and a space for juniors in such a space is almost impossible. The fact the present property is also more closely located to his present

residence (which is his rented accommodation at Mandoli, Shahdara) is also an admitted fact.

The fact that his wife Saroj Gupta had filed an eviction petition qua a property at Sita Ram Bazar is an admitted fact. This was disclosed by the landlord in his eviction petition itself. In that eviction petition, although Saroj Gupta had stated that the shop at Chandni Chowk (present premises) is not conducive for an office space for her husband yet this Court is not in agreement with the submission made by the petitioner; that that eviction petition (filed in the year 2008) and the present eviction petition (filed in 2012) is contrary to one another. At the cost of repetition, the bonafide need is a changing need; it is neither static and nor constant. Thus the need of the landlord which in the year 2008 may not be his need for an office space at Chandni Chowk is now a need which is genuine and true as four years later i.e. in the year 2012 (when he filed this eviction petition), his work profile has enlarged. All this has been explained in the eviction petition itself. There is absolutely no concealment of any fact on the part of the landlord. He has come to the Court with clean hands. He is even otherwise the best judge to decide as to in what manner he wishes to deal with his property.

The Apex Court in this context in Prativa Devi vs T.V. Krishnan (1996) 5 SCC 353 held as follows:

“... The landlord is the best judge of his requirement and courts have no concern to dictate the landlord as to how and in what manner he should live.”

No triable issues have arisen. This petition is without any merit.
Dismissed.

INDERMEET KAUR, J

MARCH 01, 2016
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