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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 29.03.2016.

Judgment delivered on : 31.03.2016

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RC.REV. 282/2015

RAJINDER PRASAD

..... Petitioner

Through

Mr.U.M.Tripathi, Advocate.

versus

MAHESH KUMAR

..... Respondent

Through

Mr.V.C.Sharma and Mr.Kamal Dev,
Advocates

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioner/tenant is aggrieved by the impugned judgment dated 12.01.2015 wherein the eviction petition filed by the landlord (Mahesh Kumar) under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) had been decreed.

2 Record discloses that the present eviction petition had been filed by the landlord seeking eviction of his tenant Rajinder Prasad from the suit premises which was a shop forming part of property No. WP-456/1, Wazirpur village, P.O. Ashok Vihar, Delhi. The rent was Rs.1,300/- per month. The need of the landlord has been described in para 18. It has been disclosed that the petitioner is an employee of MTNL. He has two sons aged

28 years and 22 years respectively. His daughter is married. He has six members in his family. All are living as a joint family. The elder son of the petitioner is unemployed. The petitioner wants to set up his son by putting up a business of chemist and the present accommodation is accordingly required by him as this elder son of the petitioner (Ishan Dev) is having the technical education in pharmacy and he wants to run a chemist shop from the aforementioned premises. The need of the petitioner is bonafide. He has no other reasonably suitable accommodation. Both his sons including the elder son are dependent upon him. Eviction petition was accordingly filed.

3 The site plan filed along with eviction petition discloses that the suit shop measures 9"x 6"x 9.3" square feet; it is on the ground floor and adjacent to the shop is a verandah.

4 The eviction petition was contested. An application seeking leave to defend was filed. Reply to the aforementioned application was also filed. In the course of these proceedings, a proposal came to be set up that the shop available with the tenant can be exchanged with another shop. This proposal was finally not accepted. The application seeking leave to defend was finally dismissed and the eviction decree was passed in favour of the landlord. This was in terms of the order of the ARC dated 20.08.2011. The order dated

20.08.2011 was the subject matter of challenge in civil revision petition before the High Court. The High Court vide order dated 21.05.2014 set aside the said order and granted leave to defend to the tenant. The tenant was required to file his written statement within three weeks (w.e.f. 21.05.2014). A fixed time schedule had been given by the High Court and the Trial Court had been directed to dispose of the eviction petition by the end of the year 2014.

5 Written statement was not filed within the stipulated period and an application seeking extension of time was filed before the High Court which was declined vide a detailed order dated 08.09.2014. The predecessor Bench of this Court had noted that there was no plausible ground for extension of time to file written statement when consciously the Court had fixed a time limit within which the written statement was to be filed. This order of the High Court was the subject matter of challenge before the Apex Court. The Apex Court in a Special Leave Petition dismissed this prayer vide its order dated 12.12.2014. The defence of the respondent/tenant was accordingly struck off.

6 In evidence two witnesses were examined on behalf of the landlord. PW-1 (Mahesh Kumar) was the petitioner himself. He was subjected to a

lengthy cross-examination. PW-2 was the Registrar from the Delhi Pharmacy Council who had proved the certificate issued by the Council (Ex.PW-2/A) to substantiate the argument of the petitioner that the elder son of the petitioner (Ishan Dev) had completed his course in pharmacy and a certificate to the said effect had been issued in his favour by the Board of Technical Education, Delhi.

7 On behalf of the petitioner/tenant, it has vehemently been argued that the landlord must stand on his own legs and in the instant case, the landlord has failed to show that he has no other reasonable alternate accommodation available with him to run a chemist shop. Secondly, the chemist shop requires a minimum 110 square feet area (which has been admitted by PW-1 in his cross-examination) and the present shop being only 72 square feet, it would not fit the bill and would not be available as a chemist shop. The need of the landlord is not bonafide. The Trial Court has failed to appreciate the facts in the correct perspective.

8 Needless to state that these arguments have been refuted.

9 Arguments have been heard. Record has been perused.

10 The eviction petition as noted supra was for the bonafide need of the elder son of the petitioner who was dependent upon him for his accommodation. The elder son of the petitioner is admittedly unemployed. There is no challenge to this specific averment made by PW-1 in his examination-in-chief. The fact that the son of the petitioner has completed a course of pharmacy has been proved by PW-2. This is also an admitted fact.

11 The need of the landlord is bonafide. Although in his cross-examination PW-1 has admitted that the law requires a 110 square feet area for running a chemist shop and admittedly the shop in question is only 72 square feet yet a perusal of the site plan and the argument of the learned counsel for the petitioner is to the effect that the adjacent verandah (which is an open space) will be encompassed along with shop to make an area of 110 square feet; it is only one wall which has to be dismantled for the said purpose. This submission as is evident from the site plan appears to be plausible and is a fully justified explanation. To meet the requirement of law if a chemist shop requires 110 square feet, the shop along with the verandah would make up for this space of 110 square feet. This has also been explained by PW-1 in his cross-examination wherein he has stated that the adjoining space along with the tenanted shop would meet the licence

requirement. In his cross-examination, he has reiterated his bonafide need. This cross-examination has also elicited that earlier there was a proposal to exchange this shop (presently with the tenant) with another shop but this proposal was not acceptable to either party and the same was not adhered to. This had been declined even before the High Court. The cross-examination further reflects that the site plan had been prepared by an Architect of the landlord and it was a correct site plan.

12 PW-2 as noted supra had proved the certificate depicting the diploma of a pharmacy certificate in favour of Ishan Dev, the elder son of the petitioner for whose bonafide need, the eviction petition has been filed. At the cost of repetition, there was no written statement as the defence of the respondent had been struck off. It is only the cross-examination of PW-1 which has been highlighted by the tenant to substantiate his argument that the need of the landlord is not bonafide.

13 This Court is not in agreement with this submission of the learned counsel for the petitioner. The need of the landlord has been explained in the eviction petition and reiterated on oath by PW-1. It is the need for a chemist shop for his son. The fact that this tenanted shop can be encompassed with the open verandah (as is evident from the site plan) has also been explained

by the landlord in his deposition. This would fulfil the requirement of the area which is required for opening a chemist shop which as per the vehement submission of the tenant cannot be fulfilled by the vacation of this shop alone. The tenanted shop when joined with the open verandah would admittedly be more than the area which is required for a chemist shop.

14 The need of the petitioner is bonafide. Needless to state that law on eviction petition filed under Section 14 (1)(e) of the DRCA is clear. It is for the landlord to decide his need and how to use the premises as per his requirement. The Court while passing a decree under Section 14 (1)(e) of the DRCA has to be satisfied on the twin requirements which are to the effect that the need of the landlord is genuine, bonafide and honest and secondly that he has no other reasonably suitable accommodation. Both these grounds are met.

15 The impugned order having decreed the eviction petition in favour of the landlord suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MARCH 31, 2016/A