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HIGH COURT OF DELHI AT NEW DELHI

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R.C.R. No.127/2013

Decided on : 18th April, 2016

LAXMI NARAIN & ORS. Petitioners

Through: Mr. Rajesh Kumar, Advocate.

Versus

AMIT JAIN

..... Respondent

Through: Mr. G.P. Thareja & Mr. Satyam Thareja,
Advocates.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

C.M. No.9508/2015 (for delay)

1. This is an application seeking condonation of 610 days delay in filing the application under Order 22 Rule 3 & 11 CPC.
2. For the reasons stated in the application, the same is allowed and delay of 610 days in filing the aforesaid application is condoned as 'sufficient cause' has been shown.
3. The application stands disposed of.

R.C.R. No.127/2013 & C.M. Nos.5335-5336/2013, 9507/2015

1. This is a revision petition filed by the petitioners under Section 25B (8) against the order dated 5.7.2012 passed by the learned ARC, Delhi in Eviction Petition No.E-95/11 titled as *Amit Jain vs. Lakshmi*

Narain & Ors. rejecting the leave to defend application of the petitioners and passing an order of eviction.

2. The present petition has been filed by two petitioners, namely, Laxmi Narain and his brother Pawan Kumar, who happens to be son of one Ikram Singh. The case which was setup by the respondent/landlord in the petition was that he is the owner of Shops bearing No.294 and 295, Dariba Kalan, Delhi. He had purchased these shops from one Bishan Swarup Gupta vide registered sale deed dated 25.2.1991 and 24.2.1996 respectively. The shop bearing No.295 was under the occupation of the respondent/landlord where from he was doing his business of selling ferrous articles. He had given the dimensions of the shop as 5' 6" x 16' 7" with a frontage of 5' 6". It was stated by the respondent that he is running his business of sale of ferrous metals from this shop and the area of the shop is very small, therefore, he is not able to do his business in full including the fact that his accountant is not having any place to sit. Therefore, he wanted the possession of the adjoining shop bearing No.294 which was under the occupation of the petitioners to be vacated and accordingly, the petition for eviction was filed under Section 14 (1) (e). It was also stated that the respondent does not have any other suitable alternative accommodation available to him for the purpose of carrying on the said business. The respondent had also stated that the income which he is able to generate by selling these goods of ferrous metals is not able to meet his requirements of maintaining a family consisting of four persons and therefore, in case the possession of shop No.294 is given to him, he will be able to improve his business and consequently get the financial benefit also.

3. The present petitioners filed their leave to defend and did not dispute the fact that their father was originally inducted as a tenant by the respondent. They took the plea that the respondent has not filed the eviction petition with *bona fide* intention of increasing his business. It was contended by them that the father of the respondent is doing the business of selling electrical goods under the name and style of Ajay Electricals at premises No.1850/9, Bhagirath Palace, Chandni Chowk, Delhi where he is working. It was also alleged that his other brother is also working at the said shop. So far as the present shop under the occupation of the petitioners is concerned, it was contended that their eviction from the tenanted premises was being sought *mala fide* because the rent was very low and the respondent wants to let out the property afresh at a higher rent. The ownership of the property by the respondent was not disputed and alternative accommodation was alleged to the respondent. So far as the *bona fides* of the respondent qua the present shop is concerned, that was assailed on various terms. The learned trial court after hearing the arguments dismissed the objections of the petitioners and thereafter passed an order of eviction against the petitioners. The petitioners have felt aggrieved by the impugned order of rejecting their leave to defend application and accordingly, they have prayed that the eviction petition should be dismissed. The learned Rent Controller dismissed the objections of the petitioners on all scores and considered the requirements of the respondent to be *bona fide* and accordingly, passed the decree of eviction.

4. Feeling aggrieved the petitioners have now filed the present petition challenging the said eviction order which has been passed after rejection of their leave to defend.

5. I have considered the submissions made by the petitioners as well as the respondent and have also gone through the record. At the outset, it may be pointed out that I do not find that there is any illegality, impropriety or jurisdictional error in the impugned order passed by the learned Rent Controller on account of the fact that so far as the purpose of letting, ownership of the suit property, number of family members of the respondent are concerned, that is not disputed. What is disputed by the petitioners is that the respondent is having an alternate space in Bhagirath Palace where he is running a business along with his father and his brother. This fact has been disputed by the respondent not only by way of affidavit but also by placing on record a partnership deed and tenancy document of the said shop in Bhagirath Palace. The partnership deed of Ajay Electricals shows that there are two partners, namely, the father of the respondent and his brother who have equal interest in the partnership deed, that is, 50 per cent each. This document is the most clinching document so far as the allegation of the respondent having an alternative accommodation is concerned. With this document on record finally, the shop in Bhagirath Palace cannot be considered to be an alternative accommodation already available to the respondent/landlord but also the fact that this fact need not have been disclosed by the respondent as this was not a place from where he was doing his business. For these reasons, this third ingredient of non-availability of the alternative suitable accommodation is also satisfied by the respondent.

6. The only question which arises now is about the *bona fides* of the respondent in seeking the eviction of the petitioners. In this regard, the learned counsel for the petitioners has stated that there are judgments to the effect that when a person needs additional accommodation normally the leave to defend should be granted. Reliance in this regard is placed on *Santosh Devi Soni vs. Chand Kiran*; JT 2000 (3) SC 397, *Narender Kumar Manchanda & Anr. vs. Hemant Kumar Talwar*; 197 (2013) DLT 171, *Mohd. Jafar & Ors. vs. Nasra Begum*; 191 (212) DLT 401, *Bhag Mal (Alias) Ram Bux & Ors. vs. Munshi (D) by Lrs. & Ors.*; 2007 (4) SCALE and *S. Amarjit Singh Kalra (Dead) By Lrs. & Ors. vs. Smt. Pramod Gupta (Dead) by Lrs. & Ors.*; 2002 (9) SCALE.

7. I have gone through these judgments. There is no doubt that normally when an additional accommodation is sought by a party, the leave to defend ought to be given to him. This is not a thumb rule. This is only a rule of prudence which has to be borne in mind and the court has to see the facts and circumstances of each case as to whether the *bona fides* of the petitioner are suspect. Simultaneously the tenant has to produce some credible *prima facie* evidence which, if permitted to be proved, would dislodge the case of the respondent seeking eviction.

8. On the aforesaid touchstone, it may be pertinent to bear in mind the stage on which this revision petition has been filed. Mr. Thareja, the learned counsel for the respondent has pointed out that the possession of the suit premises has already been retrieved by him inasmuch as the decree has already been executed and the possession has been handed over to the respondent by the *bailiff*. This is not disputed. This is a very vital fact that the possession having been retrieved by the respondent

himself, it is too late in the day to urge that it raises a question of additional accommodation and therefore, claims that the leave to defend be granted.

9. The second submission is that in the instant case the number of family members of the respondent is not disputed. The factum of the area which is under the occupation of the respondent is also not in dispute. The area of shop No.295 is just 97 square feet which the respondent considers to be grossly inadequate to manage the business of selling ferrous wires because he states that he has to display these ferrous metals of various categories in the shop itself as it is a wholesale market. If that be so, then the requirement of the respondent is perfectly just and no fault can be found with the passing of the eviction petition. So far as the plea of the petitioner that the respondent is actuated by *mala fide* intention, is simply without any basis or evidence on record.

10. For the reasons mentioned above, I am convinced that there is no illegality, impropriety or jurisdictional error in passing of the eviction order by the learned trial court after rejecting the leave to defend application. Accordingly, the present revision petition is totally misconceived and the same is dismissed.

V.K. SHALI, J.

APRIL 18, 2016
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