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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 01.03.2016.

Judgment delivered on:04.03.2016

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RC.REV. 365/2015

RENU GOEL

..... Petitioner

Through Mr. Rakesh Tikku, Sr. Adv. With
Mr. Prakash Gautam, Adv.

versus

GANGA DASS AND ANR.

..... Respondents

Through Mr Peeyush, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioner (tenant) is aggrieved by the impugned judgment dated 19.03.2015. The eviction petition filed under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) by the landlord (Ganga Dass) had been decreed in his favour. Needless to state that the tenant is aggrieved by this finding.

2 Record shows that the present eviction petition had been filed by the landlord against the two tenants. Contention was that it was a joint tenancy of D.N Singhal and Renu Goel. The tenancy had been created

on 15.06.1982 on the basis of a rent note of the same date. In 2003, the premises had been illegally and unlawfully sublet to one Surjan Singh for which a petition under Section 14 (1)(b) of the DRCA had been filed. He however thereafter vacated the premises in favour of the tenant. That eviction petition was accordingly withdrawn. The grounds of eviction are contained in para 18(a). It is stated that the petitioner is the owner and landlord of part of the building bearing No. G-87, Vijay Chowk, Laxmi Nagar, Vikas Marg, Delhi. The site plan of the property has been filed as Annuxure 'A'. The premises let out to the tenant had been described in red colour in the site plan. The portion shown in yellow is in the occupation of the landlord from where he is carrying on his business of dhaba. The portion shown in green colour is the residential accommodation of the landlord and his family. The portion in orange colour marked as 'T1' and 'T2' are premises let out to the other tenants. The petitioner is a retired Government servant. He had retired in the year 1992. He is receiving a pension of Rs.11,868/- per month. He is presently running a dhaba and this is to augment the family income as also to keep himself busy. This dhaba is located in the rear portion of the premises i.e. the premises depicted in the yellow colour in the site plan.

The location of the property is in the business are of the main bazaar. D.N. Singhal has now expired and Renu Goel is the sole tenant who is now in occupation of the premises. The premised tenanted out to the tenant (depicted in red colour) are required by the landlord bonafide for his own need and the members of his family for extending his dhaba/restaurant in order that he can run his business of dhaba in more lucrative fashion. The business of dhaba is being run from the rear lane i.e. from the back portion of the property. The disputed premises are ideally located for running the business of dhaba/restaurant and thereafter the said premises are bonafide required by the landlord. Further contention being that the two shops adjoining his dhaba marked as 'P' and 'S' are in occupation of the petitioner's younger son Jaideep Raj who is carrying on his business independently from there for the purpose of their livelihood of himself and his family. He has also expressed his willingness to join the extended dhaba business of the petitioner in case he is able to get these tenanted premises back. The second son of the petitioner Sandeep Raj is presently working as a 'Chef' in Bangalore with the ITDC and he is a specialist in confectionary items. He has won several awards. He is desirous of

shifting to Delhi but because of a lack of a business space, he is unable to do so. In case the said premises are made available to the landlord, Sandeep Raj would be shifting to Delhi. The petitioner has no other reasonably suitable accommodation for relocating his business of dhaba which is presently located on the rear side; if the disputed premises are given back to him, he would have a front coverage and access with his clients and customers and his business would be more viable from that front portion.

3 Leave to defend had been filed by the tenant which had been granted by the Additional Rent Controller (ARC). Written statement was thereafter filed. Contention in the written statement is that the need of the landlord and his family is not bonafide. Jaideep Raj is at war with his father; he does not have cordial relations with him and the petitioner had in fact filed a suit for mandatory injunction against him and his wife seeking an eviction decree against them. The so called need of Jaideep Raj to join the business of his father is incorrect. Jaideep Raj had in fact been disinherited from the estate of the petitioner and a public notice to the said effect had also been filed. In fact the business of the dhaba is being run by Jaideep Raj. The second son Sandeep Raj is also not on

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cordial terms with his father and so much so that the plaintiff had not even attended his wedding as Sandeep Raj had got married to a person from different a caste which was a bone of contention between the father and the son; Sandeep Raj is living in Bangalore since the last 15 years with his family and is earning a handsome income by working in a five star hotel. The need of Sandeep Raj to come to Delhi is false. The landlord is even otherwise having huge rental income and is well established in life which is apart from his pension. He does not need to augment the family income. The landlord had in fact filed an eviction petition under Section 14 (1)(b) of the DRCA against the tenant which was subsequently withdrawn. Thereafter a second litigation ensued which was a false suit against the petitioner wherein the BSES was also made a party. Another suit claiming damages followed by another eviction petition under Section 14 (1)(j) of the DRCA was also preferred by the petitioner. The petitioner is in the habit of pursuing false and malafide litigations. On no count, is a bonafide need made out in favour of the landlord.

4 Evidence was led by the parties. On behalf of the landlord, one witness was examined. He was landlord himself. He reiterated the

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averments contained in his eviction petition. In his cross-examination, he admitted that he has two sons Jaideep Raj and Sandeep Raj as also two daughters. His younger daughter is a widow. His elder son and widowed daughter are living with him and his younger son was living in Bangalore. He has a two floor accommodation on the ground floor and the first floor. There are three shops in front of the suit premises out of which one shop has been sold to one Surinder Kumar which was in the year 1979-1980. The present premises are three side open. He admitted that he had differences with his elder son but they have now been resolved. He admitted that Jaideep Raj is doing an independent business. He denied the suggestion that the dhaba was being run by Jaideep Raj. He reiterated that he was running the dhaba which was from the back portion depicted in yellow colour. His younger son was working in Bangalore but he was unaware of his income. He admitted that he had not attended the marriage of his younger son who is working in Bangalore. He admitted that his health had declined but he was normal and was able to run the business of a dhaba.

5 Per contra, the respondent has examined herself as RW-1. She also reiterated the defence taken by her in the written statement. In her R.C.Rev. 365/2015

cross-examination, nothing could be elicited which was new and which could demolish the case of the landlord. The fact that another eviction petition had been filed by the landlord qua another shop under Section 14 (1)(e) of the DRCA wherein he had set up a plea that the need of the shop was for his widowed daughter had been admitted.

6 This Court notes that the ARC had examined the evidence in the correct perspective. The site plan which is an undisputed document depicts the picture correctly. The portion in yellow colour which is on the rear side of the building with a back narrow gali run in front of it is the place from where the dhaba/restaurant is being run by the landlord. The disputed premises are in red colour. They face the front side i.e. the main market road of Laxmi Nagar. This shop which is required by the landlord for the purposes of running a dhaba and if this is made available to the petitioner (measures 10” X 20” feet) along with a covered verandah in front (exclusive of this measurement), the petitioner would definitely have a front coverage which would definitely be more conducive and viable for his business purpose ie the purpose of running his dhaba/restaurant. The fact that he is running his dhaba from since the year 1992 is an undisputed fact. The other fact that the shops marked ‘P’

& 'S' (shown in site plan) are in the independent domain of his elder son Jaideep Raj. Jaideep Raj has a family comprising of his wife and two children. The fact that he is carrying on his independent business is also admitted. PW-1 in a part of his cross-examination admitted that he had differences with his son but they have now been resolved. The elder son was in fact present in Court at the time when the hearing was going on. The submission of the learned counsel for the respondent that differences do arise in a family and they do get resolved is a position which cannot be ignored. Inter-se grievances between the family members do come and go; this is not something unusual. This submission endorsed by the fact that the elder son of the petitioner Jaideep Raj was present in Court on the date of hearing as also the categorical stand of the petitioner that he has no differences left with his son is a categorical answer to the submission of the learned counsel for the tenant that the parties are at war with one another. The younger son of the landlord who is presently a resident of Bangalore is working as a 'Chef' in a five star hotel. He has done a specialized course in confectionary. He is in fact the Chief 'Chef' in this five star hotel. The submission of the landlord that his younger son is also willing to come

back to Delhi if he is able to find a viable accommodation to start a restaurant/dhaba business is also a submission which is noted and cannot be dismissed. There is no reason as to why he cannot start his own business or expend his food knowledge which he has gained from his employment of 15 years and help his father in the business of running his dhaba which he is admittedly running since 1972.

7 The residential accommodation available with the petitioner is not relevant for the purposes of this eviction petition as this shop which is required bonafide by the petitioner for his own need and also the need of his younger son Sandeep Raj. The submission of the tenant that the petitioner is well placed in life and apart from pension (Rs.11,868 per month), he is also getting rentals cannot discourage a person from carrying on business if he has a will and the skill to do so. The fact that the petitioner is already carrying on this business being an admitted position and he also being in the pink of health, there is no reason as to why this need qua the petitioner himself cannot be held to be a genuine need. This need for running the dhaba/restaurant is not only for expanding his business carrying it on front side from the main market of Laxmi Nagar, it would also most certainly be commercially more viable.

This need which is true and bonafide not only for himself but also for his son who wishes to come to Delhi and join the business of his father is thus established.

8 The differences inter-se the family members have also been resolved and there is no reason to doubt this. The landlord is also the best Judge of his requirement and how and in what manner he wishes to make use of his accommodation.

9 The need of the petitioner for a shop for his widowed daughter is also a genuine need; that was a separate eviction petition and the Court need no delve into the other earlier litigations detailed supra have no bearing into the present case.

10 Reliance by the learned counsel for the petitioner upon a judgment reported in R.C. Rev. 180/2013 Deepak Gupta Vs. Sushma Aggarwal is misplaced. The facts of each case are distinct. Paragraphs 11, 12 & 13 highlighted by the learned counsel for the petitioner only lay down the procedure which is required to be followed in a petition under Section 14 (1)(e) of the DRCA which procedure has been engrafted in Section 25-B. This procedure has been followed. The parties had pleaded their respective cases and after evidence, the Court

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has returned a fact finding which in view of this Court is wholly justified.

11 This Court is sitting in a revisional jurisdiction under Article 226 of the Constitution of India and until and unless there is a patent illegality or a perversity which is apparent on the face of the record, this Court may not interfere.

12 In this background, the impugned judgment suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MARCH 4th, 2016
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