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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 503/2015 & C.M. No.19964/2015

SUDERSHAN KUMAR JAIN

..... Petitioner

Through Mr. P.D. Gupta and Mr. Abhishek
Gupta, Advs.

versus

RAM KISHORE

..... Respondent

Through Mr. J.P. Sengh, Sr. Adv. with
Mr.Amit Gupta, Ms. Vanessa Singh
and Ms. Sana Ansari, Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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29.02.2016

The petitioner is aggrieved by the impugned judgment dated 02.06.2015. The application filed by the petitioner seeking leave to defend in eviction proceedings filed under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) had been dismissed.

The suit shop is shop No. 7 in the property bearing No. 514/5, Main Bazar, Mehrauli. The eviction petition filed by the landlord discloses his bonafide need in para 18. It is stated that the family of the petitioner comprises of himself and his wife and three children namely Arun Kumar, Rajan Kishore and Nikhil Kishore Gupta. All his sons are married. The family of one son comprises of his wife and two children aged 8 & 4 years respectively. He is presently living in USA. The family of the second son also comprises of his wife and his two year old daughter. His third son Nikhil Kishore Gupta is also

married and aged 27 years. He is living in the USA and is looking for a job there. The petitioner had retired as an Assistant Account Officer from Government of India in February, 2012 and is presently without any work. He had been finding it difficult to lead his life without any work and has accordingly taken up this work as an LIC agent; he had completed a training course before taking on this assignment. The petitioner requires an office space to carry on this work of an LIC agent. The petitioner is also the owner of another shop which is adjacent to this property which is under the tenancy of one Mahender Kumar. The present shop (shop No. 7) would be ideally located for running the office of the petitioner who has no other office space to carry on this business; apart from this suit shop he has no other alternate accommodation available to him.

The site plan filed along with eviction petition shows that this shop (No. 7) is located on the main market road. It measures 10" X 8" feet.

The application seeking leave to defend filed by the tenant has been perused. The foremost contention of the tenant is that this space is not required by the landlord bonafide; as an insurance agent, he requires no business space and since he is a resident of a close area which in turn is a double storey building, he can carry on his business from the ground floor. This is not a bonafide need. Attention has been drawn to paras 4, 5, 6 & 7 of the application seeking leave to defend. Contention is that the landlord has not come to the Court with clean hands; he has concealed the fact that the property No. 29-E, Ward

No. 1, Mehrauli, New Delhi which is also a commercial property at the ground floor is vacant from where the landlord can very well carry on his business. All these submissions raise a triable issue which entitles the tenant for a leave to defend.

Reply filed by the landlord to the application seeking leave to defend has been perused. These corresponding paragraphs in the reply (para 5 to 9) of this reply of the landlord clearly state that the petitioner/landlord has come to the Court with honest hands. In the eviction petition itself, he had disclosed his address as 29-E, Ward No. 1, Mehrauli which is a residential block and the suit shop (with the tenant) is admittedly in the market area; contention of the landlord being that his residence is close to the market area and this would be a viable suitable accommodation to carry on his business from this ground floor property. In this reply, the landlord has further disclosed that although property No. 29-E, Ward No.1, Mehrauli (address mentioned in the eviction petition) is a double storey building where the petitioner and his wife are living on both the floors; all his sons are married; two of them are presently residing in USA but they do come to India to visit their family; the third son is a resident of India; this accommodation is even otherwise residential. It has categorically been denied that the ground floor of property No. 29-E, Ward No.1, Mehrauli is lying unutilized or it is commercial. The landlord at the cost of repetition stated this address in his eviction petition; he has not hidden any fact. It is also an admitted position that his three sons are married and having families; two of them are residents of USA but it

cannot be disputed that they do come to India to visit their parents. The shop with the tenant is in a commercial area and this position is also an admitted. The submission of the tenant that an LIC agent does not require office space has been categorically refuted. This Court is also not in agreement with this submission of the learned counsel for the tenant that an LIC agent does not require an office space; the landlord had retired in 2012 and is undisputedly after a professional training course carrying on this business of an LIC agent; he does require a place to sit where he can meet his prospective clients and do his paper work. His bonafide need in the aforementioned property is clearly made out.

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 his need. It has been established that the premises are bonafide required by the landlord. This is the need for his carrying on his business of LIC agent. He also

has no other alternate space for the said work. He has also come to the Court with clean hands as in the eviction petition itself it has been disclosed by him that he is a resident of 29-E, Ward No. 1, Mehrauli. This is his address in the memo of parties.

In a judgment of a Bench of this Court in Sewa Singh Bhamra Vs. Harcharan Kaur in R.C. Rev. No.427/2011 decided on 07.05.2012, a similar contention was argued and refuted. This has been highlighted by the learned senior counsel for the landlord and the extract of the same reads herein as under:-

“The submission of the tenant that there has been an active concealment of premises bearing No. WZ-3, J-59 Block, Beriwal Bagh is an argument without merit; in fact the whole impugned order is based on this premise that this fact has been disclosed by the petitioner in his eviction petition; the scrutiny of the eviction petition shows that in the memo of parties itself, the landlord has disclosed that he is a resident of the aforementioned property bearing No. WZ-3, J-59 Block, Beriwal Bagh. Moreover this is admittedly a residential property and the need of the landlord is for a commercial establishment. This fact has specifically been explained in the reply filed by the landlord to the application seeking leave to defend; that this tenanted premises is a commercial property and is a viable location to start their air-conditioners business for himself as also his son is thus prima facie established.”

Learned counsel for the landlord at this stage has also made a
RC.REV. 503/2015

submission qua a relinquishment deed which was filed along with the eviction petition wherein the shop which had fallen to the landlord (pursuant to this registered relinquishment deed dated 06.09.2003) had been delineated. The oral submission now made before this Court by the learned counsel for the petitioner is that the area which has fallen to the share of the landlord is 385 square yards and the shop in question (shop No. 7) is only 80 square yards and another shop (which finds mention by the landlord in his eviction petition) is also more or less of the same area meaning thereby that the two shops cumulatively would measure 160 square yards; the balance area of 215 square yards has not been explained by the landlord; this area could well be used by him. Admittedly this argument which has now been taken has not been taken by the tenant in the application seeking leave to defend meaning thereby that the landlord did not have a chance to rebut this plea.

There is no gain saying to the settled legal proposition that triable issues have to be culled out from the pleadings of the parties which include the eviction petition, the application seeking leave to defend and the documents annexed there. No such plea having been taken about the relinquishment deed in the application seeking leave to defend this plea cannot now be entertained at this stage.

The submission that the second shop (which finds mention in the eviction petition) would also be an identical space (i.e. 80 sq. yards) is also not established. Attention has been drawn by the learned counsel for the petitioner to para 7 of his leave to defend (on

this score) wherein it is stated that this shop is under the tenancy of Mahender Kumar. It only states that the shop tenanted out to Mahender Kumar would be more or less identical; a third shop has been concealed. In the reply to this paragraph, the landlord has submitted that there is no third shop. This submission is in the air; it has been reiterated that the landlord in fact does not have any other commercial space available with him; the so-called identical spaced shop is still under the tenancy of Mahender Kumar.

This answers the submission made by the learned counsel for the tenant. This Court notes that the plea about the relinquishment deed and the landlord not having explained as to the area which is over and above the area which has fallen to him in terms of the relinquishment deed was not a plea taken in the application seeking leave to defend and this can in no manner be argued before this Court and cannot raise a triable issue; not having been culled out from the pleadings. The landlord has clearly and categorically explained that the second shop is still under the tenancy of Mahender Kumar; this has been so stated in the eviction petition itself. That shop is admittedly not with the landlord. The measurement of this shop i.e. its space area has also not been established. The second shop (which is under the tenancy of the present tenant) is a commercially viable accommodation.

The bonafide need of the landlord for this shop is indeed genuine. He needs this shop for his office space to start his work as an

LIC agent. There is no other accommodation available with him for the said purpose. The bald contention of the tenant that a third shop is also available with the landlord has been categorically denied; relevant would it be to note that if there was any such third shop, the tenant who is an old tenant of the landlord (as per the eviction petition and not denied) as the tenancy was created with his father, would have known the details of the same; no such details of this third having come forth and there being a categorical denial on this score by the landlord, this Court need not delve any further into this submission as this is nothing short of a bald submission.

The impugned order, in this background, suffers from no infirmity. Dismissed.

INDERMEET KAUR, J

FEBRUARY 29, 2016/A