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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment : 05.05.2016*

+ RC.REV. 651/2015 & C.M. No.29804/2015

BRITISH SPRINGS CO & ANR

..... Petitioners

Through Mr. Deepak Gupta and Mr. Asit
Tewari, Advs.

versus

MOTILAL BANARSI DASS

..... Respondent

Through Mr. Asheesh Jain and Mr. Yudhvir
Singh, Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The petitioner is aggrieved by the order dated 15.05.2015 wherein the eviction petition filed by the landlord (Motilal Banarsi Dass) against the petitioner tenant (British Springs Company) from the suit property i.e. Shop No.2,41, U.A. Bungalow Road, Jawahar Nagar, Delhi decreed in favour of the landlord. The tenant is aggrieved by this finding. The application seeking leave to defend had been dismissed.

2 The eviction petition discloses that the landlord is the owner of the suit property. There is no dispute to this position. In fact the landlord-relationship stands admitted. Further averment in the eviction petition is that the suit property had been let out to the tenant in the year 1960 for a monthly rent of

Rs.55/-. The landlord's firm is a registered firm. The business of the firm is being carried out from the adjacent area i.e. the area adjacent to the disputed premises. They are running a book store from the aforementioned premises. Over the years, their business has grown and the number of books in the showroom of the landlord has increased; the space presently available with the landlord is insufficient to accommodate the entire books and the clientele which has built up in the course of this business also has to be accommodated. This business has spread on a national level. The number of visitors and customers of the showroom and the clients of the landlord having increased; on some occasions, there is hardly any space to stand let alone to sit. The manpower has also increased. Because of the paucity of space, cleanliness is difficult to maintain. Children of the partners of the petitioner firm have also grown and they have also joined this business activity. The petitioner needs the space which is presently tenanted out for the better commercial viability of his business as the petitioner needs to expand the front frontage by adding the demised premises to the aforementioned premises which are already in possession of the landlord whereby the front opening of the shop would substantially expand. Attention has been drawn to the site plan to substantiate this submission.

3 An application seeking leave to defend was filed by the tenant. The foremost triable issue sought to be raised and canvassed before this Court is to the effect that another shop which is also in the same line as that of the firm of the landlord and which is also owned by the landlord has just recently been let out i.e. in the year 2014 (during the pendency of the eviction petition) at a higher rent and had the need of the petitioner being bonafide and genuine, he would not have rented out that property. Attention has been drawn to certain photographs to support this submission. On a specific query put to the learned counsel for the petitioner, he submits that all these subsequent facts had come to the knowledge of the tenant later on yet the Trial Court had allowed the prayer made by the tenant seeking to place on record this additional fact and this order had been passed by the Trial Court on 13.10.2014. The photographs substantiating this submission had also been taken on record. The new tenant in this shop is Yishion; submission being that the petitioner is thus precluded from building up a case that he has no other reasonably suitable accommodation. Triable issues have arisen. Leave to defend should have been granted in favour of the tenant. Learned counsel for the petitioner has placed reliance upon AIR 1987 SC 741 Amarjit Singh Vs. Smt. Khatoon Quamarain, 2015 V AD (Delhi) 91

Rampat Vs. Ganga Devi and (2015) 2 SCC 158 Shanti Devi Vs. Rajesh Kumar Jain And Another. Submission being reiterated that where a prima-facie case is built up by the tenant showing that he has an arguable ground, the Court declining to grant leave to defend has committed an illegality.

4 Per contra, in reply, the learned counsel for the landlord submits that the shop which had been let out to the Yishion is admittedly not contiguous and not in continuation of the shop where the business of the petitioner firm of books is being carried out. Even presuming that this shop has been let out to Yishion in the year 2014, this would not have served the purpose for which the present eviction petition has been filed. The bonafide need in this eviction petition projected was to the effect that this adjacent shop when merged with the existing demised premises would have increased the front area of the shop.

5 Arguments have been heard. Record has been perused.

6 The site plan is the most relevant document. This site plan shows that the tenant of the demised premises is occupying an area of 185 square feet. Admittedly the area where the business of the petitioner firm under the name and style of “Motilal Banarasi Dass” i.e. sale of books from this showroom is 3300 square feet approximately and by adding this area of 185 square feet,

the area would approximately works out to about 3500 square feet. What is most relevant from the perusal of the site plan is that the tenanted premises occupies the middle of the front portion of the showroom from where the landlord is carrying out this business. This front portion where the tenant is carrying out his business under the name and style of British Springs Company opens out to the main road i.e. on Bungalow Road which is 50 feet wide road. The showroom of the petitioner presently has a broken frontage; demised premises come in between this facade; if, as has been canvassed by the landlord, the British Spring Company vacates this portion, the front frontage would increase substantially; this entire front façade would be available to the showroom of the landlord and his submission that this would enable him not only to have a complete display board and a window panel to advertise and showcase his books, which in turn would enable his clients and customers to walk into his showroom more freely as the paucity of space which is now being suffered because of lesser frontage would in fact adequately be covered if these premises are vacated is an argument which is wholly established.

7 The site plan, at the cost of repetition, answers all this.

8 The photographs filed by the tenant have also been perused (page 172

of the paper book). These photographs show that the portion/area which has been tenanted out to Yishion in the year 2014 is a shutter shop which is much beyond the property which is in the occupation of the petitioner. Presuming that the argument of the tenant is taken to its highest and Yishion was made a part of the business house of the showroom of the landlord, the area which is with the present tenant (British Springs Company) would again create a hurdle and an obstruction in the full expansion which the petitioner wishes to enjoy by joining the area of the present tenant with his own showroom.

9 Thus the submission of the tenant that an alternate reasonably suitable accommodation was available with the landlord in the year 2014 (during the pendency of this petition) and he had deliberately let it out for a commercial purpose is an argument which is mis-directed. This portion of the property would not qualify as a reasonably suitable accommodation for the need of the landlord.

10 At the cost of repetition, the landlord has projected the need to expand his front façade which accordingly has become necessary in view of the growing business need of the landlord's firm. The landlord's firm had established business in the year 1960 and over the passage of time, it has

grown. The partners of the business firm have also grown in family size. The sons of the partners have also joined the business. His clientele has expanded; the movement in the showroom has increased; the staff has increased and there is paucity of space. This paucity of space can be compensated by adding the disputed premises to the expanse of the showroom of the petitioner wherein the increased frontage and window panel would not only enable the landlord to display and showcase his books in a more viable and commercial manner but will also enable the staff to work in a more free manner; the staff which has also expanded over the year will be able to meet the demands and needs of their increased clientele.

11 The bonafide need projected by the landlord has been established. The fact that he has no other reasonably suitable accommodation for the said purpose also stands established. These are the two twin requirements which are required to be proved by the landlord before an eviction petition can be decreed under the summary procedure as contained in Section 14 (1)(e) read with Section 25-B of the DRCA.

12 At this stage, a submission has been made by the learned counsel for the that a counter-offer could well have been made by the landlord and he would have been agreeable to the proposal (had it been made) that that he

could have taken the shop now let out to Yishion and would have handed over the disputed premises back to the landlord in view of the same but the landlord had deliberately not made any such offer and this shows the mala fides on the part of the landlord.

13 Per contra, learned counsel for the landlord rightly points out that the DRCA envisages no such offer and counter offer. A landlord has to prove his case within the ingredients and parameters of the statute. If he is able to prove his case within the legislative mandate of Section 14 (1)(e) of the DRCA and the Court returns a fact finding that no triable issue has been raised by the tenant in terms of his pleadings (his application seeking leave to defend and the reply thereto), the question of the Court going into a offer and counter offer does not arise.

14 The impugned order, in this background, decreeing the eviction petition suffers from no infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

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