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

+ RC.REV. 640/2015 & C.M. No.29494/2015

JAI KISHAN KHANNA (DECEASED THR LRS)

..... Petitioner

Through Mr. Rajat Aneja and Ms. Shifa Nagar,
Adv.

Versus

NIRMAL JERATH AND ANR

..... Respondents

Through Ms. Prabhsahay Kaur and Mr. Sarfaraz
Ahamed, Adv. along with Petitioner
No. 2

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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21.04.2016

The petitioner is aggrieved by the order dated 26.10.2015 wherein his application seeking leave to defend had been dismissed; the Court was of the view that the landlord is entitled to a decree straight away as no triable issue had arisen.

Record discloses that an eviction petition had been filed by the landlord Nirmal Jerath and another against the tenant Jai Kishan Khanna (since deceased and represented through his legal representatives) seeking eviction of shop No. 3 situated on the ground floor forming part of property No. E-34, Kamla Nagar, Delhi. It was depicted in the site plan filed along with the petition. The petitioners claim themselves to be the owners of the suit property. Petitioner No. 1 has one son; petitioner No. 2 has three sons. This is the only house which they have. There are two other shops adjacent to shop No. 3. The

bonafide need has been depicted in paragraph 18. The need is the need of petitioner to start his showroom of wedding cards as he has experience in that line since the last about 12 years. His third son is also unsettled and he wishes him to join the business with him. This is the bonafide need as disclosed in the eviction petition.

In the application seeking leave to defend in para 3, it has been stated that the petitioner has wrongly stated that there three shops in the front side; there in fact two shops one of which is under the tenancy of the present tenant and the other is occupied by another tenant. The petitioner/tenant has come to know that a compromise has been arrived at qua that shop with the other tenant and that shop is lying vacant; the landlord has agreed to take the possession of the shop from the tenant and this fact had not been disclosed by the landlord because of ulterior motives.

Reply filed by the landlord to the corresponding paragraph of the application seeking leave to defend has been perused. In this reply, it has been stated that shops No. 1 & 2 are under the tenancy of two different names i.e. one belongs to 'Modern Cookeries' and the other belongs to Sweet Corner and they have been let out in different years; rate of rent of both the shops is also different. The middle intervening wall between the two shops had been removed by the proprietor of both the shops. Photographs had also been filed by the landlord.

Attention has been drawn to these photographs. These photographs depict that shops No. 1 & 2 have two fixed shutters in front of them and the name of the shop is Bindaas Collection. Contention of

the tenant is that Bindaas Collection is actually a proprietorship concern of 'Modern Cookeries' and 'Sweet Corner'. This submission of the landlord is not borne out from any documentary evidence. In fact the documents including the photographs filed by the landlord clearly depict a contrary picture. They show that these shops No. 1 & 2 has a common wall which is owned by 'Bindaas Collection' suggesting that it is a garment ware shop whereas the reply filed by the landlord in the proceedings in the Trial Court have stated that these are two separate rented shops created at two different times having two different rentals and are under the name of 'Modern Cookeries' and 'Sweet Corner'. Further submission in this reply is that the intervening wall has been broken by the proprietor to make it one concern.

This admission made by the landlord in his reply has created a serious doubt in the mind of the Court about the availability/non-availability of an alternate accommodation to the landlord as the contention of the tenant in his application seeking leave to defend is clearly that the second shop which is under the tenancy of the other tenant has since been vacated and a compromise has been entered into with the landlord to handover the shop but this has not been disclosed by the landlord. Record shows that admittedly the tenancy was under the name of 'Bindaas Collection'; in the reply filed by the landlord for the first time, the names of 'Modern Cookeries' and 'Sweet Corner' have been mentioned. This reply indicates that there are two separate tenancies and not one tenancy as is the photograph of 'Bindaas

Collection’ which as per the landlord depicts a single shop. Moreover, ‘Bindaas Collection’ as has been rightly pointed by the learned counsel for the tenant suggests a garment ware trade whereas ‘Modern Cookeries’ and ‘Sweet Corner’ are nowhere by these name relate to such a trade. That apart whether shops No. 1 & 2 had been vacated and were let out during the pendency of the eviction petition as is the contention of the tenant, in view of this Court can only be decided through trial.

Impugned order is accordingly set aside. Triable issues have arisen. Written statement be filed by the tenant within three weeks with advance copy to the learned counsel for the landlord who may file his replication thereafter. Parties are directed to appear before the Additional Rent Controller on 16.05.2016.

Petition disposed of in the above terms.

INDERMEET KAUR, J

APRIL 21, 2016

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