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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 16th April, 2018

+ CM(M) 118/2016 and CM 4407/2016

RAKESH NANDA Petitioner

Through: Mr. R.D. Itorora, Advocate

versus

RENU GUPTA Respondent

Through: Mr. Piyush Pahuja, Advocate

+ RC.REV. 104/2016 and CM 5366/2016 and 19592/2016

RAKESH NANDA Petitioner

Through: Mr. R.D. Itorora, Advocate

versus

RENU GUPTA Respondent

Through: Mr. Piyush Pahuja, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner concededly is a tenant in occupation of the premises described as one shop at ground floor bearing shop no.3875, Roshanara Road, Delhi-110 007 in terms of the tenancy created by late Sh. Krishan Avtar Gupta, the original owner, during his lifetime. The respondent indisputably is the daughter of the said late Sh. Krishan Avtar Gupta, she being an ordinary resident of Sohna in District

Gurgaon, Haryana. The respondent had filed eviction case (E-499/2013) against the petitioner on the ground of bonafide need under Section 14(1)(e) of Delhi Rent Control Act, 1958. Having regard to the grounds on which the eviction was sought, the Additional Rent Controller applied the special procedure envisaged in Section 25 B of Delhi Rent Control Act, 1958. The petitioner, in response, moved an application for leave to defend. He also filed an application for rejection of the petition on the ground the respondent had concealed material facts. The second said application was dismissed by order dated 08.10.2015 and is subject matter of challenge by CM (M) 118/2016. The application for leave to contest was dismissed by a separate order of the same date (08.10.2015). Resultantly, by the same order, the Additional Rent Controller granted an order of eviction under Section 14(1)(e) of the Delhi Rent Control Act 1958 in favour of the respondent, which order is under challenge by RC Rev. 104/2016.

2. Both petitions having arisen out of the same proceedings before the Rent Controller, and they having a bearing on each other, have been heard together and are being decided by a common judgment.

3. The prime contention of the respondent was that she had acquired the right, title and interest in the subject property in terms of the partition of the estate left behind by her father, late Sh. Krishan Avtar Gupta, the suit premises having fallen to her share under the mutual settlement between the different legal heirs, the other legal heirs having relinquished their respective shares in such premises in

her favour by relinquishment deed executed and registered on 16.11.2011. It has been her case that her son is grown up and her husband has been earning as a small collection agent of Syndicate Bank without any permanent or regular job. She indicated that she required the subject premises for business by herself and by members of her family dependent on her, she not having any alternative business premises available.

4. The petitioner had raised a number of grounds for leave to contest to be granted by the Rent Controller. By the separate application mentioned above, he had also accused the respondent of being guilty of suppression of material facts. All his contentions did not find favour with the Rent Controller.

5. At the hearing on these petitions, the allegations of suppression of facts have been reiterated. It is the contention of the petitioner that his grandfather had applied for installment of electricity connection in the tenanted premises at his own expense and that such fact had not been properly set out in the eviction petition. It is argued that in the eviction petition, the respondent would wrongly show the electrical fittings to have been provided by the landlord.

6. In the considered view of this court, such submissions as above do not take the case of the petitioner any further. The issue as to whether the landlord had actually provided the electricity connection or the electrical fittings or as to whether the tenant had to go about making such arrangements on his own is inconsequential.

7. The other fact referred to in the context of plea about concealment is the ownership of the first floor of shop no.3876 and the premises at first floor bearing no.3872. The learned rent controller has rejected the contentions based on these facts by the separate order dated 08.10.2015 correctly noting that the same are irrelevant for the reason the tenant does not dispute that the said other properties are in occupation of different tenants and, therefore, not available.

8. Even if it were to be assumed that the first floor over and above the suit shop has been lying vacant, it cannot be treated as a suitable alternative accommodation for purposes of the landlady to set up business to be run by her or members of the family dependent on her. Given the lay-out of the road on which the property is situate, there is nothing unusual in the desire of the landlady to opt for the commercial space at the ground floor which has been in the possession of a tenant.

9. The petitioner then argued that the additional rent controller was not right in ignoring his plea that two specific property dealers namely Bali Khanna and Handa had engaged him in negotiations, at the instance of the respondent / landlady, for sale of the suit shop in the month of May / June, 2013. This court finds no merit in this argument. The respondent has denied having expressed desire at any stage to sell the subject premises rather than use it for setting up family business to be run with the assistance of her husband and son. The plea of the petitioner in above regard is not founded on any cogent material. The denial of any such intention by the landlady in the given facts and circumstances must be believed. The rights of the

tenant who is to be evicted are duly protected by the law in the event of the landlady not putting the premises to the intended use after eviction within the period prescribed by the statute (Section 19). The plea to above effect, thus, has been rightly rejected by the court below.

10. One another ground taken by the petitioner before the rent controller for grant of leave to contest and which has been reiterated before this court is that the Government of NCT of Delhi is in the midst of planning widening of Roshanara Road which, when implemented, would result in the subject premises being acquired and demolished. This apprehension cannot be a reason for the tenant to be permitted to remain in occupation or to deny the plea of the landlady for eviction on the ground of bonafide requirement. It is for the landlady to consider as to what she would do if acquisition proceedings are initiated against her property.

11. It was also the argument of the petitioner at the hearing before this court that the case set out in the eviction petition reflects merely a “wish” which cannot be treated as a genuine need, the special power of attorney executed by the respondent in favour of her husband on 17.04.2013 reflecting she not being in a position to set up another business in the subject premises located in North Delhi for the reason she is an ordinary resident of distant locality of Sohna in District Gurgaon, Haryana, the special power of attorney also declaring her to be suffering from some illness rendering it personally difficult for her to even attend the court hearing. The argument referring to the declarations in the special power of attorney is most unfair. The

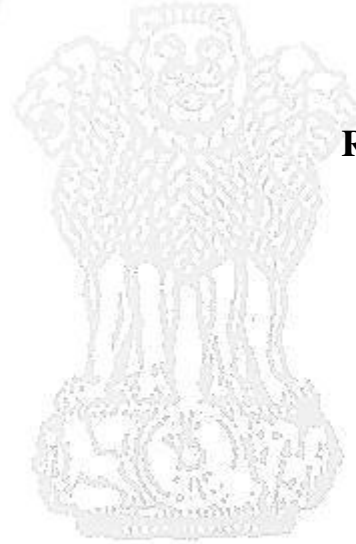
pleadings in the eviction petition have to be read in their entirety and it is clear therefrom that the respondent has set out a case of bonafide requirement to use the subject premises for setting up a business to be run not by her alone but by members of her family, particular reference being made to her grown up son and her husband who is in receipt of a meager income only as collection agent for a bank.

12. The petitions are found devoid of merits and, thus, dismissed. The pending applications consequently also stand dismissed.

R.K.GAUBA, J.

APRIL 16, 2018

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