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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 01st March, 2018

Decided on : 08th March, 2018

+ RC. REV. 94/2016 and CM APPL.4947/2016

RAM PRAKASH & SONS & ORS. Petitioners

Through: Mr. C.S. Bhandari, Advocate
with Mr. Rahul Bora, Advocate

Versus

MAHENDER PAL & ANR. Respondents

Through: Mr. Rajendra Dutt, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

J U D G M E N T

1. The respondents herein had instituted proceedings (eviction case No.84/2011) against the petitioners before the rent controller of District Shahdara at Karkardooma Courts Complex, Delhi on 08.06.2011 seeking an order of eviction under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 in respect of the premises described as shop measuring 7½ ft. x 10½ ft., forming part of property bearing No.D-3/17, Krishna Nagar, Delhi-51 [as specifically shown in red colour in the site plan (Ex.PW-1/1) filed with the said petition] pleading *bona fide* need.

2. The petition was initially filed against Shri Ram Prakash who having expired, upon application under Order XXII Rule 4 of the Code of Civil Procedure, 1908 (CPC) being moved, his legal representatives were brought on record. Upon leave to contest being

granted, the case was resisted by the petitioners (concededly, tenants in the premises in question) by filing a written statement, which was subsequently allowed to be amended, the averments made whereunder were refuted by the respondents through replication. The case went to trial in the course of which the first respondent Mahender Pal appeared as a witness (PW-1), the petitioners, on their part, having examined Ajay Diwan (RW1) in addition to two other witnesses, namely, Nitin (RW2) and Pawan Gupta (RW3), an official from the office of sub-registrar and an attesting witness of the documents referred to in evidence respectively.

3. The rent controller found, by judgment dated 21.08.2015, that the respondents had brought home their case for an order of eviction which was consequently granted, this, *inter alia*, on the basis of findings returned that the respondents had proved that there exists a relationship of landlord and tenant between the parties, the respondents being the owner of the subject premises and they requiring *bona fide* the vacant possession of the tenanted premises for setting up business of the son of the second respondent, there being no suitable alternative accommodation available for such purposes.

4. The petition at hand assails the judgment dated 21.08.2015 whereby the eviction order has been granted against the petitioners and in favour of the respondents.

5. The property in question, *i.e.*, D-3/17, ground floor, Krishna Nagar, Delhi-110051 of which the subject shop forms a part was earlier owned by Smt. Vidhya Devi Gupta and three others. The

petitioner was concededly inducted by the said erstwhile owners as a tenant in the subject premises, the tenancy being oral. It was pleaded by the respondents and proved through evidence at the trial on the eviction petition from which the present petition arises that the petitioners had purchased the undivided right, title and interest in equal shares in the said property from the erstwhile owners by separate sale deeds executed and duly registered on 07.02.2006. It may be mentioned here that the second respondent herein is the wife of Satish Kumar, who is real brother of the first respondent herein. It appears sale deeds were also executed in respect of upper two floors of the said property in favour of the respondents, but this case does not concern said above floors, the tenanted premises being part of the ground floor only. The site plan would reveal that the ground floor of the property consists of three rooms, latrine, two bathroom, one kitchen, one *varandah* and three shops besides passage leading to the back portion from the front side. The upper floors of the property were described as residential quarters put to such use by the petitioners and members of their family stated to be quite large undivided family living jointly, comprising, at the time of filing of the petition, seven adult members and three minor children.

6. As per the case set up in the eviction petition, the petitioners also owned another residential property, it bearing No.B-6/13, built up area measuring 116½ sq. yds. in the *abadi* of Krishna Nagar, village Ghondli, *illaqa* Shahdara, Delhi, such property being not suitable alternative accommodation for purposes of the need of which eviction was sought.

7. It was pleaded that the first respondent herein was engaged in assisting his father Ram Dayal in the business in the name and style of M/s. S.K. Shutters and Engineers Works in premises described as X-1570, Rajgarh, Satnam Road, Delhi measuring 100 sq. yds. wherein his brother Satish Kumar was also lending help, the father (Shri Ram Dayal being then 77 years old), such engagement earning to the respondent herein and his brother meager amount of Rs.6,000/- to Rs.8,000/- per month. It was pleaded that Saurabh Juneja, son of the second respondent herein had completed the degree course of bachelor of business administration (BBA) and he being an unemployed youth was keen to set up his own business of readymade garments and for such purposes he required the tenanted premises which was part of a property situate in the vicinity of main market of Krishna Nagar, Delhi and thus, most suitable and for which purposes, no other alternative accommodation was available.

8. It may be mentioned here that prior to filing of the eviction case on the ground under Section 14 (1) (e) of the Delhi Rent Control Act, 1958, the respondents herein had filed another eviction case against the predecessor-in-interest of the petitioners herein on the ground of non-payment of rent under Section 14 (1) (a) of the Delhi Rent Control Act, 1958 (E No.137/2011), the petition wherein had been initiated on 04.09.2010 on the pleadings, *inter alia*, that the rate of rent of Rs.3,000/- per month and which case was contested by the predecessor-in-interest of the petitioners herein on the ground that the rate of rent was Rs.330/- per month only. The said petition resulted in judgment dated 22.03.2012 (Ex.RW-1/A) wherein a finding was

returned that the averments of the petitioners herein as to the rate of rent was correct.

9. When the summons of the petition on the ground of *bona fide* need was served on the petitioners, application for leave to contest was moved. The said application was, *inter alia*, based on the pleadings of the petitioners that the second respondent herein had changed the dimensions of the other two shops reducing the size of shop No.2 and correspondingly enlarging the size of shop No.3 which had been let out to a company known as “Imprint” in the year 2010, prior to filing of the eviction petition. This plea impressed the rent controller who had consequently granted the leave to contest by order dated 09.07.2012.

10. It may, however, be noted here that during the course of trial, per evidence of the first respondent herein (PW-1) it was brought out, and to which there was no contrary evidence led by the petitioners herein, that the tenant inducted in the adjoining premises in 2010 was not a firm named M/s. Imprint but an individual named Mr. Raj Kumar Gupta, the dimensions of the said shop being 11.5 ft. x 20.7 ft. approximately. It also came out that the third shop (*i.e.* the shop other than in the tenancy of the petitioners herein and also other than one in which Raj Kumar Gupta was inducted), was a smaller shop which was used for some time for small business in the name and style of M/s. Daksh Momos, it having been closed down eventually.

11. During the course of the pendency of the case Raj Kumar Gupta, the tenant inducted in the second shop (larger one) admittedly

vacated the said premises, it having become available to the respondents in 2012. It is admitted case of the respondents that the said larger shop was taken over by the first respondent who started his own business in the name and style of M/s. Raj Kitchen Gallery in the said portion.

12. The petitioners have argued that the eviction order is bad in law for the reason it has nowhere been clarified as to which one of the two petitioners, who were co-petitioners before the rent controller, is the owner-cum-landlord qua the tenant in respect of the subject premises, the sale deeds relied upon in evidence showing purchase of undivided shares. The contention is devoid of substance for the very reason the respondents had purchased undivided equal shares in the joint property. By this very reckoning, both of them are co-owners and, therefore, co-landlord qua the tenant.

13. The contention raised before the rent controller was that the dimensions of the two adjoining shops were changed so as to make one larger than the other, the intention being to derive commercial advantage by letting out the bigger portion at higher rate of rent, this being substantiated by the letting it out of the said portion to M/s. Imprint or its proprietor Mr. Raj Kumar Gupta. There is no substantive evidence brought on record by the petitioners during the trial to show that the dimensions of the two said other shops were changed at any point of time after acquisition of the property by the respondents herein.

14. The fact remains that in 2010, about a year prior to filing of the eviction petition from which the present proceedings arise, the bigger of the said two shops was let out to Raj Kumar Gupta. The simple explanation, however, offered by the respondents is that at that stage of the letting to the larger shop to Raj Kumar Gupta, the need of Saurabh Juneja, son of the second respondent herein had not yet arisen. After all, the premises could not be left unused while the said member of the family was yet to be ready to set up his own business. In these circumstances, this court accepts the explanation and declines to read anything adverse against the case of the respondents herein for eviction on the ground of *bona fide* need.

15. The learned counsel for the petitioners then argued that the eviction petition on the ground of non-payment of rent was filed on the false averments that the rate of rent was Rs.3,000/- per month, his further submission being that in the said case leading to judgment dated 22.03.2012 (Ex.RW1/A) there was no reference, not even remote one, to the *bona fide* need. In the considered view of this court, both the contentions of the petitioners herein do not help their case. The landlord may have failed to prove the rate of rent as pleaded at Rs.3,000/- per month. But this cannot reflect on the case for eviction on the ground of *bona fide* need which has to be tested squarely on considerations of the ingredients provided in Section 14 (1) (e) of the Delhi Rent Control Act, 1958. The earlier petition being on the ground of non-payment of rent, there was no obligation on the part of the landlord to set out a case for *bona fide* need in those proceedings.

The omission to do so cannot render the case subsequently presented suspect.

16. The petitioners then argued that the need on which eviction is sought was of Saurabh Juneja, who is son of the second respondent herein. It was submitted that it was incumbent that either the second respondent herein or her said son Saurabh Juneja, should have stepped into the witness box to affirm the need thus pleaded. The petition was filed by the respondents herein jointly. The close relationship between the said set of parties has been referred to earlier. As elder member of the family, the first respondent herein was in a position to not only plead but also affirm on oath all the requisite facts. He having appeared as the witness (PW1) on behalf of the respondents, the case has to be appreciated in light of his deposition which cannot be rendered evidence of lesser value than what would have been the case if the second respondent herein or her son had also testified. The educational credentials of Saurabh Juneja were duly proved by PW-1. There is no contest to the case of the respondents that Saurabh Juneja is a qualified but unemployed youth, who is looking out for space to start earning his livelihood. The plan of the family to facilitate setting up of business of the said younger member cannot be questioned, not the least by a tenant in the property.

17. It was, however, also argued that the premises earlier occupied by Raj Kumar Gupta having fallen vacant in 2012, suitable alternative accommodation had become available which, if the need was genuine, should have resulted in Saurabh Juneja being asked to utilize the said

space for his intended business. The space vacated by Raj Kumar Gupta, larger than that of the other two shops in the property, has admittedly been taken over by the first respondent herein in 2012, he having set up a new business in the name and style of M/s. Raj Kitchen Gallery. The argument that this renders the case for eviction *mala fide* has been rejected by the rent controller in the impugned judgment and, in the opinion of this court, rightly so. As noted earlier, the business of M/s. S.K. Shutters of the father of the first respondent herein in another premises was not a business of the first respondent herein. He was only assisting his father. Even otherwise, the said business was not resulting in good income. In these circumstances, if the first respondent has switched himself from being a mere assistant in the business of his father to be proprietor of his own business in the shop vacated by Raj Kumar Gupta, it also being a matter of needs and priorities of the family the same cannot be grudged by the tenant.

18. The need of Saurabh Juneja, son of the second respondent herein remains unfulfilled and there is nothing in the evidence to show that there is another suitable alternative accommodation available for such purposes. Consequently, the revision petition is found devoid of merits. It is, therefore, dismissed.

19. The pending application also stands disposed of.

R.K.GAUBA, J.

MARCH 08, 2018

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