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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 06th December, 2018

Pronounced on: 12th December, 2018

+ RC.REV. 140/2018 & CM APPL Nos.13899-900, 31065/2018

NAVEEN PRAKASH GUPTA

..... Petitioner

Through : Mr.R.P.Lao with Ms.Poonam Lau,
Advocates

versus

DEEPAK AGGARWAL

..... Respondent

Through : Ms.Tanvi Sapra and Mr.Manish
K.Bishnoi, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This revision petition challenges the impugned judgment dated 09.01.2018 passed by the learned ACJ/CCJ/ARC (West), Tis Hazari Courts, Delhi dismissing an application for grant of leave to defend filed by the petitioner herein and passing of an eviction order. The judgment is being challenged on ground of illegality and it is urged the learned ARC has erred in determining the bonafides of the petitioner.

2. The eviction was sought by the respondent /landlord/owner of industrial shed bearing No.55, category III, DSIIDC Industrial Area, Rohtak Road, New Delhi-110041 under the tenancy of the petitioner. The grounds upon which the eviction of the tenant was sought are as under:

“a) Landlord Deepak Agarwal is the owner of shed No. 35 mentioned above. It was purchased by Deepak Agarwal landlord by virtue of irrevocable power of attorney, agreement to sell, receipt of consideration, deed of will etc. on 21.05.1997 from Shri Ashok Kumar Garg son of Shri Ratan Lai R/o C-397, Saraswati Vihar, New Delhi for

valuable consideration. Copies of aforesaid documents are also being filed. The will executed by Ashok Kumar Garg was a registered will and it was last will of Ashok Kumar Garg who has later on died. The will was voluntarily executed according to law and was attested by two witnesses according to Law.

ii) Respondent Naveen Prakash Gupta @ Naveen Gupta is the tenant of petitioner Deepak Agarwal. This Tenant is already doing business in the industrial shed No.11, 33, 34 also. This tenant is also using the shed No. 35 which is in his tenancy as Godown/ Store. The said shed No.35 is bonafidely required by the landlord Deepak Agarwal and his family members. There is no other suitable industrial accommodation/ premises in the ownership and possession of the landlord and his family members suitable for the manufacture of ladies hand bags business/industry,

iii) Smt.Roopali Agarwal is the wife of the petitioner. She wants to do business and has decided to do business of manufacturing of Ladies Handbag. She is financially dependent upon the petitioner. Kumari Damini Aggarwal is the eldest daughter of the petitioner. She has also decided to do business. She is also financially dependent upon the petitioner. Both Smt. Roopali Agarwal and Kumari Damini Aggarwal who are dependent upon the petitioner and are family members of the petitioner for doing business of Manufacturing of and sale of Ladies Handbags. Industrial shed no.35 which is in the tenancy of respondent Naveen Prakash Gupta @ Naveen Gupta is very suitable. This shed is also in front of shed no.36, where the petitioner is doing business. There is only common passage between shed no.35 and 36. Nowadays government is also encouraging and helping to ladies to do business. Smt. Roopali Agarwal has already done M.Sc. (PG) in Chemistry. She is young lady aged about 47 years of age. Kumari Damini Aggarwal has already done her B.Tech and MBA and she is aged about 23 years. Both of them shall be doing business of manufacturing ladies handbags in the Industrial Shed No.35, which has got area about 48 sq.mtr. The need / requirement of the premises in dispute to the petitioner and his family members is genuine and bonafide.

iv) The petitioner at present is doing business in industrial shed no.36 which is also having area of about 48 sq.mtr. In this shed no.36, the petitioner is doing the business of

leather embossing on job work basis. This accommodation is not even sufficient for doing the business of artificial leather embossing on job work basis. There is no regular office in this industrial shed no.36 for office purposes. There is already wooden office cabin in built in shed no.35 which is in the tenancy of the respondent. The wife of the petitioner and the daughter of the petitioner shall also be having her office in this wooden cabin for running her business. The petitioner shall also be using that office accommodation for running the business of the petitioner. The industrial shed no.35 is also required for the petitioner, so that he may have his office alongwith the office of his wife and daughter. The requirement / need of the petitioner and family members is very genuine and bonafide. v) There is no space available in the shed no. 36 for opening the manufacturing business of Smt. Roopali Agarwal and Kumari Damini Aggarwal. The accommodation in shed no.36 is not sufficient for the business of the petitioner which he is doing.

vi) Smt. Roopali Agarwal is owning and possessing the residential ground floor only of Building No. 5221/6, Krishna Nagar, Karol Bagh, Delhi and the petitioner and his family members have nothing to do with the remaining aforesaid building/floors. This ground floor portion cannot be used under the rules and regulations for manufacturing of ladies hand bags. The residential accommodation under law cannot be used in Delhi for manufacturing/industrial purpose and for the business which Smt. Roopali Agarwal and Kumari Damini Aggarwal shall be doing in Shed No.35. It is also not suitable for the business of manufacturing of ladies hand bags which Smt. Roopali Agarwal has decided to start.

vii) The requirement/need of shed No. 35 is bonafide and Genuine for the petitioner and his wife and daughter. The petitioner and his family do not have any other suitable accommodation/premises for starting the business of manufacturing ladies hand bags.”

3. At the outset the learned counsel for the petitioner did not challenge the ownership of the petitioner and his main stress was the respondent does not require the premises bonafide and the issue raised by

the petitioner ought to have been treated as a triable issue and the leave to defend should have been granted.

4. Now, the petitioner has sought an eviction on the plea that his wife and daughter require the premises for manufacturing of ladies handbags. It was urged there exist a common passage between sheds No.35 & 36 and since Shed No.36 is already in possession of the respondent where he is doing the business of leather embossing on job work basis, therefore, the manufacturing of ladies handbags by his wife and daughter in adjoining shed would be a supplement to his business and since the subject premises has a wooden office, his wife and daughter can conveniently sit and it would also be used by him as his office too. The wife of petitioner is aged 47 years and is M.Sc (PG) in Chemistry and whereas his daughter is B.Tech/MBA and is aged 23 years. Since both of them are inclined to do the business as above, the need of the respondent was rightly declared to be bonafide.

5. The learned counsel for the petitioner then referred to the reply of the respondent herein to the leave to defend application wherein the respondent has disclosed the financial stability of his wife stating interalia she is an income tax payee for last several years; has her *istridhan*, fixed deposits, shares, bonds in several companies, mutual funds and saving bank account etc. It is alleged by petitioner if the wife of the respondent is financially secured then she cannot be treated as a *dependent* upon the petitioner and hence the petitioner is entitled for leave to defend. This argument is misconceived as the 'dependency'

under Section 14(1)(e) of the Act is not limited to the financial dependency but includes dependency for accommodation too.

6. The learned counsel for the petitioner then pointed at some photographs showing the ground floor of House No.5221/6, Krishna Nagar, Karol Bagh, Delhi being used for commercial purposes to say the said house belong to the wife of the respondent and commercial activity is being carried from the said house hence the wife of respondent could very well start manufacturing of handbags from the said house and hence does not require the premises bonafidely. This argument too is misconceived since it is not the case of the petitioner that any manufacturing activity is allowed to be carried from House No.5221/6, which *per-se* is a residential accommodation. Further when the respondent owns an industrial accommodation why he would then allow his wife to use residential premises for industrial purpose. Even otherwise, the respondent has alleged the said residential house is not suitable for such purpose, and this Court has no reason to disbelieve him.

7. Let me now see as to how the learned ARC has dealt with this issue.

“13. Petitioner has projected his bonafide requirement of the tenanted premises from where his wife and daughter intends to start a manufacturing business of hand bags. His daughter is stated to have completed her M.B.A. and is thus in a position to start the business. As regards the contention of the respondent that the wife of the petitioner does not live any experience to start the manufacturing business, it is stated that there are slew of judgments of the Superior Courts where they have observed that even in the absence of any experience in any field, in case of genuine and bonafide requirement the person cannot be denied the eviction of the premises. To embolden this view, reference is this are as below.

14. *Puran Chand Aggarwal v. Lekh Raj DOD*, 16th April 2014, Relevant paragraph in this regard wherein it was held

"27. As far as business is concerned, it is not necessary that the landlord must show some evidence that he has experience of said business. That is not the requirement of law in order to file the eviction petition on the grounds of bonafide requirement".

"28. The following judgments do help the case of the respondent:

(I) In Ram Babu Agarwal vs. Jay Kishan Das, (2010) 1 SCC 164, it was observed that "A person can start a new business even if he has no experience in the new business that does not mean that his claim for starting new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business and sometimes they are successful in the new business also."

(ii) In Tarsem Singh vs. Gurminder Singh, 173 (2010) DLT 379, it was observed that " if the landlord wants to start his own business in the premises owned by him then by no stretch of imagination, it can be said that the requirement of the landlord for the premises is neither bonafide nor genuine."

(iii) In Balwant Singh Chowdhary & Ann vs. Hindustan Petroleum corporation Ltd., 2004 (1) RCR 487, it was held that "It is not necessary for the landlord to plead and prove the specific business he wants to set up, if the landlord wanted the premises for business purposes."

(iv) In Gurcharan Lai Kumar vs. Srimati Satyawati & Ors., 2013 (2) RCR (rent) 120 it was observed that "Merely because the exact nature of business has not been described would not take away their bonafide need to carry out a business (when admittedly both the sons are dependent upon petitioner for this need). It was observed that if the business need is not disclosed this would not wipe away the bonafide need of the landlord as has been

pressed under Section 14 (I) (e) of the DRCA, 1958."

(v) In Raj Kumar Khaitan & Ors. vs. Bibi Zubaida Khatun & anr., AIR 1995 SC 576, it was observed that " It was not necessary for the appellants-landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody would bind the landlords to start the same business in the premises after it was vacated." Even, after having gone through the pleadings and documents placed on record, it appears to the Court that it is not a triable issue..."

15. As far as the employment of Kumari Damini Agarwal with M/s E Value Serve is concerned, there is nothing to show that at the time of filing this petition, she was still continuing with that employment. Petitioner has already tendered explanation that his daughter merely did internship with M/s E Value Serve and was never in a permanent employment. Respondent has not furnished any material to the contrary. Petitioner is stated to be carrying on his business from Shed No. 36 in the same premises and if his daughter and wife wants to start their own business from the tenanted premises, this requirement cannot be doubted."

8. A bare perusal of the reasoning given by the learned Trial Court do show the eviction order does not suffer from any error of law and is not perverse or arrived at without consideration of the material evidence filed before it. It is only when such findings are based on no evidence or on misreading of the evidence or is grossly erroneous that if allowed to stand it would result in miscarriage of justice it is open to the High Court to upset such finding. If this Court is satisfied qua the correctness, legality or propriety of any decision or the order impugned, this Court shall not exercise its power as an appellate court to re-appreciate or reassess the evidence for coming to a different finding on fact. The revisional power cannot be equated with the power of reconsideration of all questions of

facts as a Court of first appeal, per *Hindustan Petroleum Corporation Ltd vs Dilbahar Singh* 2014 AIR(SC) 3708.

9. Finding no infirmity in the impugned judgment dated 09.01.2018, the petition stands dismissed. All pending applications stands disposed of in terms of above.

YOGESH KHANNA, J.

DECEMBER 12, 2018

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