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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 8th January, 2018

+ RC.REV. 177/2017 and CM APPL.14842/2017 (stay)

M/S LYCA FINANCE LTD

..... Petitioner

Through: Mr. Ajayinder Sungwan, Advocate
with Mr. Tarunesh Kumar, Mr. Rohan
Sharma, Ms. Sweety Chattopadhyay,
Mr. Summinder Paswan, Mr.
Anirudha Kumar, Mr. Kunal Chopra,
Mr. V.P. Singh, & Ms. Vandana
Dhankar, Advocates

versus

PROF (Dr.) A.K SALUJA

..... Respondent

Through: Ms. Rekha Aggarwal, Advocate with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The petitioner is admittedly a tenant under the respondent in the premises described as first floor of property bearing No.3-E/15, Jhandewalan, New Delhi. Concededly, the property in question was originally owned by Shri Chaman Lal Saluja, who had raised the super-structure on the basis of lease hold rights granted in his favour by Delhi Development Authority (DDA) on 07.03.1970. The super-structure thus built consists of three floors, the ground floor portion being presently in use and occupation of the second son of the respondent viz. Dr. Bobin Saluja and his wife Dr. Nidhi Saluja for

purposes of running a dental clinic and for their dental equipment manufacturing company established in 2006-07. The original owner Shri Chaman Lal Saluja passed away on 19.11.1981 and upon the other legal heirs relinquishing their shares, right, title and interest in the property, it devolved on the respondent, the petitioner also having attorned in his favour accordingly. Thus, the fact that the respondent is the landlord-cum-owner *qua* the petitioner in the subject premises is not in question.

2. The second floor portion of the super-structure of the above mentioned property is concededly in use and occupation of the respondent-landlord for residential purposes, statedly for self and members of his family dependent on him, the family comprising of his wife aged 70 years, two sons both now married, one of the sons Dr. Bobin Saluja having two daughters also living as part of the family.

3. The premises in question was admittedly let out to the petitioner by Shri Chaman Lal Saluja for non-residential purposes. The petitioner describes itself as a non-banking financial company (NBFC).

4. The respondents filed the eviction petition (E. No.125/2016) on 30.08.2016 against the petitioner on the ground of *bona fide* need invoking the provision contained in Section 14 (1) (e) of the Delhi Rent Control Act, 1958. On the special summons in terms of Section 25-B of the Delhi Rent Control Act, 1958 being served on the petitioner, it submitted an application for leave to defend. The said application was considered by the learned Additional Rent Controller

after securing reply from the respondent. By the impugned order dated 08.03.2017, the Additional Rent Controller found no triable issue having been raised and, thus, rejected the prayer for leave to contest and in the consequence granted eviction order, though extending the protection of Section 14 (7) of the Act by deferring the execution of the eviction order for a period of six months.

5. The petition at hand has been filed by the tenant seeking to assail the said order declining the leave to contest.

6. While resisting the eviction petition, the tenant had raised the plea that the landlord has sufficient alternative accommodation available to him, referring in this context to the portion at the ground floor. The landlord, by reply, explained that in terms of the stipulation in the perpetual lease deed dated 07.03.1970 granted by DDA, the portion at the ground floor could not be put to use for residential purposes. A copy of the said lease deed was shown to the Additional Rent Controller who was satisfied with the said explanation and on that basis rejected the contention of the tenant. A copy of the said perpetual lease deed has been shown to this court and it is found that the contentions of the landlord are correct. During the course of arguments, however, the counsel for the petitioner tenant submitted that if this were the stipulation in the perpetual lease deed the very letting out of the premises by late Shri Chaman Lal Saluja was illegal and, therefore, the petition raises triable issues. This argument, to say the least, is found to be wholly frivolous and leads the tenant nowhere.

The restrictions against user of ground floor portion have no bearing on the purpose of letting of upper floor.

7. The tenant had contended before the Rent Controller that the other son, *i.e.*, Dr. Robin Saluja was not residing with the landlord and was living elsewhere. The landlord by way of reply contested this position and reiterated that both the sons including the said Robin Saluja were living together, under the same roof, as family at the second floor portion of the subject property. The plea that one of the sons was living elsewhere is as vague and non-specific as it could be. The tenant has not mentioned any particulars of any property where the other son may have been living if not at the given address. Such vague plea cannot be said to give rise to any triable issue.

8. It was then contended that the landlord has enough space at the ground floor and at the second floor portion of the property. Since ground floor cannot be used for residential purposes, reference to such accommodation, even otherwise used for dental clinic and the dental equipment manufacturing company cannot be referred to. The site plan of the second floor confirms the limited accommodation available to the family at the second floor. With both sons being married – the elder son having been married about six months ago – the accommodation of only three rooms at the second floor portion can hardly be said to be sufficient. Even otherwise, it has to be kept in mind that the petitioner is a senior citizen, aged 75 years and his family includes his wife also similarly aged 70 years. The accommodation at the first floor portion would undoubtedly relieve

them of the rigor of climbing the stairs upto the second floor. During the course of hearing before the rent controller, as also before this court, the tenant tried to join issue by referring to the number of stairs which one has to climb from ground floor upto the first floor and then from first floor upto the second floor. This approach is not fair. Even if the difficulties faced in climbing stairs can be reduced upto the level of one floor, the landlord deserves the comfort he chooses within his own property.

9. It was then contended that the petitioner is a NBFC (company) and cannot simply be asked to leave the premises all of a sudden since it would require sufficient time to notify the statutory authorities about the change of address. The difficulties of the tenant are not the concerns of the landlord and on such account the eviction order cannot be resisted particularly when, upon being pointedly asked, the counsel for the petitioner submitted that the petitioners do not seek any enlargement of time.

10. For the foregoing facts and circumstances, the petition is devoid of substance and is dismissed.

11. The pending application also stands disposed of.

R.K.GAUBA, J.

JANUARY 08, 2018

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