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

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Judgment delivered on: 16.12.2019

+ RC.REV. 10/2019

RANI BHATIA

..... Petitioner

versus

SADHNA JAIN & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. J.C. Mahindro, Advocate with petitioner in person

For the Respondent: Mr. Sanat Kumar with Mr. D.S. Chauhan, Advocates for R2.

Mr. Siddharth Arora with Mr. Lalit Gupta, Advocates. for R1.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

1. Petitioner impugns order dated 14.11.2018 whereby the Rent Controller has granted leave to defend the eviction petition to the respondents.

2. Petitioner has filed the subject eviction petition seeking eviction of the respondent, under Section 14(1)(e) of the Delhi Rent Control Act, 1958 on the ground of *bona fide* necessity, from Shop No. 1518, Ground Floor, Lajja Ram Building, Chandrawal Road, Subzi Mandi,

Clock Tower, Delhi-7, more particularly as shown red colour in the site plan annexed to the eviction petition .

3. The ground pleaded by the petitioner is that the subject shop is owned by the petitioner, who had purchased the same by way of a registered sale deed dated 11.08.2011 from its previous owner. The shop was let out by the predecessor of the petitioner to the predecessor of the respondent.

4. It is contended that after the predecessor of the respondent expired, the respondents on their own constructed a wooden partition and converted the shop into two portions. One portion is occupied by respondent No.1 and another portion is occupied by respondent No.2 and they are operating their respective shops from the said portions.

5. It is contended in the eviction petition that the family of the petitioner comprises of herself, her husband, one son and one daughter, the daughter is married.

6. It is further contended that the husband of the petitioner was working as an agent for opening recurring deposit accounts with Delhi Nagrik Sehkari Bank Ltd. and his responsibility was to collect amounts from the customers for deposit in the bank which entailed door to door visit for collection of the amounts.

7. It is contended that the husband at the time of filing of the eviction petition, in 2016, was aged about 64 years and suffering from

old age related problems, due to which, he was not able to visit door to door and further that on 10.08.2016, the bank had discontinued, the work of all the agents for opening recurring deposit account and as such, he had become jobless.

8. It is contended that the shop was required by the petitioner for her husband who wanted to start his own independent business of gents clothes and readymade garments.

9. It is further contended in the eviction petition that son of the petitioner could not study beyond Class XII and could not complete his graduation even after joining correspondence courses and as such, could not get proper service/employment and was presently working with a courier company for delivering couriers and wanted to leave his job and start a business of children readymade garments.

10. It is further contended that on account of low income of the son of the petitioner, she could not get him married despite his advancing age and accordingly wanted to settle her son and her husband by starting their own independent business from the tenanted premises.

11. It is further contended that she is working on a petty salary in *Aanganwadi* and her working hours are only upto 2 pm and accordingly also wishes to start her business of ladies wear from the tenanted premises.

12. It is further contended by the petitioner that her son in law was

also not having his own independent business and was dependent upon his mother who had employed him in her business concern and he also wanted to start his own independent business from the tenanted premises.

13. It is further contended that neither the petitioner nor her family members dependent upon her have any other reasonably, suitably alternative commercial accommodation available to meet their requirements.

14. Separate leave to defend applications were filed by the two respondents. However, taking common grounds. Even before this court identical submissions have been made.

15. It is contended by the respondents in the leave to defend applications that the petitioner, though is the recorded owner of the property, did not have the financial capacity to purchase the property and funds were provided by her son in law and his family.

16. It is contended that the property was purchased in the name of the petitioner so that a ground for eviction could be made out at a later point of time.

17. It is further contended by the respondents that the petitioners have not been able to show as to which of the requirements, as mentioned in the eviction petition, would be fulfilled in case, the respondent-tenant is evicted and this raises a triable issue.

18. It is further contended by the respondents that the petitioner has recently let out the adjoining shop to M/s. COBB.

19. It is further contended that requirement of the petitioner is not *bona fide* as though the property in the name of the petitioner, the litigation is a proxy litigation on behalf of the son in law who had purchased the property in the name of the petitioner so that a ground for eviction could be raised and as such, it shows that the need of the petitioner is not *bona fide* and the eviction petition is *mala fide*.

20. The Rent Controller by the impugned order has held that insofar as the ownership of the petitioner is concerned, the sale deed duly established that the petitioner is the owner of the property and as such, no triable issue arose on the question of the ownership of the petitioner.

21. Further, the Rent Controller noticed that the respondents-tenants had filed petitions before the Rent Controller for deposit of rent showing the petitioner as the landlady which further confirmed that the respondents themselves admit the petitioner to be the owner and landlady and accordingly no triable issue on that count also arose.

22. Further, the Rent Controller has held that the respondents themselves in earlier eviction proceedings had claimed joint tenancy and had confirmed that the tenancy of the two respondents was not separate.

23. The contention of the respondents that the petitioner did not have the financial capacity and the property was purchased in her name, as a conspiracy between her and her son in law for the purposes of filing an eviction petition on the ground of bona fide necessity was also rejected by the Rent Controller on the ground that the financial capacity of the owner could not be a ground of challenge by a tenant.

24. Even though the Rent Controller has categorically returned findings in favour of the petitioner and against the respondents tenants on the above grounds, respondents have not filed any cross appeal or cross objections challenging the said findings.

25. Be that as it may. It is an admitted position that the petitioner is the recorded owner of the subject property. Respondents have also admitted the petitioner to be the landlady of the subject property by filing petitions showing her to be landlady. Even before this court, Respondents do not dispute that they have paid rent to the petitioner thereby admitting the relationship of landlord and tenant.

26. It is settled position that to maintain a petition, the petitioner does not have to show absolute ownership over the tenanted premises but has to show a better title than the tenant. Further, once the tenant by his conduct has accepted the title of the landlord, cannot later question the title of the landlord.¹

¹ *Apollo Zipper India Ltd. Versus W. Newman & Co. Ltd. (2018) 6 SCC 744*

27. In the present case, the petitioner is the recorded owner as also admittedly the landlady of the respondents. This ground clearly is not available to the respondents tenants and Rent Controller has rightly held that no triable issue arises on the said ground.

28. With regard to the *bona fide* necessity, the Rent Controller has granted leave to defend to the respondents solely on the ground that the petitioner in her petition has projected four separate needs; for herself, her husband, her son and the son in law and it remained to be seen as to how the petitioner would run the business from the tenanted premises.

29. The Rent Controller has held that whether the business is to be run by the petitioner and her dependent family members jointly or independently was an issue requiring trial. The Rent Controller has held that she has stated that each one of them want to run their own business and it was not her case that she wanted to run the business of garments jointly with her husband and son. Accordingly, the Rent Controller was of the view that *bona fide* need of the petitioner could not be assessed without evidence.

30. Clearly, the Rent Controller has committed a grave error in returning such a finding. Merely because the need expressed is more as compared to availability, is no ground to deny the landlord even of the limited resource, which is available. It is for the landlord after eviction, to see as to how he is going to put to use the tenanted

premises. Neither the Tenant nor the court can dictate to the landlord as to how to use the premises. Landlord is the best judge of his requirement and suitability.

31. The Rent Controller has clearly committed a grave error in holding the same raises a triable issue. The need as projected by the petitioner cannot be faulted. The petitioner has categorically stated that her husband, who was at the time of filing of the eviction petition on 19.09.2016, and aged 64 years, had recently lost his job and needed the tenanted premises to commence his business.

32. The son of the petitioner also was not able to secure a well-paying job because of his educational qualification and wanted to commence business. Even the petitioner who is stated to be working in the *Aanganwadi* at a petty salary wanted to start her business.

33. Whether the petitioner starts her business independent of her husband and son or jointly with them does not raise triable issue as to bonafides of the landlord and is no ground to deny eviction when the petitioner has been able to show that the needs of the petitioner and her dependent family members are genuine and *bona fide*.

34. Insofar as the requirement of the son in law, as projected in the eviction petition, is concerned, even if assuming that the son in law is not dependent upon the petitioner, petitioner has been able to establish *bona fide* need of the tenanted premises for herself, her husband, and

her son.

35. Respondent has not been able to place on record any material to show that any portion of the property or of any other property is available to the petitioner for satisfying the needs of the petitioner and her dependent family members.

36. Further contention of the respondents that an adjoining portion has recently been let out to M/s. COBB is also not been substantiated by the respondents.

37. Firstly, petitioner in her reply to the leave to defend application has categorically stated that she has no concern with the premises in which M/s. COBB is a tenant. It is categorically stated by the petitioner that M/s COBB is a tenant in property bearing No.1520 with which the petitioner has no concern. She has also given the name of the owner and landlord of M/s COBB.

38. Further the sale deed in favour of the petitioner also mentions M/s. COBB as a tenant in property No. 1520. The fact that M/s. COBB is mentioned as a tenant of adjoining shop, even in the sale deed by which the petitioner purchased the property, shows that the premises occupied by M/s. COBB is distinct from the tenanted premises which has been purchased by the petitioner and also establishes that M/s. COBB has been a tenant of the said property much prior to purchase property by the petitioner.

39. This negates the contention of the respondent that the petitioner has recently let out adjoining portion to M/s. COBB. Even this ground does not raise a triable issue.

40. Rent Controller has committed a grave error in granting leave to defend to the respondents. The Rent Controller has clearly misconstrued the grounds raised by the petitioner in the eviction petition and the pleas raised by the respondents/tenants in their leave to defend application.

41. Perusal of the leave to defend applications clearly shows that no triable issue arises in the present case and respondents have not been able to raise any plea which, if proved, would disentitle the petitioner/landlady from an order of the eviction.

42. In view of the above, the impugned order dated 14.11.2018 granting leave to defend to respondents is set aside. Consequently, the applications seeking leave to defend, filed by the respondents are dismissed. Eviction order is passed in favour of the petitioner and against the respondents, directing respondent to hand over to the petitioner the peaceful and vacant possession of Shop No. 1518, Ground Floor, Lajja Ram Building, Chandrawal Road, Subzi Mandi, Clock Tower, Delhi-7, more particularly as shown red colour in the site plan annexed with the eviction petition.

43. The petition is accordingly allowed in the above terms.

However, in terms of Section 14(7) of the Delhi Rent Control Act, 1958 this order shall not be executable for a period of six months from today.

44. Order *dasti* under the signature of the Court Master.

DECEMBER 16, 2019
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SANJEEV SACHDEVA, J.

