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

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Judgment delivered on: 06.09.2019

+ RC.REV. 41/2019 & CM APPL. 3402/2019

HARMEET SINGH

..... Petitioner

versus

DALIP KUMAR & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Ms. Amrit Kaur Oberai, Adv.

For the Respondent: Mr. Nitya Sharma and Mr. Rajat Sharma, Adv.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner/Tenant impugns order dated 14.09.2018 whereby leave to defend application filed by the petitioner has been dismissed and an eviction order passed.

2. Subject petition was filed by the Respondents, under section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the Act), on the ground of *bonafide* necessity, with regard to one shop situated in property bearing No. 3045, Gali No. 37, Beadonpura, Karol Bagh, New Delhi, more particularly as shown in red colour in the site plan attached to the eviction petition.

3. The case set up by the Respondents/Landlords is that they are

the owners of property bearing No. 3045, Gali No. 37, Beadonpura, Karol Bagh, New Delhi, having acquired the same from their predecessor who had acquired title to the said property from the Delhi Improvement Trust.

4. It is contended that they had let out suit premises to the petitioner and have also let out another shop to another tenant which shop was adjoining to the tenanted premises.

5. The petitioners are real brothers and they along with their family members have been residing jointly in the property in which the tenanted premises is situated. It is alleged that petitioner no. 1 retired from Ministry of Mines and his family consists of his wife, three sons; two of whom are married. One son is unmarried and is unemployed. The two sons of petitioner no. 1 along with their wives and one child each and the third unmarried son are residing in the Suit property along with the petitioners.

6. It is contended that the eldest son of respondent no. 1 is in a private job and other two sons are unemployed. It is further contended that respondent no. 2 is in a private job and he along with his family consisting of his wife, two children – one son and daughter are residing in a part of the property.

7. Son of respondent no. 2 is unemployed. It is contended that three sons i.e. two sons of respondent no. 1 and one son of respondent no. 2 are unemployed and are unable to earn their livelihood and

respondent no. 1 has already retired from service and the income of the family is now from one of the sons of respondent no. 1 and respondent no. 2 who are employed and their earnings are not sufficient to maintain and meet the requirements of the family members.

8. It is contended that the petitioner wanted to run the business of sale of readymade garments and wish to employ their three children so that they could earn their livelihood and meet the requirement of the family. Thus, it is inter-alia contended that the respondents bonafide required the tenanted premises for opening of a shop and they have no other suitable alternative accommodation available for running a shop.

9. Petitioner filed his leave to defend contending that the respondent no. 2 was neither the owner nor the landlord of the tenanted premises. It is contended by the petitioner that premises were let out by respondent no. 1 and respondent no. 2 has been joined in the eviction petition just to create an additional requirement when none exists. The ownership of respondent No. 1 is not disputed.

10. Further, it is contended that there is sufficient accommodation available in the property which is sufficient to meet the requirement of petitioner no. 1 and his family. Further it is contended that there is also a shop available in the property behind the shop of the petitioner which is being used by one of the sons of petitioner no. 1 for running his business and said accommodation has not been disclosed in the

eviction petition and there is thus substantial concealment.

11. It is contended that the respondent had incorrectly stated that two sons and respondent are unemployed. It is contended that one son is in private job and other was running a shop behind the shop of the petitioner and had recently closed the same and the said shop is lying vacant.

12. Learned counsel for the petitioner submits that since there is concealment, the petitioner was entitled to grant of leave to defend and further since it is a case of additional accommodation leave to defend should have been granted.

13. Reliance is placed on the decision of a coordinate bench of this Court in RC. REV. 107/2012 titled '*Narender Kumar Manchanda & Anr. Vs. Hemant Kumar Talwar*' dated 10.12.2012. Reliance is also placed on the decision of the Supreme Court in '*Santosh Devi Soni Vs. Chand Kiran*', (2001) 1 SCC 255 and '*S.M. Mehra Vs. D.D. Mallik*' (2001) 1 SCC 256.

14. Rent Controller by the order dated 14.09.2018 has declined to grant leave to defend. The Controller has noticed that the case set up by the petitioner was that both the respondents were not landlords of the tenanted premises and the premises was let out to the petitioner by respondent no. 1 only. Rent Controller has noticed that the contention of the respondents was that they were joint owners of the property and had placed on record their title documents. Rent Controller has

noticed that the admitted case of the petitioner was that at least one of the two respondents was the owners and landlords and the rent agreement has not been disputed. Rent Controller has held that once the petitioner has admitted Respondent No. 1 to be the owner/landlord of the tenanted premises, being a tenant, he could not deny the title of respondent no. 2 who is the real brother of respondent no. 1.

15. Petitioner admits that Respondent No. 1 is the owner and landlord. Respondent No. 1's case alongwith the case of Respondent No. 2 is that they both are joint owners.

16. Further, it is a settled proposition of law that the Landlord, to maintain a petition under section 14(1)(e) of the Act, is not required to show absolute ownership over the tenanted premises but is only required to show that his title is better than that of the tenant.

17. Petitioner has admitted that respondent no. 1 is the owner of the property and respondent no. 1 very categorically has averred that it is he along with his brother respondent no. 2 who are owners of the property and landlord.

18. The Contention of Learned Counsel for the petitioner is that Respondent No. 2 has been shown as a joint owner so as to increase the necessity.

19. A tenant cannot dispute the title or ownership of the landlord. Be that as it may, even if one were to consider the need of the Respondent No. 1 and his family and disregard the need of

Respondent No. 2 and his family, it is seen that a case of bonafide necessity is still made out.

20. The family of respondent no. 1 comprises of himself, his wife, three sons and two of whom are married and have one child each. Family of respondent no. 2 comprises of himself, his wife and one son and a daughter.

21. The case set up is that they require the shop for running of business by the Respondent No. 1 and the three sons. Two of Respondent No. 1 and one son of Respondent No. 2. For the sake of testing the defence raised if one were to exclude the requirement of the son of Respondent No. 2, still the need projected by the Respondent No.1/landlord is not fulfilled.

22. Respondent No. 1 has stated that he has retired and two of his sons are unemployed. He has projected the need for starting of a business by himself and his two sons besides the need for the son of Respondent No. 2.

23. It is not disputed by the Petitioner that Respondent No. 1 has retired. Case set up is that out of the two unemployed sons, one is employed in a shop earning Rs. 10,000/- per month and the other was till recently running a shop from the shop behind the shop of the Petitioner.

24. Even if assuming one of the sons is employed, it does not preclude him from starting his own business. It is not the case of the

Petitioner that Respondent No. 1 is gainfully employed. His own need cannot be disputed. Further, as has been dealt with hereinafter the alleged shop behind the tenanted premises is not comparable to the tenanted premises for running a business.

25. Further, the case set up by the respondents is that they are living together jointly as a family and the family comprises of two brothers along with their respective families. It is not the case of the petitioner that the respondents are not living together as one family.

26. The case set up by the respondents is that the family is surviving on the income of one of the sons of respondent no. 1 and that of respondent no. 2 himself and the said income is insufficient to meet the requirements of the family of the two brothers and they need the tenanted premises for starting a business.

27. Another contention of the petitioner is that there is another shop behind the shop of the petitioner, which was earlier in the occupation of one of the sons of petitioner no. 1 and is now lying vacant and thus there is sufficient accommodation already available and the need is not bonafide.

28. It is observed from the site plan and it is an admitted case of the parties that the shop under the tenancy of the petitioner opens onto main Hardhyan Singh Road which is highly commercial road and the other shop which is alleged to be in possession and lying vacant in possessions of the respondents is a small shop opening in a back

narrow lane.

29. As per the site plan, the tenanted premises has a length of 20 feet with frontage of 8 feet and back of 6'10" and the alleged shop at the back is only 8'.4" x 9'.3". When the shop under the tenancy of the petitioner is compared with the rear shop, it is clear that there is no comparison between the two shops in terms of their commercial value.

30. A tenant cannot dictate as to how else a landlord can adjust himself. It is for the landlord to choose the place of business more suitable to him. He has complete freedom in the matter.¹ The Landlord is the best judge of his requirement and it is neither open to the tenant nor to the Court to dictate to him with regard to his requirement and utilisation and it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.²

31. Further contention of the learned counsel for the petitioner that there is concealment, to my mind, has also no merit, in as much as, the respondents have clearly filed a site plan depicting the entire property including the tenanted premises and also the room at the back of the tenanted premises and have not concealed any portion of the property in the site plan.

¹ Bhupinder Singh Bawa Versus Asha Devi (2016) 10 SCC 209
Anil Bajaj & another Versus Vinod Ahuja (2014) 15 SCC 610

² Salra Ahuja Versus United India Insurance Co. Ltd (1998) 8 SCC 119

32. Concealment to non suit the Landlord should be concealment of a material fact, which would have a bearing on the facts of the case and the ultimate decision. The landlord is obliged to disclose accommodation which is available to the landlord and which could be comparable or alternative to the tenanted premises. Non-disclosure of accommodation, which is neither comparable nor an alternative to the tenanted premises, would not non suit the landlord.

33. In the present case, even if it is assumed that the rear portion was being used as shop, it is seen that there is no comparison between the said portion and the shop under the tenancy of the petitioner. Said shop cannot be said to be an alternative to the shop in tenancy of the petitioner.

34. When the need as projected by the respondents is taken into account, it is seen that they have a huge joint family comprising of two brothers, their respective wives and five children and only two earning members. Respondents have shown bonafide necessity of the tenanted premises for the purposes of opening a showroom of a readymade garments for augmenting the income of the family and for settling the unemployed children.

35. In view of the above, I find no infirmity in the view taken by the Rent Controller in holding that no triable issue arises and that the petitioner has not been able to raise any ground which if established would disentitle the respondents from an order of eviction.

36. The Judgment in the case of *Narender Kumar Manchanda (supra)* relied by learned counsel for the respondents is not applicable in the facts circumstances of the case. In the said case, the landlord has concealed that from the adjoining accommodation he was doing his business and accordingly the Court held that the case was of additional accommodation for setting up a new business or expanding existing business and as such the projecting requirement was required to be tested.

37. Further, reliance placed by learned counsel for the petitioner on the judgments of the Supreme Court in *Sontosh Devi Soni (supra)* and *S.M. Mehra Vs. D.D. Mallik (supra)* is misplaced. In the said cases, Supreme Court had granted leave to defend in the peculiar facts of those cases. Supreme Court in the said judgments has not laid down as a principle of law that in all cases of additional accommodation, leave to defend has to be granted. Each case has to be assessed on its own merits.

38. I find no merit in the petition. The same is accordingly dismissed.

39. Order *Dasti* under signatures of Court Master.

SANJEEV SACHDEVA, J

SEPTEMBER 06, 2019/rs