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

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Judgment delivered on: 18.11.2019

+ RC.REV. 585/2019

M/S DEEPAK TEXTILE & ANR

..... Petitioners

versus

SANJAY GAUTAM

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. Deepak Kumar Vijay and Ms. Neeru Sharma,
Advocates.

For the Respondent:

Mr. Jagdish Chandra, Advocate

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 44463/2019 (exemption)

Allowed, subject to all just exceptions.

RC.REV. 585/2019 & 44462/2019

1. Petitioner impugns order dated 21st May, 2019 whereby leave to defend application of the petitioner has been dismissed and an eviction order passed.

2. Respondent had filed the subject eviction petition seeking eviction of the petitioner, on the ground of *bona fide* necessity under Section 14(1)(e) of the Delhi Rent Control Act, 1958 from shop

bearing private No. 1 in property bearing municipal No. 1009/16, Kucha Natwan, Chandani Chowk, Delhi.

3. The ground of eviction on which the subject petition was filed is that the petitioner is a co-owner/landlord of the building and intends to set up a textile business in the tenanted premises.

4. It is contended that the tenanted premises are required bona fide by the respondent. Respondent at the time of filing of the eviction petition was aged about 54 years and had contended that he had worked in ARTEX Textiles Pvt. Ltd at Surat from 2009 to 2016 and was also presently working in a textile firm at Surat (Gujarat) and had adequate experience for setting up business of textiles.

5. It is contended that he has no other property/accommodation in Delhi or an NCR other than the tenanted premises in the building and the tenanted premises were required for setting up the business of textiles.

6. Subject leave to defend application was filed by the petitioner contending that the property was owned by several co-owners and as the other co-owners have not been impleaded, the petition is bad for non-joinder or mis-joinder of the parties.

7. Further, it is contended that the premises are situated in a slum area and as such, the petition was not maintainable in the absence of permission in under Section 19 of the slum area (Improvement &

Clearance Act, 1956).

8. It is further contended that the tenancy was created between the grandfather of the petitioner and late Smt. Shakuntala Devi, the mother of the respondent and after her demise, the rent was being collected by Sh. Rajeev Gautam, brother of the respondent who had also expired.

9. It is further contended that the advance rent had been paid upto 31.03.2027 to Sh. Rajeev Gautam and he had issued a receipt dated 30.09.2014, acknowledging receipt of rent till 2027.

10. Further, it is contended that since there is no partition of the properties and respondent is not the owner of the property he does not any *locus standi* to file the eviction petition.

11. Respondent has filed the subject petition contending that he has experience in the field of textile and has worked in the textile industry in Surat and is presently also working in Surat. He has expressed his need tenanted premises as he intends to start his textile business and he has no other accommodation available in Delhi from where he can start his business.

12. Petitioner in his leave to defend has not been able to show that the Respondent has any other premises available from where he can start his business. There is not even an averment that Respondent owns or possesses any other property available, except the subject

premises in Delhi wherefrom business of textiles can be commenced/carried on by the respondent.

13. It is settled position of law that a co-owner can maintain a petition under Section 14(1)(e) without impleading the other legal heirs. The Supreme Court of India in *Kanta Goel v. B.P. Pathak* (1977) 2 SCC 814 held that a co-owner is as much an owner of the entire property as any sole owner and thus was not disentitled to from suing for eviction. In *Pal Singh v. Sunder Singh* (1989) 1 SCC 444, the Supreme Court held that when other co-owner did not object to the eviction, one co-owner could maintain an action for eviction even in the absence of other co-owner.

14. In *Dhannalal v. Kalawatibai* (2002) 6 SCC 16, *India Umbrella Manufacturing Co. v. Bhagabandei Agarwalla (dead) by LRs Savitri Agarwalla* (2004) 3 SCC 178 the Supreme Court of India held that consent of co-owner is assumed, unless it is shown that other co-owner is not agreeable to eject the tenant and the proceedings for ejectment are inspite of the disagreement.

15. The contention of the petitioner is that the tenancy was created between the grandfather of the petitioner and late Smt. Shakuntala Devi, the mother of the respondent and after her demise, the rent was being collected by Sh. Rajeev Gautam, brother of the respondent. Both the mother Smt. Shakuntala Devi and the brother of the Respondent have expired. Petitioner has not stated that if not the

respondent, who is the owner and landlord of the property.¹

16. In these circumstances, the Rent Controller has rightly returned the finding that the relationship between the parties exists of landlord and tenant respondent has shown that he has a better tilted than the petitioner and accordingly, he is entitled to maintain the subject eviction petition.

17. The Plea of the Petitioner that advance rent has been paid to the brother of the respondent is contrary to statutory provisions. Section 13 of the Delhi Rent Control Act provides limitation of one year to a tenant to seek recovery of any rent paid to the landlord or collected by the landlord in contravention of the provisions of the Delhi Rent Control Act, 1958.

18. Furthermore, the fact that Section 14 of the Delhi Rent Control Act begins with a non-obstante clause that “*Notwithstanding anything to the contrary in any other law or contract.....*” indicates that the provisions of the Act would override any contract between the parties. Merely because the petitioner is alleged to have paid rent upto 2027 would not mean that respondent/landlord cannot seek eviction of the petitioner from the tenanted premises in case, respondent is able to show that grounds as mentioned in Section 14 of the Delhi Rent Control Act, exist.

¹ *Rajender Kumar Sharma Versus Leela Wati & Others 155 (2008) DLT 383*

19. The plea of the petitioner that as permission under section 19 of the Slum Areas (Improvement & Clearance) Act, 1956 has not been obtained, Respondent cannot maintain the Eviction Petition is also not sustainable. Division Bench of this Court in *Smt. Krishna Devi Nigam & Others Versus Shyam Babu Gupta & Others* (1980) 17 DLT 344 : AIR 1980 Delhi 165 has held that “to an application brought under clause (e) of proviso to sub-section (1) of Section 14 the provisions of Slum Areas Act are not applicable.”

20. Rent Controller has rightly held that the affidavit filed by the Petitioner in support of the leave to defend application does not raise any triable issue or grounds which if proved would disentitle the respondent/landlord from an order the eviction.

21. The leave to defend application in my view also does not raise any triable issue or disclose facts, which if proved would disentitle the respondent landlord from an order of the eviction. There is no merit in the petition.

22. The petition is accordingly dismissed.

23. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J.

NOVEMBER 18, 2019

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