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

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Judgment delivered on: 30.10.2019

+ RC.REV. 609/2019

HANSRAJ

..... Petitioner

versus

VINOD CHOUDHARY

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Ashish Negi with Ms. Aarzu Khattar, Advocates.

For the Respondent: Mr. Sudhir Naagar and Mr. Mohit Singh, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.47106/2019 (exemption)

Exemption is allowed subject to all just exceptions.

RC.REV. 609/2019 & CM APPL.47105/2019 (stay)

1. Petitioner impugns judgment dated 06.06.2019, whereby leave to defend application of the petitioner has been dismissed by the Rent Controller and an eviction order passed.

2. Respondent had filed the subject eviction petition seeking eviction of the petitioner on the ground of bonafide necessity under Section 14(1) (e) of Delhi Rent Control Act, 1958 from a shop in property bearing No.351/2, Punjabi Bazar, Subhash Market, Kotla Mubarakpur, New Delhi, more particularly as shown in pink colour in the site plan attached to the eviction petition.

3. The case set up by the respondent was that the subject property is an ancestral property comprising of 5 shops bearing Municipal Nos.351/1 to 351/5 and the said shops have been bequeathed to the respondent by the registered Wills dated 28.12.1976 and 25.03.1988 by the father of the respondent and consequently to a Family Settlement dated 06.09.2007, said shops have come the share of the respondent.

4. It is contended by the Respondent that all the five shops are tenanted and were let out by his father during his lifetime and old tenants are still continuing.

5. It is contended by the respondent that both the children of the respondent are jobless and respondent intends to open a departmental store for his elder son Keshav Chaudhary as he has no other reasonably suitable accommodation available with him.

6. It is further contended that the respondent plans to sell one of his agricultural land to invest in the business of his son Keshav Choudhary.

7. Further, it is contended that for setting up of business for himself, he has filed another eviction petition in respect of Shop No.351/3.

8. It was further contended that as the requirement of space for running a departmental store is more than the space available in the tenanted premises, respondent had also filed another petition for eviction in respect of Shop No.351/1.

9. It is contended that he has no other reasonably suitable commercial accommodation for setting up of a departmental store for his son.

10. It is further contended that father of the respondent has left behind other properties as well and by way of a settlement, the properties were divided between the respondent and his brother and a memorandum of family settlement dated 06.09.2007 was executed.

11. Leave to defend application was filed by the petitioner contending that the respondent has not disclosed that the respondent is the owner of several immovable properties, which could be put to commercial use and for that purpose eviction petitions have been filed.

12. Petitioner had contended that apart from the subject property, respondent is the owner of the property Nos.371, 351, 54, 55 and 57 situated in Subhash Market besides property Nos.1818, 1819, Gurudwara Road, Kotla Mubarakpur and three shops in property Nos.1478/1, 1478/9 and 1478/10 besides the agricultural land. It is thus contended that there are several properties in possession of the respondent which are commercial and could be used for the purpose for which the eviction petition has been filed.

13. It is contended on behalf of the learned counsel for the petitioner that apart from the subject eviction petition, respondent has filed an eviction petition with regard to property bearing Nos.351/1, 351/3, 351/4 and 351/5.

14. In response to the leave to defend application, respondent had categorically stated with regard to each of the property as under:-

<i>Sr. No.</i>	<i>Property Numbers</i>	<i>Stand of the Petitioner</i>
<i>1.</i>	<i>371, 371/7, situated at</i>	<i>Property No.371 (approx. plot area 500 sq.yds) has 16 divisions from 371/1 to</i>

	<i>Subhash Market, New Delhi.</i>	<i>371/16, in which Property Nos.371/1 to 371/14 (residential) &371/16(residential) has gone to the share of the brother of the Petitioner Mr. Rakesh Chaudhary and the petitioner has nothing to do with the said properties.</i> <i>However, a residential portion i.e. 371/15 (plot area 100 sq.yds.) has come to the share of the Petitioner which is on rent for more than 50 Years and petitioner has filed Eviction Petition No.117/2008 Vinod Chaudhary Vs. Pushpa Rani & Ors. which is pending in the Court of Shri Samar Vishal, ARC, Saket.</i>
	<i>351, situated at Subhash Market, New Delhi.</i>	<i>Property No. 351 (approximately 115 Sq. Yards) has 5 divisions from 351/1 to 351/5, which are all shops have gone to the share of the Petitioner, all of which are occupied by tenants more than 50 Years ago.</i> <i>351/1 Tenant Ashok Kumar, Vijay Kumar, Rent Rs.1000/- pm</i> <i>351/2 Tenant Hansaj, Rent Rs.77/- pm</i> <i>351/3 Tenant Om Prakash, Rent Rs.70/-pm</i> <i>351/4 Tenant Kanta Rani, Rent Rs.400/-pm</i> <i>351/5 Tenant Shyam Sunder, Rent Rs.600/- Pm</i>
	<i>54, 55, situated at Subhash Market, New Delhi.</i>	<i>Property Nos. 54 &55 (approx. plot area 200 sq.yds.) is one property having 2 numbers from 2 sides of the roads, which is being used as a residence by the petitioner.</i>
	<i>57, situated at Subhash Market, New Delhi.</i>	<i>Property Nos. 57 (approx. plot area 200 sq.yds.) is a residential property in the share of the brother of the petitioner Rakesh Chaudhary and the petitioner has nothing to do with the said properties.</i>

2.	<i>1818, 1819 Gurudwara Road, Kotla Mubarakpur, New Delhi</i>	<i>Property Nos. 1818 & 1819 is old family house. As per Will of the father of the petitioner date (18.12.1986) the said property has gone to the share of the step brothers of the petitioner namely Swaran Singh and Jay Karan Singh and the petitioner has nothing to do with the said properties.</i>
3.	<i>1478/1, 1478/9, 1478/10 Gurudwara Road, Kotla Mubarakpur, New Delhi.</i>	<i>As per Will dated 25.03.1988, the Property No.1478 alongwith all its divisions has gone to the share of the Mother of the Petitioner Ramwati for her livelihood and benefit and the petitioner has nothing to do with the said properties.</i>
4.	<i>Agricultural Land at Village Kharkhoda,</i>	<i>This is completely a bald allegation of the Tenant, which has nothing to do with present case. However it is clarified that the agricultural land, if any, was already sold by the Father of the Petitioner during his lifetime.</i>

15. The Rent Controller, by the impugned judgment, has noticed that there is no dispute with regard to the relationship of landlord and tenant.

16. With regard to the bonafide necessity, the Rent Controller has noticed that the eviction petition has been filed for the requirement of the elder son of the respondent Sh. Keshav Choudhary, who was stated to be unemployed and of marriageable age, for opening a departmental store. The Rent Controller has held that the need expressed could not be stated to be bogus or sham.

17. The Rent Controller has noticed that the petitioner had not pleaded in

the leave to defend application that the elder son was gainfully employed or has any other business for fulfilling his financial and personal need and accordingly, his need to start a business was held to be bonafide.

18. With regard to the plea of the petitioner that there was income of the respondent from agricultural property, the Rent Controller has negated the same on the ground that the need propounded was for starting of a business by the son of the respondent and accordingly, the earning of the respondent from agricultural properties was irrelevant.

19. With regard to the alternative accommodation, it is noticed that the contention of the petitioner is that there are five shops in property No.351. Admittedly, none of the shops are available to the respondent as all of them were rented out.

20. It is submitted by the learned counsel for the petitioner that about a week ago, respondent has secured possession of property bearing No.351/3 through warrants of possession.

21. In the subject eviction petition itself petitioner has disclosed petitioner had filed an Eviction Petition in respect of Shop No. 351/3 as he required the said premises No.351/3 for his personal use as he was not gainfully employed and has no other source of income except agricultural income and wanted to start his business.

22. It is not the case of the petitioner that the respondent has any other source of income. Even if the possession of property bearing No.351/3 has been made available to the respondent, the same does not, in any manner, diminish the need as projected in the eviction petition of the son of the

respondent.

23. Subject petition was filed with regard to shop bearing No. 351/2. Eviction Petitions filed with regard to other shops for the bonafide need of the son of the respondent are still pending. None of the shops for which eviction petitions have been filed for the need of the son are vacant or available.

24. Apart from that, the petitioner has stated that the respondent has the ground floor of property bearing No.H-57 available to him.

25. The family settlement filed on record by the respondent clearly shows that the property bearing No.H-57 has fallen to the share of the brother of the respondent and property bearing Nos. H-54 and 55 have fallen to the share of the respondent.

26. In the leave to defend application, petitioner has contended that the brother of the respondent is residing in a portion of property No. H-54 and 55 and has agreed to vacate the same and handover the same to the respondent. Petitioner has not been able to produce any material on record to show that the property bearing No.H-54 and H-55 were or are being used for any commercial purpose.

27. During submissions before this Court, it was contended on behalf of the petitioner that the properties bearing No.H-54, 55 and 57 have been demolished and reconstructed. However, it was conceded by the learned counsel for the petitioner that there is no shop or commercial activity visible in the property bearing No.H-54 and 55. However, in property No.57, it is contended that there is one shop in a portion of the property. Learned counsel

for the petitioner submits that there is no demarcation visible as to which property is H-54, 55 or 57.

28. From the site plan annexed to the family settlement, which was before the Rent Controller, it is apparent that the property No.57 is the front property and property No. 54 and 55 are towards the rear.

29. It is not the case of the petitioner that any commercial activity is being carried on from the rear portion, which as per the site plan annexed to the family settlement, has fallen to the share of the respondent.

30. Even otherwise, petitioner has not been able to point out to any alternative vacant commercial space available in the any property from which business of a departmental store could be carried out by the son of the Respondent.

31. With regard to the other properties, it is clear from the family settlement that said properties have not fallen to the share of the respondent and are not available to the respondent for the purposes of opening of a departmental store by his son.

32. The contention of the learned counsel for the petitioner that there are other eviction petitions filed by the respondent against other tenants, which are pending does not further the case of the petitioner. It is not the case of the petitioner that any of the premises qua which eviction petitions have been filed by the respondents for the requirement of his son have been allowed or accommodation has been made available.

33. The plea that in the case of another tenant an interim order of stay has

been passed against the order of eviction does not *ipso facto* entitle the petitioner to grant of leave to defend. Facts of each case have to be considered on their own merit. What has to be taken into consideration is the ground taken by the tenant in the affidavit in support of the leave to defend application.

34. Petitioner has not been able to show that the need of the respondent is not bonafide or that there is any alternative accommodation available to the respondent for the purpose of opening of any commercial activity by the son of the respondent.

35. The Rent Controller has rightly held that none of the ingredients, as required for grant of leave to defend, are satisfied by the petitioner.

36. Relationship of landlord and tenant is not in dispute. Petitioner has not been able to show that the need of the respondent is not bonafide or that there is any alternative commercial accommodation available with the respondent for the purpose for which eviction petition has been filed.

37. In view of the above, I find no infirmity in the impugned order of the Rent Controller holding that no ground has been raised by the petitioner which raises a triable issue or which, if proved, would disentitle the respondent/landlord from an order of eviction.

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

SANJEEV SACHDEVA, J

OCTOBER 30, 2019
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