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

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Judgment delivered on: 01.11.2019

+ RC. REV. 91/2019 & CM APPL. No. 7078/2019

KISHAN CHAND RATHI

..... Petitioner

versus

UZMA SAJID

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. J.P. Sengh, Senior Advocate with Ms. Zubeda Begun, Ms. Sona Ansari, Ms. Zubin Singh, Mr. Shashi Pratap Singh, Ms. Manisha Mehta, Advocates along with petitioner in person.

For the Respondent:

Mr. Sachin Jain, Mr. Akhil Sharma and Ms. Isha Aggarwal, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 12th October, 2018 whereby the leave to defend application filed by the petitioner, has been dismissed and the eviction order passed.

2. Subject eviction petition was filed by the respondent under Section 14(i)(e) of the Delhi Rent Control Act, on the ground of *bona fide* necessity seeking eviction of the petitioner from one shop on ground floor in property bearing No. 1206, Chandni Chowk, Delhi.

3. The ground pleaded by the respondent in the eviction petition was that the respondent literally for all practical purposes is the absolute owner of the tenanted premises and the tenanted premises are required bona fide for her own use and/or for expending their business of sale/purchase and export import of readymade cloths etc. and/or starting new business.

4. It is further contended that the respondent is not in use and occupation or even physical possession of any other reasonably suitable accommodation for meeting the needs of her aforesaid requirement and that in the last few years, the business of the respondent has grown tremendously wherefor one has to stock clothes of different sizes and make so as to satisfy the whims and fancies of the customers who come to buy new clothes.

5. It has further been contended that respondent has acquired for herself goodwill as well as reputation by virtue of which, the business is flourishing but due to lack, sufficient space the business suffers setback in sale and it is not possible to expend the same further and in order to expend the business as also the volumes of trading carried out, it is essential to acquire vacant possession of premises. It is further contended that the premises are most suitable for the aforesaid purpose.

6. It has further been contended that she has no other accommodation available to her in the walled city of Delhi and requires the premises for her own use and occupation for genuine business purposes.

7. Subject leave to defend application was filed by the petitioner, *inter alia*, contending that the need of the respondent is neither *bona fide* nor

borne out from the eviction petition.

8. Apart from disputing the site plan filed by the respondent, petitioner had contended that the respondent had not shown the entire construction existing on the first and ground floor of the subject property which is also being used for commercial purposes by her husband.

9. It is further contended that the respondent does not require the premises for alleged expansion of business as she is the owner and in possession of several commercial properties.

10. It is contended that Respondent owns commercial properties bearing No. 987 and 988 Ballimaran, Chandni Chowk, Delhi. There is a big shop on the ground floor of property No. 987, Ballimaran, Delhi and two big halls on the first floor from where the husband of the respondent is carrying on business.

11. It is further contended that there is a big shop on the ground floor and two big halls in property No. 988, Ballimaran, Delhi which are being used by the respondent for carrying on her business.

12. It is contended that the respondent has incorrectly shown that the respondent is residing in property No. 988, Ballimaran, Delhi, whereas respondent is residing in property No. M-9, Balta House, Okhla in which also there is commercial space available.

13. It is further contended on behalf of the petitioner that there are several other commercial properties available to the respondent, from where she and her husband are carrying on their respective businesses.

14. In response to leave to defend application, the respondent had contended that the first and second floor of the subject property are rented out and it is further reiterated that the respondent is residing in property Nos. 987 and 988, Ballimaran, Delhi and on account of paucity of space is also carrying on business from property Nos. 987-988, Ballimaran, Delhi.

15. The Rent Controller has declined to grant leave to defend holding that all the properties are either occupied by the husband of the respondent or by the respondent and as such are not available. Further the, Rent Controller has held that even if the premise are presumed to be available for her requirement, the choice is left to the respondent to decide as to which of the suit properties should be used by her for doing business and tenant does not have any say in the matter and the tenant cannot dictate as to how the respondent can use her available properties.

16. Further, the Rent Controller has held that even if the respondent did not disclose other properties owned by her, same does not amount to concealment as none of the properties are alternative or suitable to her and are being used by her husband for his business purposes.

17. Learned senior counsel for the petitioner contends that the case of the petitioner is that the respondent had firstly not disclosed the properties from where she is carrying on her business and has incorrectly stated that she is residing in 988, Ballimaran, Delhi, whereas the entire property is being used for business purposes and further she has not placed on record any material to show that there is any need for expansion and the respondent has neither pleaded nor produced any material to show that there was a *bona fide* requirement of the subject property.

18. It is further contended that the respondent has also not placed on record the material to show that the other properties admittedly owned by the respondent are either rented out to the third party or not available.

19. Perusal of the eviction petition show that the respondent has not pleaded the nature of business that the respondent is doing and has also not stated anything about where she is carrying on her own business.

20. In the leave to defend application, Petitioner has pointed out to several properties which are owned and/or in possession of the Respondent and her husband. The Respondent in response has admitted that the Respondent and her husband own and possesses several properties but contended that either they are being used by her for commercial purposes or by her husband for his business.

21. Rent Controller has declined to grant leave holding that either the properties disclosed by the Petitioner/tenant in his leave to defend are being used by the Respondent or her husband for their respective business. Rent Controller has held that the alternative properties re not suitable as they are not on the ground floor. Rent Controller has not taken into account at least two shops on the ground floor, which were disclosed by the Petitioner in his leave to defend application, i.e. 987 and 988, Ballimaran, Delhi. The Respondent has contended that the same are already being used for business purposes by her and her husband. The Dimensions of the shops have not been disclosed. It has also not been disclosed as to how they are insufficient.

22. The admitted case of the respondent, respondent is carrying on

business from property No. 988, Ballimaran, Delhi. It has not been disclosed in the eviction petition that the respondent is carrying on business in shop No. 988, Ballimaran, Delhi and neither the site plan nor the extent of accommodation available in 988 has been produced on record. The case of the petitioner is that the accommodation available in 988, Ballimaran, Delhi is sufficient for the existing business of the respondent and there is no need to expand and the so-called need expressed in the mere desire as distinct from a necessity as required under Section 14(i)(e) of the Delhi Rent Control Act, 1958.

23. Further, documents filed along with the eviction petition also do not show as to what is the nature and extent of business being carrying out by the respondent. No material has been placed on record to even *prima facie* show that the business of the respondent has grown or that due to lack of sufficient space business is suffering any set back in sales as alleged.

24. Learned counsel for the respondent submits that sufficient material is available with the respondent and can be produced before the Court to show that the business of the respondent is suffering on account of the lack of space.

25. Further it is submitted by learned senior counsel for the petitioner that summons of this petition were sent by this court to the address at 988, Ballimaran, Delhi, which was the address disclosed by the Respondent as her residential address. It is submitted that the report of the process server is that at the given address he met one Mr. Abdul Hamid, who informed the process server that he was the purchaser of the subject property from Uzma Sajid (Respondent herein) and that he had purchased the property about two

years back.

26. Learned counsel submits that the same also raises a triable issue and said plea could not be taken earlier as it has come on record only pursuant to the report of the Process server, who attempted service on the respondent of this petition on 29.03.2019.

27. The questions as to whether the accommodation available with the respondent in 988 Ballimaran, Delhi and other properties which have been mentioned by the petitioner in the leave to defend are unsuitable or are insufficient is a triable issue.

28. The Rent Controller has accordingly, committed grave error in declining to grant leave to defend the eviction petition to the petitioner and in holding that no triable issue arises. The affidavit filed by the Petitioner in support of the leave to defend application raises triable issues and the petitioner has been able to show facts which if proved would disentitle the Respondent/landlord from an order of eviction.

29. In view of, the impugned order dated 12.10.2018 is set aside. Leave to defend the eviction petition is granted to the petitioner.

30. List the petition before the concerned Rent Controller on 09th December, 2019, on which date, petitioner shall file his written statement before the Rent Controller.

31. Keeping in view, the fact that the eviction petition was filed in the year 2012, Rent Controller is directed to expedite the proceedings and endeavour to conclude the same within a period of one year from the next

date of hearing.

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

33. It is clarified that observations contained herein are prima facie in nature and only for the purpose of consideration of the application for grant of leave to defend and shall have no bearing on the merits of the case at the final stage.

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

NOVEMBER 01, 2019
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SANJEEV SACHDEVA, J.



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