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

% Judgment delivered on: 19.09.2019

+ RC.REV. 137/2019 & CM APPL.10531/2019 (stay)

CHANDER PRAKASH Petitioner

versus

MANEEL BANSIWAL & ANR Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Dinesh Rohilla with Mr. Mohan Singh,
Advocates.

For the Respondent: Mr. Manish Kumar with Mr. Sanjay Kumar,
Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 24.11.2018, whereby the leave to defend application of the petitioner had been dismissed and an eviction order passed.

2. Subject eviction petition was filed by the respondents seeking eviction of the petitioner from one shop in Property No.6584, Gali No.4, Block-9, Dev Nagar, Karol Bagh, more particularly as shown in red colour in the site plan attached to the eviction petition.

3. The ground on which eviction petition was filed was that the

property is owned by the respondents having inherited the same from their father.

4. It was contended that the ground floor of the property consists of the two shops and two rooms. One room was occupied by another tenant while one room was occupied by the petitioner. The shop adjoining to the room occupied by the petitioner is occupied by the respondent No.1, who is running his business of mobile repairing from the said shop. Other shop is occupied by the respondent No.2, who is also running his business of mobile shop therein. It is contended that the two rooms in mezzanine floor are also rented out. The first floor and the second floor of the property are occupied by the respondents and their family and are being used for residential purpose.

5. It is contended that the respondents' family consists of respondent No.1, his wife, two minor children and that the respondent No.1 is suffering from chronic arthritis and joint pain and is unable to walk properly and huge amount is required for his treatment. It is contended that the wives of the two respondents want to start a business of beauty products in the shop to supplement the income of the family in order to assist their husbands in maintaining the family expenses.

6. Further, it is contended that the wives of the respondents want to run their business of beauty products to settle themselves in the said

profession to supplement the income of the family. It is contended that the earning from the business of the petitioner is not sufficient to meet the requirements of the family and as such, it is necessary for the respondents to start a new business with the help of their wives so that the income of the respondents could be increased to meet out their requirements.

7. In the application seeking leave to defend petitioner has denied the need is bona fide. He has contended that apart from the subject property, the respondents are the owners of the adjoining property, a portion of which has been let out and one shop in the said property adjoining to the property in tenancy of the petitioner is lying vacant and locked. It is contended that the shop which is lying locked is identical in size to the tenanted premises.

8. Perusal of the record shows that the bonafide need projected is that the respondents do not have enough income for meeting the expenses of the family and to augment the income, the wives of the respondents want to start a new business.

9. No material has been placed on record by the respondents to show that the income of the family of the respondent is meagre. Admittedly two shops are in possession of the respondents from which they are carrying on their business. No evidence or material has been placed on record to show that the income from the said shops is insufficient and there is a need to augment the income.

10. The two shops in possession of the respondents from where they are carrying on their business are measuring 8.2 ft x 7.5 ft and 11ft x 14.6 ft. The tenanted premises measures 7.5 ft. x 3.5 ft.

11. There is no material to place on record by the respondents to show the extent of business being carried on from these two shops or their income earning status.

12. The petitioner tenant has specifically raised a ground that the need, as projected by the respondents, is not bonafide and they have artificially created the said need.

13. In case Respondent is able to establish at trial that the need projected is artificially created, it would disentitle the respondents from an order of eviction.

14. Clearly, the affidavit in support of the leave to defend filed by the petitioner discloses a triable issue and the ground raised, if proved, would establish that the need is not bonafide and it would disentitle the respondents from an order of eviction.

15. Further, a mere desire is distinct from a bonafide need. Eviction petition under section 14(1) (e) would lie if there is a bonafide necessity as distinct from a mere desire for which a petition would not be maintainable.

16. The Rent Controller erred in not appreciating that sufficient grounds were raised by the petitioner which entitled him to grant of

leave to defend.

17. The Rent Controller has erred in declining to grant leave to defend by the impugned order. In view of the above, the impugned order dated 24.11.2018 cannot be sustained and is, accordingly, set aside. Leave is granted to the petitioner to defend the eviction petition.

18. List the eviction petition before the concerned Rent Controller on 23.10.2019. Petitioner shall file his written statement on the said date.

19. Petition is disposed of in the above terms.

20. Order *Dasti* under signatures of the Court Master.

SEPTEMBER 19, 2019
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SANJEEV SACHDEVA, J