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

% Judgment delivered on: 21.10.2019

+ RC.REV. 116/2018 & CM APPL. 12079/2018

MAHER ELAHI

..... Petitioner

versus

RUBANA HAROON

..... Respondent

**Advocates who appeared in this case:**

For the Petitioner: Mr. Jagjit Singh, Advocate

For the Respondent: Mr. Praneet Pranav and Mr. Rahul Kumar,  
Advocates.

**CORAM:-**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**SANJEEV SACHDEVA, J. (ORAL)**

1. Petitioner impugns order dated 13.10.2017 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 from shop bearing No. 686, Bali Saudagaran, Ballimaran, Chandni Chowk, Delhi, more particularly as shown in red colour in the site plan annexed with the eviction petition.

3. The ground of eviction pleaded by the respondent is that the

tenanted premises are required bonafide by the respondent and the members of her family dependent upon her. It is contended that the respondent is an educated person and wants to establish her business of shoes and her family comprises of her husband and a minor son. It is contended that the earning of the respondent's husband is not sufficient for herself and other dependent family members. Further it is contended that the respondent has no other reasonably suitably commercial premises in possession with her and the only property in her possession is residential.

4. Subject leave to defend application was filed by the petitioner, inter-alia, disputing the ownership of the respondent. Further it is contended that the respondent has not disclosed that she and her husband have several commercial properties.

5. In paragraph 19(ii) in the affidavit in support of leave to defend application, it is pleaded by the petitioner as under:

*“19. (ii) That Para No.19(ii) of the petition as stated is wrong and denied. It is denied that suit premises is required bonafide by the petitioner and members of her family dependent upon her. It is denied for want of knowledge that petitioner is an educated person. It is denied that petitioner wants to establish her business of Shoes. It is denied that earning of the petitioner's husband is not sufficient for herself and her other dependent family members. It is humbly submitted that the petitioner and her husband has several commercial properties, the details of which are given below:-*

- a) 2 Shops & 3 Almira bearing No. 681/A to,681/E at Katra Mohammadeen opposite PNB, Near Ballimaran, Delhi-110006.
- b) Shop No. 685, Katra Mohd. Din, Opposite PNB, Near BalliMaran.
- c) Shop/Showroom at T-565, Idgah Circle, Chamelian Road, Delhi-6, operating under the name of Bharat Leather Works.”

6. In response to paragraph 19(ii) of the affidavit in support of leave to defend, the respondent in her response has stated as under: -

*“(ii) That the contents of the para no.19(ii) of the affidavit of the respondent are false, frivolous, concocted and baseless hence denied. It is submitted herein that neither petitioner nor her husband has any property on their name or in the possession of the petitioner. It is submitted that no any vacant premises available which is in possession of petitioner all mentioned properties by the respondent are either tenanted property to other tenant or ownership belongs to other persons than petitioner or her husband. It is submitted herein that respondent has failed to show any property which is registered in the name of petitioner and is in peaceful vacant possession with her. It is submitted herein that ownership of the alleged shop /showroom at T-565, Idgah Circle, Camelian Road, Delhi-110 006 neither vested in the name of petitioner nor in the name of her husband.”*

7. Petitioner had further placed on record along with leave to application the visiting card of Bharat Leather Works showing the name of the husband of the respondent alongwith one – Mr. M. Raza

and has also produced the photographs of the showroom of Bharat Leather Works which is stated to be in property bearing No. 565, Idgah Circle, Chamelian Road, Delhi.

8. It is further contended by learned counsel for the petitioner that petitioner has subsequently purchased 50% share of the subject property from the co-owner. He seeks to place on record the ownership papers.

9. In so far as the purchase of 50% share by the petitioner is concerned, it is settled position of law that merger of the tenancy takes place if the tenant purchases 100% ownership rights in the tenanted premises. In case a tenant claims to have purchased a part of the undivided share in the tenanted premises, there shall be no merger of tenancy and the tenancy is not extinguished and tenant shall still be liable for eviction.

10. In *India Umbrella Mfg. Co. v. Bhagabandei Agarwalla*, (2004) 3 SCC 178 the Supreme Court of India has held that “*In order to bring the tenancy to an end the merger should be complete i.e. the interest of the landlord in its entirety must come to vest and merge into the interest of the tenant in its entirety. When part of the interest of the landlord or the interest of one out of many co-landlords-cum-co-owners comes to vest in the tenant, there is no merger and the tenancy is not extinguished.*”

11. In so far as the pleas taken by the petitioner in the affidavit in

support of leave to defend are concerned about alternative accommodation, it is seen that the petitioner has specifically pleaded that the respondent and her husband own three properties which are available and also that the husband is carrying on business under the name and style of Bharat Leather Works.

12. In response to the aforesaid affidavit of the petitioner, the respondent in her reply, has not specifically dealt with each of the properties as mentioned. It is observed that neither in the eviction petition, nor in the reply to the leave to defend application, has respondent explained the connection of the respondent or her husband with Bharat Leather Works. A vague reply has been give that *“It is submitted that no any vacant premises available which is in possession of petitioner all mentioned properties by the respondent are either tenanted property to other tenant or ownership belongs to other persons than petitioner or her husband.”*

13. The ground of eviction is that the income of the husband is insufficient. Petitioner has place on record material to prima facie show that the husband is carrying on a business under the name and style of Bharat Leather Works.

14. Learned counsel for the respondent submits that the husband of the respondent is only assisting his father in Bharat Leather Works and does not have any right either in the property or in the said business and given an opportunity he would be in a position to establish the same.

15. Learned counsel for the respondent further submits that the petitioner has failed to substantiate that respondent have any right or connection with either of the properties mentioned in the leave to defend application.

16. Section 106 of the Evidence Act reads as under:-

*106. Burden of proving fact especially within knowledge.— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*

*Illustrations*

- (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.*
- (b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.”*

17. Section 106 of the Evidence Act places the burden to prove a fact upon the person who is having special knowledge of the said fact.

18. The petitioner has categorically stated that the three properties are owned and in possession of the respondent. Respondent has not specifically denied that she or her husband have no connection with the said properties. She has merely stated that *all mentioned properties by the respondent are either tenanted property to other tenant or ownership belongs to other persons than petitioner or her*

*husband*. She has not even disclosed the names of the person who are owners or who are in possession of the said properties.

19. It is admitted position that one of the showrooms under and name and style of Bharat Leather Works is operating in one of the said properties and the husband of the respondent has a connection with Bharat Leather Works.

20. Even before this Court, it is conceded by the respondent that husband of the respondent has connection with Bharat Leather Works, though it is stated that he is assisting his father in Bharat Leather Works. However, there is no such averment either in the eviction petition or in the reply to the leave to defend or any material placed on record.

21. The above clearly becomes a triable issue and in case the petitioner is able to establish that the husband of the respondent is owner or in possession of the alternative accommodation, the eviction petition filed by the respondent is liable to be dismissed.

22. Clearly, the affidavit in support of leave to defend filed by the petitioner raises triable issues and the petitioner has been able to disclose such facts, which if proved, would disentitle the respondent/landlord from an order of recovery of possession.

23. Rent Controller has clearly erred in not appreciating the grounds raised by the petitioner in the affidavit filed in support of the leave to defend application and has simply rejected the same on the

ground that the petitioner has not been able to show proof that the husband of the respondent is in possession of the said properties.

24. As noticed above, the husband of the respondent has a connection with at least one of the properties and carrying on business/assisting his father in the business (as contended by the respondent) in one of the properties under the name and style of Bharat Leather Works.

25. Rent Controller has further erred in not appreciating the provisions of 106 of the Evidence Act.

26. In view of the above, the impugned order cannot be sustained and is accordingly set aside. Leave to defend the eviction petition is granted to the petitioner.

27. List the petition before concerned Rent Controller on 26.11.2019. Petitioner shall file his written statement before the concerned Rent Controller on the said date.

28. Further, Rent Controller is directed to expedite the proceedings and endeavour to conclude the same within a period of one year from the date fixed before the Rent Controller.

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

**SANJEEV SACHDEVA, J**

**OCTOBER 21, 2019/‘rs’**