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

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Judgment delivered on: 17.10.2019

+ RC.REV. 243/2019 & CM APPL. 18640/2019

SH. SANJAY KUMAR

..... Petitioner

versus

SHRI ANIL AGGARWAL

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. Ashok Kumar Arya and Mr. Shivam Sharma,
Advocates with petitioner in person.

For the Respondent:

Mr. Suhail Khan, Advocate with respondent in
person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 29.10.2018 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 bonafide necessity under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 from Shop no. 361, Chitla Gate, Chawri Bazar, Delhi (measuring 3.3 ft x 2.6 ft.), more particularly as shown in red colour in the site plan attached with the eviction petition.

3. The ground of eviction stated by the petitioner is that besides the subject property, petitioner has another property bearing No. 417, Chitla Gate, Chawri Bazar, Delhi which is occupied by the seven tenants and the property is a dangerous building and a notice has already been issued to the tenants and an eviction petition against the tenants has already been filed.

4. It is contended that the tenanted premises is required for settlement of the son of the respondent, As the tenanted premises is a very small property, it has been decided by the respondent to give a big hall to his son and the big hall cannot be used as a good commercial place for settlement of his son unless the tenanted premises is evicted. If the tenanted premises is evicted then the big hall behind the tenanted shop can be used properly by the son of the respondent and without having possession of the tenanted premises, the hall behind the tenanted premises is worthless.

5. Subject leave to defend application has been filed by the petitioner contending that the tenanted premises measures only 3 feet x 2 feet and is not useable as a shop as it cannot accommodate even one person. It is contended that behind the shop there is a staircase leading to the first floor and the tenanted shop cannot be merged with the hall. There is a passage besides the shop leading to the hall at the back. It is contended by the petitioner that the sole intention of the respondent is to evict the petition and then to connect the staircase leading to the first floor through the shop to the main road and the

intention is not to merge the same with hall at the back as has been stated in the eviction petition.

6. During pendency of the consideration of the leave to defend application, an application for bringing on record certain subsequent events was filed by the petitioner contending that four shops in property bearing No. 417, Chitla Gate, Chawri Bazar, Delhi fell vacant and are in possession of the respondent and have not been put to any use.

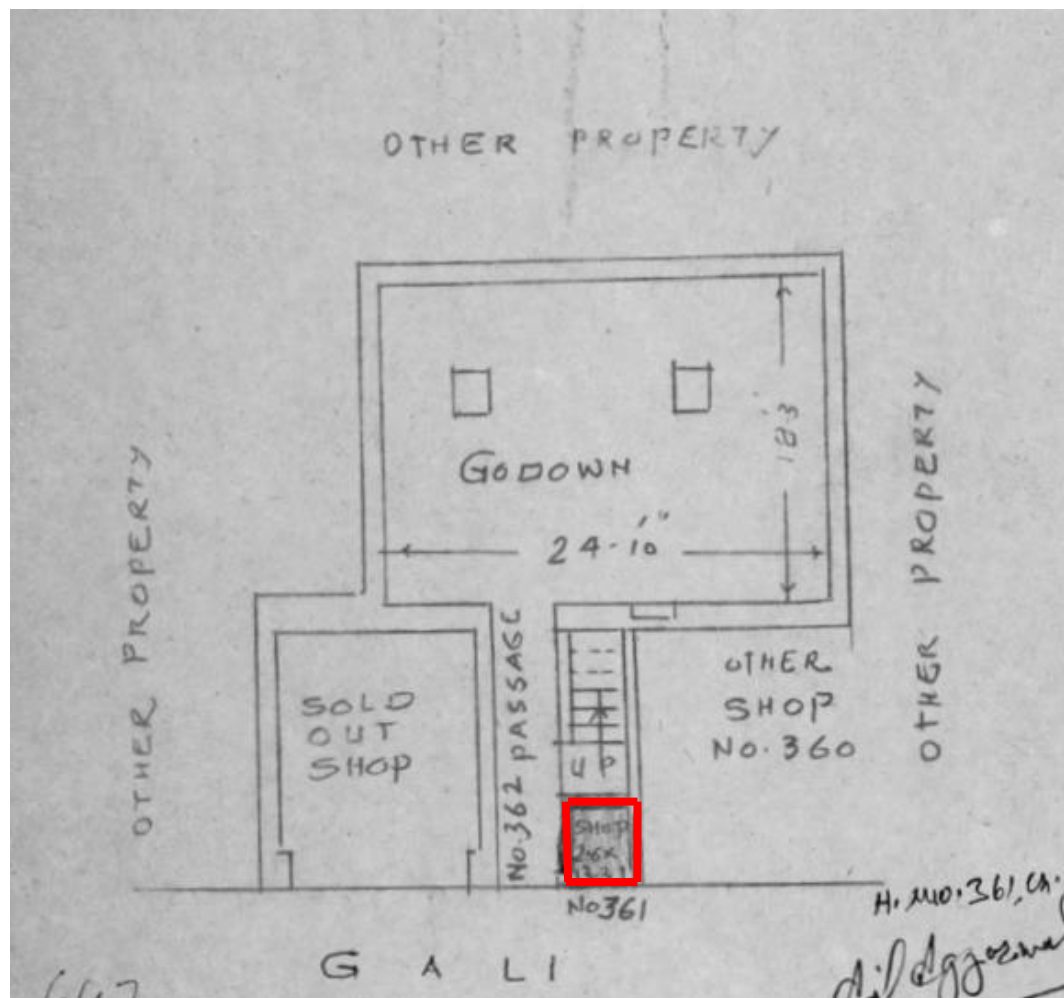
7. In response, it is admitted by the respondent-landlord that four shops had fallen vacant and are in possession of the respondent-landlord, however, it is contended that the building is in a dilapidated and dangerous condition and unless all the tenants are evicted the same cannot be repaired and renovated and put to use.

8. Further, it is contended by learned counsel for the respondent that the property bearing No. 417, Chitla Gate, Chawri Bazar, Delhi has been reserved by the respondent for his other son.

9. By the impugned order dated 29.10.2018, the Rent Controller has declined to grant leave to defend holding that the respondent had himself disclosed in eviction petition stated that the property bearing No. 417, Chitla Gate, Chawri Bazar, Delhi is in dilapidated condition and is a dangerous building and the property requires a lot of renovation. The Rent Controller had held that it is not the case of the petitioner-tenant that the property is in fit state. Further the Rent

Controller has held that the site plan shows that the hall at the back measures 24 x 10 ft. and the son of the respondent can start his business from the same.

10. The Site plan filed by the Respondent along with the eviction petition is as under:



11. Perusal of the site plan filed along with the eviction petition shows that behind the tenanted premises (shown in red) there is a

staircase leading to the first floor. The tenanted premises is not directly connected to the hall at the back (shown in the site plan as a godown). There is a passage adjoining the tenanted shop which leads to the hall/godown at the back. The contention of the Respondent that the hall at the back cannot be put to use unless the tenanted premises is vacated is not borne out from the site plan.

12. The access to the rear hall/godown is through a passage which is on the side of the tenanted shop. Even if the tenanted shop is vacated, the access to the hall/godown at the back does not change.

13. The question as to whether the hall/godown at the rear cannot be used unless the tenanted premises is vacated is thus a triable issue.

14. Further, it is an admitted position that four shops in property bearing No. 417, Chitla Gate, Chawri Bazar, Delhi have fallen vacant and are in the possession of the respondent. The plea of the respondent that the building is dilapidated and is in a dangerous condition is not substantiated by any document issued by the Municipal Corporation declaring the building to be in dangerous condition.

15. The question as to whether the four shops which have fallen vacant in property bearing No. 417 Chitla Gate, Chawri Bazar, Delhi are suitable or not or are in a dilapidated condition and cannot be put to use or are reserved for the other son of the respondent is a matter which requires consideration and is a triable issue.

16. The Rent Controller has erred in holding that no triable issue arises and that the petitioner has not raised any ground which if provide would disentitle the landlord from an order of eviction.

17. In view of the above, I am of the view that the affidavit filed by the petitioner in support of the application seeking leave to defend raises triable issues and pleads grounds which, if proved, would disentitle the respondent landlord from an order of eviction.

18. Accordingly, the impugned order dated 29.10.2018 is set aside. Leave to defend the eviction petition is granted to the petitioner.

19. List the petition before the concerned Rent Controller on 25.11.2019. The petitioner shall file his written statement before the concerned Rent Controller on the said date.

20. Keeping in view of the fact that the eviction petition was filed in the year 2013, the Rent Controller is directed to expedite the proceedings and endeavour to conclude the same within a period of nine months from the date fixed before the Rent Controller.

21. The petition is allowed of in the above terms.

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

SANJEEV SACHDEVA, J,

OCTOBER 17, 2019/‘rs’