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

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Judgment delivered on: 26.09.2019

+ RC.REV. 261/2019 & CM APPL. 19815/2019 & 34684/2019

HARPAL SINGH

..... Petitioner

versus

NARINDER KUMAR & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Ratan K. Singh, Mr. Nikhilesh Krishnan, Ms. Priyanka Solanki and Ms. Sandhya Chawla, Advocates

For the Respondent: Mr. Rajiv K. Garg, Mr. Rajeev Kapoor, Mr. Govind Singh and Mr. Harsh Nagar, Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 08.01.2019 whereby leave to defend application of the petitioner has been dismissed and eviction order passed.
2. Subject eviction petition was filed by the respondent seeking eviction of the petitioner from Shop No. 2 & 5 and Godown in property bearing No. 3815-16, Gali No. 22, Regharpura, Arya Samaj Road, Karol Bagh, New Delhi, more particularly as shown in red colour in the site plan annexed with the eviction petition.
3. The ground of eviction propounded by the respondents is that the

father of the respondents was carrying on his own independent business under the name and style of M/s Atma Ram & Sons as a proprietor thereof in Shop No. 3 & 4. It was contended that respondent no. 1 was not possessed of any commercial space in his own name or possession and he was constrained to assist his father due to paucity of commercial accommodation.

4. It is contended that he is engaged in the business of sanitary contractor, but was not able to do effective and proper business as there was no proper commercial space available with him. It was contended that respondent no. 2 was carrying separate business from a separate property at Beadanpura, Karol Bagh.

5. It was contended that since the respondents did not have reasonable suitable commercial accommodation available to accommodate respondent no. 1 as such the premises was required bonafide by the respondents.

6. Subject leave to defend application was filed *inter-alia* contending that the respondents had sufficient alternative space available from which business could be carried out.

7. It is contended by learned counsel for the petitioner that after the arguments were heard on the leave to defend application, father of the respondents expired and the factum of death of the father of the respondents and the commercial space available with the father, becoming available to the respondent No. 1 was brought on record of the Rent Controller.

8. Learned counsel for the petitioner submits that the Rent Controller has erred in not appreciating the said subsequent event and the fact that the

need now stood fulfilled.

9. Learned counsel for the respondents submits that the need of the respondents has still not been fulfilled as the premises which was being occupied by the father of the respondents was a tenanted premises in his name and he was a tenant thereof from even prior to purchase of the property by the respondents and his tenancy continued even after the purchase of the property. It is contended that there are six legal heirs and his entire business has been inherited by the mother of the respondents.

10. The sole ground of eviction stated in the eviction petition was that respondent no. 1 wanted to start his independent business and because of paucity of commercial space, he was assisting his father in the business and there was no suitable alternative accommodation available.

11. Admittedly during pendency of the eviction petition, father of the respondents has expired. AS per the respondents, respondent no. 1 was assisting his father in the business and respondent no. 2 had his own independent business from a separate property.

12. Keeping in view the changed circumstances that father of the respondents has expired and the sole ground on which eviction was sought was that respondent no. 1, for whose need the petition was filed, was assisting his father and did not have any space for his independent business.

13. The question that now arises is as to whether the need of the respondents still subsists or is fulfilled. This clearly is a triable issue and would require parties to lead evidence. If petitioner is able to establish that the need is fulfilled, the eviction petition may be dismissed.

14. In view of the above, the Petitioner is entitled to grant of leave to defend the eviction petition.

15. Accordingly, the impugned order dated 08.01.2019, declining leave to defend the petition, is set aside. Leave to defend the eviction petition is granted to the petitioner.

16. List the eviction petition before the concerned Rent Controller on 15.11.2019. Petitioner shall file his written statement before the Rent Controller on the said date.

17. Keeping in view the fact that the eviction petition was filed in the year 2012 and it took 7 years for leave to defend to be decided, the Rent Controller is directed to expedite the proceedings and endeavour to conclude the same within a period of 9 months from the next date before the Rent Controller.

18. The petition is accordingly disposed of in the above terms.

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

SANJEEV SACHDEVA, J
SEPTEMBER 26, 2019/‘rs’