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

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Judgment delivered on: 23.08.2019

+ RC.REV. 281/2019 & CM APPL. 21052/2019, 28272/2019

R D BATRA

..... Petitioner

versus

SURESH GULATI

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Sagar Saxena, Adv.

For the Respondent : Mr. Shiv Charan Garg, Mr. Vinay Sharma and Mr. Imran Khan, Advs.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns judgment dated 23.10.2018 whereby leave to defend application of the petitioner has been rejected.
2. Petitioner was tenant in a shop in property bearing No. 3565, Ward No. 14, Gali Takia Tawakel Shah, Qutub Road, Sadar Bazar, measuring 7 ft. x 38 ft, more particularly as shown in red colour in the site plan annexed to the eviction petition.
3. Respondent filed the subject eviction petition contending that the said premises were given on rent for commercial/godown

purposes to the petitioner and he was using the same for godown purposes. The monthly rent of the premises was Rs. 90/-. Eviction petition was filed contending that the suit premises was purchased by the mother of the respondent and a registered Will was executed in favour of the petitioner of the said premises by his mother. She expired on 04.06.2010 and after her death respondent became the owner of the suit premises.

4. It is contended by learned counsel for the petitioner that initially Shri Kundan Lal was inducted as a tenant and on his demise, his son carried on the business from the said premises and on his demise his son became the tenant of the property.

5. The ground for eviction pleaded by the respondent/landlord was that he was selling school bags from a shop in Nabi Karim, Paharganj along with his brother. The said shop in Nabi Karim, Paharganj was also owned by the mother of the respondent/landlord and on her demise, the said shop has devolved on her 7 legal heirs i.e. husband, petitioner, one other son and four daughters.

6. It is contended that from the said premises at Nabi Karim business was being carried out by all the members of the family.

7. Subject petition was filed by the petitioner as his father and brother wanted to separate respondent from the business and he also desired to separate from his family and independently start his business from the tenanted premises.

8. Petitioner filed his leave to defend contending that all the legal heirs of the tenant had not been impleaded as parties. However, he fairly conceded that on the demise of the grandfather there was a family settlement consequent to which the said godown was given to the father of the petitioner and on his demise the petitioner was carrying on his bonafide business from the tenanted premises.

9. It was also contended that the respondent/landlord had approached the petitioner prior to purchase of the tenanted property and offered to sell the property to him and had taken an advance of Rs. 50,000/-. However, no material was produced to substantiate this allegation.

10. It was further denied that there was any bonafide necessity of the respondent/landlord for the said premises. The ownership of the respondent was also denied.

11. The trial court by the impugned judgment has noticed that though the petitioner had denied the ownership of the respondent/landlord but had not stated as to who, other than the respondent, was owner of the tenanted property.

12. On the other hand, the respondent/landlord had placed on record the sale deeds, i.e. title documents in favour of the mother of the respondent and also the Will executed by the mother in his favour to establish his ownership.

13. The trial court, in my view, rightly came to the conclusion that the respondent/landlord has shown a better title than the petitioner and established that he was the owner of the subject property. Trial court further noticed that the respondent/landlord categorically stated that he required the premises bonafide for running his business and that currently he was running his business from a property jointly with his brother and father and that he had no other accommodation to start his own business.

14. Trial court has further noticed that the petitioner/tenant has not produced any material on record to show that the respondent has any other premises available with him for carrying on business or that need was not bonafide.

15. Trial court has accordingly found that the affidavit seeking leave to defend did not raise grounds disentitling the respondent/landlord from an order of eviction.

16. Even before this court, the Petitioner has not been able to show any ground, which would disentitle the respondent from an order of eviction. Petitioner has not been able to show that alternative accommodation is available to the respondent/landlord or that his need is not bonafide. I am of the view that there is no infirmity in the order refusing to grant leave to defend.

17. The petition has no merits and is accordingly dismissed.

18. It may also be noticed that pending these proceedings, though notice was issued but there was no stay, impugned order already stands executed and the possession of the tenancy premises has already been recovered by the respondent/landlord.

AUGUST 23, 2019
'rs'

SANJEEV SACHDEVA, J

