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

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Judgment delivered on: 16.10.2019

+ RC.REV. 382/2019

SHRI ZIAULLAH

..... Petitioner

versus

REGHU VANSI MANI SHARMA

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Ms. Zubeda Begum with Ms. Sana Ansari and Mr. Zubin Singh, Advocates with petitioner in person.

For the Respondent: Mr. J. Ratta with Mr. S.L. Sharma, Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

RC.REV. 382/2019 & CM APPL.28911/2019 (stay)

1. Petitioner impugns order dated 23.01.2019, 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 Delhi Rent Control Act, 1958 from one shop on the ground floor of Property No.2665, Gali No.3, Beadonpura, Karol

Bagh, more particularly as shown in red colour in the site plan annexed to the eviction petition.

3. Respondent had filed the subject eviction petition contending that the respondent had become the owners of one shop on the ground floor and three shops on the first floor of the subject property by virtue of a Gift Deed executed by Smt. Kuntal Kumari.

4. It is contended that one shop on the ground floor is the tenanted premises and the other shops had been sold on 13.01.2003. It is contended that the elder son as also the grandson of the petitioner are unemployed and the tenanted premises is required for settling his son and grandson.

5. Subject leave to defend application has been filed by the petitioner contending *inter alia* that Smt. Kuntal Kumari had entered into an agreement with the petitioner on 07.09.1971, whereby, she had agreed to transfer possession on payment of Rs.45,000/-. Second ground taken by the petitioner is that the need, as projected, is not bonafide. It is submitted that no material has been placed on record by the respondent to show that neither his son nor grandson are employed. Further, it is contended that the three shops on the first floor are lying vacant.

6. Learned counsel for the petitioner submits that the respondent in his reply to the leave to defend application has merely reiterated

that the shops are rented out but has neither given any details of the tenants nor placed any document on record to show that the premises are rented out. Learned counsel for the petitioner submits that the same raises a triable issue.

7. Learned counsel appearing for the respondent dispute the alleged agreement dated 07.09.1971 and contends that no such agreement was executed by Smt. Kuntal Kumari. He further submits that even if the agreement were to be taken at its face value, the agreement itself records that the premises were taken on rent by the petitioner and rent of Rs.90 per month was fixed. It is further contended that the petitioner has all along admitted his tenancy and continued to pay rent to Smt. Kuntal Kumari and thereafter to the present respondent.

8. Further, it is contended that the site plan annexed with the eviction petition gives names of the tenants on the first floor. He submits that the three shops on the first floor are rented out and respondents can establish that the said premises are rented out.

9. Coming to the first ground raised by the petitioner vis-à-vis the agreement dated 07.09.1971, it may be noted that in Clause 2 of the agreement, it is specifically stated that the second party i.e. the petitioner shall pay a sum of Rs.90 as rent to the first party (Smt. Kuntal Kumari) regularly excluding water and electricity charges of the said shop.

10. Further, it may be seen that in paragraph 5 of the affidavit filed by the petitioner in support of the leave to defend application, petitioner has categorically stated that the mother of the respondent namely Sh. Kuntal Kumari Sharma has let out the premises in question to the respondent for commercial purposes on 07.09.1971 on the basis of agreement dated 07.09.1971.

11. There is thus a clear-cut admission by the petitioner that the premises in question were let out to the petitioner.

12. It may further be noticed that Section 14 of the Delhi Rent Control begins with a non-obstante clause and uses the expression “*Notwithstanding anything to the contrary contained in any other law or contract.....*”, which implies that the provisions of Section 14 of the Delhi Rent Control Act will override any contract and law to the contrary.

13. I find no merit in the contention of the petitioner that the petitioner is not a tenant and there does not exist any relationship of landlord and tenant.

14. Coming to the second ground raised by the petitioner that three shops on the first floor are lying vacant, it may be noticed that the respondent landlord has placed on record certain rent receipts of the tenanted premises, however, has not placed any material on record to show that the three shops on the first floor are rented out.

15. Respondent has merely stated that the first floor is rented out and the rental of the three shops on the first floor is the source of income for the respondent. No material has been placed on record to show that the shops are occupied by tenants. Respondent has not even mentioned in the eviction petition or the reply to the leave to defend application, the names of the tenants, the terms of their tenancy, except for mentioning the names in the site plan annexed to the eviction petition.

16. Whether three shops on the first floor are vacant or occupied by tenants raises a triable issue. In case the Petitioner is able to establish that the three shops on the first floor are vacant and available to the Respondent landlord, the eviction petition would be liable to be dismissed.

17. Accordingly, I am of the view that ground taken by the Petitioner in the leave to defend application raises a triable issue and if proved, would disentitle the respondent landlord from an order of eviction. The Rent controller has erred in rejection the application of the petitioner, seeking leave to defend.

18. In view of the above, the impugned order dated 23.01.2019 is set aside. Leave is granted to the petitioner to defend the eviction petition.

19. List the eviction petition before the concerned Rent Controller

on 20.11.2019. Petitioner shall file his written statement before the Rent Controller on the said date.

20. Keeping in view of the fact that the respondent landlord is stated to be handicapped, Rent Controller is directed to expedite the proceedings and endeavour to conclude the same within a period of 9 months from the next date fixed before the Rent Controller.

21. Petition is allowed in the above terms.

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

OCTOBER 16, 2019
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SANJEEV SACHDEVA, J