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

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Judgment delivered on: 08.11.2019

+ RC.REV. 394/2019

GOPAL KUKREJA

..... Petitioner

versus

SUMAN CHHABRA @ SUMAN MEHTA

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Asutosh Lohia, Advocates

For the Respondents: Mr. Bhaskar Tiwari and Mr. Ramakant Shukla, Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 21.01.2019 whereby the application for leave to defend of the petitioner has been dismissed and an eviction order passed.

2. Respondent had filed the subject eviction petition under Section 14(1) (e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) on the ground of bonafide necessity seeking eviction of the petitioner from one shop on ground floor admeasuring 11.3 sq. yards in property bearing No. D-5, Ward No. XII, Kamla Nagar, Delhi.

3. The need expressed by the petitioner in the eviction petition was that she was a partner in a partnership firm since 2007, however, has retired from the partnership firm and her husband is carrying the business of manufacturing and trading of fabric spray perfumes under the name and style of “Karon Chemicals” from B-36/5, GT Karnal Road Industrial Area, Delhi and she was desirous of opening a retail outlet to sell cosmetic items including the products manufactured by her husband and that she had experience in cosmetic industry and was financially capable to initiate business of retail sales of cosmetic items.

4. Subject leave to defend application was filed by the petitioner contending that respondent had, available for use and occupation, other shops i.e. shop bearing No. C-135-B, Moti Nagar, New Delhi-110015 which has a larger area and Shop No. 2343, at Teliwara Sadar Bazar, Delhi-110 006 and that the said shop is occupied by the respondent who is carrying business under the name and style of M/s Anant Ram & Sons in the said premises, besides a factory at G.T. Karnal Road.

5. In response to the leave to defend application, the respondent had filed an affidavit contending that neither she nor her family members have any right, title or interest in shop no. C-135-B, Moti Nagar, New Delhi and the petitioner had not filed any supporting documents or material to show that they have any interest in the said shop. Further, she denied that neither she nor any of her family

members have any right, title or interest in the shop bearing No. 2343, at Teliwara Sadar Bazar, Delhi-110 006 or that she and her family members were doing business from there. With regard to the property at G.T. Karnal Road, it is contended that it is the property in which her husband is running a factory.

6. Rent controller has declined to grant leave to defend to the petitioner holding that no triable issue arises and that the petitioner has not been able to show any ground which if proved would disentitle the respondent landlord from an order of eviction.

7. Only two contentions have been raised before this Court by learned counsel for the petitioner; (1) that the petition was barred under Section 14(6) of the DRC Act, in as much as, the respondent had succeeded to the property by virtue of the relinquishment deed; and (2) that rejoinder affidavit should have been taken into consideration by the Rent Controller while disposing of the application for leave to defend.

8. In support of the second contention, learned counsel for the petitioner seeks to rely on the judgment of the High Court of Punjab & Haryana in '*Salig Ram & Anr. Vs. Shiv Shankar & Ors.*' AIR 1971 P&H 437 to contend that replication is a part of pleadings and is required to be controverted, else it is assumed that the pleas taken in the replication are accepted. Further reliance is placed on the judgment of the Supreme Court in '*Subramania Desika*

Gnanasambanda Pandarasannadhi Vs. State of Madras & Ors.’ AIR 1965 SC 1578 to contend that pleas mentioned in subsequent affidavit could be taken into account. He further relies on the judgment of this Court in ‘*Abdul Hamid & Ors. Vs. Nur Mohd*’ AIR 1976 Delhi 328 to contend that a tenant is not expected to make a research himself and un-aided by any such allegation by the landlord that he does not own any property and the tenant should be given a fair opportunity for making an inquiry regarding the available premises with the landlord and to make counter-assertions.

9. With regard to the first contention, that petition is barred under section 14(6) of the DRC Act, it is noticed that in the eviction petition itself the respondent had mentioned that she and her brother have succeeded to the estates of Smt. Nirmal Mehta their mother and her brother out of natural love and affection and has relinquished all his rights, title and interest in respect of the subject property by virtue of Relinquishment Deed dated 25.06.2009 in her favour.

10. The contention of the petitioner in the leave to defend is that Smt. Nirmal Mehta was the landlord of the property. The arguments of the learned counsel for the petitioner that respondent has become owner of the subject property by virtue of a relinquishment deed is not substantiated. It is admitted position that Smt. Nirmal Mehta was the owner of the property and respondent is the daughter of Smt. Nirmal Mehta who, as per the eviction petition, along with her brother succeeded to the estates of Smt. Nirmal Mehta. It is also a settled

position of law that a co-owner can maintain a petition for eviction on the ground of bonafide necessity (*Kanta Goel Versus B.P. Pathak* (1977) 2 SCC 814; *Pal Singh Versus Sunder Singh* (1989) 1 SCC 444) and landlord does not have to show the absolute title to the property but has to show only a better title than the tenant. (*Meenakshi Versus Ramesh Khanna & Anr.* (1995) 60 DLT 524)

11. From the record it is apparent that respondent was a co-owner of the property prior to the relinquishment deed and accordingly she had a right to file a petition under Section 14(1) (e) of the Delhi Rent Control Act, 1958 on the ground of bonafide necessity. By the execution of the relinquishment deed respondent had not become the owner of the property by assignment. She was already a joint owner of the tenanted premises and her share was enlarged by the relinquishment deed. It is not the case that she became the owner for the first time by virtue of the Relinquishment Deed. Clearly, the embargo of section 14(6) of the DRC Act is not applicable. (*Smt. Ram Chameli Versus Smt. Sajjan Kaur & another* (1999) 81 DLT 549)

12. Coming to the second plea raised by the petitioner, it is noticed that Section 25-B of the DRC Act stipulates that leave to contest the eviction petition is granted to the tenant if the affidavit filed by the tenant in support of the Application seeking leave to defend, discloses such facts which, if proved, would disentitle the landlord from obtaining an order for recovery of possession.

13. Section 25-B (4) further stipulates that a tenant shall not contest a prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction of the subject property within a period of 15 days. Schedule-III of the Delhi Rent Control Act, 1958 stipulates that the tenant shall enter appearance and obtain leave of the Controller to contest the application within a period of 15 days of service.

14. The tenant has to file an affidavit disclosing such facts which, if proved, would disentitle the landlord for an order of eviction within a period of 15 days of the service of the summons on him in terms of IIIrd Schedule as prescribed under Section 25-B of the DRC Act.

15. Only facts as disclosed in the affidavit in support of leave to defend application have to be taken into account, while considering an application seeking leave to defend. However, in case of subsequent events or facts coming to the notice of the tenant subsequent to the filing of the leave to defend can be permitted to be taken into account on an application being filed by the tenant for taking subsequent events into account.

16. The judgments relied on by the learned counsel for the petitioner in '*Salig Ram & Anr. Vs. Shiv Shankar & Ors.*' AIR 1971 P&H 437, and '*Abdul Hamid & Ors. Vs. Nur Mohd*' AIR 1976 as also the judgment of Supreme Court in '*Subramania Desika Gnanasambanda Pandarasannadhi Vs. State of Madras & Ors.*' AIR

1965 SC 1578 are not pertaining to the Delhi Rent Control Act, 1958 or a summary procedure as prescribed under Section 25-B but are judgments pertaining to Civil Procedure Code and as such are not applicable to the facts of the present case.

17. Further the judgment of *Abdul Hamid (supra)* is also not applicable in the facts of the present case as it is in context of section 14(1)(e) of the Delhi Rent Control Act, 1958 as it existed prior to incorporation of the summary procedure by Section 25B which was introduced in the statute with effect from 01.12.1975 and the judgment deals with the cases of bonafide necessity post-trial. Clearly the said judgment *Abdul Hamid (supra)* is not applicable to the facts of the present case.

18. Further it may be seen that the rejoinder affidavit, which is sought to be relied on by the learned counsel for the petitioner, does not take any subsequent or fresh ground. It only makes a vague allegation that the landlady also has other properties.

19. The only allegation which is referred to, by learned counsel for the petitioner, of the rejoinder affidavit is that *respondent has several hundred square feet of business premises; at G.T. Karnal Road, Industrial Area, Azadpur, Sadar Bazar, Kamla Nagar, Moti Nagar, Gujranwala Town and Teliwara in Delhi available to her and her family*. Even if the averments in the rejoinder affidavit were taken into account, the same are vague in nature and do not raise a triable issue.

20. It is also settled position of law that tenant cannot be allowed leave to defend merely on the basis of a vague and bald assertion without placing any material in support thereof and burden is placed on the tenant to show available alternative accommodation. (*Precision Steel & Engineering Works & anr. Versus Prem Deva Niranjana Deva Tayal* 1982) 3 SCC 270)

21. In my view, even if the rejoinder would have taken into account the same does not further the case of the petitioner as the petitioner/tenant had not taken any specific plea or raised any ground which, if proved, would disentitle the respondent-landlord from an order of eviction.

22. I find no infirmity in the order of the Rent Controller in declining to grant leave to defend. I find no merit in the petition. The petition is accordingly dismissed.

23. It may also be further noticed for the purpose of record that respondent-landlord has already taken possession of the premises in execution proceedings.

SANJEEV SACHDEVA, J

NOVEMBER 08, 2019

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