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

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Judgment delivered on: 29.11.2019

+ RC.REV. 72/2017 & CM APPL. 6047/2017, 9737/2019

MOHAN LAL

..... Petitioner

versus

GAURAV RASTOGI

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Ms. Shalini Kapoor, Mr. Dikshant Khanna, Mr. Meet Kapoor and Mr. Sangram Singh Kheechi, Advocates

For the Respondent: Mr. Deepak Goel and Ms. Niharika Mathur, Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 16.08.2016, whereby the Leave to defend application of the petitioner has been dismissed by the Rent Controller 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 situated at property Nos. 4014-16, Ground Floor, Bagichi Ram

Chander, Pahar Ganj, Delhi-110055, more particularly as shown in red colour in the site plan attached to the eviction petition.

3. The ground of eviction pleaded by the respondent in the eviction petition is that the Respondent is residing at property No. 547/1, Second Floor, Vaishali, Ghaziabad, Uttar Pradesh which property is a joint property with his brother and he is a real estate agent operating under the name and style of AG Properties at 1017, Gali Halwai, Mantola, Paharganj, New Delhi from an area measuring 5 x 7 ft. only which is a very small space to run his business and he is being pressurized by his landlord to vacate his property.

4. It is further contended that his wife is owner of ground floor of property bearing No. 5042, Six Tooty Chowk, Paharganj, New Delhi which is on rent and the rent is the source of income for his wife. The respondent had contended that respondent wants to shift to the first floor of the property for residential purposes. Respondent accordingly filed eviction petitions seeking eviction of the tenants in three shops which were rented out on the ground floor as well as tenants on the first floor.

5. It may be just noticed that the tenant on the first floor has vacated the premises and handed over the peaceful vacant possession of the first floor to the respondent during pendency of these proceedings, however, requirement for the first floor was for residential use and the present petition pertains to commercial usage

on the ground floor and as such handing over of possession of first floor is not germane for the purpose of deciding the present petition.

6. Leave to defend application was filed by the petitioner-tenant, inter-alia, contending that respondent has incorrectly stated that the respondent is residing in Vaishali, Ghaziabad (UP) along with his brother and there are disputes with his brother whereas there are no disputes with his brother and his brother does not even reside in Vaishali, Ghaziabad (UP).

7. The said plea of the petitioner is not germane for deciding the leave to defend application as the requirement pleaded by the respondent in the eviction petition is for expanding his business on the ground floor on the subject property where the tenanted premises is situated and not qua the first floor.

8. With regard to the commercial requirement propounded by the respondent, the case set up by the petitioner-tenant is that respondent has not correctly stated that he is a tenant in property bearing No. 1017, Gali Halwai, Mantola, Paharganj, New Delhi and has an area of much larger than 5 x 7 ft. It is further contended by the petitioner that apart from the said property, respondent is also owner of property bearing No. 4001, Gali School Wali, Kesruwalan, Pahar Ganj, New Delhi wherefrom the respondent is operating a business under the name and style of A.G. Properties and also running a hotel under the name and style of 'Hotel Good Luck Inn'.

9. It is further contended that two big vacant shops measuring 10 x 30 sq. yards each are lying vacant in the property in which the tenanted premises are situated. It is further contended that the tenanted premises are situated on the side lane and the said two shops measuring 10 x 30 sq. yards each are on the front side of the property facing 30 ft. wide road.

10. It is contended that the said space is sufficient for meeting the requirement of the respondent and the respondent has not even put the same to any use.

11. In reply to leave to defend, the respondent has denied that the respondent is owner of property No. 1017, Gali Halwai, Mantola, Paharganj, New Delhi from where his business is being carried on and also denied that accommodation is more than 5 x 7 ft.

12. Since no material has been produced by the petitioner-tenant to show that the respondent is owner of the said property or that the area is more than 5 x 7 ft. or sufficient for the requirement of the respondent, this ground also does not raise a triable issue.

13. Coming to the issue raised by the petitioner that there are two big vacant shops measuring 10 x 30 sq. yards. available on the subject property which are lying vacant and are available to the respondent and further that the said two shops are on a 30 ft. wide road, vis-à-vis, the tenanted premises which opens into a side lane. The petitioner in the leave to defend application has contended as under:

“G. That without prejudice to the abovementioned ground it is submitted by the deponent that the petitioner is having two big vacant shops admeasuring 10 x 30 sq. yds each and the same are situated on side of the property facing the main road measuring 30 ft wide and the same are within the possession of the petitioner and the same as such can be used by the petitioner for alleged bonafide requirement and there is no requirement to get the shop in question vacated. It is further submitted that the petitioner has malafidely concealed the abovesaid facts from the Hon’ble Court. On this ground alone the deponent is entitled to leave to defend in the present case.”

14. Petitioner has also placed on record along with leave to defend application photographs depicting that the said two shops are lying vacant.

15. In response to the above averments of the respondent in its reply has stated as under: -

“G. That the contents of para No. G of affidavit of respondent are wrong and denied. It is denied that the petitioner is having two big vacant shops admeasuring 10 x 30 sq. yards each or the same as such can be used by the petitioner for alleged bonafide requirement and there is no requirement to get the shop in question vacated. It is denied that the petitioner has malafidely concealed the above aid facts from the Hon’ble Court or on this ground alone the respondent is entitled to leave to defend in the present case. It is submitted that apart from those shops, the petitioner more space to run his business by expanding the same, therefore, the respondent being tenant has no right to dictate the petitioner that as to how

and in which manner, the petitioner shall use his own property and even there is no triable issue raised by the respondent in his affidavit under reply.”

16. Though in the earlier part of its reply, respondent has denied the entire paragraph, however, in the later part of the paragraph it is contended that apart from those shops more space (*sic: is required by the respondent*) to run his business by expanding the same.

17. Perusal of the eviction petition as also the reply to the leave to defend application does not disclose as to how the respondent intends to use the said property or as to how much space is required by the respondent for shifting and expanding his business to the said property.

18. The respondent as per the eviction petition is currently running his business from a shop measuring 5 x 7 ft. which as per him is inadequate for his business and which is also tenanted premises and he requires to shift to his own property. As contended by the petitioner two shops measuring 10 x 30 sq. yards each are already available with the respondent to which there is no denial.

19. The issue as to whether the said shops are sufficient for the requirement of the respondent or whether the respondent requires any further space raise a triable issue.

20. Petitioner has clearly raised a triable issue and disclosed such facts in his affidavit which, if proved, would disentitle the respondent-

landlord from an order of eviction.

21. The Rent Controller in the impugned order has incorrectly noted that since respondent has denied the same in his counter affidavit, the shops are not available. As observed hereinabove, there is no specific denial by the respondent to the availability of those two shops.

22. Rent Controller has accordingly erred in refusing to grant leave to defend. The affidavit filed by the petitioner, in support of leave to defend application, raises triable issues and such grounds which, if proved, would disentitle the respondent-landlord from an order of eviction. Accordingly, leave to defend the eviction petition is granted to the petitioner.

23. List the eviction petition before the Rent Controller on 15.01.2020, on which date petitioner shall file his written statement before the Rent Controller.

24. Petition is allowed in the above terms.

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

SANJEEV SACHDEVA, J

NOVEMBER 29, 2019

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