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

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Judgment delivered on: 27.11.2019

+ RC.REV. 464/2019

RAJENDER KUMAR LOHIA

..... Petitioner

versus

SUNITA MAINI & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Ms. Sonali Malhotra, Advocate.

For the Respondent: Mr. Vikrant Arora, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner/landlord impugns order dated 16.04.2019 whereby the eviction petition filed by the petitioner has been dismissed by applying the principles of Order VII Rule 11 holding that cause of action has not been disclosed.

2. Petitioner had filed the subject eviction petition, on the ground of bonafide necessity under Section 14(1)(e) of the Delhi Rent Control Act, 1958, seeking eviction of the respondent from private shop No.9 in property No.2856, Main Bazar, Sikriwala, Hauz Qazi, Delhi-110006, more particularly as shown in red colour in the site plan

annexed with the eviction petition.

3. After service, respondents/tenants filed their leave to defend application.

4. By the impugned order, the Rent Controller while considering the leave to defend application, filed by the respondents, proceeded to examine the eviction petition *suo motto* without any such plea being raised by the respondents in their leave to defend application and held that the eviction petition did not disclose a cause of action and accordingly rejected the same under Order VII Rule 11 CPC.

5. It is pointed out by learned counsel for the petitioner that the Rent Controller has also noticed in the impugned order itself that no such plea or objection has been taken by the respondents in their leave to defend application.

6. The Rent Controller has not considered the leave to defend application of the respondents on merits but has returned a finding that there is no assertion made in the subject eviction petition that landlord does not have any reasonably suitable accommodation in his possession.

7. The grounds of eviction are mentioned in Annexure A to the eviction petition which forms part of paragraph 18(a).

8. Petitioner in the eviction petition has categorically stated that the respondent is in occupation of portion shown in red colour in the

site plan annexed and the portions shown in yellow colour in the site plan are in occupation of different tenants and the portion in occupation of the petitioner has been shown in orange colour. The other shops existing in the said property are owned by others.

9. In paragraphs 8 & 9 of Annexure A, it is specifically mentioned by the Petitioner/landlord that the tenanted premises are required by the son of the petitioner for commercial purposes and that the son of the petitioner does not have any accommodation or retail outlet in his possession. Petitioner has further stated that the tenanted premises in occupation of respondent is required bonafidely by the Petitioner for the retail outlet of the son of the Petitioner and he does not have any property and has got no portion of the subject property in his occupation.

10. Clearly the finding of the Rent Controller that the petition does not disclose a cause of action as the Petitioner/landlord has not stated that the Petitioner does not have any reasonably suitable accommodation is erroneous.

11. The grounds stated in the eviction petition have to be meaningfully read and not hyper technically. On a meaningful reading of Annexure A annexed to the eviction petition it *ex-facie* appears that petition discloses a cause of action. It has been specifically stated that the Petitioner/landlord requires the tenanted premises bonafidely for the purposes of his son and his son has no other accommodation.

12. When the landlord specifically pleads in the eviction petition that there is no other accommodation available then it will include the plea that the landlord does not have any other reasonably suitable accommodation.

13. In a case, where the landlord pleads that he has other accommodations available, he would be required to additionally show or plead that the said available accommodations are not reasonably suitable. When landlord states he has no accommodation at all, where is the question of him additionally stating that he does not have any other reasonably suitable accommodation. The later would be a sub set of the former.

14. In view of the above, the impugned order dated 16.04.2019 cannot be sustained and is accordingly set aside

15. The eviction petition is remitted to the Court of the Rent Controller with a direction to consider the application of the Respondent/tenant, seeking leave to defend the eviction petition, on merits.

16. List the eviction petition before the Rent Controller on 18.12.2019 for directions, on which date the Rent Controller shall fix a date for considering the application of the respondent seeking leave to defend the eviction petition.

17. Petition is allowed in the above terms.

18. The rent controller shall consider the application of the respondent seeking leave to defend, without being influenced by anything stated herein on merits.

19. Keeping in view the fact that the eviction petition was filed in the year 2014, Rent Controller is directed to expedite the proceedings and endeavour to dispose of the leave to defend application filed by the respondent within a period of three months from the next date before the Rent Controller.

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

NOVEMBER 27, 2019

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SANJEEV SACHDEVA, J