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

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Judgment delivered on: 06.09.2019

+ RC.REV. 467/2019

CHAMAN LAL MITTAL

..... Petitioner

versus

KAMINI SHARMA

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Sumit Bansal with Mr. Prateek Kohli and
Ms. Vishnushree Dalmia, Advocates.

For the Respondent: None.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.35633/2019 (exemption)

Exemption is allowed subject to all just exceptions.

RC.REV. 467/2019 & CM APPL.35632/2019 (stay)

1. Petitioner impugns judgment dated 03.04.2019, whereby, the eviction petition, filed by the respondent, under Section 14(1)(e) of the Delhi Rent Control has been allowed and eviction order passed.
2. Respondent filed the subject petition under Section 14(1)(e) of the Delhi Rent Control Act seeking eviction of the petitioner from two

shops situated in property bearing No.6153, Block 1, Dev Nagar, Karol Bagh, more particularly, as shown in red colour in the site plan annexed with the eviction petition.

3. The ground of eviction *inter alia* was that the entire property consists of the ground, first and second floor whereas the first and the second floor of the property were being used for the purposes of residence by the petitioner and his sons who are residing therein with their families and the ground floor was given on rent to various tenants.

4. Subject tenanted premises were let out to the petitioner for running a clinic by the grandfather of the husband of the respondent landlady about 50 years ago.

5. It is contended in the petition that the respondent landlady has two sons and both the sons are advocates practising the legal profession. The sons have their offices at Bangalore, Mumbai and Delhi. The elder son was mainly confined to Bangalore and the younger son is confined to Delhi and Mumbai.

6. It is contended that both the sons were running their office from a tenanted premises on the first floor of East Patel Nagar and they have no other suitable accommodation from where they could run their office.

7. It is contended that they have to pay huge rental at Patel Nagar

for their office. It is thus contended that the respondent bonafidely requires the premises for opening of office by her sons.

8. Petitioner tenant filed an application seeking leave to defend contending that the respondent was guilty of concealing material facts and that the respondent had not disclosed that during the contemporaneous period she had let out three shops on the ground floor and one shop to the mezzanine floor to different tenants. It is further contended that the need was not bonafide and was a mere fanciful desire.

9. Further, it is contended that alternative accommodation was available in the suit premises itself as the first floor was still lying vacant and unutilized and could be used by the sons for opening their office.

10. Leave to defend was granted to the petitioner. Thereafter parties led their evidence.

11. It has been stated by the respondent/landlord in the evidence that the premises which is alleged to have been let out contemporaneously to the filing of the petition was in fact not suitable for running an office.

12. It is contended that one of the portions on the ground floor is in fact a *paan* corner shop and is a side almirah which was rented out 40 to 45 years ago to the grandfather of the present tenant. It has further

been brought on record that the room on the mezzanine floor, which was being run as an office by the late husband of the respondent and after his death by the younger son, was not suitable for their office purpose and accordingly they had to shift to Patel Nagar to a rented premises.

13. It is further stated that the younger son is residing in Kirti Nagar and the respondent/landlady lives with her two sons by going to Kirti Nagar or Bangalore from time to time though she is permanently residing on the first floor of the Suit premises.

14. Rent Controller has noticed that during cross-examination, the petitioner/tenant was not able to substantiate the allegations that one Rajesh Kumar was running a shop in the building or residing on the second floor. He had admitted in his cross-examination that the portions on the ground floor were in possession of the various tenants. It was also not disputed that the sons of the respondent were running their office from a tenanted premises in Patel Nagar.

15. From the site plan it was noticed that the remaining shops on the ground floor (apart from the tenancy premises) are much smaller in size as compared to the tenanted premises in possession of the petitioner.

16. The site plan relied on by the petitioner show the dimensions of the three shops, which are stated to have been let out contemporaneously as (1) 4' x 11'.6", (2) 4' x 8'.6" and (3) 3'.3" x 7'.

None of the three shops which are alleged to have been let out contemporaneously qualify as premises which could be used for the purpose of an advocate's office. The premises in occupation of the petitioner is 14'.8" x 14'.6".

17. Further, the contention of the learned counsel for the petitioner is that the late husband of the respondent was having his office in the mezzanine floor till 2010 and thereafter the same was being run by the sons of the respondent and subsequently it has been let out also does not further the case of the Petitioner.

18. There can be no comparison of an Advocate's office in a mezzanine floor with an Advocate's office on the ground floor on a main commercial street.

19. A tenant cannot dictate as to how else a landlord can adjust himself. It is for the landlord to choose the place of business more suitable to him. He has complete freedom in the matter.¹ The Landlord is the best judge of his requirement and it is neither open to the tenant nor to the court to dictate to him with regard to his requirement and utilisation and it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.²

20. Even if the mezzanine or the first floor was available for

¹ Bhupinder Singh Bawa Versus Asha Devi (2016) 10 SCC 209
Anil Bajaj & another Versus Vinod Ahuja (2014) 15 SCC 610

² Salra Ahuja Versus United India Insurance Co. Ltd (1998) 8 SCC 119

opening of an office, there can be no comparison with an office situated on the ground floor.

21. Admittedly, the respondent does not have any accommodation available on the ground floor in any property wherefrom an office of an advocate can be opened.

22. I find no infirmity in the finding returned by the Rent Controller that the respondent landlady has been able to establish that she requires the tenanted premises bonafidely for accommodating the office of her two sons who are practising advocates.

23. The contention that there was concealment on the part of the Respondent/landlady in not disclosing that she had let out three shops on the ground floor in the contemporaneous period is also misplaced.

24. Concealment to non suit the Landlord should be concealment of a material fact, which would have a bearing on the facts of the case and the ultimate decision. The landlord is obliged to disclose accommodation which is available to the landlord and which could be comparable or alternative to the tenanted premises. Non-disclosure of accommodation, which is neither comparable nor an alternative to the tenanted premises, would not non suit the landlord.

25. In the present case, leave was granted to the Petitioner and the Controller after Trial has held that the alleged alternative accommodation was not alternative to the tenanted premises. Further,

as noticed above the three shops let out during the said period are in no manner comparable to the tenanted premises.

26. There is no infirmity in the impugned order. I find no merit in the petition. The Petition is, accordingly, dismissed.

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

SEPTEMBER 06, 2019/st

SANJEEV SACHDEVA, J

