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

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Judgment delivered on: 10.10.2019

+ RC.REV. 486/2019 & CM APPL. 36813/2019

GEETA KAPOOR

..... Petitioner

versus

JAIPAL & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Ashish Aggarwal, Advocate with petitioner in person.

For the Respondent: Mr. Ravi Gupta, Senior Advocate with Mr. P.K. Rawal, Mr. Tarun Agarwal, Mr. Sachin Jain, Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 12.04.2019 whereby leave to defend application of the petitioner has been dismissed and an eviction order passed.

2. Respondent no. 1 and 2 had filed the subject eviction petition seeking eviction of the petitioner from shop bearing private No. 4, in property bearing Municipal No. 5, Church Mission Road, Fatepuri, Delhi, on the ground of bonafide necessity under Section 14 (1) (e) of

the Delhi Rent Control Act, 1958, more particularly as shown in red colour in the site plan attached with the eviction petition.

3. Respondent no. 1 and 2 had filed the subject eviction petition contending that their father had purchased the property from its previous owner namely Babu Lal Jatia Dharmarth Trust, Laxman Ganj, Khurja by virtue of a registered sale deed dated 26.06.1997.

4. Apart from the tenanted premises adjoining portion of the property was also purchased by them. It is contended in the eviction petition that respondent no. 1 and 2 were running the business of a Eating House under the name and style of *Gole Hatti* in the adjoining part of the property for the last 62 years and the shop is well known in the heart of the city.

5. It is contended that they have an entry of about 3.5 ft. in which they have installed a counter for sale and the entry of 3.5 ft. is too narrow and the customers as well as the staff have to enter from the narrow passage. It is contended that with passage of time, the business of the respondent no. 1 and 2 has increased substantially and accordingly they require the tenanted premises for expansion of their business.

6. It is contended that they do not have a proper arrangement for waiting area for the customers. It is contended that they have a sitting arrangement of about 30 persons and number of persons alongwith their families come to the Eating House but due to unavailability of

proper sitting space they have to return.

7. It is contended that the entry of the Easting House is very narrow, merely 3½ ft. And is also covered by a counter of the Eating House leaving a passage of only 2 - 3 ft. which is small. It is contended that the turnover of the business of respondent no. 1 and 2 is more than Rs. 5 lakhs per month but the business can be increased if more space was available and business is suffering on account of shortage of accommodation. It is also contended that they are unable to serve variety of dishes because of non-availability of space and non-availability of kitchen. It is contended that they wish to increase the variety of dishes and increase their sale and output which they are unable to do because of paucity of space.

8. It is also contended that space is limited even for the staff of the respondent no. 1 and 2. It is contended that on account of paucity of space the kitchen has been set up at a distance in a different property and staff has to bring cooked articles from the said kitchen which affects the taste and freshness of the food items.

9. Subject leave to defend application was filed by the petitioner challenging the title of the respondent no. 1 and 2. It is contended on behalf of the petitioner that since the respondent no. 1 and 2 had purchased the property from a trust, the same could not have been purchased without permission of the court and no such permission has been produced, the sale deed of the respondent no. 1 and 2 is under

cloud. Reliance is placed upon the judgment of this Court in '*Bharat Deep Sethi Vs. Sonia Takkar*' 247 (2018) DLT 513.

10. Further it is contended on behalf of the petitioner that the eviction petition expresses the need of six different purposes i.e. expansion of narrow passage, expansion of business, additional space for customers, setting up a kitchen and increasing space for staff, etc.

11. Learned counsel submits that respondent no. 1 and 2 are themselves not clear as to what purpose the tenanted premises is going to be used. Accordingly, it is contended that the need is not bonafide.

12. It is further contended that additional accommodations are available with respondent no. 1 and 2 at property bearing Nos. 157-158, Kucha Ghasi Ram, Fateh Puri, Delhi-110006, property No. 4, Old Lajpat Rai Market, Chandni Chowk, Delhi and property Nos. 3535-36, Chutani Manzil, Nicholson Road, Mori Gate, Delhi-110006 besides mezzanine floor being available in the subject property.

13. In response, learned Senior Counsel for respondent no. 1 and 2 submits that petitioner being a tenant cannot challenge the title of the owner/landlord. He further submits that to maintain a petition filed under Section 14(1) (e) of the Delhi Rent Control Act, 1958, the respondent-landlord does not have to show absolute ownership but has to show a better title than the tenant.

14. He further submits that admittedly the petitioner had paid rent

to the respondent-landlord and accordingly admitted the relationship of landlord-tenant. It is contended that even the petitioner has admitted that the rent was paid to brother of respondent no. 2 and as such has admitted his tenancy right and cannot now raise a dispute.

15. Further it is contended that the need expressed is of expansion of the business in the very premises. It is submitted by learned Senior Counsel for respondent no. 1 and 2 that respondent no. 1 and 2 have stated in the eviction petition itself that they have a kitchen in the adjoining property however, they need the tenanted premises for expansion of their business which is being carried on in the rear portion of the tenanted shop and need to expand the entry and access to their restaurant. It is contended that the premises at a distance from the tenanted is clearly not suitable.

16. It is settled position of law that to maintain a petition under Section 14(1) (e) of the Act, a landlord does not have to show absolute ownership but is required to show a better title than the tenant. Further a tenant who admits his tenancy and even admits the relationship of landlord-tenant cannot challenge the rights of the owner of the property.

17. It is not in dispute that petitioner had paid rent to the brother of the respondent no. 2, though, it is contended that the same was paid bonafidely. Nevertheless, the petitioner has admitted that petitioner is a tenant in the property and the fact that the petitioner had paid rent to

the brother of the respondent even though bonafidely amounts to an admission of the relationship of landlord and tenant.

18. Further it is observed that in the sale deed the trust has specifically mentioned that there was a necessity for sale of the property as the property was not fetching adequate revenue. Further it is mentioned in the sale deed itself and there is no legal impediment in the sale of the property.

19. It may further be noted that the property was purchased by virtue of the sale deed registered in the year 1997 and the petitioner had challenged the same by filing a suit after being served with the summons of the subject eviction petition.

20. The reliance placed by learned counsel for the petitioner on the judgment in *Bharat Deep Sethi (supra)* is misplaced in as much as in the said case, the Suit challenging the title was filed prior to the registration of the sale deed and leave under Section 92 of the CPC had been granted. In the present case the Suit has been filed after 19 years and till date no leave under section 92 CPC has been granted.

21. With regard to the submission of learned counsel for the petitioner of alternative accommodation available, it is observed that respondent no. 1 and 2 have themselves stated in the eviction petition that they have a kitchen in neighbouring property, however, they have stated that kitchen is required in the subject property so that the customers can be served hot and fresh food. It is clearly mentioned in

the eviction petition that respondent no. 1 and 2 are unable to expand their business and increase the number of dishes for the reasons that they do not have a kitchen to serve hot food and accordingly they are restricted to the articles which do not require to be served fresh immediately on cooking. It is contended that food brought from a kitchen in the adjoining property, loses its freshness and taste.

22. The need is also stated by respondent no. 1 and 2 for enlarging the entrance to the sitting area and the shop which presently is 3½ ft. in which there is a sale counter. It is not denied by the petitioner that the access available to the restaurant of the respondents behind the shop is only through a passage of 3½ ft. The tenanted premises are adjoining passage and in case the space is joined with the passage, the entrance to the restaurant would become approximately 8 ft.

23. Further it is a settled position of law that a tenant cannot dictate as to how the landlord has to put to use an accommodation which is available to the landlord. The landlord is the best judge of his/her requirement and suitability. Neither the tenant nor can the court dictate to the landlord.

24. Further plea of learned counsel for the petitioner that respondent expressed desire for six different purposes and in the tenanted shop all six purposes cannot be fulfilled, is also meritless. Merely because the landlord requires the premises for six purposes does not mean that the landlord should be denied eviction solely

because all six purposes cannot be fulfilled. Once the tenanted space is available, it would be available for use of any of the six purposes for which the eviction petition has been filed. It would be for the landlord to decide as to which purpose the same is to be used. The tenant cannot dictate as to how he has to use the property. Merely because the need is more than the supply cannot be a ground to deny eviction.

25. Further it is noticed in the eviction petition itself that respondent had disclosed about the alternative accommodation and also disclosed that some of them were available but are not suitable. The Respondents 1 and 2 require property adjoining their restaurant and not at a distance from there.

26. There is no infirmity in the impugned order holding that the petitioner has not raised any triable issue or raised any ground which if proved would disentitle the landlord of an order of eviction. I find no infirmity in the order declining to grant leave to defend to the petitioner. There is no merit in the petition. The petition is accordingly dismissed.

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

SANJEEV SACHDEVA, J,

OCTOBER 10, 2019

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