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

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Judgment delivered on: 13.09.2019

+ RC.REV. 542/2019

SANJAY WADHWA & ANR

..... Petitioners

versus

SURAJ PRAKASH PAHWA

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr.Rambhakt Agrawal, Adv.

For the Respondent: Mr. R.K.Sahani, Adv.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 40914/2019 (Exemption)

Allowed, subject to all just exceptions.

CAV. No.913/2019

In view of the appearance of the respondent, caveat stands discharged.

RC.REV. 542/2019 & CM APPL.40915/2019 & 40916/2019

1. Petitioner impugns order dated 11.03.2019, whereby the Leave to defend application of the petitioner has been dismissed and eviction order passed.

2. Subject eviction petition was filed by the respondent seeking eviction of the petitioner on the ground of bonafide necessity, under section 14(1)(e) of the Delhi Rent Control Act, 1958 from Shop bearing No. 39 – 40 on the ground floor of property bearing No.IX/1604, Krishna Market, Gandhi Nagar, Delhi-110031 more particularly as shown in red colour annexed to the eviction petition.

3. The ground mentioned in the eviction petition by the respondent was that the respondent was running his business from a portion of the property and was able to earn only Rs.16,000/- per month from all sources and he was unable to bear the day to day as well as monthly expenses of his family members. In those circumstances, it was alleged that the wife of the respondent wanted to start a readymade ladies garments business from the tenanted premises.

4. Leave to defend application was filed by the petitioner contending that apart from the tenanted premises and the property from which the respondent was allegedly doing business there were other accommodations available which have been incorrectly stated to be occupied even though they were still available.

5. Further it was contended that the plea that the wife of the respondent wanted to start her independent business was incorrect in as much as the wife was herself carrying on business from the property and the business which the respondent had stated he was

carrying, was in fact being carried out by the wife of the respondent. Video footage showing that the wife of the respondent was carrying on the business was placed before the Rent Controller.

6. Further ground taken by the petitioner was that the allegation that respondent was having a meagre income of Rs.16000/- per month which was insufficient to meet the requirements of the family had not been substantiated and no financial documents or material have been placed on record to show the income and the alleged expenditure.

7. The sole ground on which eviction has been sought by the respondent/landlord is that respondent earns only Rs.16,000/- per month from all his sources and is unable to meet the day to day as well as monthly expenses of his family and in those circumstances his wife wanted to start readymade ladies garments business.

8. It is noticed that the respondent/landlord along with the eviction petition did not file any financial documents and even with the reply to the leave to defend application, when an object was taken by the petitioner, no financial documents have been filed.

9. Though contention of learned counsel for the respondent is that the financial documents are available and can be produced, in my view it was incumbent upon the landlord to place on record his financial documents along with the eviction petition so as to prima facie substantiate his ground for eviction. Him not having done so, in my view raises a triable issue and accordingly the matter would

require examination by the Rent Controller after trial.

10. In my view the grounds taken by the Petitioner in the affidavit in support of the leave to defend, if proved, would disentitle the respondent landlord for an order of eviction.

11. The leave to defend application discloses sufficient grounds on which leave should have been granted by the Rent Controller.

12. Clearly the Rent Controller has committed an error in declining to grant leave to defend. Accordingly, the impugned order dated 11.03.2019 is set aside. Leave is granted to the petitioner to defend the eviction petition.

13. List the eviction petition before the concerned Rent Controller on 23.10.2019.

14. Petitioner shall file his written submissions before the Rent Controller on the said date.

15. Petition is disposed of in the above terms.

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

SANJEEV SACHDEVA, J

SEPTEMBER 13, 2019

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