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

% Judgment delivered on: 09.10.2019
+ RC.REV. 586/2019

SUDESH KUMAR BANSAL Petitioner

versus

AJAY SAINI & ORS Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Shiv Charan Garg, Advocate

For the Respondent: Mr. Nagender Yadav, Advocate for R-1

**CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.44464/2019 (Exemption)

Exemption is allowed subject to all just exceptions.

CM APPL.44466/2019 (for condonation of delay in re-filing)

1. It is contended by learned counsel for petitioner that the petition was originally filed within time but was returned with objections and thereafter it took some time to remove the objections, consequently, a delay of 76 days in re-filing the petition has occurred.

2. Learned counsel further submits that in any event this being a rent revision, is covered by Article 137 of the Limitation Act and the limitation period is three years from the impugned order and even if it is calculated from the date of re-filing the petition is within time.

3. In view of the above and for the reasons stated in the application, the delay in re-filing is condoned. The application stands disposed of.

CAV 1008/2019

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

RC.REV. 586/2019 & CM APPL.44465/2019 (stay)

1. Petitioner impugns order dated 04.05.2019 whereby leave to defend application of the petitioner has been dismissed 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 Shop No. 8631, East Park Road, Karol Bagh, New Delhi, situated at ground floor of the suit property, more particularly as shown in yellow colour in the site plan attached to the eviction petition.

3. It is contended in the eviction petition that the respondent-

landlord is not carrying any business and requires the subject premises bonafidely for use and occupation by himself as he is neither in servicer nor is in any business and wants to carry on business of novelties, gift items, etc. from the tenanted premises.

4. It is contended in the eviction petition that respondent is also the owner of property bearing No. 315/5/6, Sarai Rohilla, Old Rohtak Road, Daya Basti, Delhi which is a single-storey building in which two shops are situated and the said two shops are already in possession of tenants Shri Amar Nath and Mr. Vinod Puri.

5. Leave to defend application was filed by the petitioner *inter alia* contending that the respondent-landlord had not correctly disclosed the entire accommodation in his possession and further that the property at Sarai Rohilla was in possession of the respondent and not in possession of Shri Amar Nath and Mr. Vinod Puri as tenants.

6. In reply to leave to defend application, the respondent had filed the lease deed in favour of Shri Amar Nath and Mr. Vinod Puri on record.

7. The lease deed dated 12.08.2016 was executed in favour of Shri Amar Nath and the Lease Deed dated 02.11.2015 was executed in favour of Shri Vinod Puri. Subject eviction petition was filed on 15.10.2016 i.e. few months later after alleged creation of tenancy in favour of Shri Amar Nath and Mr. Vinod Puri.

8. It is pointed out by learned counsel for the petitioner that the respondent has mentioned in the eviction petition that he is owner of property bearing No. 315/5 and 315/6, Sarai Rohilla, Old Rohtak Road, Daya Basti, Delhi and the lease deed in favour of Shri Amar Nath is with regard to Shop No. 315/6 and the lease deed in favour of Shri Vinod Puri is in respect of back portion of the two shops in the said property.

9. Learned counsel points out that there is no document to show that property bearing no. 315/5, Sarai Rohilla, Old Rohtak Road, Daya Basti, Delhi which is also a shop is not in possession of the respondent.

10. Further from the record, it appears that fresh tenancy has been created in favour of the said tenants, just few months prior to filing of the eviction petition.

11. Learned counsel for the respondent submits that the property at Sarai Rohilla is not comparable to the property at East Park Road in which the tenanted premises is situated and not suitable for the purpose for which this eviction petition has been filed. He further submits that the respondent resides on the first floor of property situated at East Park Road and requires the premises on the ground floor.

12. The Respondents have not disclosed the entire accommodation at Sarai Rohilla and have also not been able to prim facie show that no

portion of the property at Sarai Rohilla is available. The questions as to whether portion of property situated at Sarai Rohilla is available or not and whether the property at East Park Road is more suitable or the plea of the petitioner that there is no need and scarcity is artificially created by letting out portions for commercial use immediately prior to the filing of the eviction petition, require consideration by the Rent Controller and are matters requiring trial.

13. In view of the above, I am of the opinion that the Rent Controller has erred in holding that the leave to defend does not raise triable issue or plead grounds which if proved would disentitle the landlord from an order of eviction.

14. On perusal of the leave to defend application as also the above facts, it is clear that petitioner has raised triable issues and also pleaded grounds which if proved, would disentitle the landlord from an order of eviction.

15. Accordingly, impugned order dated 04.05.2019 is set aside. Leave to defend the eviction petition is granted to the petitioner.

16. List the petition before the concerned Rent Controller on 14.11.2019.

17. Petitioner shall file his written statement before Rent Controller on the said date before the Rent Controller. Further, the Rent Controller is directed to expedite the proceedings.

18. Petition is allowed in the above terms.

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

OCTOBER 09, 2019/‘rs’

SANJEEV SACHDEVA, J

