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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 05th April, 2019
Pronounced on: 07th May, 2019

+ RC.REV. 83/2018 & CM APPL No.7680/2018

KULDEEP RAJ ARORA

..... Petitioner

Through : Mr.J.K.Bhola, Advocate.

versus

ROHTASH KUMAR SEEWAL & ORS

..... Respondents

Through : Respondent No.1 in person.

Mr.P.D.Gupta, Advocate for
respondents No.2 to 6.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition challenges the order dated 06.09.2017 passed in eviction petition E-545/2017 under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (hereafter '*DRC Act*') whereby the leave to defend application was dismissed and eviction was allowed.

2. The respondents have filed an eviction petition *E-545/2017* in respect of the shop admeasuring 7' x 14' situated at ground floor in house No.37/3052, Beadon Pura, Karol Bagh, New Delhi-110005 of Main Hardhyan Singh Road (hereafter '*tenanted shop*'). The said shop is required by respondent no.1 for his professional purposes viz. he being a lawyer, has been practicing since 2005 and has no suitable accommodation in Delhi to be used as his office for practicing as a lawyer. The grounds for his bonafide need are mentioned in para 18(a)(ii) of the petition as under:-

“The premises is required for bonafide use of self by petitioner No.1 as his Legal office since he is a practicing lawyer since 2005 and has no other reasonable and suitable accommodation in Delhi. Petitioner No. 1 has retired from the services of Govt. of India as Executive Director in the year 2005. I and thereafter he enrolled himself as an Advocate with Bar Council of Delhi in August, 2005 vide enrolment No.D-792/2005. He became member of Delhi High Court Bar Association in 2005 with Membership No.8908/2005 and also became member of Supreme Court Bar Association in 2005 with membership No. S-1213/2005 He also became member of Saket Bar Association in 2010 with Membership No. 1084/2010. After getting enrolled as an Advocate he is doing practice in the Courts and he has bonafide requirement of an proper office to be used for this purpose. He has no other suitable premises for such office and without proper office, he is constrained to operate from the Bar room/Library in the court premises which in no way is suitable and graceful for his profession. So the premises in question is required for the bonafide use as an office for his professional work. Further it is worth mentioning here that the said premises is located on the main road in the area where the petitioners, including Petitioner No.1, have been brought up from their childhood and are well known in the area in their social community. So operating from the said premises in question would be more suitable, more convenient for himself and his clients who are generally from the weaker section of the society who live in the neighborhood and adjoining areas and the petitioners too belongs to weaker sections of the society.”

3. In his leave to defend application the petitioner has alleged **(a)** the petitioner had paid an amount of Rs.5,25,000 at the time of construction and hence the petitioner is an owner of the super structure being constructed on property No.37/3052, Beadon Pura, Karol Bagh, New Delhi-110005; **(b)** the respondent no.1 though alleges he requires the premises for running his office but has concealed the fact he is an ordinary resident of property 37/3052 (supra) per Govt. records i.e., electoral role and his ID card of Bar Council of Delhi shows his official

address to be the same and also other records shows he is living in the premises 37/3052 (*supra*) and hence his need is for additional accommodation thus the leave to defend ought to have been granted; and (c) the respondent no.1 has other alternative accommodation viz. his office at 40, Railway Enclave, San Martin Marg, Chanakya Puri, New Delhi-110021; 16/1310, Padam Singh Road, Bapa Nagar, Opposite Shiv Mandir, Karol Bagh, New Delhi-110005 and another office at A-509, Som Dutt Chambers-1, 5, Bhikaji Cama Place, New Delhi.

4. I have perused the documents on record as also the impugned order passed by the learned Trial Court. The learned Trial Court has duly considered that property No.37/3052 (*supra*) is an ancestral property where on the first floor, respondents No.4 is residing alongwith his wife and a college going son; the second floor is occupied by respondent No.5, who is residing alongwith his wife and two college going daughters. The third floor is used by respondents No.1, 2 & 6 as and when they come to stay on family ceremonies and festivals. Nevertheless, respondents have categorically stated even if the third floor is lying vacant, it cannot be used for running an office of an Advocate since the foot fall of his clients shall be very less on the third floor and it shall be highly inconvenient for senior citizens to climb the stairs till third floor. This view is accepted by the learned Trial Court.

5. Qua the contention a) viz the petitioner herein is an owner of the constructions made at the property No.37/3052 (*supra*); the respondents have given the details of the rent agreement dated 03.10.1994, which contains clause No.6 qua the security amount of Rs.5,25,000/-. The

security, admittedly, is refundable at the time of vacation of the premises and the learned Trial Court has rightly noted that merely by paying the security amount the petitioner cannot claim to be an owner of the superstructure of property No.37/3052 (supra). I agree.

6. The learned counsel for the respondent has also averred flat No.40, Railway Enclave, San Martin Marg, Chanakya Puri, New Delhi-110021 was an official accommodation given to the wife of the respondent No.1, who has since retired as Chief Medical Director from the Railways in the year 2010 and hence his various certificates prior to the year 2010 would show the said address but now since his wife is not in service, such government accommodation cannot be treated in possession/occupation of respondent No.1. The same is the view taken by the learned Trial Court. Even otherwise, the government allotted accommodation in service is always residential, hence even otherwise, would never be suitable for running an office of an advocate.

7. Qua accommodation allegedly available to respondent No.1 in premises bearing No.16/1310, Padam Singh Road, Bapa Nagar, Karol Bagh, New Delhi-110005, the only evidence filed by the petitioner herein before the learned Trial Court was certain pages of Yellow Pages or Just Dial Services. The respondent No.1 has denied any connection with this property and merely by filing such papers, giving telephone number of the respondent No.1, would not make such property being available to respondent no.1. Admittedly respondent No.1 is an advocate by profession and hence many a times if an advocate finds a sitting space/office/ correspondence address on temporary basis, he give such

number on his visiting card, letter pads etc. but that does not mean such accommodation is available on permanent basis or is always suitable to an advocate. Nevertheless the respondent No.1 has denied any connection with this Bapa Nagar property and simply finding such numbers on Yellow Pages or Just Dial Services without any further proof of a sitting space or suitability/availability of accommodation to the respondents no.1, would not make it a triable issue in the event of complete denial of availability of such property to respondent no.1 to be used as his office.

8. The learned Trial Court has also dealt with these properties as under:-

“13. It is averred by the petitioners that the tenanted premises is bonafidely required by petitioner no. 1 to start his own legal office. That petitioner no. 1 has retired from the services of Govt. of India as Executive Director in the year 2005 and thereafter, he enrolled himself as an Advocate with Bar Council of Delhi, Delhi High Court Bar Association, Supreme Court Bar Association in 2005 itself and in Saket Bar Association in the year 2010. However, petitioner no.1 does not have any suitable space to start his office of advocacy and he is constrained to operate from the Bar room/Library in the Court premises which is neither suitable nor graceful for his profession. Further, it is submitted by the petitioner that the premises in question is located on the main road in the area where the petitioners were born and well known to the petitioners and thus, will be more suitable for petitioner no.1 to start his office of advocacy, especially in order to help weaker section of the society. Per contra, it is averred by the respondent that as per the documents filed by the petitioners themselves, the suit property comprises of first, second and third floor, which are available to petitioner no.1 for starting his office. That even in his enrollment certificate, petitioner no.1 has shown his office address to be of 37/3052, Beadon Pura, Karol Bagh, New operating his office from the said premises. Per contra, it is averred

by the petitioner that property bearing no. 37/3052, Beadon Pura, Karol Bagh, New Delhi is being used for residential purpose by petitioner no.4 & 5. That petitioner no.1 has only 25 sq. yds. plot in the said property and on the first floor, petitioner no.4, namely, Sh.Tribuvan Singh is residing alongwith his wife and one college going son. Similarly, on second floor, petitioner no.5 is residing alongwith his wife and two college going daughters. The third floor is used by petitioners no.1, 2 & 6 as and when they come to stay on festivals and other family ceremonies. It is also admitted that property bearing no.37/3052, Beadon Pura, Karol Bagh, New Delhi is the inherited property of the petitioners, wherein petitioner no.4 & 5 are still residing. Even if the contention of the respondent is admitted to be true, then also, petitioner no. 1 has in his possession only third floor of the said property, which cannot be termed as alternative suitable accommodation for running an office of advocacy when petitioner no. 1 is having under his ownership the premises in question, which is situated on the ground floor which will be more suitable for him to start his office of advocacy and where footfall of the clients will be much more as compared to an office of advocacy at third floor as it will be highly inconvenient for senior citizens to climb the stairs till third floor.

14. It is also averred by the respondent that an amount of Rs.5,25,000/- was paid by the respondent to Smt.Fato Devi at the time of construction, thereby financing the erstwhile owner/landlady qua the construction of the upper floors and in this manner, the respondent is owner of the superstructure being constructed by the erstwhile owner/landlady over the property bearing no.3052/37, Hardhyan Singh Road, Karol Bagh, New Delhi. In order to prove the same, the respondent has also filed on record the receipt of Rs.5,25,000/-. Per contra, it is submitted by the petitioners that the said amount was paid by the respondent to the petitioners as an interest free security and the same shall be refunded by the petitioners at the time of vacation of the premises by the respondent. There is a specific clause in the Rent Agreement dated 03.10.1994 with respect to the security amount of Rs.5,25,000/- as Clause 6, wherein it has been stated that the same is a refundable amount. Thus, it cannot be said that by merely paying security amount, the respondent has become the owner of the superstructure constructed over the property no.3052/37, Hardhyan Singh Road, Karol Bagh, New

Delhi. Thus, this contention of the respondent is also without any substance.

15. It is also averred by the respondent that in the Certificate dated 10.11.2006 issued by the Indian Council of Arbitration, petitioner no. 1 has shown his office address to be of 40, Railway Enclave, San Martin Marg, Chanakya Puri, New Delhi and therefore, it cannot be said that petitioner no. 1 does not have any office place. Per contra, it is submitted by the petitioners that wife of petitioner no. 1 retired as Chief Medical Director from Railways in the year 2010 and therefore, the address on various certificates prior to year 2010 have been given to be of the Government accommodations allotted to the wife of petitioner no.1 while she was in service. Thus, it cannot be" stated that merely because petitioner no. 1 had mentioned his office address to be of 40, Railway Enclave, San Martin Marg, Chanakya Puri, New Delhi at that time when his wife was an employee in Railways, therefore, he has sufficient space to run his office as on date when his wife has already retired.

16. It is also averred by the respondent that petitioner no. 1 has shown his office address to be of 16/1310, Padam Singh Road. Bapa Nagar, Opposite Shiv Mandir, Karol Bagh. New Delhi in Just Dial Services and that the petitioner is also running another business under the name & style of Estate Consultant and Allied Services, having its Office at A-509. Som Dutt Chambers-1, 5, Bhikaji Cama Place, New Delhi. Petitioner has denied to have anything to do with the Estate business stating that petitioner no 5 is the sole owner of the said business and is carrying out his business from there since 1993. No proof has been filed by the respondent to prove that petitioner no. 1 is carrying on the said business of Estate Consultant and Allied Services and therefore, this contention of the respondent also remains to be a mere bald averment without any substance. Further, the respondent has placed on record an internet generated report showing address of Mr. Rajeev to be of 16/839H, Bapa Nagar, Karol Bagh, Delhi and not of petitioner no. 1 Sh. Rohtash Kumar Seewal. The address of Sh. Rohtash Kumar Seewal is shown to be as 37/3052, Karol Bagh, New Delhi in the said yellow page document filed on record by the respondent and therefore, it cannot be said that petitioner no. 1 has in his occupation property no. 16/1310, Padam Singh Road, Bapa Nagar, Opposite Shiv Mandir, Karol Bagh. New Delhi, which can be used by

him for running his office. Even otherwise. Just Dial Services report is an internet generated report, which is not accompanied by certificate u/s 65-B of the Indian Evidence Act and thus, the same cannot be relied upon. Thus, the respondent has miserably failed to prove the availability of any alternative suitable accommodation with petitioner no. 1, which can be used by him for starting his office of advocacy.

17. Thus, from the discussion made above, respondent has failed to raise any triable issue, which requires evidence to be proved. The petitioners, on the other hand, have clearly established their bonafide requirement regarding tenanted premises. Hence, the application for leave to defend filed by the respondent is ordered to be dismissed. Consequently, eviction order is liable to be passed against the respondent u/s Section 25 B (4) of the Act. The petitioners are held entitled for recovery of the tenanted premises, i.e., one room measuring 7' X 14' (98 sq. ft.) being part premises of ground floor on Hardhyan Singh Road side within the total residential plot of area of 25 sq. yds. in the premises of House No. 3052, Gali No. 37, Beadon Pura, Karol Bagh, New Delhi-110005, as shown in red colour in the site plan annexed with the petition. However, the petitioners would not be entitled to initiate execution proceedings for recovery of possession of the tenanted premises before expiration of six months from today in view of provisions given in Section 14 (7) of the Act.

9. Admittedly the respondent No.1 has retired in the year 2005 and despite being an advocate is still searching for a suitable office to carry on his professional activities. The only material borne out from the pleadings above rather establish the respondent No.1 is in possession of only third floor of the property No.37/3052 (supra), which has been alleged to be in joint use of respondents No.1,2 & 6 as noted above. Even otherwise, an office on the third floor would be highly inconvenient for his clients, especially senior citizens to climb till third floor.

10. In *A.K.Woolen Industries & Others vs Narain Gupta* 2017(2) RCR (Rent) 653, the Coordinate Bench of this Court held that ground floor is

more suitable for commercial purposes and further in *Praveen Kumar Arora vs Akshay* 2019 I AD (Delhi) 741 wherein it was held the needs of the shop on the ground floor needs to be viewed from the different perspective than the availability of the business space on the upper floors, hence there is no ground to interfere with the view of the learned Trial Court.

11. Though learned counsel for the petitioner relied upon *Liaq Ahmed and Others vs Habeeb-Ur-Rehman* (2000) 5 SCC 708 as well as *Vijay Kumar Ahluwalia & Others vs Bishan Chand Maheshwari & Another* 2017(2)CLJ 254 SC to say an enquiry envisaged is a summary enquiry to *prima facie* find out existence of any reasonable ground in favour of the tenant and such facts as would disentitle the landlord from obtaining the order for recovery of possession then the tenant shall be entitled to leave to contest and that the law envisages discovery of facts and not prove of facts and though there is no disagreement with the proposition of law laid down above, but the learned Trial Court after going through the facts of the case has rightly held merely by giving phone numbers of some addresses in Yellow Pages or Just Dial Services would not suffice unless is supported by some other fact viz the extent of accommodation available to the respondent No.1 in the said property and on which floor etc.

12. Thus, I am in agreement with the view taken by the learned Trial Court. There is no cogent reason shown by the petitioner to interfere with a reasoned order passed by the learned Trial Court. A bare perusal of the reasoning given by the learned Trial Court do show that it does not suffer

from any error of law and is not perverse or arrived at without consideration of the material evidence filed before it. The revisional power, even otherwise, cannot be equated with a power of reconsideration of all questions of facts as a Court of first appeal, per *Hindustan Petroleum Corporation Ltd vs Dilbahar Singh* 2014 AIR(SC) 3708.

13. In view of above, the petition is dismissed with no order as to costs. The pending application(s), if any also stands dismissed.

YOGESH KHANNA, J.

MAY 07, 2019

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