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

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Judgment delivered on: 23.10.2019

+ RC.REV. 119/2017 & CM APPL. 10054/2017

RAJAT KAKKAR & ORS

..... Petitioners

versus

KRISHAN GUPTA SHARMA

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Ms. Tanmaya Mehta, Mr. Piyush Singh & Mr. Akshay Srivastava, Advocates.

For the Respondent:

Mr. Rajat Aneja & Ms. Bhawna Pandey, Advocates.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 22.11.2016 whereby the leave to defend application filed by the petitioner has been dismissed and an eviction petition order passed.

2. Respondent had filed the subject eviction petition seeking eviction of the petitioner from four rooms, one kitchen, one WC on the first floor and similar construction on the second floor in property bearing Municipal Number 4903/XI, 89 Ansari Road, Delhi, more particularly as shown in red colour in the site plan annexed to the eviction petition.

3. The contention of the respondent was that respondent had purchased

1/4th undivided share in the subject property and the balance 3/4th share was purchased by the husband of Smt. Krishna Gupta.

4. It is contended in the eviction petition that at the time of the purchase of the subject property it was occupied by four tenants. Two tenants have already vacated their premises and handed over possession to Smt. Krishna Gupta who is using the same for accommodating her servants. It is contended that Smt. Krishna Gupta has permitted the respondent to deal with the other two tenants and in case the premises is vacated, to occupy the same. It is pointed out that another petition with regard to another portion of the subject property has been filed and in the said petition leave to defend was declined by order dated 22.11.2016 and an order of eviction passed.

5. The ground of eviction pleaded by the respondent was that the family of the respondent comprises of respondent himself and his wife aged 60 years, two sons aged 39 and 36 years. Both the sons are married. The elder son has two children aged 12 and 6 years and the younger son has two children aged 6 and 3 years.

6. It is contended that presently respondent is residing at Ansari Road, Daryaganj as a licensee of one Sh. Ankit Gupta and the accommodation in occupation of the respondent comprises of two rooms, one kitchen and a bathroom. It is contended that the married sons are occupying one room each and during summer season the respondent and his wife sleep on the terrace or in the balcony and during rainy and winter season they are accommodated in the rooms of their married sons because of paucity of accommodation. Respondent has stated that he requires the tenanted

premises bonafidely. It is contended that respondent requires one bed room for each adult grown up member of his family, one drawing room, one dining room, one room for the guests, one study room, and one pooja room besides amenities of kitchen, bath and W/C.

7. Subject leave to defend application was filed by the petitioner contending that respondent has suppressed material facts and has not disclosed complete facts to the Court. It is contended that respondent had concealed the extent of accommodation available with him and has not filed the site plan of the entire property. It is contended that respondent has more than sufficient accommodation available with him and does not require the tenanted premises.

8. Rent Controller in the impugned order has negated the contention of the petitioner that respondent has a right to reside in the property at Daryaganj in view of the fact that the respondent has categorically stated that the property is not owned by the respondent and he is residing along with his family members as a licensee.

9. A copy of the lease deed was placed on record by the respondent to show that the property bearing No.114, Daryaganj, Delhi is owned by Sh.Ankit Gupta, Ashish Gupta and Smt. Krishna Gupta and not by the respondent.

10. Rent Controller has held that petitioner has not been able to establish that any other alternative suitable accommodation is available to the respondent for the residence of himself and his family members.

11. Before me the only contention of learned counsel for the petitioner is

that respondent has alternative space available which has not been disclosed. It is contended that subsequently the petitioner has come to know that respondent had filed eviction petition on identical grounds against two tenants in Hauz Qazi and got eviction orders and it was not disclosed by the respondent that respondent is in occupation of the said premises.

12. Further additional ground taken by learned counsel for the petitioner is that a portion of the first floor of the subject property is being occupied by labourers and could have been used by the respondent.

13. It may be noticed that the two proceedings which are referred to by learned counsel for the petitioner pertain to one room flat each in a property in Hauz Qazi. Said two rooms cannot be held to be sufficient to meet the requirement of the respondent and his family.

14. Furthermore, it may be noted that the accommodation at property No.114, Daryaganj, Delhi where the respondent is presently residing with his family, as a licensee, comprises of only two rooms. Respondent in the eviction petition has clearly explained as to how the two rooms are being used i.e. both the rooms are being used to accommodate the married sons along with the families. Respondent and his wife during summer season sleep either on the terrace or in the balcony and in the rainy and winter season they are accommodated by their sons in their rooms.

15. It is a settled position that a landlord is the best judge of his need. A landlord cannot be asked to split his family and divide the same between three or four different premises so as to adjust the tenant.¹ Neither the

¹ *S.A. Satsangi Versus Prem Kumar : 98 (2002) DLT 11*

tenant nor the Court can dictate as to how a landlord has to use the available premises.²

16. The family of the respondent comprises of the respondent, his wife and two married sons, their wives and two children each. It has not been denied by the petitioner that respondent resides with his family as one composite unit.

17. Out of the properties mentioned by the petitioner as allegedly available to the respondent none of the properties have enough accommodation which can accommodate the entire family except the subject premises.

18. It may further be noticed that apart from the property at Hauz Qazi where only two rooms and two kitchens have fallen vacant, respondent has stated that he is not the owner or has any legal right to any other property. No material has been placed on record by the petitioner to contradict said submission or to show that the Respondent has any other alternative suitable premises available.

19. Further, suitability has to be seen from the convenience of the landlord and his family members and on the basis of the totality of the circumstances including their profession, vocation, style of living, habits and background.³

20. An alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, in comparison with the suit

² *Bhupinder Singh Bawa Versus Asha Devi : (2016) 10 SCC 209*

³ *M.L. Prabhakar Versus Rajiv Singal (2001) 2 SCC 355*

accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors.⁴

21. Non disclosure of accommodation which is neither suitable nor alternative will not non-suit the landlord. It is only where the landlord does not disclose premises which is suitable and alternative would the landlord be non suited.

22. It may be noticed that the petitioner had not taken any such grounds in his affidavit in support of the leave to defend application but has taken these additional grounds during submissions before this Court. Though, what is to be considered is the pleas raised by the tenant in the affidavit filed in support of the leave to defend application and nothing beyond that can be permitted unless the same is a subsequent event, petitioner was heard on the said additional grounds also.

23. As noticed above, even by the additional grounds petitioner has not been able to show a prima facie case or any fact, which if proved, would disentitle the landlord of an order of eviction.

24. Respondent in his eviction petition had categorically stated that two portions on the first and second floor and a portion on the ground floor had fallen vacant and same are in occupation of Smt. Krishna Gupta, who is the owner of 3/4th share of the subject property and said portions are being used by her for accommodating her servants. Respondent had very categorically disclosed that he does not have any accommodation available in the subject

⁴ *Shiv Sarup Gupta v. Mahesh Chand Gupta (Dr): (1999) 6 SCC 222*

property.

25. I find no infirmity in the view taken by the Rent Controller in holding that the affidavit in support of the leave to defend does not raise any triable issue or disclose facts which if proved would disentitle the respondent landlord from an order of eviction.

26. In view of the above, I find no merit in the petition. The Petition is accordingly dismissed.

OCTOBER 23, 2019
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SANJEEV SACHDEVA, J

