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

% Judgment delivered on: 13.11.2019

+ RC.REV. 128/2018

BALESHWAR GUPTA

..... Petitioner

versus

YOGESH CHANDRA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rohit Kumar Dubey with Mr. Anand Ahlawat,
Advocates.

For the Respondents: Mr. Deepak Gupta with Mr. Rupendev Sharma, Advocates
with respondents in person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

RC.REV. 128/2018 & CM APPL.13321/2018 (seeking interim relief) & CM APPL.11864/2019 (filed on behalf of respondent No.1 under Section 151 CPC), CM APPL.18565/2019 (filed on behalf of respondent No.1 under Section 151 CPC)

1. Petitioner impugns order dated 01.07.2017, whereby leave to defend application of the petitioner was dismissed and an eviction order was passed. Petitioner further impugns order dated 08.03.2018 whereby review petition, filed by the petitioner, impugning order dated 01.07.202017 was also dismissed.

2. Subject eviction petition was filed by the respondent No.1

seeking eviction of the petitioner on the ground of bonafide necessity under Section 14(1) (e) of Delhi Rent Control Act, 1958 from property bearing Municipal No.4337, Block No.4, Ansari Road, Darya Ganj, New Delhi, more particularly as shown in red colour in the site plan attached to the eviction petition.

3. The case set up by the respondent No.1 was that the respondent No.1 is the owner of the entire building and was running a guest house from the rear portion of the building. The tenanted premises were required bonafide for the purpose of expanding/extending the frontage of the business premises which was running as a guest house for several years.

4. It is contended that the passage of the guest house from the main Ansari Road is only 4 feet wide and since the frontage of the guest house was very small, the business of the guest house suffered immense set back as the customers, who were looking out for a reasonable accommodation, would be unable to locate the guest house and would accommodate themselves in other guest houses.

5. It is contended that the premises of the petitioner is right adjoining the passage of the guest house. It is further contended that the tenanted premises was required for providing a free and broader ingress and egress to the rear portion of the property from which the business of the guest house was being run for last several years. However, since the guest house is closed, the same is now being used as a godown for storing business stock of the respondent No.1. It is

alleged that the rear portion is unusable for any other purpose because of its design and constraint of space.

6. It is further contended in the eviction petition that the accommodation of the rear side in possession of the respondent could be very easily converted into a proper and commodious, clean and airy large guest house in which the business could be rekindled.

7. Further, it is contended that in the alternative, if the eviction of the tenanted premises and the adjoining tenanted premises happens, the ground floor could be converted into a proper showroom for setting up of a new business either of readymade garments, books or jewellery since the premises are situated in a locality where such businesses are being carried on.

8. In the eviction petition, the petitioner was only impleaded as a proforma respondent. The contention of the respondent No.1 was that the tenants of the premises were respondent Nos.2 to 5, however, since the petitioner was claiming himself to be a tenant petitioner was impleaded as a respondent.

9. No leave to defend application was filed by any of the respondents in the eviction petition including the petitioner. Petitioner, however, filed a detailed affidavit seeking grant of unconditional leave to defend.

10. The only ground taken by the petitioner in the affidavit filed before the Rent Controller seeking leave to defend was that

respondent No.1 had sufficient accommodation available in the entire property and is also the owner of several other commercial as well as residential properties.

11. It is alleged in the affidavit by the petitioner that respondent No.1 is the owner of property Nos.33, 34 and 39 at Gali Kedar Nath, Chawri Bazar, Delhi. It is further contended that the property Nos.33, 39 are residential properties and property No.35, 36, 37 and 38 have been let out on rent. Further, it is contended that the respondent No.1 has vast properties at Sonapat, Haryana.

12. With regard to relationship of landlord and tenant, though respondent No. 1 denies it, petitioner claims to be a tenant under the respondent.

13. Further, the Rent Controller has found that the petitioner has not been able to point out to any property which is available or alternative of the subject property.

14. The case set up by the respondents is that the passage to the rear portion of the property is only 4 feet wide, which is unsuitable for ingress and egress to the rear portion and the tenanted premises is required for the purposes of broadening the passage so that the ingress and egress is smoothen and more attractive to customers visiting the rear portion from which the respondent No.1 intends to either restart his guest house or open a showroom.

15. Though the contention of the petitioner is that the respondent

has other commercial properties, in the same ground he also contends that none of the properties are vacant. Two of the properties, as per the petitioner, in the affidavit, are residential and remaining properties are already on rent.

16. In any event, the ground set up by the respondent No.1 is for widening the passage leading to the rear portion of his building. The alleged plea that respondent No.1 is the owner of other commercial properties is of no consequence. The need projected is not for a commercial property but to broaden the passage leading to the rear.

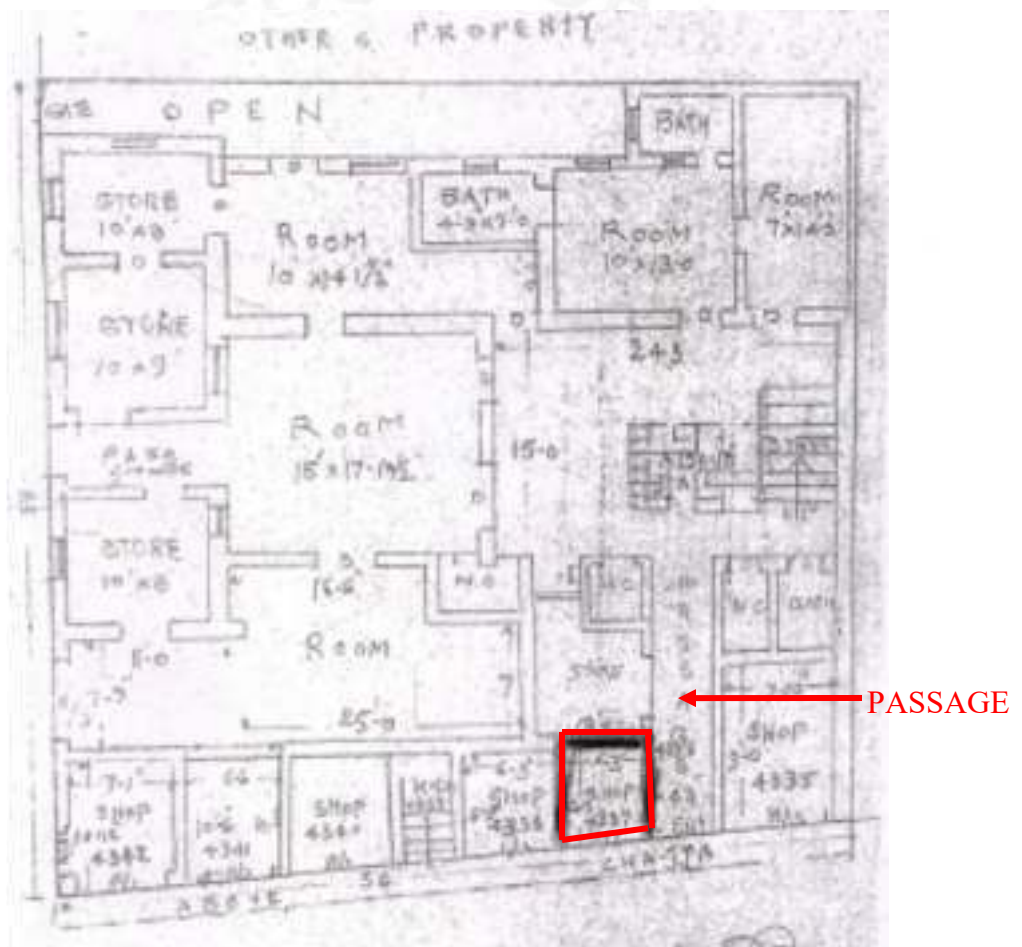
17. Rent Controller has noticed that the petitioner has not filed any application seeking leave to defend. The Rent Controller has relied on the judgment of a Division Bench of this court in *Jijar Singh vs. Mohinder Kaur*: AIR 1979 Del. 245 wherein it is held that a prayer has to be made only by way of an application and an affidavit cannot contain a prayer and the tenant has to first make an application to seek leave of the Court to contest the eviction petition, which has to be supported by an affidavit, as is referred to in sub Section (5) of Section 25-B of Delhi Rent Control Act.

18. Nonetheless, the Rent Controller has considered the case of the petitioner on merits and found that no grounds were raised by the petitioner which would entitle him to grant of leave to contest the eviction petition.

19. There is only one passage leading to the rear portion from the

front main Ansari Road though there are other entrances in the side lane. The other entrances on the side lane cannot be a substitute to the main passage to the property. Entrance on the side street opens into a room whereas the passage on the main road opens into a central courtyard and also to the main staircase leading to the first floor.

20. For better appreciation, it would be appropriate to extract the site plan, which was annexed with the eviction petition, as under:-



21. Perusal of the site plan clearly shows that the passage to the rear portion is only '4' feet wide. The tenanted premises are '6.3' wide.

Clearly, the passage of 4 feet is not sufficient for accessing the commercial property at the rear. However, in case the tenanted premises is available, respondent No. 1 could have a passage of 10 feet which would be reasonable wide enough for ingress to and egress from the rear portion.

22. Further, the Rent Controller has dismissed the review petition holding that no ground is made out to review the eviction order and the petitioner has in fact filed the review application in the nature of a revision petition which would not lie before the same Court.

23. Keeping in view the facts and circumstances of the case, as noticed hereinabove, I am of the view that there is no infirmity in the view taken by the Rent Controller in refusing to grant leave to defend to the petitioner or in entertaining the review petition filed by the petitioner.

24. No triable issue arises from the affidavit filed by the petitioner. He has not been able to show any ground which if proved would disentitle the respondent from an order of eviction.

25. I find no merit in the petition. Petition is, accordingly, dismissed.

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

NOVEMBER 13, 2019/st

SANJEEV SACHDEVA, J