

\$~14

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

%

Judgment delivered on: 09.10.2019

+ RC.REV. 173/2018

DILPREET SINGH GANDHI

..... Petitioner

versus

NEERAJ & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. H.S. Arora, Advocate.

For the Respondent: Mr. Shailesh Kumar, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

RC.REV. 173/2018 & CM APPL.16893/2018 (stay), CM APPL.13021/2019 (seeking directions for payment of user charges)

1. Petitioner impugns order dated 08.11.2017, whereby, leave to defend application of the petitioner has been dismissed and 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 the Delhi Rent Control Act, 1958 from one shop measuring 15 sq. yards in property No.386, Ground Floor, Kucha

Bulaqui Begum, Dariba Kalan, Delhi, more particularly, as shown in red colour in the site plan annexed with the petition..

3. Subject eviction petition was filed by the respondents contending that they are the co-owners of the property having succeeded to the same on demise of their father. It is contended in the eviction petition that the respondent No.1 was working as an employee under a property dealer and the respondent No.2 was working as an employee in a cloth house. It is contended that they have their own families and have decided to start their own cloth business including tailoring business at the tenanted premises. It is contended that the wife of the respondent No.1 was doing tailoring course in order to gain knowledge in the business. It is contended that they had no other alternative suitable accommodation from which business could be carried on.

4. Subject leave to defend was filed by the petitioner *inter alia* contending that the need is not bonafide and further contending that the respondents have not disclosed as to where they are employed or from where they are doing business.

5. It is further contended that a couple of months prior to the filing of the eviction petition, the first floor of the suit premises has been let out for commercial purposes to one M/s. Krishna Electronics at the rate of Rs.4,000/- per month from where the said M/s. Krishna Electronics is carrying on its business.

6. In support of the contention that the respondent No.2 is carrying on his business, photographs of respondent No.2 standing in a shop and selling clothes have been placed on record. It has further been contended in the leave to defend that both the respondent No.1 and respondent No.2 own commercial properties from which business is being carried on.

7. In reply to the leave to defend, it is contended by the respondents that they have no alternative suitable accommodation and further that they are employed and are not carrying on any business. With regard to M/s. Krishna Electronics, it is contended that the said Krishna Electronics has been a tenant since the year 2010 and has not been let out the premises recently.

8. Perusal of the record shows that the respondents have not disclosed as to where they are working or what is the nature of their employment or the name and address of the employer.

9. With regard to the photographs that have been placed on record by the petitioner showing the respondent No.1 standing and selling clothes in a shop, the contention of the respondents is that the number of the premises, which is mentioned by the petitioner, does not exist. It is stated by the respondent that he is employed in another property and the photograph is of the place where he is employed.

10. Perusal of the record shows that the respondents have not stated

the name and address of their employers. Respondent No. 2 has only stated the address of the premises to which the photographs pertain. He has not even stated the name and style of the shop in which he is seen standing and selling articles. Respondents has not even stated as to on what wage/remuneration they are employed, what are the nature of their services and under whom they are working.

11. Since the respondents have not disclosed any particulars with regard to their employment, the issue as to whether the respondents are employed or carrying on business from the said premises, as seen in the photograph, is a triable issue. Further with regard to M/s. Krishna Electronics, the documents placed on record by the Respondent show that M/s. Krishna Electronics is a tenant but the documents pertain to the year 2017. No document has been placed on record by the respondents to show that M/s. Krishna Electronics has been occupying the said premises since the year 2010. Once again, the issue as to whether M/s. Krishna Electronics was a tenant since the year 2010 or had been recently let out the premises just prior to the filing of the eviction petition is a triable issue which would require consideration.

12. Perusal of the leave to defend application shows that the petitioner has raised sufficient triable issues and pleaded ground, which, if proved, would disentitle the respondent landlord from an order of eviction. Clearly the Rent Controller has erred in rejecting

the application of the petitioner seeking leave to defend.

13. In view of the above, impugned order dated 08.11.2017 is set aside. Leave is granted to the petitioner to defend the eviction petition.

14. List the eviction petition before the concerned Rent Controller on 15.11.2019. Petitioner shall file his written statement before the concerned Rent Controller on said date.

15. Petition is disposed of in the above terms.

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

OCTOBER 09, 2019
st

SANJEEV SACHDEVA, J