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

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Judgment delivered on: 19.09.2019

+ RC.REV. 293/2016 & CM APPL. 20131/2016, 25458/2016

PRITAM ARORA

..... Petitioner

versus

MANAK CHAND JAIN

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Aayush Agarwala, Advocate

For the Respondent: Mr. Rishabh Jain, Advocate

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns judgment dated 11.01.2016 whereby the application of the petitioner seeking leave to defend has been rejected.

2. Respondent had filed the subject eviction petition seeking eviction of the petitioner from one shop (converted into two shops), forming part of property no. 2847, Ward No. VII, Mohalla Niyarian, G. B. Road, Delhi- 110006, more particularly as shown in red colour

in the site plan annexed to the eviction petition.

3. Subject petition was filed by the respondent on the ground of bonafide necessity under Section 14(1) (e) of the Delhi Rent Control Act seeking eviction of the petitioner from the tenanted premises on the ground that his son was an Advocate by profession and he had no office and room for library or for the secretarial staff and the son was dependent on the respondent for the purposes of accommodation and no other reasonable suitable accommodation was available with him.

4. Subject leave to defend application was filed by the petitioner contending that the respondent had alternative accommodation available in the form of one room on the ground floor and the entire first floor of the subject property besides a property in Chandni Chowk, Delhi.

5. Subsequently, an additional affidavit was filed by the petitioner/tenant contending that the son of the respondent/landlord had put up a board on a shop at Chandni Chowk, Delhi which showed that he had alternative accommodation available with him.

6. It was disputed by the respondent that alternative space was available, however, it was contended that the first floor of the property was residential and son of the respondent wanted to open an office on the ground floor.

7. It is a settled position that a tenant cannot dictate to the landlord

as to how he is to use his premises. Tenant cannot dictate to the landlord that the son of the landlord should have his office only on the first floor and not on the ground floor when the said premises can be made available by evicting the tenant. It is the case of the respondent that accommodation on the first floor is not suitable as the elderly clients would not be in a position to climb the stairs to the first floor.

8. Further, the Contention of the petitioner is that a shop on the ground floor is available. The dimension of the shop which is stated to be available with the respondent is 7 x 16 ft., whereas the tenanted premises is 14 x15 ft.

9. Clearly the alternative accommodation on the ground floor having a dimension of 7x16 ft. is insufficient for opening of an office specifically when the requirement projected is for office of an Advocate, besides space for secretarial staff and a library.

10. Further contention of the learned counsel that there was concealment with regard to accommodation at ground and first floors available are concerned, is without any merit.

11. Landlord is obliged to disclose accommodation which is alternative, available and suitable. Mere non-disclosure of accommodation which is neither alternative nor available and suitable cannot non-suit the respondent-landlord.

12. In case the alleged vacant accommodation is neither suitable for

the need for which the petition has been filed, non-disclosure of the same will not non-suit the respondent-landlord.

13. Clearly, the accommodation on the first floor and a 7 x 16 ft shop on the ground floor is not suitable or alternative to the tenanted premises.

14. Further, the alleged accommodation in Chandni Chowk where the petitioner states – a board has been put by the son of the respondent, is a jewellery shop from where the Respondent/landlord is carrying on his business. Petitioner has not placed any material on record to show that the son of the respondent is having an office in the said premises except pointing out to a board which has been affixed outside the jewellery shop.

15. In my view, the petitioner has not been able to point out to any accommodation which is available and suitable to meet the requirement of an office for the respondent's son.

16. There is no infirmity in the view taken by the Rent Controller holding that the petitioner has not been able to raise any ground which, if proved, would disentitle the respondent-landlord from an order of eviction.

17. It may further be observed that since there was no interim protection granted to the petitioner, petitioner has already been evicted from the tenanted premises on 22.07.2016 through warrants of

possession issued in execution of the impugned order.

18. I find no merit in the petition. The petition is accordingly dismissed.

19. Learned counsel for the petitioner submits that the respondent has not occupied the premises even though, the petitioner was evicted on the ground of bonafide necessity and right of restoration has accrued to the petitioner under Section 19 of the Delhi Rent Control Act and he reserves his right to take appropriate action in respect thereof.

20. With regard to the said contention, as no issue arises in this petition, same is not being commented upon. All rights and contentions of the parties are reserved.

SANJEEV SACHDEVA, J

SEPTEMBER 19, 2019

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