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

% Judgment delivered on: 13.09.2019
+ RC.REV. 254/2016

ARVIND AGGARWAL Petitioner

versus

JAGWAT PRASAD Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Vishal Bhatnagar, Adv.

For the Respondent: Mr. P.K. Khanna, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL. 33497/2016 (Exemption)

Allowed, subject to all just exceptions.

RC.REV. 254/2016 & CM APPL.17184/2016 & 33496/2016

1. Petitioner impugns judgment dated 27.01.2016 whereby the eviction petition filed by the respondent landlord on the ground of bonafide necessity under section 14(1)(e) of the Delhi Rent Control Act, 1958 has been allowed after trial.

2. Subject eviction petition was filed by the respondent/landlord

with respect to one shop in property bearing No.1047, Ground floor, Main Bazar, Lal Kuan, Delhi-110006, more particularly as shown in blue colour in the site plan annexed to the eviction petition.

3. Subject eviction petition was filed by the respondent/landlord contending that he is the owner/landlord of the tenanted premises and said premises was required bonafide for the use of his son. It was contended that the son of the respondent was then unemployed and required bonafidely the said premises/shop for running the business for earning his livelihood for himself and for his dependant family members.

4. It was also contended in the petition that another shop in the same property which was occupied by another tenant was required bonafidely by the respondent himself for earning his livelihood and for his family members.

5. It was contended that the respondent did not have any alternative shop for carrying on running business by himself and by his son and that he was earlier doing business from premises bearing No.1781, Main Bazar, Lal Kuan, Delhi-110006 which was owned by his sister and she had got it vacated from him.

6. Leave to defend was granted to the petitioner. Thereafter, written statement was filed and evidence was led by the parties.

7. Relationship between the parties of landlord and tenant is not

disputed.

8. The main ground of challenge raised by the petitioner tenant was that respondent had other premises available in the vicinity which had not been disclosed and further that the son of the respondent for whose requirement subject petition has been filed was himself working in one of the alternative properties.

9. It is contended that the respondent owned property No.1781 and 1939. It is contended on behalf of the petitioner/tenant that in property No.1781 there were three shops on the ground floor, possession of one of the shops was with the respondent and he was carrying on his business. It is further contended by the petitioner/tenant that the ground floor of property No.1939, Gali Durga Mandir, Lal Kuan, Delhi comprises of a hall from which the son of the respondent was carrying on his business of Lathe (Fabrication) machines. It was also alleged that respondent had first and second floor in the suit property available from which business could be carried out.

10. Respondent led his evidence and, in his evidence, stated that there was no accommodation available with him.

11. To verify the claim of the Petitioner, that respondent had first and second floor available from which business could be carried out, a Local Commissioner was appointed by the Court to inspect the property and to ascertain whether the first, second and third floor of

the said property was being used for commercial or residential purposes.

12. The Local Commissioner in its report had confirmed that the first, second and third floors were being used for residential purposes by the family of the respondent and also some portion was occupied by tenants.

13. The Rent Controller, in the impugned judgment has noticed that no objections were filed to the said report by either of the parties.

14. In support of the petition, respondent has led his evidence and categorically stated that his son was dependant upon him and was unemployed and required the tenanted shop in the possession of the petitioner/tenant for earning his livelihood and for his dependant members.

15. He has specifically deposed that there was no alternative shop available for running of business either by himself or his son. He categorically stated that he was earlier doing business from premises No.1781 which is owned by his sister Mrs. Channa Devi and she got the premises vacated from him in the year 1997. Subject eviction petition was filed on 04.04.2009.

16. The respondent in his evidence affidavit had further stated that property No.1939, Gali Durga Mandir, Lal Kuan, Delhi was owned by his two late brothers namely Sh. Bhagwat Prasad and Sh. Vishesh

Kumar and the family members of the said two late brothers were residing in the said property. He has categorically deposed that he has no portion in his possession in any manner in said property No.1939, Gali Durga Mandir, Lal Kuan, Delhi.

17. Learned counsel for the petitioner seeks to rely on the cross examination of the respondent who appeared as PW-1 inter-alia as under: -

“It is also correct that Smt. Channa Devi was my mother. It is correct that there are three shops on the ground floor in the said premises. It is incorrect to suggest that out of these three shops, I occupied one shop or that I am doing business of playing cards (Gambling) and charges commission from the Gambler. The second shop was let out by Bhagwat Prasad to someone Mohd. Nasim. It is correct that Bhagwat Prasad was my brother. It is correct that the third shop is occupied by the sons of Sh. Vishesh Kumar in the said premises. It is correct that all the three shops came into possession of three brothers including myself (Vol. my sister get vacant possession of one shop from me). It is incorrect to suggest that at present also I am running the said shop.

It is incorrect to suggest that I have another property which bearing MCD No. 1939, Gali Durga Mandir, Lal Kuan, Delhi-6. The said property was owned by my father Sh. Solu Mal thereafter on the basis of WILL, of my father, the said property came in the name of my mother Smt. Channa Devi. It is incorrect to suggest that on the ground floor in the said property I occupying one big hall on the ground floor in which I installed Kharad Machine. (Vol. As earlier the same was in my possession and running Kharad Machine in the year), Again said, I

never came in possession in the said property. It is incorrect to suggest that at present also I am in possession on the ground floor in the said premises. It is further incorrect to suggest that my workers and my son Sunil Kumar himself in managing the business of Kharad Machine.

It is incorrect to suggest that I let out one big hall to Rakesh Kumar on 01.12.2008 for running commercial activities on monthly rent of Rs.5000/- p.m. in the suit premises in question (Vol. The number of the first floor is 1046). It is incorrect to suggest that there is no different number of the suit premises on the ground floor or other part of the property). It is correct that the whole property including the shop in question was owned by Solu Mal and Smt. Channa Devi. It is also correct that Sh. Solu Mal and Smt. Channa Devi had three sons namely Jagwant Prasad, Bhagwat Prasad, Vishesh Kumar and one daughter namely Nona Devi. It is incorrect to suggest that Solu Mal who was my father, let out the suit shops to the respondents. (Vol. I myself let out the shop in question to the respondent). It is incorrect to suggest that Sh. Solu Mal let out the premises to the respondent at the monthly rent of Rs.100/- and thereafter the same was enhanced from time to time and the present rent of Rs.240/- p.m. It is incorrect to suggest that I am occupying more than sufficient commercial accommodation to run the business for myself and for my son Sunil. It is incorrect to suggest that I used to get vacated the premises from the old tenants and there are inducted new tenant at the higher rent of rent. I am not Income Tax Assesse. It is correct that portion A to A in my affidavit para 6 are not mentioned in the petition (Vol. the same has been mentioned in my reply to the leave to defend application). It is correct that my sister have no concerned from P. No. 1939, Gali Durga Wali, Main Bazar, Lal Kuan, Delhi. It is incorrect to suggest

that my sisters have no concerned from P.No. 1781. Main Bazar, Lal Kuan Delhi — 6 (Vol. My sister Nona Devi is the owner of the said property and she has been receiving the rent). It is incorrect to suggest that Nona Devi neither received the rent nor claim for her ownership in the said property. It is incorrect to suggest that I have filed the false affidavit in the court or that I have filed false suit by creating false bonafide requirement. It is incorrect to suggest that I am deposing falsely.”

18. Learned counsel for the petitioner submits that the respondent in his cross examination has admitted that the three shops came into the possession of the three brothers.

19. Perusal of the cross examination shows that the respondent had categorically stated that the sister had got vacated the possession of one shop from him. If the cross examination is read in conjunction with the evidence affidavit filed by the respondent, it is clear that he has stated in his evidence affidavit that the sister had got vacated the shop which had come in his possession in property No.1781 in the year 1997 i.e. several years prior to the filing of the eviction petition.

20. Perusal of the affidavit of the petitioner shows that apart from making an bald assertion that respondent was in possession of one of the shops in property No. 1781 and that his son was doing business from a hall in property No. 939, no material has been placed on record to show that the possession of any portion of the said properties was

available to the respondent when the eviction petition was filed or in the near past or future.

21. In a case of bonafide necessity, the initial burden though lies on the landlord to establish bonafide need but once the landlord has categorically in his evidence deposed that no other accommodation was available with him, the onus shifts on the tenant to establish that accommodation is available.

22. The categorical stand of the respondent was that no other alternative accommodation is available, however, the case of the petitioner is that alternative accommodation was available. The burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not on the party who denies it.¹

23. Since the petitioner was categorically asserting that alternative accommodation was available the burden was on the petitioner to establish that it was available.

24. In the cross examination of the Petitioner/tenant, when a suggestion was given to the petitioner by the counsel for the respondent landlord that nothing was available, he denied the same and said that he could produce photographs. However, no photographs were produced.

25. Except for a bald assertion that alternative accommodation was

¹ Anil Rishi vs. Gurbaksh Singh (2006) 5 Supreme Court Cases 558

available, admittedly, no material has been produced by the petitioner.

26. The Rent Controller in the impugned judgment has even commented upon the conduct of the petitioner/tenant to the extent that he has noticed that the petitioner was not telling the truth as on the one hand he denied the suggestion regarding use of first, second and third floors and on the other hand stated that the said floors were occupied by the respondent and respondent's daughters for residential purposes.

27. The Rent controller has noticed that the respondent was a senior citizen and the petitioner had failed to rebut the claim of the respondent and has failed to bring anything on record which could refute the same.

28. In my view the Rent Controller has rightly come to the conclusion that bonafide need of the respondent stood established along with the factum that no other alternative accommodation was available to him to meet his requirement.

29. I find no infirmity in the view taken by the Rent Controller in the impugned judgment.

30. The petition being without merit is accordingly dismissed.

SANJEEV SACHDEVA, J

SEPTEMBER 13, 2019/rk