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

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Judgment delivered on: 10.12.2019

+ RC.REV. 157/2017 & CM APPL. 13025/2017

NARESH DASS KHANNA

..... Petitioner

versus

JIWAN LAL BERRY & SONS HUF

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Kirti Uppal, Sr. Advocate with Mr. Mohit Khanna and Mr. Aditya Awasthi, Advocates.

For the Respondent: Mr. Brij Bhusan Gupta, Sr. Advocate with Mr. Jai Sahai Endlaw, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners impugn order dated 23.11.2016, whereby the Leave to defend application of the petitioner has been dismissed and an eviction order passed.

2. Respondent had filed the subject eviction petition seeking eviction of the petitioners on the ground of bonafide necessity under Section 14(1) (e) of Delhi Rent Control Act, 1958 from Shop No.1671-72, Main Bazar, Dariba Kalan, Chandni Chowk, Delhi.

3. The ground pleaded by the respondent – landlord is that the subject premises are required bonafide for setting up direct taxes consultancy services and that he has no other reasonably suitable accommodation anywhere except the subject premises.

4. There is no dispute inter-se the parties with regard to the relationship of landlord and tenant and also the fact that the respondent is the owner of the property.

5. It may be noticed that though in the leave to defend application, petitioner has raised a dispute with regard to relationship by contending that not only the petitioner but there are other legal heirs who are also tenants, however, the respondent has categorically contended that on the death of the original tenant i.e. the father of the petitioner, the tenancy was inherited as a joint tenancy and the petitioner has been solely carrying on the business and as such there is a deemed surrender of tenancy rights by other heirs in favour of the petitioner.

6. Before this Court no such issue with regard to relationship was pressed and it is candidly admitted that there exists a relationship of landlord and tenant between the petitioner and the respondent.

7. The contention of the respondent in the eviction petition is that the respondent is an advocate practising since the year 1962 and has been dealing in Income Tax, Direct taxes consultancy and Advisory from his residential house at B-31, Hauz Khas, New Delhi and desires

to set up his direct taxes consultancy services from the tenanted premises, which is a shop and that the same is suitable for setting up professional work as it is situated in a well known commercial area of Dariba Kalan.

8. It is contended that despite his age he is very much mentally and physically fit for starting and continuing his professional work from the shop in dispute.

9. Subject leave to defend application was filed by the petitioner contending that respondent was never practising as an advocate in Delhi or in any other place and his membership does not exist in the Bar Council of India. Further it is contended that he has not revealed that he is not dealing in any taxation matter from his residential house and that he has not filed any Income Tax return to show that he is practising as an advocate.

10. It is contended that the respondent has several properties in Dariba Kalan and other places in Delhi and by threats of eviction has abnormally increased the rent and that he was doing the business of property dealer from the office situated in Hauz Khas, however, for the last 10 years he has stopped carrying out the property business due to old age ailments.

11. It is further contended that it would not be feasible for the respondent who is aged 80 years to travel more than 20 kms daily to Dariba Kalan from his residence in Hauz Khas.

12. In response to the affidavit filed by the petitioner seeking leave to defend, it is once again reiterated by the respondent/landlord that despite his age of about 80 years, respondent is still mentally and physically active and having no old age ailments and is capable of attending his office everyday.

13. It is contended that the tenanted premises are situated in the biggest commercial market and surrounded by traders and businessmen which would help in attracting new clientele and certainly increasing the professional practice of the respondent to a greater level.

14. Respondent has denied that he owns other properties in Dariba Kalan or other places in Delhi and by giving threats of eviction increases the rent.

15. Respondent has filed the subject petition seeking eviction of the petitioner on the ground that he is an advocate and intends to shift his practice from his residence in Hauz Khas to Dariba Kalan. It is an admitted position that Dariba Kalan is a highly populated commercial area with several commercial establishments and merchants. Since respondent is practising on taxation side dealing with direct taxation consultancy services, office in Dariba Kalan would certainly be more fruitful than an office in Hauz Khas which is primarily a residential colony.

16. Petitioner has not been able to produce on record any material

to show that respondent owns or possesses any other suitable alternative commercial accommodation in Dariba Kalan or Delhi. Petitioner has also not placed on record any material to show that respondent is not keeping good health or is incapable of running his office from Hauz Khas.

17. The contention of the petitioner that Respondent has not placed on record any material to show that he is currently carrying on any professional activity does not hold any merit. Even if it is assumed that respondent is presently not carrying on the profession of an advocate, since respondent is admittedly enrolled with the Bar Council as an advocate, nothing prevents the respondent from commencing a new professional venture as an advocate from the tenanted premises.

18. The question as to whether the premises in Hauz Khas are more suitable than Dariba Kalan is again an issue which neither the tenant nor the Court can dictate to the landlord. It is settled position that it is the landlord who is the best judge of his requirement and suitability.

19. If the respondent landlord intends to carry on his professional activity from Dariba Kalan, neither the tenant nor the Court can dictate to the landlord or even decide as to which would be more suitable. The discretion is left completely to the landlord to ascertain as to which would be more suitable premises for carrying on the advisory and consultancy profession by an advocate. Even otherwise

ex facie a commercial venture in Dariba Kalan would be more suitable than a venture in Hauz Khas.

20. On perusal of the affidavit filed in support of the leave to defend application, I am of the view that the impugned order does not suffer from any infirmity and the Rent Controller has not committed any error in holding that the petitioner tenant has not been able to place on record any material which would raise a triable issue or plead any fact which if proved would disentitle the respondent landlord from an order of eviction.

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

CM APPL. 37255/2017

This is an application on behalf of the respondent for payment of use and occupation charges. Since the revision petition filed by the petitioner has been dismissed, no orders are being passed on this application.

SANJEEV SACHDEVA, J

DECEMBER 10, 2019

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