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

% Judgment delivered on: 20.12.2019
+ RC.REV. 276/2018 & CM APPL. 24434/2018

SATISH KUMAR CHHABRA & ANR Petitioners

versus

VINOD KUMAR AHUJA Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Ajay Malhotra and Mr. Deepankar Kataria,
Advocates.

For the Respondent: Mr. Nimish Chib and Mr. Gaurav Arora, Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioners impugn order dated 19.01.2018 whereby leave to defend application of the petitioners has been dismissed and an eviction order passed.

2. Subject eviction petition was filed by the respondent on the ground of bonafide necessity under section 14(1)(e) of the Delhi Rent Control Act, 1958 seeking eviction of the petitioners from a shop on the ground floor in property bearing No. 1/398, Punja Sharif, Gali Rajan Kalan, Kashmere Gate, Delhi, more particularly as shown in red colour in the site plan annexed with the eviction petition.

3. There is no dispute with regard to the relationship of the landlord and tenant or the fact that respondent is owner of the property. Petitioners have not raised any dispute with regard to the said relationship or that respondent is owner of the property.

4. Subject eviction petition was filed by the respondent contending that respondent was initially running a confectionary shop from the front part of the shop on the ground floor measuring 11 sq. yards adjoining the tenanted shop but in the year 2014 because of his health issues and diabetes he was forced to retire and the other part of the shop on the ground floor was sold as he was in dire need of money.

5. It is further contended that in the year 2015, respondent's health improved and the elder son of the respondent showed interest in practicing law and enrolled himself with Delhi University in LLB 3 years course (2014-2017) and thereafter respondent continued to request the petitioner to hand over the peaceful vacant possession of the tenanted premises but petitioner did not do so. It is further contended that the petitioner is in possession of several other commercial premises.

6. It is further contended in the eviction petition that the respondent would also assist his son by keeping accounts of his law office. It is further contended that the respondent has no other commercial property and both the ground and first floors were

required for law office, storage of files and office use.

7. It is further contended that the respondent was facing hardships as neither he nor his son has any other premises in Delhi except the tenanted shop and tenanted first floor in respect of which another eviction petition has been filed. It is further contended that the respondent bonafidely required the tenanted premises under the tenancy of the Petitioners to accommodate the needs of himself and his son.

8. Subject leave to defend application was filed by the petitioner contending that the son of the respondent was already doing his pharmacy business from Ghaziabad and eviction petition has been filed just to create a false ground against the petitioner.

9. It is contended that the tenanted premises are situated in a market area which is primarily a market of spare parts of automobiles. It is further contended that the respondent had enrolled his son in LLB 3 years course only to create a false ground of eviction as he was doing his business of pharmacy. It is further contended that the respondent has recently sold another portion of the property which fortifies that the need of the respondent is not bonafide.

10. It is further contended by learned counsel for the petitioner that the petition has been filed for a requirement in future and not in *presenti* as such the eviction petition was not maintainable. It is contended that the son of the respondent is independent as he is doing

his pharmacy business. Further it is submitted that the son of the respondent renewed his pharmacy registration on 17.01.2017 till 2021 and in case the son of the respondent wanted to practice as an Advocate he would not have got his pharmacy registration renewed.

11. Rent Controller by the impugned order has declined to grant leave to defend to the petitioner holding that the petitioner has not been able to show that any triable issue or raise any ground, which if proved, would disentitle the respondent-landlord from an order of eviction.

12. The ground of eviction pleaded by the respondent is that the respondent was earlier running a confectionary shop but in the year 2014 due to health issues had to retire from the shop and sold his shop as he was in dire need of money.

13. Subject eviction petition has been filed in May, 2017 and the said shop was sold in September, 2014 over three years prior to the filing of the eviction petition. It cannot be said that the respondent had recently sold another shop. Further, he has explained that the shop was sold as he was in dire need of finances.

14. It may be noted that petitioners have not been able to show that either the respondent or his son own or possesses any other commercial property in Delhi.

15. Petitioners have not produced any record or material to show

that respondent or his son have any other alternative, suitable accommodation by which the need of the respondent as projected, could be fulfilled.

16. Further, the contention of the petitioner, that the eviction petition has been filed for a requirement in future and not *presenti* is not sustainable.

17. Subject eviction petition has been filed in May, 2017 and as per the record the son of the respondent had taken admission in 3 years LLB Course in Delhi University starting from 2014-2017.

18. It is common knowledge that normally the results of law in Delhi University are declared around June or July in a particular year and enrolment happened thereafter. It cannot be said that a petition filed in 2017 on the ground that son of the respondent is studying LLB 3 years Course (2014-2017) is for a need in future and not in *presenti*.

19. Disposal of an eviction petition, even under the summary procedure takes some time in disposal. Even the present petition which is filed in May, 2017 has taken over two-and-half years to be concluded. It cannot be said that the requirement as projected was for the future and not in *presenti*.

20. Contention of learned counsel for the petitioner that son of the respondent is financially independent is also not sustainable. Financial dependency and dependency for the purpose of accommodation are

two separate things.

21. A family member can be dependent upon the landlord-respondent for the purpose of accommodation, even though that family member may be an earning member or may be financially independent.

22. It has been held by this Court in *R.K. Bhatnagar versus Sushila Bhargava 1986 (1) RCJ 717* “that the word “dependent” cannot be construed as wholly dependent in the sense of earning nothing at all and being entirely dependent on parents for board, lodging or maintenance but in the context in which that term appears in clause (e) of the proviso to Section 14(1) it connotes a wider concept and covers a larger field. So, it takes in a person who is not financially dependent upon the landlord but who would in the normal course look up the landlord to provide him with the facility of a house possessed by the landlord”.

23. Further contention of the petitioner that the son of the respondent runs his pharmacy business in Ghaziabad does not have any merit. The contention of the Respondents is that the son of the Respondent, though is registered as a pharmacist but does not do any pharmacy business.

24. The plea that son of the respondent has renewed his pharmacy licence in the year 2017 also does not raise a triable issue. The stand of the Respondents is that the son of the Respondent does not do any

pharmacy business, as apart from registration as a pharmacist, a pharmacy licence is also mandatorily required, which the son of the Respondent does not possess. Petitioner has not placed any material on record to show that the son of the Respondent actually does any business.

25. Even otherwise, a property alleged to be in possession of the landlord property situated outside Delhi does not qualify as a suitable or alternative accommodation. The plea that the son of the landlord does business outside Delhi, would be no ground to deny the respondents/landlord of an order of eviction of a property in Delhi required for starting business in Delhi. (*Ref: Inderjeet Dugal Versus Gurdeep Singh 2017 SCC OnLine Del 11412*)

26. The contention of the learned counsel for the petitioner that Respondent has not stated in the eviction petition, that the son of the respondent is dependent upon the respondent is also without any merit.

27. The eviction petition has to be read as a whole to ascertain whether the plea of dependency is made out or not. Respondent in his petition has categorically stated that neither he nor his son have any alternative suitable accommodation and that the premises are required bonafidely and further that the respondent is facing a lot of hardships as respondent and his son have no other shop in Delhi except the present shop and the premises is required bonafide to accommodate

the needs of the respondent and the son of the respondent. Even the admitted case of the petitioner is that neither the respondent nor his son have any other alternative accommodation in Delhi.

28. The contention of learned counsel for the petitioner that son of the respondent got admission in law in August, 2014 and a shop was in September, 2015 and in case there was a necessity of the accommodation, respondent not have sold the shop also does not hold any merit.

29. The son of the respondent had taken admission in a three years law course commencing in 2014 and he would have graduated in 2017. As mentioned in the eviction petition, the shop was sold in May 2015 because respondent was in dire financial need. Landlord and his family cannot be expected to starve for two years in an anticipation that in future they may require the premises.

30. I find no infirmity in the view taken by the Rent Controller that petitioner has not been able to raise a triable issue or plead a ground which, if proved, would disentitle the respondent-landlord from an order of eviction.

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

SANJEEV SACHDEVA, J

DECEMBER 20, 2019/‘rs’