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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 17th December, 2018

Pronounced on: 11th January, 2019

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RC.REV. 296/2016

PRAVEEN KUMAR ARORA

..... Petitioner

Through : Mr.Gurvinder Singh, Advocate.

versus

AKSHAY

..... Respondent

Through : Mr.Ashesh Lal and Mr.Raghav
Parwatiyar, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition challenges the order dated 11.03.2016 passed by the learned CCJ-cum ARC-I (Central) Tis Hazari Courts, Delhi whereby an application for leave to defend of the petitioner was dismissed and an eviction order under Section 14(1)(e) of the Delhi Rent Control Act, 1958 was passed.

2. The respondent had filed an eviction petition for recovery of shop No.4700, ground floor, Laxmi Bazar, Cloth Market, Delhi-110006. The reasons for filing the petition are stated in para 18 of the petition as under:-

“1. That the petitioner is the owner of the property bearing no.4698 and 4700 having area at the ground floor as 17 ½ sq. yards and 35 sq. yards first floor, second floor and third floor. It is clarified that first to third floor is known as property No.4698. The aforesaid property was purchased from Shri Ram Chander Bhawsar S/o Shri Nand Ram vide

sale deed dated 19.9.1994. It is relevant to mention that the petitioner was minor at that particular time when the property was purchased.

2. That at the time of the purchase of the property respondent's father late Shri Kartar Mal was the tenant at the ground floor on a monthly rent of Rs.175 per month. After the purchase of the said property 'the rent was collected by the father of the petitioner as petitioner being minor. Subsequently, the father of the respondent died and respondent is in the possession of the ground floor and paying- a rent of Rs 600 per month for which rent receipt was issued.

3. That at the first floor Shri Govind Ram was tenant and the petitioner had filed eviction petition bearing no.E-48/2010 against the said tenant and this Hon'ble Court vide its order dated dismissed the leave to defend application filed by the tenant and passed the eviction orders. The tenant being aggrieved with the eviction order, has filed revision petition bearing R.C Revision No. 349 of 2012 against the said order before Hon'ble High Court and Stay was granted in favour of the tenant. It is again relevant to ' mention here that the above said revision petition is pending and Hon'ble High Court vide its order dated 14/10/2014 has vacated the stay. Further the petitioner has filed an execution petition to vacate the tenanted premises.

4. That the father of the petitioner was doing a small business from the second floor and third floor and the petitioner joined BBA course at Pune. However, petitioner's father got ill, due to chronic the problem and different ailments and further he is unable to go at the said property as he has to climb almost 45 steps of stair which is not to be done as advised by the doctor. That as health of the father of petitioner is not to be done as advised by the doctor.

5. That as health of the father of petitioner is not well so the small business has almost deteriorated to nil and at present the family is going thorough financial paucity.

6. That the petitioner who became major on dated 14.9.2008 has completed his BBA course and wants to establish his own business as the ground floor i.e the most suitable property for counter sale and display of the goods so that he can look after his father, mother.

7. That under the pathetic situation petitioner number of times requests the respondent to vacate the premises as he needs to establish his own business for the livelihood.

Further ground floor is the most suitable property for counter sale and display of the goods but all in vain.

8. That finally petitioner sent a legal notice dated 29.04.2010 to the respondent to hand over the peaceful vacant possession and also stating that the rent for one year has not been paid.

9. That the respondent- replied to the said notice dated. 11.06.2010 refusing to vacate the premises on frivolous grounds.

10 That by the act and conduct of respondent it has become crystal clear to the petitioner that the respondent has illegal designs behind the occupancy of the premises which he is using as commercial, respondent is adamant to turn down bonafide requirement and' personal requirements of the petitioner.

11 That the petitioner requires the aforesaid tenanted premises bearing No.4700, ground floor, as well as first floor Laxmi Bazaar, Cloth Market, Delhi-6 measuring 17 ½ sq. yards for ground floor more particularly shown in red color in the site plan as the petitioner has no other property than the property mention in the present case to' do his business. Petitioner would be requiring the ground floor to n do his business for counter display and sale further the first floor will be utilized for storing the goods."

3. During arguments, the learned counsel for the petitioner says the ownership of the petitioner is admitted. However the petitioner has challenged the bonafide necessity of the respondent stating interalia the respondent has an alternative accommodation to start his business and has challenged the eviction petition on yet another ground of concealment on the part of the petitioner since he has been doing his Chartered Accountant's practice since the year 2012 and has no intention to start any business as alleged. However he argues the possession of first floor was obtained by the respondent during the pendency of proceedings of this petition but till July 2015 when the respondent has filed his reply to the leave to defend application, he alleged that he is likely to get possession of the premises though he had already received the

possession, hence due to concealment on the part of the respondent, the eviction petition is liable to be dismissed.

4. Qua concealment, I may say the non-disclosure of only those facts which are material for grant or refusal of the leave to defend, are relevant. In his petition the respondent has already averred that even if he gets the first floor of the premises he would still require the ground floor portion to be used as a showroom to display articles. Admittedly, his father have been doing cloth business from the second and third floor of the premises but since was having health issues viz. heart diseases etc., he could not climb the stairs and had stopped his business which has adversely effected the financial status of the family of the respondent and hence the respondent now intend to start business from the ground and first floor of the premises and there is no reason to disbelieve his statement. If the respondent is doing some practice and is not satisfied from his professional income or if he intend to leave his practice no one can stop him to do so and start his business.

5. Secondly, the learned counsel for the petitioner has alleged the respondent has first floor, second floor and third floor in the same property, which floors are lying vacant and he has not started any business from the said three floors as yet. It is alleged the first floor is lying vacant since the year 2015 and the upper two floors are lying vacant prior to 2015 yet the respondent has not started any business. It is argued the situation could have been different if the respondent had started some business from these three floors and would have now required additional premises to display the articles but since is pursuing a Chartered Accountant course, his intention do not appear to be bonafide.

6. Let us see how the learned Trial Court has dealt with this issue.

The relevant paragraphs are as under:

“14. It is averred by the petitioner that the tenanted premises is bonafidely required by him for starting his business of cotton yarn as the father of the petitioner is a heart patient who was earlier doing business from second and third floor of suit property but since due to his medical problem he is unable to climb stairs therefore he closed the said business. Even otherwise, it is submitted by the petitioner that the ground floor shop is perfect for counter sale and display of goods, thus, he requires the tenanted premises in order to support his family which presently is facing financial paucity. Per contra, it is submitted by the respondent that petitioner is doing the CA final year and does not want to start any business. Further, it is submitted by the respondent that the petitioner is already doing business of share trading as well as real estate from the first, second and third floor shops of Laxmi Bazar, Cloth Market Delhi-110006.

15. I have heard the contentions of both the parties.

16. Even if, the contention of the respondent is believed to be true that the petitioner is presently doing his CA but that does not stop the petitioner from starting his business in order to support his family. The respondent cannot dictate terms upon the petitioner as to which premises and when business he should start in order to earn his livelihood. Merely pursuing a CA course is not a bar upon the petitioner for not doing any business in order to earn livelihood for his family members. Further, the contention of the respondent that the petitioner is doing real estate business or the business of shares is not supported by any document and hence cannot be relied upon. The other contention raised by the respondent is that in Laxmi Bazar, Cloth Market, any business can be carried out from second and third floor from where the father of the petitioner is doing his business earlier. However, it cannot be disputed that a shop available on the ground would definitely fetch much more customers as compared to the shop situated at second floor where the customers have to climb stairs to approach to the said shop. Further, it is not disputed that the father of the respondent was inducted by previous owner prior to 2009 but due to medical problem, father of the petitioner has become incapable for doing active

physical work from second and third floor. Thus, if the father of the petitioner is advised not to climb stairs due to his medical condition, he cannot be forced to do so and suffer medical problem just because at one point of time, premises was let out to the father of the respondent by the previous owner. It is not the case of the respondent that the petitioner is presently earning something or having a source of livelihood in order to support his family members. Thus, the bonafide requirement of the petitioner in order to start his business from the ground floor premises stands duly proved.

17. It is averred by the respondent that the petitioner is having second and third floor of property in question and is likely to obtain possession of the first floor of the property in question which can be used by him for the alleged business. However, it has been discussed above that a shop on the ground floor having the provision of counter display and sale would definitely fetch much more customers as compared to a shop situated at any other floor since for approaching the shop at any other floor customers have to take pain of climbing the stairs which they would not prefer. Thus, the premises on first, second and third floor cannot be termed as an alternative suitable accommodation as compared to a shop on the ground floor.

18. It is also averred by the respondent that the petitioner is having a shop No. 4700A and shop No.4698 on the ground floor of property in question. However, the respondent has failed to file any document to substantiate the same by filing any photographs or any other proof. Per contra, the petitioner has filed the copy of sale deed which clearly shows that the petitioner purchased the ground floor shop No. 4700 as well as the first, second and third floor portion bearing No.4698. Except the first floor to top floor, no other portion was purchased by the petitioner by virtue of said sale deed and therefore he cannot be said to be the owner and in possession of shop bearing No.4698 and 4700A. Thus, the non-availability of alternative suitable accommodation with the petitioner stands duly proved.”

7. On the above facts the learned Trial Court has come to the conclusion since the shop at the ground floor has more value and it attract

more customers hence the need for the respondent is bonafide and this shop need be handed over to the respondent.

8. The learned counsel for the petitioner however referred to *Khem Chand & Ors. vs. Arjun Jain & Ors.* 2013(4) CLJ 306 Delhi wherein the Court held:

“37. xxxxx The question is not merely of the tenant dictating the need of the landlord. The question is really of the availability of the alternative reasonable and suitable accommodation. If the tenant is successful in demonstrating that there exists an alternative reasonably suitable accommodation available with the landlord, then it cannot be termed as the tenant dictating the need of the landlord. This is due to the reason if there is a requirement in law that the landlord xxxxx.

39. xxxxx The said are the line of the cases where the landlord is put to the extreme hardship by tenant's insistence that he should adjust to inconvenient premises by squeezing his needs. The facts of the present case are entirely different where the landlord is enjoying the property with in the same location though as a tenant coupled with another property lying vacant within the same location though on the different floor owned by the landlord himself where the business can be carried out as per the market conditions and thereafter the landlord is seeking to vacate the third property in the same location on the basis of bonafide need and non availability of the alternative accommodation which raises the doubt on the need of the landlord as not felt need but fanciful desire. Thus, there exist considerable doubts as to the bonafides of the need of the respondent at this stage of deciding the leave to defend application warranting trial.

40. It is not the thumb rule that in every case the landlord always is the best judge and the court is helpless by not scrutinizing the stand of the tenant while testing the reasonableness and suitability of the alternative accommodation. Actually it depends upon the case to case basis. xxxxx

47. Applying the said tests to the instant case, it can be seen that the learned controller while passing the impugned

order has merely applied the proposition that the landlord is the best judge to decide his needs in a mechanical manner and did not test the case of the competing parties on the objective standards. Thus, the impugned order passed by the learned Rent Controller suffers from legal infirmity.

48. The learned Controller legally erred in the not testing the case of both the parties on the objective standards which is the requirement of the law for examining the reasonableness and suitability of the alternative accommodation. The learned controller ought not have just simply observed that the landlord is the best judge to decide his needs but should have considered his plea non availability of reasonable accommodation vis-à-vis the accommodation which the respondent is enjoying presently which is property No. 9 A Sunder Nagar and also coupled with his ownership of first floor of the property No. 10 Sunder Nagar where such business can be carried out in the event of any future eventuality considering the business at the first floor is permissible in the said area. xxxxxx”

9. Thus it was argued once the alternative accommodation is lying vacant and can be used for the same business then if the ground floor is suitable or not is a triable issue and hence leave to defend ought to be granted.

10. However I may here refer to *Viran Wali vs. Kuldeep Rai Kochhar* 174 (2010) DLT 328 wherein the Court held:

“34. Admittedly, tenanted premises are situated on the ground floor. It is not the case of petitioner, that beside basement, respondent is having any other suitable and readily available accommodation with him in the entire premises. Respondent has categorically stated that basement is not suitable for him to carry on the business, as the same is being used for storage and parking purposes. Even if the basement is available with the respondent, then why respondent who is the landlord of the premises, should be forced to work from the basement, when he can get the tenanted premises vacated which is more suitable and also situated on the ground floor, for running his business.

35. *It sounds really strange that owner/landlord should be at the mercy of the tenant for running his own business in the property owned by him as per the dictates of the tenant. It is a well known fact, that any shop situated on the ground floor is more convenient than a shop situated in the basement of the premises. Respondent being the owner/landlord of the premises in question, has all the right and choice to start his own business in the premises more suitable and most convenient to him.*

36. *Any business which is being run from the ground floor of the premises, will obviously attract more customers than the business being run from the basement. It is the settled law, that a tenant cannot dictate the landlord as to how and in what manner the landlord should use his own property.*

37. *Respondent in his eviction petition in clear and unequivocal terms has mentioned about his requirements. It is not only the "mere desire" of the respondent to get the premises vacated but he needs the same for his above stated requirements. So, it cannot be said that respondent does not require the premises for himself and his son dependent upon him for accommodation for the purpose of starting business.*

38. *The concept of alternate accommodation means that accommodation which is "reasonable suitable" for the landlord. As to alternative accommodation disentitling the landlord to the relief of possession, it has been held time and again that it must be reasonably equivalent as regards suitability in respect to the accommodation he was claiming. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. As long as the landlord is able to establish that he in good faith and genuinely wishes to occupy the premises in possession of the tenant and that good faith or genuineness is of a reasonable man, it would not be open to the Controller to weigh the claim of the landlord in a fine scale*

and that the viability of the other accommodation will have also to be considered from the stand-point of a reasonable landlord. It is further to be observed that the law does not require the landlord to sacrifice his own comforts and requirements merely on the ground that the premises is with a tenant and for deciding whether or not the alternative accommodation available to the landlord is suitable or not, the social customs, conventions and habits, usage and practices of the society cannot be completely ruled out and termed as irrelevant. The problem had to be approached from the point of view of a reasonable man and not that of a whimsical landlord.”

11. Even in *Ragavendra Kumar vs. Firm Prem Machinery and Co.* AIR 2000 SC 534 the Court held:

“10. The learned Single Judge of the High Court while formulating first substantial question of law proceeded on the basis that the plaintiff-landlord admitted that there were number of plots, shops and houses in his possession. We have been taken through the judgments of the courts below and we do not find any such admission. It is true that the plaintiff-landlord in his evidence stated that there were number of other shops and houses belonging to him but he made a categorical statement that his said houses and shops were not vacant and that suit premises is suitable for his business purpose. It is settled position of law that the landlord is best judge of his requirement for residential or business purpose and he has got complete freedom in the matter, (See: Prativa Devi (Smt.) v. T.K Krishnan, [1996] 5 SCC 353. In the case in hand the plaintiff-landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.”

12. The aforesaid law as cited by the respondent clarifies the position qua the shop on the ground floor needs to be viewed from a different prospective then the availability of the business space on the upper floors and hence the Court has no reason to doubt the intention of the respondent that he would start the business once he gets the vacant possession of the ground floor. There is no reason to doubt his statement

and hence I see no illegality in the order of the learned Trial Court and hence being devoid of merits the petition stands dismissed.

YOGESH KHANNA, J.

JANUARY 11, 2019

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