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

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Judgment delivered on: 23.09.2019

+ RC.REV. 309/2016

M/S BISHAMBER DASS PRAN NATH & ANRPetitioner

versus

MADHU KAPOOR & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Ms. Richa Kapoor, Ms. Saloni Jain and Mr. Chaitanya Bansal, Advocates

For the Respondent: Mr. Kamal Bansal, Advocate

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

RC.REV. 309/2016 & CM APPL.22066/2016 (for filing additional documents), CM APPL.22509/2016 (stay), CM APPL.37576/2017 (under Order 340 Cr.P.C.), CM APPL.48834/2018 (to bring on record the supplementary affidavit)

1. Petitioners impugn order dated 04.02.2016, whereby, leave to defend application of the petitioner has been dismissed and an eviction order passed.

2. Respondents had filed the subject eviction petition seeking eviction of the petitioners from a shop measuring 109 sq. ft. in a

property bearing No.1210, Chandni Chowk, more particularly as shown in red colour in the site plan annexed to the eviction petition.

3. Respondents had filed the subject petition seeking eviction of the petitioners contending that the son of the respondent No.2 was an educated youth and was unemployed and dependent on the respondents and was in dire need of the premises to start his shop/business and neither he nor the respondents had any other reasonable suitable premises from which he could start his business.

4. Respondents further stated in the petition that her son had tried to do business with his uncle, father and brother, however, on account of temperamental differences, different nature of business and his different business interest, he could not carry on business with them and accordingly wanted to start an independent business.

5. It was stated in the petition that another premises being part of property bearing No.1212, Chandni Chowk was on rent with a tenant since the last 30 years and another premises being part of property bearing Nos. 1212 and 1210 were on rent with one Sh. Rohit Khurana.

6. Subject leave to defend application was filed by the petitioners *inter alia* contending that the respondents were in possession of several alternative suitable accommodation. It was contended that the respondents were in possession of 3 shops on the ground floor of the tenanted premises.

7. It was further contended that the shop, which was alleged to

have been rented out to Sh. Rohit Khurana, in fact, was still available to them.

8. It was further contended that there was another shop in the property bearing No.1233, Kucha Bagh, Chandni Chowk which was available to the respondent No.1 and the respondent No.1 along with her son Nakul Kapoor was doing business from the said property.

9. Besides the above two premises, it was alleged that there were several other premises which were in the possession of the respondents and wherefrom business was being carried out by the respondents and some of the properties were lying vacant.

10. During submissions, the arguments were concentrated by learned counsel for the petitioner to two premises i.e. the premises being part of property bearing Nos. 1212 and 1210 which were alleged to have been let out to Sh. Rohit Khurana and the property bearing No.1233, Kucha Bagh, Chandni Chowk. Learned Counsel submits that this alone would show that petitioner was entitled to leave to defend.

11. In the reply to leave to defend the respondents had stated that the premises being part of property bearing Nos. 1212 and 1210 was already rented out to Sh. Rohit Khurana and was not available.

12. Further, in the reply to the leave to defend, with regard to the property No.1233, Kucha Bagh, it is stated that the property was under litigation as Government had claimed possession of the said

shop and the same was not available.

13. Learned counsel for the respondents submits that the shop, which is under the tenancy of Sh. Rohit Khurana was let out to him a few months prior to the filing of the eviction petition.

14. Eviction petition was filed on 30.08.2013. It is stated on behalf the Respondents that the premises being part of property bearing Nos. 1212 and 1210, which was rented out to Sh. Rohit Khurana was vacated by an earlier tenant after a settlement was recorded in the High Court on 30.01.2013. Learned Counsel for the respondent submits that it was shortly thereafter that the possession was available and the same was let out to Sh. Rohit Khurana.

15. It is submitted by learned counsel for the Respondent/landlords that the said premises being part of property bearing Nos. 1212 and 1210 were not occupied by the Respondent No. 1 as the temperamental differences between the son of the respondent No.1 and her husband and his father, uncle and brother had not surfaced till then.

16. Further with regard to premises No.1233, it is submitted by learned counsel for the respondents that the litigation with regard to the said property had travelled up to the Supreme Court and ended shortly after the eviction petition was filed.

17. Learned counsel for the respondents further contends that the said property No.1233 is neither suitable nor alternative to the

tenanted premises and as such could not be used.

18. Perusal of the record shows that the plea of the learned counsel for the respondents that temperamental differences had surfaced shortly before filing of the eviction petition is not so stated in either the eviction petition or in reply to the leave to defend.

19. It is an admitted position that the premises being part of property bearing Nos. 1212 and 1210, which has been rented out to Sh. Rohit Khurana is comparable to the tenanted premises.

20. Though it is disputed by the learned counsel for the petitioner that the said premises have been rented out to Sh. Rohit Khurana and is still available with the respondents, the same does give rise to a triable issue. The Rent Controller would have to consider, after trial, as to whether the said premises are available to the respondents or has been let out to Sh. Rohit Khurana.

21. Further, the plea of the respondents that the said property was not occupied by the respondent No. 1 and let out to Sh. Rohit Khurana because the temperamental differences surfaced shortly before filing of the eviction petition and after the respondents secured possession of the said premises from the earlier tenant is a triable issue. Whether the need is bonafide or it is an artificially created scarcity, is also to be considered by the Rent Controller.

22. With regard to property No.1233, it is an admitted position that the respondents have succeeded in the litigation against the

government upto the Supreme Court and the possession is with the Respondents. The submission of the learned counsel for the respondents is that the said premises is neither alternative nor suitable. Respondent has neither pleaded nor placed any material on record to show that the premises is neither alternative nor suitable for the purpose for which the eviction petition has been filed.

23. Perusal of the order shows that the Rent Controller has declined to accept the plea of the petitioners with regard to shop No.1233 solely on the ground that the same was under litigation and with regard to alternative shop on the ground that the same has been rented out.

24. The grounds, as noticed, above raised by the Petitioners in their affidavit in support of the application for leave to defend, raise a triable issue and if proved would disentitle the respondents/landlords from an order of eviction.

25. Since the above referred grounds are sufficient grounds to entitle the petitioners to grant of leave to defend the eviction petition, the other grounds taken by the petitioners in their leave to defend application are not being commented upon.

26. The Rent Controller has erred in declining to grant the leave to Petitioners to defend the eviction petition.

27. Accordingly, the impugned order dated 04.02.2016, declining leave to defend is set aside. Leave is granted to the petitioner to

defend the eviction petition.

28. Parties shall appear before the concerned Rent Controller on 31.10.2019. Petitioners shall file their written statement before the Rent Controller on the said date.

29. It is noticed that the directions were issued to the petitioners to pay use and occupation charges by order dated 08.08.2017. The said order also directed that the payment shall be subject to final outcome of the petition and in the event of petitioners succeeding, refundable to the petitioners.

30. Accordingly, respondents shall refund to the petitioners the amount paid by the petitioners for use and occupation charges, in terms of order dated 08.08.2017, within 4 months.

31. Keeping in view that the eviction petition was filed in the year 2013, the Rent Controller is directed to expedite the proceedings and endeavour to conclude the same within a period of 1 year from the next date fixed before the Rent Controller.

32. Petition is disposed of in the above terms.

33. Order *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J
SEPTEMBER 23, 2019/st