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

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Judgment delivered on: 09.10.2019

+ RC.REV. 285/2018 & CM APPL. 25577/2018, 46813/2018

SUSHIL KUMAR

..... Petitioner

versus

RAMA MEHTA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Praveen Suri with Mr. Komal Chhibber,
Advocates along with petitioner in person

For the Respondent: Mr. Ashwini Mata, Senior Advocate with Mr.
Karan Gaur, Advocate with Ms. Seema, respondent
no. 3 in person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 16.05.2018 whereby leave to defend application of the petitioner has been dismissed.
2. Respondent had filed the subject eviction petition seeking eviction of the petitioner from one Shop on the South-West corner of the building bearing No. 13/1, West Patel Nagar, New Delhi on the ground of bonafide necessity under Section 14 (1) (e) of the Delhi Rent Control Act, 1958, more particularly as shown in red colour in

the site plan attached with the eviction petition.

3. Respondent had filed the subject eviction petition contending that they are owner/landladies of the suit property and the tenanted premises were required bonafidely for their personal use, particularly for the use of respondent no. 3 who does not own or possess any other commercial accommodation to establish her office. It is contended that respondent no. 3 is a qualified Advocate and at the time of filing of the eviction petition was working with Press Trust of India (P.T.I.) as a Legal Consultant and she was desirous of opening an independent office in the tenanted premises as she had no other independent office/accommodation available anywhere in the city of Delhi.

4. Further, it is contended that she wanted to set up her office in the subject premises so that she could take care of her mother i.e. respondent no. 1 who resides on the first floor of the said property and being an aged lady suffers from age related issues.

5. Leave to defend application was filed by the petitioner, inter-alia, contending that tenancy was created by the predecessor in interest of the respondents in favour of the petitioner as also one Shri Raj Kumar and being co-tenants, the petition filed only against one of the co-tenants was not maintainable.

6. Further it is contended that there are six shops on the ground floor and built-up back portion of the suit property is vacant which could be used by the respondents for the purposes of opening a

lawyer's office. It is further contended that besides the ground floor, the first and second floor are also constructed and could also be used for a lawyer's office.

7. It is contended that on the ground floor, behind the shops there is a big hall/drawing room which could be used as an office.

8. Respondent-landlord has contended that none of the shops on the ground floor are vacant and all the shops on the ground floor are tenanted and further it is contended that rear portion of the ground floor comprises of one hall and entrance to the same is through a small lane on the back side of the property and the entrance also passes the staircase leading to the residential accommodation on the first floor and is not suitable.

9. Rent Controller has noticed that there is no dispute with regard to the relationship of landlord and tenant. With regard to the plea of the petitioner that rent deed was executed by the predecessor of the respondent in favour of two tenants i.e. petitioner and one Shri Raj Kumar, the Rent Controller has noticed that as per the eviction petition, earlier the business was being carried out under the name and style of M/s Aggarwal Sweets by the petitioner and his partner Raj Kumar. Subsequently, name and style of the business was changed to M/s Bikaner Sweets. It is contended that in the eviction petition that thereafter Raj Kumar stopped working from the said premises.

10. Rent Controller has noticed that the petitioner had not filed any

document to show that the business was being carried on as a partnership business or that Shri Raj Kumar was still a partner in his business. Rent Controller was of the view that nothing has come on record to show that Shri Raj Kumar had continued to have any connection with the property.

11. Rent Controller has found that respondent no. 3 was practicing as an Advocate and was working as a Legal Consultant with P.T.I. Rent Controller has held that she being a legal consultant is not barred from carrying on a private independent practice and petitioner had failed to produce any material on record to show that being a legal consultant with P.T.I., respondent no. 3 was debarred from practicing as an independent lawyer.

12. With regard to the accommodation pointed out by the petitioner on the rear side of the portion, Rent Controller has held that merely because lawyers are allowed to operate from their residences cannot be a ground to force an Advocate to operate from his or her residence particularly when commercial accommodation is available for maintaining an office.

13. Rent Controller was of the view that no reasonable suitable alternative accommodation, available to the respondent, had been pointed out by the petitioner.

14. Even before this Court, petitioner has failed to show that Shri Raj Kumar continued to have any connection with the tenanted

premises. No document or material have been placed on record by the petitioner either before the Rent Controller or even before this Court to show that Shri Raj Kumar continued his association in the tenanted premises after the name and style of the business changed from M/s Aggarwal Sweets to M/s Bikaner Sweets several years ago.

15. With regard to the accommodation on the rear side, perusal of the site plan annexed with the eviction petition shows that the tenanted premises is a corner shop on Main Patel Road whereas access to rear portion is through a small lane on the side of the property and the access passes through a staircase/well and then goes into the hall. The staircase is used for accessing residential area.

16. Clearly, there can be no comparison between a corner, two side open, commercial property on the main road with a residential portion, access to which is from a small lance on the rear side of the building.

17. It is a settled position of law that a tenant cannot dictate as to how the landlord has to put to use an accommodation which is available to the landlord. The landlord is the best judge of his/her requirement and suitability. Neither the tenant not can the court dictate to the landlord.

18. A landlord cannot be asked to open an office in a residential portion, when commercial space on the main road can be available.

19. Further, with regard to the plea of the Petitioner that as respondent No. 3 is working as a legal consultant with Press Trust of India, she cannot open her office, no material has been placed on record by the Petitioner to show that there is any prohibition in a legal consultant with PTI to open her office or carry out her private practise. Admittedly, Respondent No. 3 is enrolled as an advocate and no material has been placed on record by the Petitioner to show that she is precluded from opening an office or from practising law.

20. At this stage, Dr. V.P. Singh, Advocate enters appearance for Shri Raj Kumar and submits that he has filed an application for intervention. However, no such application is on record. Since no such application is on record, no observation is being made qua the same, even otherwise as noticed above, no material has been placed on record by the petitioner to show that Shri Raj Kumar continued to have any connection with the tenanted premises or continued his association in the tenanted premises after the name and style of the business changed from M/s Aggarwal Sweets to M/s Bikaner Sweets several years ago.

21. I find no infirmity in the view taken by the Rent Controller in declining to grant leave to defend. I find no merit in the petition. The petition is accordingly dismissed.

SANJEEV SACHDEVA, J,

OCTOBER 09, 2019/‘rs’