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

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Judgment delivered on: 10.10.2019

+ RC.REV. 347/2016 & CM APPL. 24837/2016

ROSHAN LAL & ANR

..... Petitioners

versus

SHANKER GUPTA

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Sanjay Bansal, Advocate

For the Respondent: Mr. Vijay K. Gupta and Mr. Mehul Gupta,
Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 20.02.2016 whereby 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 petitioner on the ground of bonafide necessity under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 from Shop no. 5, admeasuring 28 sq. ft. in property bearing no. 4787, Summi

Hardware Market, Phatak Namak, Hauz Qazi, Delhi-110006, 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 subject property comprises of four floors and has 136 shops out of which 84 shops have been sold and remaining 52 shops are occupied by the various tenants including the respondent.

4. It is contended that the Respondent wants to maintain an office in the tenanted premises so that he could look after his entire property, collect the rent from his tenants, maintain the said building and sort out issues relating to its maintenance on day to day basis. It is contended that the respondent had no other alternative suitable accommodation.

5. Subject leave to defend was filed by the petitioner contending that respondent has not disclosed the details of 52 shops which he claims to have been rented out and has not filed the site plan describing all the properties. It is further contended that the need of the respondent is not bonafide.

6. Rent Controller has declined to grant leave to defend on the ground that the respondent-landlord has categorically stated that 52 shops owned by him are occupied by various tenants and none of them were lying vacant which could be used by him for his office.

7. Rent Controller was of the view that the petitioner has made bald allegation without any substance and has not been able to point out to even a single shop which was lying vacant which could be used by the respondent for his bonafide purpose.

8. Rent Controller has held that petitioner had admitted the bonafide need of the respondent and has not disputed the same.

9. The finding returned by the Rent Controller that petitioner has not disputed by the petitioner, is not substantiated from the record. The affidavit in support of the leave to defend application, filed by the petitioner, clearly shows that petitioner has disputed the bonafide necessity.

10. Petitioner in the affidavit has categorically stated that the need is not bonafide and that the respondent-landlord does not require any shop as alleged.

11. Along with the petition, the petitioner has placed on record copies of the two sale deeds dated 24.08.2015 and two sale deeds dated 26.10.2015 executed by the respondent. It is contended by the petitioner that the said sale deeds were executed after the leave to defend application was filed and came to the Knowledge of the petitioner after the impugned order was passed. It is contended that the respondent by the said sale deeds has sold two shops and two offices in the building to third parties.

12. It is the case of the respondent that the said sale deeds have been executed of tenanted portions and none of the shops/offices were vacant or available to the respondent.

13. The plea of the petitioner that the need of the respondent is not bonafide and is a mere desire as distinct from necessity and that the respondent has not been able to show that there is any necessity of having any office in the subject property, raises a triable issue.

14. It is the case of the petitioner that admittedly respondent never had an office in the building when the building alleged comprised of 136 tenants. The details of the 52 tenants have not even been mentioned by the Respondent in response to the objection being raised by the Petitioner, in his leave to defend application.

15. Further, the Rent Controller has clearly erred in holding that the petitioner had admitted the bonafide need of the respondent. The Affidavit in support of leave to defend application clearly shows that the petitioner has disputed that the need of the respondent is bonafide. Further the issue raised by the petitioner as to whether there is subsequent transfer of four premises out of the subject property which could have been utilized by the respondent is once again a triable issue which requires consideration.

16. In my view, the Rent Controller has clearly erred in holding that no triable issue has been raised by the petitioner in his affidavit in support of leave to defend.

17. Perusal of the affidavit and also the above facts clearly show that the petitioner has raised triable issues which, if proved, would disentitle the respondent landlord from an order of eviction

18. In view of the above, the impugned order dated 20.02.2016 is set aside. Leave to defend the eviction petition is granted to the petitioner.

19. List the petition before the concerned Rent Controller on 15.11.2019. The petitioner shall file his written statement before the concerned Rent Controller.

20. The petition is allowed in the above terms.

21. Order *dasti* under signatures of the Court Master.

OCTOBER 10, 2019
'rs'

SANJEEV SACHDEVA, J,