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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 26th March, 2019

Pronounced on: 16th April, 2019

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RC.REV. 309/2018, CM Appl. No. 27327/2018

RAMESH CHAND

..... Petitioner

Through Mr.Rajat Aneja, Ms.Chandrika
Gupta, Advocates.

versus

SHYAMA ARORA

..... Respondent

Through Mr.Gaurav Kumar Singh,
Advocate.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition challenges the impugned order dated 07.04.2018 whereby the eviction petition filed by the petitioner herein was dismissed after evidence. Before coming to the issues raised it would be appropriate to state few facts.

2. The petitioner herein filed an eviction petition in respect of a shop at No.97, Block-D, Gali No.6, Shashi Garden, Patparganj, Delhi. The said premises is required by the petitioner for his daughter in law to start a garment business.

3. Admittedly the petitioner has two sons and three daughters; all are since married. The petitioner is a senior citizen of 65 years of age and has a meager income as he runs a general store in a shop situated in the same

property. His elder son is married having two minor sons and is doing a private job. The wife of his elder son Raju wants to start a business of garments. His second son Mr.Duli Chand has recently started a business of cyber café in the name and style of M/s.Internet Zone to earn his livelihood and to support his family. All the daughters of the petitioner are since married and thus the petitioner needs the shop in question for his daughter in law viz. Mrs.Poonam w/o Raju.

4. The application for leave to defend was allowed on 17.04.2012 by the learned ARC and the evidence was led. On 15.07.2016 the eviction petition was dismissed. The learned ARC after noting the facts and evidence, disposed of the eviction petition by simply saying Mrs. Poonam, daughter in law of the petitioner is not dependent upon the petitioner's income and hence is not a member of petitioner's family. The learned ARC referred only to financial dependency and not dependency qua accommodation of Mrs. Poonam. The order passed in RC/ARC-504/2016 was challenged in CM(M) 1112/2016. The CM was allowed vide order dated 15.12.2016 and the matter was remanded to the learned ARC to decide it afresh. The relevant portion of the judgment dated 15.12.2016 is as under:

"6. Hence, the phrase "any member of the family dependent upon him" could include the daughter-in-law. The impugned order suffers from material illegalities. It has ignored settled legal position. Accordingly, the impugned order is quashed and the matter is remanded back to the ARC to consider afresh after giving an opportunity to both the sides to make their argument on the evidence/pleadings/documents already on record. The ARC may expeditiously deal with the matter and dispose of the same."

5. An appeal was filed by the respondent herein in the Supreme Court by filing SLP (C) No.23119/2017 but it was also disposed of on 11.09.2017 noting *if the daughter in law is dependent upon the petitioner is a matter yet to be seen by the learned ARC pursuant to the remand made by the High Court.*

6. However the learned ARC once again passed similar order saying Mrs.Poonam is not financially dependent upon the petitioner and rather failed to consider if she was dependent upon the petitioner as a member of family, for accommodation.

7. A bare perusal of the impugned order would reveal that paras 1 to 8 are replica of an earlier order dated 15.07.2016 and then the entire conclusion is drawn in para 10 as under:

"10. PW 1/petitioner-Ramesh Chand has deposed In his cross-examination conducted on 17.08.2012 that his son Raju works as private operator at Ghaziabad and earns about Rs. 14,000/- to Rs. 15,000/- per month. The said testimony Is reproduced below:

My daughter-in-law Poonam is the wife of my son Raju, who works as a private operator at Ghaziabad and he earns around Rs. 14,000/- to Rs. 15,000/-per month."

10.1. In his cross-examination conducted on 21.09.2012, the said witness deposed that he earns about Rs. 5000/- to Rs. 6000/- per month from all the tenancies in the building at Shastri Nagar and about Rs. 2000/- to Rs. 2500/- per month from the tenancies in building in which the premises is situated and that he earns Rs. 4000/- to Rs. 5000/- per month from the shop he runs. The said testimony is reproduced for ready reference:

" I am earning rental income to Rs. 5000/- to Rs. 6000/- per month cumulatively from all my four tenants at my Shastri Nagar property. My ' rental income is Rs. 2000/- to Rs. 2500/- per month regarding all tenanted portion of the building in question Raju and his wife are dependent on me

since the income of Raju is insufficient to sustain his family earn Rs. 4000/- to Rs. 5000/- per month from the shop , run by me. "

10.2. If the upper limits of income of the petitioner, as deposed by him, from various sources is added, it come to the Rs. 13500/- per month (Rs. 6000/- + Rs. 2500/- + Rs. 5000/-). Petitioner deposes that his son-Raju earns Rs. 14000/- to Rs. 15000/- per month. By no objective reasoning, considering the respective incomes of petitioner and his son-Raju as deposed by the petitioner, any person could arrive at the finding that Raju is dependent on his father because Raju earns more than his father, it is noteworthy that the petitioner has not deposed in his affidavit Ex. PW 1 about the vocation of his son - Raju and left the said aspect in doldrums. What the petitioner has deposed in the affidavit in this regards is-

"the deponent states that his son Raju is married and doing some private job and he is having two male children."

11. The said finding is in pursuance of order dated 15.12.2016 of the Hon'ble High Court of Delhi and the order dated 11.09.2017 of Hon'ble Supreme Court of India in SLP no. 23119/2017 titled "Shyama Arora Vs. Ramesh Chand" wherein a specific finding regarding the aspect of the dependence was. required to be made upon consideration of evidence.

12. The present petition is dismissed."

8. A bare perusal of the impugned order would reveal once again the learned ARC did not dwell upon the issue of dependency of Mrs.Poonam for commercial accommodation, as was directed by the order dated 15.12.2017 in CM(M) 1112/2016.

9. Let me now look into the evidence on record. The petitioner herein lead his evidence as *PW1* and filed his affidavit as *Ex.PW1/A* and the salient features of the said affidavit are as follows:

"5. xxxxxxxx needed the shop in dispute bonafidely for his daughter-in-law namely Smt. Poonam who is dependent upon the petitioner for commercial accommodation and

there is no any other alternate suitable commercial accommodation.

8. That the deponent states that he is landlord as well as owner of the property and the premises in dispute is required bonafidely by the deponent for his daughter-in-law namely Smt. Poonam who do not having any property of her own in Delhi in her own name or in name of her husband and she is dependent upon the deponent for commercial accommodation and the deponent as well as his daughter-in-law, namely Smt. Poonam do not have any other alternate suitable commercial accommodation and they are residing in joint family and Smt.Poonam do not having any source of income.

9. That the deponent state that the dispute shop is required bonafidely to the deponent for his daughter-in law namely Smt. Poonam who is dependent upon him for commercial accommodation. That the deponent state that there are 7 shop in the property out of which disputed shop forms a part and any shop is not lying vacant. The photographs of the property in dispute showing commercial space available in the property is exhibited as PW-1/32 collectively and the negatives of the same are exhibited as PW-1/4 collectively.

10. That the deponent states that shop in dispute is required bonafidely to the deponent for his daughter-in law namely Smt. Poonam who is dependent upon the petitioner for commercial accommodation and wants to start her business of garments, hence the shop is required for commercial purpose.

11. That the deponent states that his daughter-in-law namely Smt. Poonam wife of Raju is also part of family and residing in the joint family and-also do not having any commercial property either in her name Or in name of her husband hence she is dependent upon the deponent for commercial accommodation. That the deponent states that the sons of the deponent namely Sh. Raju and sh. Dulichand are. dependent- upon the petitioner for commercial accommodation. That the deponent states that his sons as well as his daughter-in-law are residing in the same properly as a joint family and none of them owned a property in their name in Delhi and they are dependent upon the petitioner for commercial accommodation and the younger son namely Dull chand is running his business

from a shop in the property Out of which this disputed shop forms a part. That the deponent stated that his son Raju is doing same private job is also dependent upon the deponent for commercial purposes. That the deponent states that the deponent and his family members having every right to expand their businesses Or increase their income due to high inflation and needs. That the deponent states that his sh. Raju who is doing same private job and having very meager income is also help deponent in his shop for last more than 20 year.”

10. Thus the petitioner deposed his daughter in law is a member of his joint family and she knows sewing work hence intends to start her business of garments for which the shop premises is required.

11. Though in the written statement an objection was taken by the respondent herein that the petitioner has an accommodation at B-30, Sarojini Naidu Park, Shashtri Nagar, Delhi but the petitioner while admitting the said property is owned by him yet asserted there exist no commercial space in it and that it is purely residential property and it is 8-9 kms. away from the impugned shop and it would not be possible for his daughter-in-law to open a shop 8-9 kms. away from her residence as she has other responsibilities too viz. **a)** two minor children and **b)** she lives in a joint family and has to take care of the needs of all her family members and thus it would be very convenient for her to start her business in the property she resides in.

12. Let me now come to the cross examination of *PWI* conducted on behalf of the respondent. In his cross examination, the petitioner has admitted there are seven shops in the building, out of which five have been rented out, including the shop in question and one shop is run by him and another shop is run by his younger son Mr.Duli Chand. Besides

this he also has a property admeasuring 50 sq. yds. elsewhere where his brother namely Mr.Suresh Kumar along with three other tenants are residing, hence no commercial space is available in the said property too. In his cross examination he reiterated his son Mr.Raju works as a private operator in Ghaziabad and earns about Rs.15,000/- per month and that his son Raju alongwith his wife and children share common kitchen and other household expenses as all are residing in a joint family. PW1 further reiterated Mrs.Poonam, though has no technical degree for garments business, but she sew clothes at her house. He has also given the detail of his other tenants in remaining shops in his own examination –in-chief.

13. The petitioner denied the suggestion that his daughter in law is not dependent upon him or he does not require the subject shop for his daughter-in-law Mrs.Poonam. Rather he volunteered both his sons are dependent upon him and as Raju's has lower income to sustain his family so his wife is to start business to augment her family income. Mrs.Poonam also appeared as *PW2* and deposed in the line of the petitioner herein and rather stated she does not have any other property to start her business and she is dependent upon the petitioner for commercial accommodation and no other commercial space is available to her even in property B-30 (*supra*).

14. In her cross examination *PW2* admitted her husband is doing a private job and his income is about Rs.15,000/- per month and she requires the premises for starting her own garment business and that her brother-in-law Mr.Dulichand has already acquired the possession of a

shop vacated by another tenant and has opened cyber cafe there. She admitted she is residing in a joint family wherein they pool their resources and income.

15. The wife of the tenant Smt.Shyama Arora appeared as *RW1* and deposed in the line of written statement. During her cross examination she *admitted* no shop is lying vacant in the property. She even volunteered earlier the commercial property bearing no. B-30 (supra) was with the petitioner but *no commercial activity* is being carried in the said property as of today. She admitted in her cross examination that Mr.Dulichand, the younger son of the petitioner is occupying a shop in the property and that the family of the petitioner is a joint family.

16. Thus the facts do show the family of petitioner is joint and Smt.Poonam is member of such joint family. In *Anil Kumar Gupta vs. Deepika Verma*, 224 (2015) DLT 473 the concept of dependency was elaborately stated as under:

“12. Customarily or in common parlance a dependent would be defined as any person who is reliant on another either for financial or physical support for sustenance of life. It is pertinent to note that the word dependent or as to what constitutes a family has nowhere been defined in the Delhi Rent Control Act. Rather, the legislators consciously and deliberately have used the words "any member of family dependent On the landlord" instead of defining a clear degree of relations so as to construe a wider meaning to the aforesaid words as man is a social creature and part of a complex societal system involving myriad of relations from which he cannot be isolated. It is significant to understand that the dependency is not restricted to financial or physical but will also include emotional reliance On another person. Reliance ' in this regard is placed on the findings of this court in M/S. Jhalani Tools (India) Pvt. Ltd. vs. B.K. Soni; AIR 1994 Delhi 167, wherein the court observed that the social set up of our

society is such where a married daughter continues to enjoy a place of pride in her maternal home and therefore while considering the requirement of the landlord her married daughter and her expected visits cannot be lost sight of. Similarly in Sain Dass V. Madan Lal; 1972 Ren CJ(SN) 8 (Delhi), this court has acknowledged that the word "himself" as Cohabiting with family members with whom he is normally accustomed to live . Therefore , contrary to the submission of the learned counsel for the petitioner financial or physical incapacitation cannot be sole premises for determining dependency on another."

Reference was also made to *Joginder Pal vs. Naval Kishore Behal* (2002) 5 SCC 397.

17. Further in *Sunder Singh Talwar vs. Kamal Chand Dugar* 249(2018) DLT 94 and *Lahorian Di Hatti vs. Shyam Lal Meher Chand Jain* 214 (2014) DLT 431 it was held the requirement to settle the daughter in law would be considered as bonafide.

18. The learned counsel for the respondent also raised an issue qua concealment of property no. D-30 (supra) as it was not disclosed in the petition but was only disclosed in reply to leave to defend application, where the petitioner admitted of such property of 50 sq. yds. but primarily, in use for residential purposes and no commercial space being available in D-30 (supra). Mrs.Poonam (PW2) admittedly is residing in a joint family of the petitioner and has two minor children, thus it would be most convenient for her to have the shop in property no. 97, Block-D (supra) and not at a far of place i.e., 8-9 kms. away from her residence.

19. The bonafide need of the daughter in law of the petitioner has been sufficiently elaborated in the eviction petition, replication and evidence of PW1 and 2 herein and hence petitioner's has proved his case of

bonafide requirement of a shop for his daughter in law and hence I set aside the impugned order dated 07.04.2018 and pass a decree of eviction against the respondent in respect of property No.97, Block-D, Gali No.6, Shashi Garden, Patparganj, Delhi as shown in site plan Ex.PW1/I. Per Section 14(7) of the DRC Act this eviction order be not enforced for a period of six months from today.

20. The revision petition is disposed of in terms of above, pending application, if any, also stands disposed of.

21. Copy of this order be communicated to the learned Trial Court/Successor Court for compliance.

22. No orders as to costs.

23. The petition and pending application stands disposed of in terms of above.

YOGESH KHANNA, J.

APRIL 16, 2019

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