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

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Judgment delivered on: 05.12.2019

+ RC.REV. 365/2016 & CM App No. 26452/2016

ABDUL HAMEED & ANR

..... Petitioners

versus

MOHD AHMED

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. S.D. Ansari with Mr. I.Ahmad, Advocates
along with petitioner No1. in person.

For the Respondent: Mr.Anis Ahmed with Mr.Suhail Rizwan Ahmed,
Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 30.01.2016 whereby the leave to defend application of the petitioner has been dismissed and eviction order passed.

2. Respondent had filed the subject eviction petition under Section 14(1)(e) of the Delhi Rent Control Act on the ground of *bona fide* necessity seeking eviction of the petitioner from one shop measuring 25.7 x 7.5 feet on the ground floor of the property bearing No.2559, Ward No. XI Bazar Tiraha Behram Khan, Daryaganj, Delhi, more

particularly as shown red colour in the site plan annexed to the eviction petition.

3. The ground of eviction stated by the respondent was that the respondent is doing the work of manufacturing wires or drawing, at his residential accommodation and he has no other alternative commercial accommodation available with him. It is further contended that he has five sons and on account of paucity of accommodation, he has to shift the commercial activity from his residence. Further, it is contended that he also requires the tenanted premises for opening businesses by his sons.

4. Subject leave to defend application was filed by the petitioner contending that the respondent, *inter alia*, has concealed that he is owner and in possession of several other properties which are suitable and alternative.

5. It is contended that he is in possession of property bearing Nos.1897, 1898 and 1899 besides being owner of shop No.2241/16 Kucha Chellan, Darya Ganj, Delhi and also in physical possession of shop No.314 Delhi Gate, Delhi.

6. In reply to leave to defend application, the respondent has contended that the property No.1899 is a big building which is occupied by various occupants and the entire building is not owned by him and he is the only owner of a portion of the property.

7. He has stated that the ground floor of the said property bears No.1899, the first floor bears No.1898 which is neither in his possession nor he has any concern with the same and it is occupied by his elder brother and the second floor comprises municipal No.1897 and he has also no concern with the said property.

8. With regard to property No.2241/2016 and Shop No. 314, he has denied that he has any concern with the said properties or that he is owner thereof.

9. Learned counsel for the petitioner during the submission has relied upon an order dated 18.01.2019 passed by the Rent Controller in eviction petition No.78991/16/13 tilted *Mohd. Ahmad v. Om Prakahs and Anr.*

10. Learned counsel for the petitioner points out that the said order was passed on another eviction petition filed by the respondent against another tenant in which leave to defend was granted, *inter alia*, on the ground that the respondent had acquired possession of shop bearing municipal No. 315 Delhi Gate and also that he had obtained vacant possession of shop bearing No.2241/16 Kucha Chellan in which there is an electricity connection in his name.

11. Learned counsel points that the Court has noticed that respondent has not denied that the electricity connection was obtained in his name.

12. During submission, learned counsel for the respondent contends that the said property No. 2241/16 was earlier in the occupation of the respondent as a tenant and was vacated several years ago and now he has no concerned with the said property. However, he submits that there could be a possibility that the electricity meter still continues in his name.

13. The explanation given by the learned counsel for the respondent before this Court is not found in reply to the leave to defend application.

14. The question as to whether the respondent has obtained vacant possession of Shop No.315 Bazar Delhi Gate and 2241/2016 or as to whether the respondent was earlier a tenant in the same and today has no concerned with the said properties raises a triable issue.

15. The explanation given by learned counsel or the respondent is not on record in these proceedings and accordingly it becomes a matter of trial and it would be appropriate for the parties to lead evidence and establish as to whether the respondent has any additional alternative accommodation available and for the respondent to show that no such accommodation is available with the respondent.

16. On perusal of the affidavit in support of the leave to defend application and also the contentions as noticed above, I am of the view that the grounds taken in the affidavit raise triable issues and the petitioner has been able to raise grounds which if proved would

disentitle the respondent landlord from an order of the eviction.

17. In view of the above, leave to defend the eviction petition is granted to the petitioner.

18. List the eviction petition before the concerned Rent Controller on 20.01.2020, on which date, the petitioner shall file his written statement before the Rent Controller.

19. Keeping in view the fact that the eviction petition was filed in the year 2013, Rent Controller is directed to expedite the proceedings and endeavour to conclude the same with a period of six months from the next date before the Rent Controller.

20. The petition is allowed in the above terms.

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

SANJEEV SACHDEVA, J.

DECEMBER 05, 2019

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