

\$~26

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

% Judgment delivered on: 05.09.2019

+ RC.REV. 380/2018

AMIT KHANDELWAL & ANR Petitioners

versus

HEM CHAND ALURIA Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. S. N. Gupta with Mr. S.K. Gupta, Advocates.

For the Respondent: Ms. Sindhu with Mr. Hitender Sakkarwal,
Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

RC.REV. 380/2018 & CM APPL. 31835/2018 (stay)

1. Petitioners impugn order dated 26.04.2018, whereby, the leave to defend application of the petitioners/tenants has been dismissed.
2. Subject eviction petition was filed by the respondent with regard to a shop on Ground Floor of property No.2974, Gali No.41, Beadonpura, Karol Bagh, New Delhi, more particularly, as described in red colour in the site plan annexed with the eviction petition.
3. The petitioner is a tenant paying rent @ Rs.442/- per month

besides electricity charges. The respondent landlord filed the eviction petition, *inter alia*, contending that the respondent is a landlord and owner of the said shop which was leased by Delhi Development Authority in favour of the respondent and his three brothers. One of the brothers relinquished his share in favour of the respondent and his two brothers. Subsequently, by way of a partition of the family properties, the subject property fell to the share of the respondent.

4. It is contended that the property was let out to the petitioner for commercial purposes.

5. Eviction petition was filed in the year 2012. It is alleged in the petition that the wife of the respondent landlord aged 62 years was suffering from kidney failure and was on dialysis besides other ailments.

6. It is pleaded that, respondent himself was aged 69 years and suffering from old age ailments. It is contended that he was suffering from swelling in bilateral lower limb and also heart problem and his lipid profile shows risk of coronary artery disease. It is contended that he is suffering from arthritis and is unable to climb and get down the stairs. Medical papers of the respondent were also annexed along with the eviction petition.

7. It is contended that the respondent and his wife were living on the first floor of the property and the on the ground floor there were

two shops, one rented out to the petitioner and the other to another tenant. Eviction petition has been filed with regard to both the tenants.

8. Learned counsel for the respondent landlord submits that in the other petition also leave to defend has been rejected on 01.05.2019 and eviction order passed.

9. It is contended by learned counsel for the respondent landlord that the wife of the respondent passed away during pendency of the present petition and as such the necessity is only of the respondent himself.

10. Leave to defend application was filed by the petitioner primarily on the ground that the premises had been let out for commercial purposes and the need expressed is that of residential premises.

11. Further, it is contended that the respondent and his wife were comfortably residing on the first floor in spacious accommodation having independent room, kitchen and other amenities. It is contended that the accommodation already available with the respondent landlord was sufficient for their requirements.

12. It is further contended that since the premises have been let out for commercial purposes, there are no facilities attached thereto for other amenities like kitchen, toilet, bathroom, etc. on the ground floor and the shop could not be used for residential purposes.

13. By the impugned order, the Rent Controller has held that though the relation of landlord and tenant had been denied by the parties, the petitioner tenant had not denied the lease deed was executed by DDA in favour of the respondent landlord and his brothers.

14. Further, the Rent Controller noticed that there was nothing placed on record to show that anyone other than the respondent was an owner of the property.

15. With regard to bonafide requirement, the Rent Controller has held that the eviction petition was filed on the ground that the petitioner was old, suffering from various ailments and physically weak and therefore unable to climb the stairs and accordingly, wanted to shift to the ground floor.

16. The Rent Controller held there was no bar in using the commercial property for residential purposes and further there was no bar on the respondent to carryout addition or alternations on the ground floor to build a bathroom, toilet and kitchen after receiving possession of the property.

17. Though the subject eviction petition was filed expressing need for the respondent and his wife, his wife has since expired. Respondent, in the petition, insofar as his personal requirement is concerned, has specifically stated that he was aged 69 years when the

petition was filed and today he is aged 76 years and is suffering from old age ailments besides being physically weak. His medical documents filed along with the petition show that he is suffering from swelling in bilateral lower limb and also heart problem and arthritis.

18. Clearly, a tenant cannot dictate to a landlord as to how the landlord is to use his premises. At the age of 69 years (now 76 years), it would be too much to expect from the respondent landlord, with his health condition, to make climb up and get down the stairs when he can have the accommodation available on the ground floor.

19. It is an admitted position that the area on the ground floor is identical in extent to the area on the first floor. If amenities like toilet, bathroom and kitchen are available on the first floor, the same can also be made available on the ground floor by making additions and alterations. There is no prohibition on a landlord to seek eviction of a premises and thereafter carryout additions and alterations to make them suitable for his own bonafide need.

20. The petition clearly shows bonafide need on the part of the respondent landlord of accommodation on the ground floor. The premises has been leased out by DDA for residential purposes. Merely because the property was let out to the petitioners for commercial purposes does not preclude the respondent landlord from using the same for residential purposes if the same is permissible in accordance with Building Bye-laws.

21. The premises can be put to use for residential purposes after making necessary additions and alterations. The fact that the respondent landlord is residing on the first floor of the said premises clearly shows that the property can be put to residential use.

22. I find no infirmity in the view taken by the Rent Controller that the application seeking leave to defend does not raise any triable issue and does not disclose facts, which if established, would disentitle the landlord from obtaining an order for recovery of possession of the premises.

23. The respondent landlord has clearly shown bonafide need for the premises in question. No ground entitling grant of leave have been shown in the application seeking leave to defend.

24. Accordingly, I find no merit in the petition. The Petition is dismissed.

SANJEEV SACHDEVA, J

SEPTEMBER 05, 2019

st