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

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Judgment delivered on: 21.11.2019

**+ RC.REV. 400/2016 & CM APP Nos.29696/2016, 40846/2018
& 1390/2019**

ASHOK KUMAR

..... Petitioner

versus

KAMLESH KUMARI SHARMA (DEAD) THR LRS..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr.Parinav Gupta, Mr.Pradeep Gupta and Ms. Mansi Gupta, Advocates.

For the Respondent: Mr.Alok Kumar, Mr.Aakash Dubey and Mr.Vaibhav Dubey Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 29.04.2016 whereby the eviction petition filed by the Respondent/Landlord has been allowed and an eviction order passed.

2. Respondent Smt. Kamlesh Kumari Sharma (now deceased) had filed the subject eviction petition seeking eviction of the petitioner from shop No.4, Plot No. 14, B block main market, Vivek Vihar, Phase-I, Delhi more particularly, as shown red colour in the site plan

annexed to the eviction petition.

3. Petition was filed by Smt. Kamlesh Kumari Sharma (now deceased) on the ground of *bona fide* necessity under Section 14(1)(e) of the Delhi Rent Control Act, 1958, contending that her family comprises of herself, her husband, two sons and their wives. The sons were running their own business but their wives were unemployed. It was contended that there is no other commercial premises available with the petitioner, her husband and her two son's wives where the petitioner, her husband and her two son's wives could run the business independently and earn their livelihood.

4. It was contended that the demised premises was require bonafide by the Respondent/landlady for herself, her husband and her two son's wives who were dependent on her and that she had no other reasonably accommodation for running the business independently. It is contended that the tenanted premises are situated in commercial area where she herself, her husband and her two sons' wives could run the business independently and support their family members dependent on them.

5. Leave to defend the eviction petition was granted to the Petitioner. In the Written Statement, the Petitioner *inter alia* took a plea that it was the responsibility of the sons of the respondent to maintain their family. It was further contended that the wives of the respondent's sons were housewives and had no experience of any

business. Further it was contended that the 2nd son of the landlady was residing separately in South Delhi and would not like to reside and run his business in the area of Vivek Vihar which is comparatively not a posh area like South Extension.

6. It was further contended that neither the sons of the landlady nor their wives were dependent upon the landlady for any purpose. The sons were having their independent businesses and maintaining their families and there was no bona fide necessity of the tenanted premises.

7. During pregnancy of the eviction petition, the landlady expired and accordingly her husband and the two sons Vishal Sharma and Vineet Sharma were impleaded as legal heirs.

8. There is no dispute about relationship of landlord and tenant.

9. Disputing Bonafide necessity of the Respondents, Petitioner has contended that after the demise of the mother (original eviction petitioner) and here husband, the property devolved upon the two brothers and shops No. 1 and 2 came to the share of Vishal Sharma and his brother Vineet Sharma continued to carry on his business from Shop No. 1 and if the need was bonafide, Vishal Sharma would not have allowed his brother Vineet Sharma to continue his business from shop Number 1 after the said shop was relinquished in favour of Vishal Sharma.

10. It was further contended that Vishal Sharma had let out a shop at South Extension Plaza, Masjid Moth and letting out of the said shop shows that need was not bonafide.

11. Further, it is contended that the wife of Vishal Sharma is a housewife and her requirement to open a boutique from eth tenanted shop is malafide as she has no experience to run the business of a boutique.

12. Learned counsel for the petitioner further contends that respondent had not disclosed in the evidence affidavit which was filed on 21.10.2013 that there was a relinquishment deed executed by the brother of the respondent on 13.09.2013 and had incorrectly stated that he was a co-owner of the suit shop. It is further contended that since there is a mis-representation, the respondent is dis-entitled from an order of the eviction and his eviction petition is liable to be dismissed.

13. Submission of learned counsel for the petitioner in my view is misplaced. Firstly, there is no concealment of facts. The relinquishment deed is dated 13.09.2013 and the affidavit in evidence is filed on 21.10.2013 in close proximity of the execution of relinquishment deed. Thereafter, when Vishal Sharma stepped into the witness box, after filing his evidence affidavit, without any suggestion being given by the petitioner, he volunteered that there was a relinquishment deed executed by his brother in his favour.

14. Secondly, it may be seen that in the evidence affidavit Vishal Sharma has not tried to project a case that he needs the property for his brother with regard to whom he had misstated that he is a co-owner. The need as projected in the eviction petition as also in the evidence affidavit is only for the wife of Vishal Sharma and not of his brother.

15. The contention of learned counsel for the petitioner that respondent should have asked his brother to vacate his shop as he has already relinquished his share and has no right title or interest to continue in shop No.1 rather than asking the petitioner to vacate the tenanted premise is also not sustainable. Clearly, it would be imprudent for a brother to seek eviction of his brother from a property and so as to accommodate a tenant. Merely because the brother of the respondent does not have any right title or interest in the shop does not imply that respondent should spoil her family relations and seek eviction of his brother from shop from which the brother is carrying on his business so as to accommodate a tenant.

16. The contention of the petitioner that commercial space, available in basement in South Extension Plaza, Masjid Moth, Delhi had been let out by the Respondent and as such the need is not bonafide is also not sustainable.

17. Respondent himself has deposed that said shop is occupied by a tenant and further that the same is not suitable for the business to be

carried on by the wife of the respondent.

18. The tenanted premises as also the premises from where the husband carries on business are adjoining each other in Vivek Vihar and the other property is in Masjid Moth. It would clearly not be suitable for the wife of the Respondent to run her business from a shop far away from where her husband is doing his business specially when there could be space available, after eviction of the tenant, right adjoining the shop of her husband.

19. Clearly, the shop at Masjid Moth in a basement and smaller in size to the two shops which are subject matter of this petition and the other eviction petition and cannot be said to be comparable and alternative or suitable for the requirement of the wife of the respondent. So, the contention of the respondent that the shop at Masjid Moth is not suitable cannot be faulted.

20. The Rent Controller has held that the said shop is far away from the residence of Bhawana, for whose requirement the eviction petition had been filed and this fact was asserted by witness Vishal Sharma, in his cross-examination dated 30th April 2014, however, no suggestion to the contrary was given to him. The Rent Controller also noticed that in the evidence affidavit dated 11th March 2016, the petitioner also did not claim that the said shop was not far away from the residence of Bhawana or that the said shop is more suitable in comparison to the tenanted shop.

21. The Rent Controller has further held that the said shop, is a Single shop and also situated far away from the place where Vishal Sharma was carrying on his business, and as such was not prima facie more suitable, as compared to the tenanted shop and the tenanted shop is most suitable for his wife Bhawana, to start a business of boutique, as she will have the assistance of her husband as well as her brother-in-law in starting and running the said business. Moreover, it would be easy for her to commute to the said shop from her residence, with her husband.

22. The Rent Controller has rightly held that the objection taken by the petitioner with regard to the wife of the respondent not being dependent upon him could not be restricted to financial dependency and has to be seen in the light of prevailing social circumstances. The Rent Controller has rightly held that the petitioner has not been able to show that the respondent has any other reasonably suitable accommodation available wherefrom the wife of the respondent could start her business.

23. Landlord is the best judge of his requirement and tenant cannot dictate to the landlord as to how he has to put to use the available accommodation.

24. Further contention of petitioner that the respondent's wife is a house wife and only taking care of his children is again without any substance. In today's day and age, it is quite common for women to

go out and commence/run their businesses. Merely because the Respondent is running his own shop is no ground to deny his wife an opportunity to start her own business and become independent. Especially, in view of the fact that she is educated and holds diploma in Fashion Designing from India International Trade Organisation, Mumbai and that also in first class.

25. Rent Controller has categorically held that on perusal of the pleadings as also the evidence produced on record, requirement of the respondent of the tenanted shop to start the business of boutique of his wife could not be termed to be mala fide or a mere desire or fanciful.

26. Rent Controller has correctly held that the respondent has successfully established the *bona fide* need for the tenanted shop and that there is no other reasonably suitable alternative accommodation available to meet his requirement.

27. I find no infirmity in the view taken by the Rent Controller. I find no merit in the petition.

28. The petition is accordingly dismissed.

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

SANJEEV SACHDEVA, J.

NOVEMBER 21, 2019

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