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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 19th March, 2019

Pronounced on: 28th March, 2019

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RC.REV. 395/2018 & CM APPL No.33197/2018

ANIL MADAN

..... Petitioner

Through : Dr.Anurag Kumar Agarwal and
Mr.Umesh Mishra, Advocates.

versus

ALLIED PROMOTERS LTD

..... Respondent

Through : Mr.Sanjeev Sindhvani, Sr
Advocate with Mr.Ajay Gupta and
Ms.Surbhi Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This revision petition challenges the judgment dated 11.05.2018 passed in respect of eviction of shop *No.3463-A and D*, Krishna Niketan, Ground Floor, Delhi Gate, Delhi-110002. The rent of the said premises is Rs.400/month.

2. The petition under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (hereafter 'the Act') is filed on the premise the tenanted shop is required bonafidely by the respondent for its commercial activity which can only be run from the ground floor portion. It is alleged though some portion on the ground floor is in occupation of the respondent but it cannot be used since it doesn't lead to a proper opening from the front road side to use the rear/ internal portion of the property.

3. Admittedly the location of the property is prime and the respondent company alleges to run a business of display of goods viz. refrigerators, LED TVs, other electrical gadgets, a departmental store; or selling electronic items and has numerous other options to start any of the aforesaid businesses but the big hall on the rear side can only be used effectively once the front shops are got vacated. It is alleged the front portion can be used as a reception office or a showroom, hence the space presently available with the respondent company is not suitable as is on internal/ rear side of the property and hence this eviction petition.

4. The petitioner herein has challenged the impugned order, primarily on following grounds *(a)* during the pendency of the petition a shop on the front was got vacated but this aspect was overlooked by the learned Trial Court; *(b)* notice under *Order 12 Rule 8 CPC* for production of documents, though given by the petitioner, but the respondent failed to produce such documents; *(c)* the site plan of the entire property viz. of first, second and third floor was never filed by the respondent; *(d)* *PW-1* was not aware of the facts of the case; *(e)* as per the Delhi High Court Rules the respondent was obliged to disclose other litigations which the respondents had with different tenants, hence is guilty of concealment.

5. Before coming to the objections so raised by the learned counsel for the petitioner, let me have a look on the evidence of the respondent herein led before the learned Trial Court.

6. Mr. Ankit Gupta was examined as *PW1* on behalf of the respondent as its authorized representative and he filed an affidavit *Ex.PW1/A*, a replica of the eviction petition and proved the certificate of

incorporation of the respondent company as *Ex.PW1/3*; its Memorandum of Association *Ex.PW1/4*; Form 18 as *Ex.PW1/5*; Form 32 as *Ex. PW1/7*; order of slum petition as *Ex.PW1/8*.

7. Admittedly, *PW1* during his cross-examination could not depose with clarity about the earlier businesses of the respondent company and could not file such documents as did not have access to the entire record of the company. He rather deposed he occasionally visits the property but *admitted* the portions on first and third floor are occupied by the respondent herein and whereas some portion of the second floor is occupied by a tenant and is being used by him for commercial activities. He admitted of a notice *PW1/R1* received by the respondent but did not produce the documents. He admitted there are six tenants on the ground floor of the suit property and the petitioner Mr.Anil Nanda was one of them and he handed over the possession of a corner front shop to the petitioner by way of a compromise in December 2017, The said shop is marked X in site plan *Ex.PW1/1*. However *PW1* deposed he was not present when site plan *Ex.PW1/1* was prepared and hence could not verify the dimensions, area, numbers of the shops referred to therein but he believed the *site plan* is correct and is as per site though he has not personally compared it with the site. He admitted the photographs *Ex.PW1/R2*, *Ex.PW1/R3*, *Ex.PW1/R4* and *Ex.PW1/R5* to be the photographs of the respondent's building and admitted the eviction petitions were filed against other tenants too. He admitted the premises at the rear portion, now is in occupation of the respondents, was earlier let to a bank. The respondent company started business of auto accessories but later closed it and now the said portion is lying vacant. *PW1* did not

remember the date of letting and vacation of the premises by the Bharat Overseas bank and did not produce its lease agreement, the respondent had with the bank, though was asked to produce such documents and he rather deposed he shall produce such documents *only if available*. PW1 admitted of two entrances in the rear side of ground floor of the suit property marked A and B in the site plan Ex.PW1/I and an entrance at point C which lead to the upper floors ,PW1 admitted the rent is the only source of income of the respondent. PW1 denied commercial activity can be carried from rear portion of the ground floor or from first, second or third floor or the respondent is not authorised to carry any alteration or structural changes in the suit property as it fall within the Prohibited limits of the Protected monuments viz, Delhi Gate.

8. The learned ARC has dealt with these objections of the petitioner in the following manner :-

*“19. One of the argument raised by the respondent is that no resolution has been passed by the company in respect of opening of business, as reflected in the evidence by way of affidavit Ex. PW1/A. However, the above contention is not found tenable as it is for the petitioner company to pass resolution as and when they have accommodation available with them to start any business. The Hon'ble Supreme Court in **Mattulal v. Radhe Lal** (1974) 2 SCC 365 held that litigation in India takes a long time in reaching final conclusion and then also it is uncertain as to how it will end and with what result; unless the landlord could be reasonably sure that he would, within a short time be able to recover possession and start business therefrom, it will be too much to expect from him that he should make preparations for starting new business, it will be foolish on his part to make arrangements for investment of capital, obtaining of permits when the landlord does not know, whether he will ultimately succeed in the litigation and after how many years.*

20. Moreover, it has been clearly mentioned by the petitioner that the petitioner wishes to promote its business at large scale and hence, requires a large office on the ground floor to entertain its clients, buyer and sellers of products. Hence, the petitioner has shown requirement of 4,000 sq. ft. and as admitted by the respondent, presently, it is having in its occupation only 2141 sq. ft.

21. Further, it is argued on behalf of the respondent that the requirement of the petitioner is multi-purpose in nature, as such, it is not clear which business, the petitioner company wishes to start from the premises in question. However, the said contention of the respondent is not found tenable as merely because several grounds are stated for the bonafide requirement of the same tenanted shop does not in any manner do away with the bonafide requirement of the petitioner. Once the petitioner gets possession of the shop, the petitioner would be free to put it to any one of the stated purposes/requirements. Reliance in this regard may be placed upon **Naresh Kumar v. Surender Kumar Gulati**, 236 (2017) DLT 265 and **Jitender Mohan Gulati v. Hira Lal Singh**, 219 (2015) DLT 489, wherein it has been held that having two requirements for the same tenanted shop would be a valid requirement.

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24. Further, it is averred by the respondent that the accommodation already in the occupation of the petitioner is sufficient to meet the alleged requirement of the petitioner and it is just a camouflage plea to make the fake ground of bonafide requirement. On the other hand, the petitioner has stated that perusal of the site plan Ex. PW1/1 clearly shows that one big hall is available with the petitioner company on the ground floor which is not suitable to run the business activities as the same is at the back side of the suit property. The petitioner is unable to use the same as the entire front ground floor portion has been occupied by various tenants. It is also stated that due to paucity of accommodation as and when any business was started by the petitioner company, the same has to be closed down due to non-availability of better front. Petitioner has further substantiate its version by saying that the bank to whom the ground floor premises was let out has vacated before completion of the tenure. There is no space to park the vehicle for loading and unloading of goods and articles. The first floor & second floor portion is not suitable to run the business or to open the showroom as no such activity can be carried out from the upper floors. The petitioner has further substantiated its version saying that the tenants on the upper floors, namely, Birla Insurance and Max New York Life Insurance have vacated the portions let out to them.

25. xxxxx.... It is common knowledge that footfall of the customers on ground floor portion towards the main road Would definitely be much more as compared to showroom at the rear side portion or as compared to showroom at any other floor. Thus, availability of vacant upper floor cannot be said to be suitable alternate accommodation as compared to shop on the ground floor towards the main road. xxxx.... No customer would like to go to the upper floor. The premises or the space available at the upper floors, can in no way substitute the commercial space available at the ground floor of the given property and that too on the main road.

29. It is also stated by the respondent that the petitioner has filed four other cases for eviction against other tenants for the alleged bonafide requirement. It is stated that one of the tenant Anil Nanda has already compromised and surrendered the possession of his part of premises to the petitioner. However, petitioners company has already stated that it requires the property in question being at the prime location three side open having three comers out of which one of the comer is towards the

Asaf Ali Road and other corner is towards Darya Ganj. Further petitioner company has already shown the need of 4000 sq. ft of the front portion for its showroom and business. Moreover offer has been given by the petitioner to the respondent to occupy the portion in his occupation which the respondent has failed to consent seeking time to think over the proposal.

*Counsel for the petitioner has relied upon the case laws **Pushkar Singh v. Ansuiya** VI (2006) SLT 379 in this regard to show that when the respondent is unwilling to accept the said offer of alternate accommodation, it is clear that the alleged alternate accommodation is wholly unsuitable. Moreover, pendency of eviction petition against other tenants show the dire and bona fide need of the petitioner/landlord."*

9. The learned council for petitioner also relied upon Rule 2 Chapter 22, Volume-I to allege concealment. The rule is as under :-

"2. Petition to contain details of cases pending between same parties / same properties and make a disclosure as to issuance of rent receipt- The Landlord at the time of filing of petition under the provisions of Delhi Rent Control Act shall also furnish details of all other pending cases between the same parties or with different parties in respect of same property in question and also disclose as to whether he has been issuing rent receipt(s) to the respondent / tenant and if so, file copies of the counterfoil(s) thereof."

10. The rule does not show the respondent is bound to disclose the litigation it had with other tenants in the same property. What is required under the rule is to furnish details of other pending cases between the same parties or with different parties in respect of the same very premises, hence no concealment can be alleged and rightly held so.

11. The learned counsel for the petitioner argued though the proposal was given by the respondent in the cross-examination of the petitioner herein to shift his business to first and third floors, but since he is carrying business of cycle sale and sale of cycle parts/repair and since it cannot be carried from upper floors such a proposal was though a farce but was considered by the learned ARC against the petitioner. However, if one reads the entire cross examination of the respondent the suggestion

were also given for shifting the premises to another shops, even on the ground floor portion viz shop *XI*, lying vacant but the petitioner avoided answers.

12. Qua non-filing of documents, required to be filed vide notice under Order *XII* Rule 8 CPC, I may say such documents were never relied upon by the respondent and even otherwise, it is an admitted fact Bharat Overseas Bank had vacated the premises way back in the year 2002. The lease deeds with such bank after 15 years were, even otherwise, not relevant. Similarly, the lease deed with another tenant, an Insurance Company on the first floor was also not relevant to the issues involved. Admittedly the respondent had filed eviction petitions for shops at ground floor only. Para Nos.*x* and *xi* of *18.a* of eviction petition do show the premise at the ground floor, with a space of 4000 square feet, is actually required by the respondent to start its businesses, as aforesaid. There is no cross-examination on these aspects by the petitioner herein and per settled law if the averments are not challenged in cross examinations, it would be deemed to have been admitted.

13. Another contention raised was qua the concealment in the site plan. It was alleged the accommodation available to the respondent on different floors is not shown in the site plan *Ex.PW-Y1*. Admittedly, the petition was filed for the shop on the ground floor and it was necessary to disclose only the accommodation available with the respondent on the ground floor of the said property. The site plan *Ex.PW1/1* does show the shop *XI*, and the interior /rear portion of the property, being in possession of the respondent herein. Admittedly, the petitioner has not filed any site

plan to show the site plan filed by the respondent is incorrect. There was no need for the respondent to file the site plan for the upper floors when petition does not make any claim for the premises on the upper floors and that the *bona fide* need is for opening a showroom on the ground floor.

14. The eviction petition, replication and the evidentiary affidavit *Ex.PW1/A* of PW1 do show one of the tenant viz the Bharat Overseas Bank had vacated the rear portion of the ground floor in the year 2002 and another portion since the year 2005 is also lying vacant but as the respondent needs at least 4000 square feet area to open a showroom at the ground floor so even after vacation of the shop by Anil Nanda, the premises in occupation of the respondent could not be put to use as it require a bigger opening in the front. No question was put in cross to *PW1* as to if the respondent does not require 4000 square feet area with a bigger opening on the ground floor of the building.

15. I have also perused the site plan *Ex.PW1/I*, Despite vacation of shop by Anil Nanda, the front has a small opening on the front main road and it would certainly not satisfy the need of the respondent. In *Naresh Kumar vs Surender Kumar Gulati* 2017 (236) DLT 265 the Court has observed the requirement of the premises facing main road is a valid requirement.

16. In *Parveen Kumar Arora vs Akshay* 2019 (256) DLT 662 this Court held the requirement of the shop on the ground floor need to be viewed from a different perspective then the availability of business spaces on upper floors. In *Neelam Sharma vs Ekjant Rekhan* 2019 (70) DLT 750 the requirement of 1800 square feet on the ground floor for the

purposes of showroom as also the additional area for bill counter, office cabin, waiting area was termed as genuine.

17. Thus a bare perusal of the reasoning given by the learned Trial Court do show that it does not suffer from any error of law and is not perverse or arrived at without consideration of the material evidence filed before it. It is only when such findings are based on no evidence or misreading of the evidence or is grossly erroneous that if allowed to stand it would result in miscarriage of justice. It is open to the High Court to upset such finding. If this Court is satisfied qua the correctness, legality or propriety of any decision or the order impugned, this Court shall not exercise its power as an appellate power to re-appreciate or reassess the evidence for coming to a different findings on fact. The revisional power cannot be equated with the power of reconsideration of all questions of facts as a Court of first appeal, per *Hindustan Petroleum Corporation Ltd vs Dilbahar Singh*, 2014 AIR(SC) 3708.

18. I see no infirmity in the impugned order passed by the learned Trial Court and hence the petition is dismissed with no order as to costs. The pending application(s), if any, also stands disposed of.

YOGESH KHANNA, J.

MARCH 28, 2019

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