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

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Judgment delivered on: 03.09.2019

+ RC.REV. 431/2016

PRITAM LAL MAKHIJA

..... Petitioner

versus

AKHIL BHARTIYA AGGARWAL SAMMELAN THR ITS
JOINT ORGANISED SECRETARY VIRENDER GUPTA

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. Prasoon Kumar with Mr. Aashish Kumar and
Ms. Sarita Kumari, Advocates.

For the Respondent:

Mr. V.P. Rana, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

**RC.REV. 431/2016 & CM APPL.32783/2016 (stay), CM APPL.
39582/2019 (for fixation of user charges)**

1. Petitioner impugns order dated 02.08.2016, whereby, the application seeking leave to defend of the petitioner has been rejected.
2. Petitioner is a tenant in a shop measuring 7 feet x 18 feet of ground floor of the property bearing Nos.8596, 8597 and 8543, more particularly, as described in red colour in the site plan annexed with the eviction petition.

3. Subject petition for eviction was filed by the respondent contending that the respondent is a society registered under the Societies Registration Act and is an all India level society conducting its office through employees employed in the organisation/society. As per the respondent landlord, it is in possession of a portion of the ground floor, entire first floor and the second floor.

4. It is contended in the petition that the accommodation in the possession of the respondent landlord is falling short and it is not able to accommodate the staff employed by it. There is a shortage of sitting space to accommodate the staff, as such, the portion in possession of the petitioner tenant is required for bonafide expansion of its office.

5. Leave to defend application was filed by the petitioner contending that there are only 7 employees in the office of the respondent and in the last 15 years it had never employed more than 8 persons. It is alleged that the respondent landlord has 472.5 Sq. ft. space available on the ground floor, 598.5 Sq. ft. on the first floor and 598.5 Sq. ft. space available on the second floor besides the terrace also being available to the respondent landlord. A ground has been taken that the need is not bonafide and the requirement as set up is artificial, imaginary and expresses a mere desire and not a necessity.

6. In the reply to leave to defend, the respondent landlord has contended that the respondent society is a national level society having 21 national office bearers, 72 State bearers and 17 Committee bearers and more than 50 office bearers visit the office daily for various works.

7. It is averred that the ground floor is used for the office purpose which is too small to accommodate the national office of the organisation. It is, however, admitted that there are only 7 employees employed to look after the work of the Delhi office.

8. It is further stated that the first floor is used as a conference room and the second floor having two rooms are used as storage.

9. Perusal of the eviction petition shows that the respondent/landlord has not explained the accommodation in its possession and has merely stated that it is falling short in terms of the accommodation and the space already available is not sufficient to accommodate the staff employed by the respondent landlord. It is further averred that there is a shortage of sitting space to accommodate the staff.

10. Per contra, the petitioner tenant has categorically taken a ground that the respondent landlord has never employed more than 8 employees in its office in the last 15 years and has 472.5 Sq. ft. space available on the ground floor and approximately 600 Sq. ft. space available on each of the first and the second floors.

11. Perusal of the petition as also the reply to the leave to defend shows that the landlord has expressed a desire to expand its office. The Rent Controller has rejected the grant of leave to defend solely on the ground that the tenant cannot dictate as to how the landlord has to utilize the premises and it is for the landlord to decide as to what is suitable and what is not.

12. No doubt the tenant cannot dictate to the landlord as to how it has to

utilise its property and the landlord is a best judge of its accommodation. Nonetheless, it is also to be seen that a petition under Section 14(1)(e) of the Delhi Rent Control Act would lie only if there is a bonafide need of the landlord for additional accommodation. Bonafide need/bonafide necessity is distinct from a mere wish or desire.

13. Reading of the petition shows that the landlord has merely expressed a desire to expand and has not even pleaded as to how there is a need for expansion of additional space.

14. In my view, the tenant has raised sufficient grounds which, if established at trial, would disentitle the respondent landlord of an order of eviction. The application seeking leave to defend discloses a triable issue and sufficient ground as to why leave to defend should be granted.

15. The Rent Controller has clearly committed an error in not noticing the distinction between the bonafide necessity and a mere desire.

16. It may be noticed that the respondent landlord has neither denied the number of the employees nor the extent of accommodation available with it. In the reply, the respondent landlord merely stated that 50 people visit the office on daily basis. It is a matter of trial as to whether the existing accommodation available with the landlord is sufficient to accommodate 7 employees and 50 visiting members.

17. Clearly, the Rent Controller has committed an error in declining to grant the leave to defend to the petitioner.

18. Keeping in view the facts and circumstances of the case and also the

facts, as pleaded by the petitioner tenant, specifically stating the extent of accommodation in possession of the landlord and also the plea that there are only 7 employees, I am of the view that the petitioner tenant has shown sufficient grounds to entitle the petitioner/tenant to a leave to defend the eviction petition.

19. Accordingly, impugned order dated 02.08.2016 is set aside. Leave is granted to the petitioner to defend the petition.

20. Petition is allowed in the above terms.

21. List the eviction petition for consideration before the concerned Rent Controller on 17.10.2019. Petitioner shall file his written statement within a period of 30 days from today.

22. Since the eviction petition was filed in the year 2014, the Rent Controller is directed to expedite the proceedings.

23. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

SEPTEMBER 03, 2019
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