

\$~20

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

%

Judgment delivered on: 24.12.2019

+ RC.REV. 410/2018 & CM APPL. Nos.34584-86/2018

VIKAS JAITLEY

..... Petitioner

versus

ASHOK KAPOOR

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr.D.K Sharma, Mr.Praveen Southey, Mr. Sanchit Vashistha and Ms. Tanuakshra Pal, Advs.

For the Respondent: in person

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

1. Petitioner impugns order dated 25.04.2018 whereby the leave to defend application of the petitioner has been dismissed and eviction order passed.

2. Respondent had filed the subject eviction petition seeking eviction of the petitioner from the tenanted premise under Section 14(1)(e) of the Delhi Rent Control Act, 1958 in respect of Shop No.25, Old Rajinder Nagar Market, New Delhi.

3. As per the respondent, the property was let out to Sh. Keval Kishan Jaitely, father of the present petitioner for commercial purposes.

4. The ground of eviction pleaded in the eviction petition is that the respondent retired from CITI Bank as an authorised signer and draws pension of Rs.6,000/- per month and the wife of the respondent is also a graduate from Delhi University and retired as Manager from the Bank of Tokyo Mitsubishi and draws pension of Rs.5145/- per month.

5. It is contended that the respondent and his wife are having vast experience and contacts to run business and in order to meet the extreme jump in the present cost of living (daily needs), medical expenses and other expenses, the respondent and his wife are in urgent need of their commercial place to start their own business to earn additional source of income to meet the additional increase in their expenses. It is further contended that the tenanted shop is situated on the main road of the market and is suitable for business purposes.

6. Subject application seeking leave to defend was filed by the petitioner contending that the eviction petition is not maintainable as there are several litigations pending between the parties. It is contended that an earlier eviction petition was filed by the respondent against the father of the petitioner which is pending adjudication and is at the stage of evidence and since the matter is sub-judice, respondent could not have filed another eviction petition.

7. It is contended that the property still stands in the name of the father of the respondent and as such even after his death, respondent could not maintain the present petition.

8. It is contended in the leave to defend application that one of the legal heirs of the father of the respondent has sold his one fifth undivided share in the tenanted shop along with additional land in favour of the petitioner by an agreement to sell dated 16.10.2019, after receiving the entire sale consideration and as such respondent is precluded from filing the present eviction petition without getting partition of the property by metes and bounds.

9. It is further contended that the requirement of the respondent is not *bona fide* rather sham and fanciful. It is contended that respondent has not disclosed that he is also in possession of the property No.193 with terrace and roof and 196 double storey quarters at Ram Nath Vij Marg, New Rajinder Nagar and the said property are situated at prime a location and respondent has kept the same vacant for the purposes of evicting the petitioner. Further, it is contended that the respondent is residing in a specious property located in Shalimar Bagh and respondent and his wife have huge bank balances and fixed deposits.

10. It is contended that the wife of the respondent was partly paralysed and has recently been operated from a private hospital i.e. Sir Ganga Ram Hospital and if respondent was a poor person and he could not have afforded treatment in a private hospital.

11. It is further contended that the respondent was co-owner of another property No.30/47, Old Rajinder Nagar, which was let out and had been sold after the possession of the same was recovered from the tenant in the year 2007.

12. It is further contended that the respondent has concealed that there is an alternative suitable accommodation available in the possession of the respondent. Additionally, learned counsel for the petitioner submits that since the petitioner is in possession of the tenanted premises in part performance of the agreement to sell dated 16.10.2019, respondent could not evict the petitioner from the tenanted premises.

13. The respondent, who appears in person submits that respondent's father had filed the suit for possession against the petitioner in the year 1985 with regard to the land which is situated behind the tenanted shop and the suit has been decreed in favour of the father of the respondent.

14. He relies on a decision of this Court dated 03.05.2016 in Execution Second Appeal No. 5 of 2014 titled *Keval Krishan Jaitely v. Achraj Ram Kapoor @ Ashraj Ram Kapoor* through LR's wherein a similar plea of the petitioner, having purchased one fifth share undivided share by agreement to sell and GPA dated 16.10.2019, was raised. In the said order, this Court held that the decree against the petitioner had become final and the petitioner had not perfected his title pursuant to the agreement to sell in GPA dated 16.10.2019. Relying upon the judgment of Supreme Court in *Suraj & Industries Pvt. Ltd. v. State of Haryana AIR 2012 SC 206*, this Court by judgment dated 03.05.2006 held that the petitioner could perfect his title by filing an independent suit and could not object to the execution

of the said decree.

15. It is submitted that the said judgment of this Court dated 03.05.2006 was taken up in appeal by the petitioner before the Supreme Court by the predecessor of the petitioner in SLP No.24203 of 2016 titled *Keval Krishan Jaitely deceased through LRs v. Achraj Ram Kapoor @ Ashraj Ram Kapoor* and by order dated 07.11.2016 the said Special Leave Petition was dismissed.

16. Respondent thus points out that the plea of the petitioner that he had purchased one fifth undivided share in the property and thus cannot be evicted has been negated and respondent has been held entitled to possession from the petitioner of the land in his occupation and the court has also held that the title of the petitioner *qua* one fifth share was still not perfect. Respondent further contends that the petitioner should first perfect his title and then seek to enforce right *qua* his alleged one fifth undivided share.

17. Further, with regard to contention of the petitioner that respondent cannot seek eviction as he has purchased one fifth share, it is settled position in law that merger of tenancy can take place only if the entire share of the landlord has been purchased by the tenant. Since admittedly it is the case of the petitioner that he has only purchased one fifth undivided share, there would be no merger of tenancy so as to deprive the landlord of the order of the eviction.

18. Further the contention of the petitioner that respondent had filed

earlier an eviction petition which was pending, the Rent Controller has already in the impugned order noticed that the averments in the earlier eviction petition and the subject eviction petition are very different from each other and major developments have taken place since the year 2011 onwards and petitioner has failed to produce any material on record to show that the respondent is barred from filing the subject eviction petition.

19. The requirement projected by the respondent is that both the respondents and his wife are retired and do not have any source of income, except the pension which they receive from their respective organisations. Respondent has categorically stated that the needs of the respondent are increasing day by day and they do not have enough income to meet the increasing expenses.

20. It is also an admitted position that the wife of the respondent is suffering from several ailments and requires medical attention as well as treatment.

21. Respondent further in his reply to the leave to defend application has categorically stated that he does not have any other commercial property except the subject property.

22. With regard to property No. 30/47, Old Rajinder Nagar, the case of the petitioner himself is that the property was sold in the year 2007. A property which was sold several years prior to the filing of the eviction petition cannot become the basis of holding that the need

of the landlord at the time when the eviction petition is filed was not *bona fide*.

23. With regard to the properties i.e. no. 193 and 196 double storeys, said properties are residential flats and it is not the case of the petitioner that the same are being used for commercial purpose or can be used for commercial purposes.

24. Further plea raised by the petitioner that the respondent got his wife treated from a private hospital and has incurred substantial amount is no ground to disbelieve the contention of the respondent that the premises are required *bona fide*. Merely because respondent or his wife have enough bank balance or can afford private treatment is no ground to deprive respondent landlord of an opportunity to commence his own business so as to augment his income.

25. Petitioner has not placed on record any material to show that respondent or his wife are currently engaged in any business or have any other source of income except pension.

26. Petitioner has also not been able to place on record any material to show that there is any other alternative suitable accommodation available with the respondent, wherefrom the respondent can commence his business or fulfil the need as expressed in the eviction petition.

27. With regard to the property at Shalimar Bagh, it is an admitted position that the respondent is residing in the said property and said

property is a residential property. Merely because the value of residential property is substantial is no ground to hold that the said property is commercial in nature or can be used for commercial purposes or a suitable alternative premises.

28. Petitioner has not been able to place any material on record to show that the need as projected by the petitioner is not *bona fide* or that respondent had any other suitable, alternative accommodation available.

29. I find no infirmity in the view taken by the Rent Controller that leave to defend application filed by the petitioner does not raise a triable issue or pleads facts, which if proved, would disentitle the landlord of an order of eviction.

30. I find no merit in the petition, the petition is accordingly dismissed.

31. Order *dasti* under the signature of the Court Master.

SANJEEV SACHDEVA, J.

DECEMBER 24, 2019

neelam