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

% Judgment delivered on: 12.09.2019

+ RC.REV. 534/2016 & CM No.41753-41754/2016

NARENDER KUMAR JAIN Petitioner

versus

P D SHARMA Respondent

Advocates who appeared in this case:

For the Petitioner: Mr.Surinder Jain, Advocate.

For the Respondent: Mr.Ravi Varma, Advocate with Mr.Rakesh Kumar and Ms.Shurti Verma, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner/tenant impugns order dated 04.07.2016, whereby the leave to defend application of the petitioner has been dismissed.
2. Respondent/landlord filed an eviction petition under Section 14 (1) (b) and 14 (1) (e) of the Delhi Rent Control Act, 1958, seeking eviction of the petitioner from one shop measuring 10 ft. x 8 ft, on the ground floor in premises bearing no.1453, Gali No.100, Talab Road, Tri Nagar, Delhi-110035.
3. The need expressed by the respondent in the eviction petition

was that he is a retired person from Government services and aged about 71 years as on the date of filing of the petition and on account of his health it was difficult for him to travel by public transport and he wanted to purchase a car and needed the tenanted premises for making a garage for parking his car.

4. It is contended in the petition that he has requested the petitioner to vacate the tenanted premises by end of December, 2013 and since he did not do so subject eviction petition was filed.

5. It is further contended in the petition that landlord requires the tenanted premises for his own bonafide need and he has no other space available which could be used as a garage and in absence of a garage to park his car, he is unable to buy a car and is constrained to use public transport.

6. It is further contended that a notice dated 30.01.2015 was issued requesting the petitioner to vacate the tenanted premises but he has failed to do so.

7. Subject leave to defend application was filed by the petitioner contending that the need was not bonafide and was a mere desire and it was also contended by the petitioner/tenant that the respondent could always purchase a car and park it on the public street and there was no requirement for evicting the petitioner from the tenanted premises solely for the purposes of parking a car.

8. Further ground was taken by the petitioner that the landlord had got vacated one shop from another tenant, which shop was subsequently sold to some other person on 26.02.2015.

9. The Rent Controller, relying on the judgment of this court in *Vinod Kapoor vs. Kailash Sethi, 2008 VIII AD Delhi (461)*, held that the requirement of a garage for parking a car would also constitute bonafide requirement.

10. No doubt, requirement of a garage for parking a car could constitute a bonafide requirement, however, the Rent Controller would have to consider in the facts and circumstances of a particular case as to whether the demand of the tenanted premises on the ground of parking a car is bonafide or not.

11. In the subject case, the stand of the respondent is that he intends to purchase a car and on account of unavailability of parking space, he is unable to purchase a car.

12. Ground has been taken by the petitioner, in his affidavit in support of the leave to defend that an identically sized premises i.e. adjoining shop was vacated by another tenant and subsequently the said shop was sold by the respondent on 26.02.2015 and subject eviction petition was filed on 26.05.2015.

13. It is not denied by the respondent that the adjoining shop of an identical size had become available and was subsequently sold.

However, the response given by the respondent is that there was no space available behind the said shop which could be merged, which space is available behind the tenanted premises.

14. It is observed that no such plea was taken in the eviction petition and even the factum of vacation of the adjoining shop and the subsequent sale just prior to filing the eviction petition has not been disclosed.

15. It may further be noticed that in the eviction petition it is specifically stated that the petitioner/tenant was requested to vacate the premises by December, 2013 as there was a bonafide need of the respondent. If the need had been bonafide, the respondent would have first put the adjoining shop of identical which was vacated by another tenant for parking his car rather than selling the same.

16. Further, as to whether the adjoining shop was not suitable for converting into a garage is a matter of trial.

17. In my view the tenant has disclosed sufficient grounds in the affidavit in support of the application seeking leave to defend, which if proved would disentitle the respondent/landlord from getting an order of eviction.

18. Clearly the Rent Controller in the impugned order has erred in not appreciating the grounds raised by the petitioner and erred in declining to grant the leave to defend to him.

19. In view of above, the impugned order dated 04.07.2016, declining the leave to defend, is set aside. The petitioner is granted leave to defend the eviction petition.

20. List the matter before the concerned Rent Controller on 21.10.2019. The petitioner shall file his written statement before the Rent Controller on the said date.

21. Keeping in view the fact that the eviction petition was filed in the year 2015 and has been pending on the question of leave and also keeping in mind the age of the respondent/landlord, the Rent Controller is directed to expedite the proceedings and make an endeavour to conclude the proceedings within 9 months from the said date fixed before him.

22. The petition along with pending applications, being CM No. 41753-41754/2016, are disposed of.

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

SANJEEV SACHDEVA, J.

SEPTEMBER 12, 2019
"shailendra"