

\$~6

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

%

Judgment delivered on: 13.11.2019

+ RC.REV. 561/2016

MITHLESH KUMAR

..... Petitioner

versus

M/S SUBHASH CHANDRA TRIPATHI & SONS & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Ms. Noopur Singhal, Advocate.

For the Respondent: Mr. C.S.Bhandari, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 16.08.2016 whereby the leave to defend application of the petitioner has been dismissed and an eviction order passed.

2. Subject eviction petition was filed by the respondent seeking eviction of the petitioner from Shop No.7 in property No.4A-5, House No.209/8, Post Office Block, Krishna Nagar, Delhi-110051. It was contended by the respondent in the eviction petition that the subject property was owned by Smt. Vijay Kumari, wife of respondent No.1 who died intestate leaving behind four sons and all of them had become co-owners of the subject property.

3. It is contended by the respondents that there are nine shops in the property. Respondents had recovered possession of Shop Nos.1 & 2 under single tenancy through orders of Court. After eviction of the shops Nos.1 & 2, Sh. Umesh Tripathi, respondent No.3 was carrying on his business from the said shop. Shop No.9 is being run by Sh.Naresh Tripathi, respondent No.2 and there was no other accommodation for the other two co-owners i.e. respondent Nos.4 & 5 i.e. Sh.Dinesh Tripathi and Sh.Sunil Tripathi as the other shops are under tenancy of other persons. Further it was contended that Sh.Sunil Tripathi was constrained to work in the shop of Sh.Umesh Tripathi to support his own family.

4. It was contended in the eviction petition that since there were only two shops available, the other two had no accommodation available for running their businesses.

5. Subject leave to defend application was filed by the petitioner contending that Sh.Dinesh Tripathi had his own independent business which he was carrying on along with his wife in a separate property. Further it was contended that Sh. Umesh Tripathi's wife had purchased a shop and he was carrying on his business from the said shop. With regard to Sh. Naresh Tripathi it was contended that he was carrying on his business from Shop No.9 and Sh.Sunil Tripathi was, in fact, carrying on his business in shop No.1. Further it was contended that Shop No.1 and Shop No.2 are two separate shops and are separated by a wall and respondents had filed two separate eviction petitions.

6. Respondent has denied that Shop Nos.1 & 2 are two separate shops but has contended that there is no intervening wall in Shop Nos.1 and 2 and

both the shops comprise one single unit and the shop is being run by Sh. Umesh Tripathi.

7. Perusal of the record shows that petitioner had placed on record sale deeds of two commercial properties comprising of shops in favour of Sh. Umesh Tripathi and Sh. Dinesh Tripathi & his wife. Another other ground raised by the petitioner is that Sh. Sunil Tripathi is only running shop No.1 and photographs of Sh. Sunil Tripathi carrying on business in the said premises has been placed on record.

8. Further petitioner has placed on record photographs of each of the respondents 2 to 4 sitting and running separate commercial premises.

9. The Rent Controller by the impugned order has noted the contention of the respondent that the wife of Sh. Dinesh Tripathi has been carrying on business of sale and purchase from the shop which is purchased by Sh. Dinesh Tripathi and his wife jointly and that she is being helped by her husband. Rent Controller has held that the plea of bonafide necessity is with regard to running of shop by Sh. Dinesh Tripathi and Sh. Sunil Tripathi for the purpose of selling children garments which also involves the interest of Sh. Sunil Tripathi and they have the right to choose what business they want to expand.

10. The Rent Controller has erred in not noticing that the case set up by the respondent in the eviction petition is not that they have two more premises other than the subject property from where they are carrying on businesses or that the accommodation in those shops is insufficient. Respondents have not disclosed that Sh. Dinesh Tripathi is carrying on

business with his wife and that he wants to set up his independent business, independent from his wife in the tenanted premises.

11. The Rent Controller has also erred in not noticing that petitioner had placed on record sale deeds of the two shop purchased by Sh.Umesh Tripathi and Sh. Dinesh Tripathi and his wife. The ground raised by the petitioner is that it is Sh.Sunil Tripathi and not Sh.Umesh Tripathi who is carrying on business from Shop No.1 and Sh.Umesh Tripathi is carrying on from Shop No.2 as also from the shop that he has purchased by virtue of a sale deed.

12. Even if assuming that shop Nos.1 & 2 comprise one premises and Shop No.9 comprises a separate premises, there are admittedly two shops in the subject property and two shops from which Sh.Umesh Tripathi and Sh.Dinesh Tripathi are carrying on their business outside the subject property. There are at least 4 to 5 shops between the four respondents. The question as to whether their need is fulfilled or still subsists, is a matter which would require consideration and accordingly raises a triable issue.

13. Clearly the affidavit filed by the petitioner in support of the leave to defend application raises triable issues and discloses grounds which if proved would disentitle the respondent from an order of eviction.

14. The Rent Controller has erred in declining to grant leave to defend the eviction petition to the petitioner.

15. In view of the above, impugned order dated 16.08.2016 is set aside. Leave to defend the eviction petition is granted to the petitioner.

16. List the eviction petition before the concerned Rent Controller on 20.12.2019 on which date petitioner shall file his written statement before the Rent Controller.

17. Keeping in view the facts and circumstances, the Rent Controller is directed to expedite the proceedings.

18. The petition is allowed in the above terms.

19. It is clarified that the observations contained herein are prima facie in nature and only for the purpose of consideration of the application for leave to defend and shall not have any bearing on the merits of the case.

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

NOVEMBER 13, 2019

rk

SANJEEV SACHDEVA, J