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

% Judgment delivered on: 16.12.2019

+ RC.REV. 387/2017

DEVENDER SINGH & ORS Petitioners

versus

KAILASH CHANDER GUPTA & ORS Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Manjul Dahiya, Advocate.

For the Respondent: Mr. Arun Gupta with Ms. Mansi Khurana and Mr. Samrendu Chaudhary, Advocates.

Mr. A.S. Dahiya, Advocate for the applicant in CM APPL.20063/2019

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.20063/2019 (under Order I Rule 10 CPC)

1. Learned counsel for the applicant submits that since he has already raised a similar plea before the Rent Controller in execution proceedings, he seeks leave to withdraw the application with liberty to raise all available pleas before the Rent Controller.

2. In view of the above, application is dismissed as withdrawn.

3. All rights and contentions of the parties are reserved.

RC.REV. 387/2017 & CM APPL.30413/2017 (stay), CM APPL.14974/2019 (directions to pay outstanding rent), CM APPL. 40761/2019 (under Order XXII Rules 4 & 11)

1. Petitioners impugn order dated 07.04.2017, whereby, decree of eviction has been passed against the petitioners.

2. Respondents had filed the subject eviction petition seeking eviction of the petitioner from premises bearing Nos.4104, 4105, 4154/III, Plot No.118, Naya Bazar, more particularly, as shown in red colour in the site plan annexed with the eviction petition.

3. Learned counsel for the respondents submits that though the premises is known as premises bearing Nos.4104, 4105, 4154/III, the tenanted premises in occupation of the petitioner is premises comprising of property bearing Nos.4105, 4154/III and the premises bearing No.4104 is not a part of the tenanted premises.

4. Eviction petition was filed on the ground of bonafide necessity under Section 14(1)(e) of the Delhi Rent Control Act, 1958.

5. Respondents/landlords had contended that the respondents are the owners of the subject property having succeeded to the same through their predecessor. It was contended that the respondents required the tenanted premises for their own bonafide commercial use for running a shop and that the respondents have no other alternative commercial premises suitable for their business of food grains and

pulses, traders and commission agent and that they have no other alternative suitable ground floor premises at Naya Bazar or any other place in Delhi.

6. It is contended that since they do not have any other shop on the ground floor or even godown space and they have stocked their goods elsewhere at the distant place from Naya Bazar which is neither convenient nor suitable. It is contended that they require the tenanted premises for running the shop at the front side and keeping their goods at the back side. It is contended that the food grains, pulses and rice are contained in jute bags of 50kg/100 kg and it is impossible for the respondents to arrange the godown at the upper storey.

7. It is further contended that the respondent No.7 is in possession of a small shop on the ground floor in property bearing No.3989, Naya Bazar wherefrom he is running his firm but the said shop is on tenancy and the owner has served a legal notice for vacating the said premises.

8. It is further contended that they also have an office space in property bearing No.2662, Gali Jatwara, Naya Bazar, Delhi, which is being used as an office and it is neither suitably nor ideally located for the purpose of the business of the respondents.

9. Further, it is contended that they have another shop situated at property No.4099, Naya Bazar, which is owned by someone else and

there is litigation going on with the owner of the property and there is a threat of eviction.

10. No leave to defend application was filed by the petitioners. However, it is an admitted case that within 15 days a written statement was filed by the petitioners to the eviction petition.

11. Learned counsel for the petitioners submits that even though no leave to defend application was filed, written statement could be considered as a leave to defend application as the same was supported by an affidavit.

12. Learned counsel for the petitioners relies on a decision of a Coordinate Bench of this Court in *Arjun Rai Bhayana vs. Santosh Hans* dated 19.03.2011 in R.C. Revision 438/2011, wherein, a Coordinate Bench of this Court, relying on the judgment of another Coordinate Bench of this Court in *Gyan Chand vs. Roop Narain*: 1979 RLR 469 and noticing that the written statement was supported by an affidavit, treated the written statement as a leave to defend application.

13. Even if the contention of learned counsel for the petitioners were to be accepted and the written statement were to be treated as a leave to defend application, perusal of the written statement shows that no defence has been raised by the petitioner to the eviction petition.

14. Petitioner has only taken two grounds in his written statement; one that the premises in respect of which eviction petition has been filed have been let out for commercial purposes and no petition under Section 14(1)(e) of Delhi Rent Control Act would lie qua a commercial premises and secondly that the respondents claimed title over the property by virtue of a Will and probate of the Will has not been obtained from a competent Court.

15. Apart from these two grounds, no other ground has been raised by the petitioner in his written statement.

16. With regard to the first ground raised by the petitioner that the premises are commercial in nature, it is settled by the judgment of the Supreme Court in *Satyawati Sharma (Dead) by LRs. vs. UOI & Anr.* (2008) 5 SCC 287, that a petition for eviction on the ground of bonafide necessity under section 14(1)(e) of the Delhi Rent Control Act, 1958 would lie even where the tenanted premises are commercial in nature.

17. With regard to the second point raised by the petitioner that the respondent has not obtained a probate of the Will, it is also settled position of law that a tenant cannot question the title of the landlord.

18. There is no dispute raised by any of the legal heirs or any other person claiming ownership or title of the property qua the title of the respondents.

19. Both the grounds raised by the petitioners do not raise a triable issue.

20. Further contention of learned counsel for the petitioners that since the respondents themselves running business for the last 40 years from the premises, which they are admittedly occupying, their need is not bonafide, does not hold any merit. Petitioner has neither pleaded nor placed on record any material to show that the need as projected by the respondents does not exist or is not bonafide.

21. Necessity of a landlord is fluctuating and may increase or diminish with passage of time. Respondents have in the eviction petition categorically stated as to how and why they require the tenanted premises for their bonafide necessity.

22. Even if the written statement of the petitioners were to be taken as a leave to defend application, the same does not disclose any triable issue or raise any ground, which, if proved, would have disentitled the respondent landlord from an order of eviction.

23. If the legal plea raised by the petitioner that the written statement can be treated as a leave to defend application were to be considered, normally, this Court would have relegated the matter to the Rent Controller for considering the written statement as a leave to defend application but in the facts and circumstances of the case as no ground has been raised at all by the petitioner in the written statement,

which would even *prima facie* show that respondent could be denied the relief from eviction, the exercise would be in futility and would further delay the proceedings.

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

25. The legal question raised by the petitioner is left open.

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

DECEMBER 16, 2019
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SANJEEV SACHDEVA, J

