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

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Judgment delivered on: 27.08.2019

+ RC.REV. 592/2018

MAN MOHAN @ MASTOO RAM

.... Petitioner

versus

RAVINDER KAUR

..... Respondent

+ RC.REV. 274/2019

KULWANT SINGH & ANR

..... Petitioners

versus

RAVINDER KAUR

..... Respondent

+ RC.REV. 466/2018

RAVINDER KAUR

..... Petitioner

versus

DARSHAN SINGH & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Love Kumar, Advocate with petitioner in person in
RC.REV. 592/2018

Mr. R.K. Jain, Adv. in RC.REV. 274/2019

Mr. Rajesh Yadav, Mr. Aman Leckna and Ms. Ruchira
Yadav, Advs. in RC.REV. 466/2018

For the Respondent: Mr. Rajesh Yadav, Mr. Aman Leckna and Ms. Ruchira
Yadav, Advs. in RC.REV.592/2018 & in
RC.REV.274/2019

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

RC.REV. 592/2018 & CM APPL. 51502/2018 (stay), RC.REV. 274/2019 & CM APPL. 20355/2019 (stay) & 20356/2019 (under Order 41 Rule 27) & RC.REV. 466/2018 & CM APPL. 39666/2018 (stay), CM APPL.39667/2018 (under Order 41 Rule 27)

1. All these three petitions pertain to a common property in which the three tenanted premises of different tenants are situated. Since identical eviction petitions have been filed, the petitions are being taken up for disposal together.

2. In RC.REV. 592/2018 and RC.REV. 274/2019, leave to defend has been rejected and eviction order has been passed. In RC.REV.466/2018, leave to defend filed by the respondent/tenant has been granted.

3. Mrs. Ravinder Kaur/landlady, respondent in RC.REV.592/2018 and RC.REV.274/2019 and petitioner in RC.REV.466/2018 has filed eviction petition against the three tenants pleading that she is the owner of the property No.1534-1550, Main Bazar, Pahar Ganj, New Delhi in which the three tenanted premises are situated. The ground for eviction is that she is running a guest house in the name of Vivek Hotel in the said property and since the year 2000 her son Vivek

Juneja has been managing the guest house. The guest house was established by the husband in the year 1968.

4. It is contended that the guest house has gained goodwill and in order to successfully compete with other hotels and guest houses in the vicinity, the guest house of the landlady needs revamping, improvement, improvisation, better infrastructure, enlargement of areas of some existing services such as reception, office, restaurant-cum-bar and cafe.

5. It is alleged in the eviction petition that the guest house has 50 rooms, out of which 4 rooms are on the ground floor, 11 on the first floor and 22 on the second floor, 13 on the third floor. The hotel has two restaurants one in the name of Sam's Restaurant and Bar and another in the name of Sam's Cafe. The restaurant is located on the mezzanine floor of the property.

6. It is alleged that the total seating capacity of both the restaurant and café is 65 persons. It is further averred that there are several guest houses and hotels in the vicinity and in order to survive in the competition, continuous improvement and upgradation is required every now and then. The restaurant and the café are the integral part of the hotel and guests need comfortable stay as well as dining and relaxation facilities in the hotel.

7. It has been averred that to revamp the hotel and make the same eye-catching and presentable, the reception area as well as the

restaurants need to be revamped and made attractive to customers, who lodge in the hotel as well as the customers, who visit the hotels.

8. It is contended that the guest house is adversely suffering because of inadequate infrastructure and need urgent improvisation. It is contended that the accommodation available in the building is inadequate for the purposes of expansion and improvisation and the petitioner requires the tenanted premises for the purposes of expansion of her business.

9. It is submitted that apart from the subject premises, eviction petitions were filed against other tenants, having premises in the same property. Two tenants have handed over possession and others have undertaken to handover the possession in the near future.

10. Affidavits seeking Leave to defend were filed by the tenants, *inter alia*, contending that the need of the petitioner was not bonafide and there was no requirement. It was contended that the landlady had sufficient accommodation available to her and the averments in the eviction petition expressed a mere desire rather than a bonafide necessity for expansion.

11. It is contended on behalf of the tenants that the hotel has enough space in the existing reception area and admittedly has at least two functional restaurants which are sufficient to accommodate the guests. Further it is averred on behalf of the tenants that the landlady is not running the business herself and has let out the premises to third

parties, who were running the business.

12. The petitioner in RC.REV. 592/2018 had specifically contended in his leave to defend that the hotel has been let out by her to one Mr. Pankaj Roy of 811, Gali Dor Wali, Paharganj, New Delhi and Naresh, who have taken the same on rent and are operating the hotel and paying annual rental of Rs.11 lakhs to the landlady.

13. It has further been contended that there is plenty and ample space available in the reception as well as the restaurants to accommodate the guests. The tenant in the said petition has also placed on record certain photographs, which have been sourced from the website of the hotel, to show that there is a large reception area, restaurants and other amenities being projected in the hotel.

14. It is contended by learned counsel appearing for the tenants that as per the case of the petitioner, the occupancy rate is about 60%. In a 50 rooms hotel, it would translate to 30 rooms being occupied on an average at one point of time. Learned counsel for the tenants submits that even if assuming all the rooms were occupied on double occupancy basis, it would mean 60 guests are residing at one point of time and even if assuming all the guests dine together, as per the admitted case of the landlady, the restaurants have a seating capacity of 65 persons in the two restaurants, which is sufficient to accommodate the inhouse guests.

15. Further, it is contended that the website of the hotel has shown

that there is a roof top restaurant also, which has not been so disclosed in the eviction petition.

16. Section 25(B)(5) of the Delhi Rent Control Act lays down that the controller shall give leave to a tenant to contest the application for eviction if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises.

17. Mere desire is distinct from necessity. Mere desire would not entitle the landlady an order of eviction as distinct from a bonafide necessity.

18. In the present case, the tenants have taken several pleas. They have averred that the landlady does not run the business herself but has let out the hotel to third parties from whom she is receiving rentals and as such she has no bonafide requirements of the premises. Further, plea of the tenants is that, the ground that she has insufficient accommodation for reception as well as restaurant area is *prima facie* contradicted by the photographs which have been placed on record.

19. Further contention is that there are three restaurants and only two have been shown, which also are sufficient for the in house guests.

20. As noticed above, the contention of the learned counsel for the tenants is that on the own showing of the landlady, the number of

guests staying in the guest house at any point of time would be 60 and the accommodation available is sufficient for accommodating said guests in the restaurants as well as the reception area.

21. Clearly, it is a matter of trial as to whether the need of the landlady, as projected, is a genuine need or is a mere desire. The facts which have been pleaded by the tenants in their affidavit seeking leave to defend, in my view, constitute sufficient grounds for grant of leave to defend. In case the facts as pleaded by the tenants are proved by them at trial, it would disentitle the landlady from an order of eviction.

22. In view of the above, I am of the view that the impugned order dated 31.08.2018 in RC.REV. 592/2018 and the impugned order dated 07.12.2018 in RC.REV.274/2019, whereby, the leave to defend applications, filed by the tenants (petitioners in RC.REV. 592/2018 and RC.REV.274/2019), have been dismissed, suffer from infirmity inasmuch as the Rent Controller has erred in not appreciating that the tenants had disclosed facts, in their affidavit seeking for leave to defend, which would disentitle the landlady from obtaining an order of eviction.

23. Accordingly, the impugned orders dated 31.08.2018 in RC.REV. 592/2018 and impugned order dated 07.12.2018 in RC.REV.274/2019 are set aside. The petitions i.e. RC.REV. 592/2018 and RC.REV.274/2019 are allowed.

24. List the eviction petitions for consideration before the concerned Rent Controller on 27.09.2019. Parties shall file their written statements within a period of 30 days from today.

25. In RC.REV. 466/2018, by order dated 31.08.2018, the Rent Controller has granted leave to defend *inter alia* on the ground that the site plan filed by the landlady does not disclose or describe the tenanted premises correctly and further that the landlady has not disclosed that one of the portions in the subject property has been rented out to a third party, which is running a tours and travel agency from there.

26. Though contention of learned counsel for the landlady is that the site plan correctly describes the premises and even if dimensions are not mentioned or there is an internal partition in the mezzanine floor that would not change the description of the property as the tenanted premises is clearly identifiable as it has a separate number and is bounded by four walls.

27. Though the contention of the landlady with regard to the portion that has been rented out for the purposes of tours and travels business is that the said business is ancillary and integral to hotel business, however, this matter would be a matter for trial.

28. In view of the above I find no infirmity in the view taken by the Rent Controller in order dated 31.08.2018 impugned in RC.REV. 466/2018, whereby, leave to defend has been granted to the

respondent tenant.

29. Accordingly, I find no merit in this petition i.e. RC.REV. 466/2018. The same is, accordingly, dismissed.

30. Keeping in view the facts and circumstances, the Trial Court is directed to expedite the proceedings.

31. It is further clarified that the observations contained herein are *prima facie* in nature and only for the purposes of consideration of the application for grant of leave to defend and will have no bearing on the finding of the Trial Court rendered at the final stage post a trial.

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

AUGUST 27, 2019
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SANJEEV SACHDEVA, J