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

% Judgment delivered on: 17.10.2019
+ RC.REV. 464/2017 & CM APPL.37312/2017

SURINDER KUMAR SOOD Petitioner

versus

SURESH KUMAR MATHUR Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Sachin Datta, Senior Advocate with Ms. Prity Sharma, Ms. Rijuta Mohanty and Mr. B. L. Sharma, Advocates.

For the Respondent: Ms. Prachee Satija, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 29.05.2017 whereby the leave to defend application filed by the respondent has been allowed.
2. Subject petition was filed by the petitioner under Section 14(1)(e) of the Delhi Rent Control Act seeking eviction of the respondent from one shop on the ground floor bearing Shop No.1 in property bearing No.H-12, Main Market, Laxmi Nagar, Delhi, more particularly as shown in red colour in the site plan annexed to the eviction petition.

3. The ground of eviction pleaded by the petitioner was that the only son of the petitioner is fully dependant upon him and petitioner wanted to expand his business which is presently being run in the name and style of M/s. New Fashion Wear from another shop on the ground floor in the subject property.

4. It is contended that petitioner deals in trading of artificial jewellery and ladies' garments and wanted to expand the business by making requisite alterations on the ground floor in his property. It is contended that there are only two shops on the ground floor including the tenanted premises. Further it is pleaded in the petition that petitioner does not have any other property, commercial or residential in Delhi except the subject property and he bonafidely needed the tenanted premises to expand his business jointly with his only dependant son.

5. Respondent filed the leave to defend application admitting the relationship of landlord and tenant.

6. The ground raised by the respondent is that it was a case of additional accommodation. It is contended, in the affidavit in support of the leave to defend application, that petitioner/landlord has concealed several facts.

7. It is contended that in the year 2005 petitioner had shifted from the ground floor of the property to the first floor after renovating the

first floor and second floor. The ground floor was left in the form of two huge halls besides the shop in the possession of the petitioner. It is contended that the shop in possession of the petitioner and two halls at the back of the shop constitute a single unit from which the petitioner was running a gift shop.

8. It is contended that in the month of February, 2015 petitioner raised a temporary partition on the ground floor made of plywood thereby partitioning the shop in his possession and the halls at the back just to deliberately show that the shop in his possession was small in size. It is contended that the temporary partition on the ground floor has been created to show artificial scarcity.

9. Further it is contended that the petitioner has shown the two halls as vacant but has not disclosed anything about the same in the eviction petition. It is contended that petitioner was using the two halls till January, 2016 along with his shop and it is only just prior to filing of the eviction petition that partition has been built to show artificial scarcity.

10. Further it is contended that the petitioner has not given any explanation with regard to alternative accommodation available in the subject property as also the fact that there are two room which are available on the second floor which are not being used at all.

11. It is further contended in the affidavit that the son of the

petitioner is not capable of carrying on independent business on account of his slow mental growth and extremely low IQ. It is contended that petitioner has no reason to expand his business.

12. By the impugned order dated 29.05.2017 the Rent Controller has granted limited leave to defend to the respondent only on the grounds accepted and not on the grounds rejected.

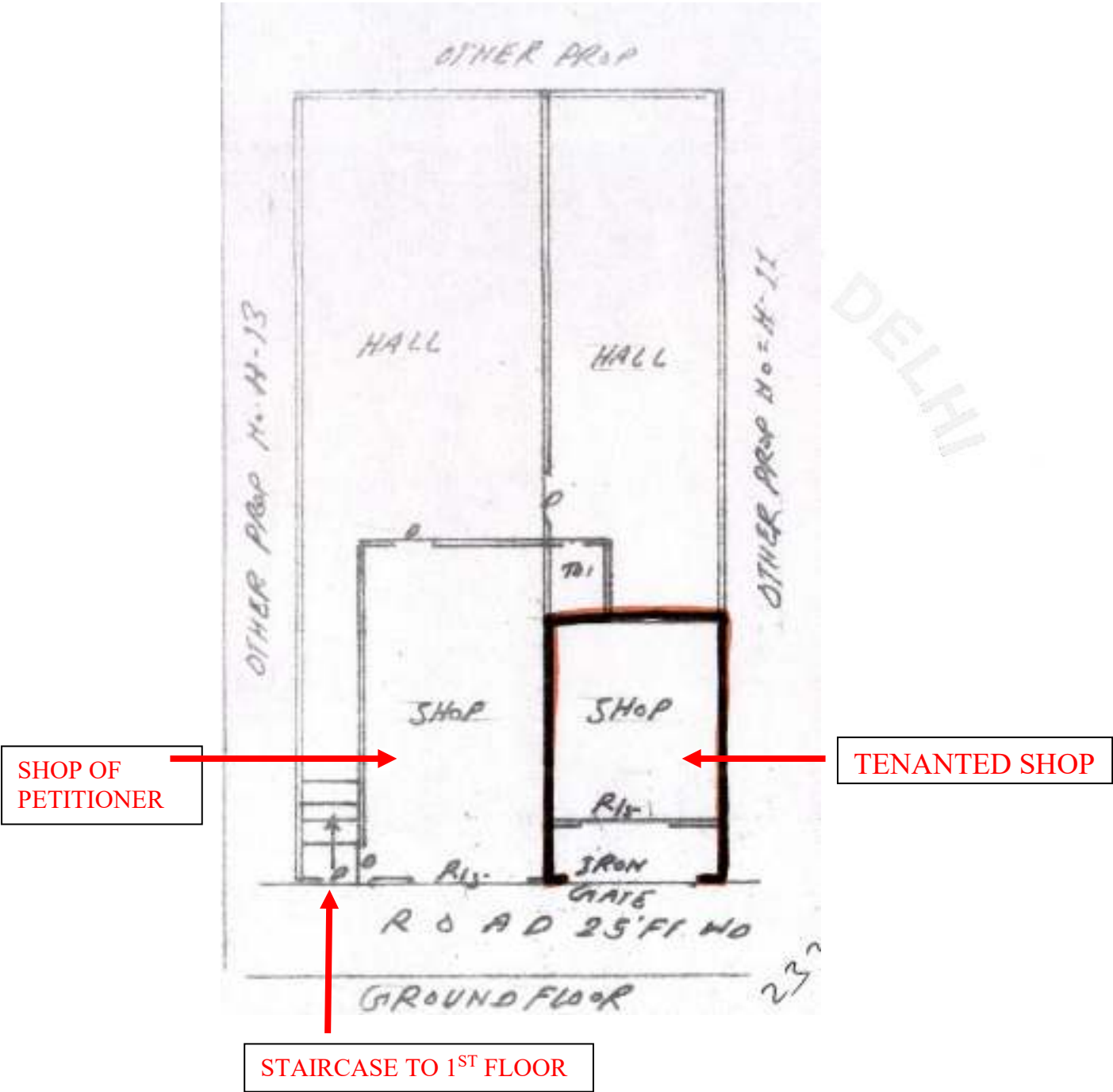
13. Rent Controller has recorded a finding that the need of the petitioner for expansion of business has remained unchallenged. It is pointed out by learned counsel for the respondent who submits that respondent has challenged the need for expansion.

14. It is further contended by learned counsel for the respondent that petitioner has merely expressed a desire to expand and no material has been placed on record to show that there is any necessity leave alone a bonafide necessity to expand the business.

15. With regard to availability of alternative accommodation, the Rent Controller has noticed the contention of the respondent that as per the site plan the shop as also the hall behind the shop is a single unit.

16. Though, it is denied by learned senior counsel for the petitioner that the hall and the shops are single units, however, it is conceded that the only access to the hall is through the shop which is in possession of the petitioner.

17. The Site Plan of the Ground floor of the subject property as filed by the Petitioner along with the eviction petition is as under:



18. If one were to peruse the site plan which is annexed to the eviction petition, it clearly shows that on the front of the building there are only two shops, one which is the tenanted premises and the other which is admittedly in possession of the petitioner.

19. In the site plan annexed to the eviction petition, the size of the shops has not been mentioned, however, the shop in possession of the respondent/tenant has been shown smaller than the shop in possession of the petitioner. In the impugned order the dimensions of the shop in possession of the respondent is mentioned as 8 feet x 16.5 feet.

20. The site plan further indicates that apart from the two shops on the front of the property there is only one staircase which leads straight to the first floor. There is no access to the hall at the back except through the shop in occupation of the petitioner. The property is bounded on all the three sides from other properties.

21. Clearly the contention of the petitioner that the halls are not part of the shop in his possession is incorrect. There is no access to the halls behind the shop except through the shop which prima facie supports the contention of the respondent that the petitioner was using the halls in conjunction with his shop.

22. Petitioner has not disclosed anything qua the two halls or that they are available or being used. If one were to examine the site plan, then it is clear that if the partition between the halls and the shop is

removed, the premises in possession of the petitioner becomes far greater than the tenanted premises.

23. There is no error in the finding returned by the Rent Controller that the affidavit in support of the leave to defend application raises triable issues and Respondent has disclosed such facts which, if proved, would disentitle the landlord from an order of eviction.

24. It is pointed out by learned counsel for the respondent that the Rent Controller while granting leave has erred in holding that leave is granted only on the grounds accepted and not on the grounds rejected.

25. At the time of consideration of the leave to defend application, the Rent Controller has to form a prima facie opinion. The consideration at the stage of grant of leave to defend is restricted to examining as to whether there are facts disclosed by the respondent/tenant which, if proved, would disentitle the landlord from an order of eviction.

26. The findings returned by the Rent Controller at that stage are only for the purposes of disposal of the leave to defend application and are not findings of facts returned after appreciation of evidence and as such cannot be conclusive at the final stage.

27. Once leave to defend is granted, the order works itself out and it is open to the respondent to raise additional pleas and grounds in the Written Statement to defend the eviction petition. Tenant cannot be

bound down to the grounds taken in the Affidavit in support of the Leave to Defend application after the grant of leave to defend. Nothing prevents him from taking additional pleas in the Written Statement. However, admissions made in the Affidavit in support of the Leave to Defend application would continue to bind him and cannot be withdrawn. Facts which are admitted, or which should have been denied and are not denied, would be binding.

28. In the present case, since respondent has not denied that the relationship of landlord and tenant exists between the parties or that petitioner is the owner of the property, same would be binding upon the Respondent.

29. In view of the above, I find no infirmity in the impugned order dated 29.05.2017 in so far as it grants leave to defend the eviction petition to the Respondent. However, it is clarified that the leave shall not be restricted only to those grounds accepted by the Rent Controller.

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

31. Needless to state that the findings of fact returned herein are also prima facie and would not bind the Rent Controller at the stage of final consideration of the eviction petition.

32. Keeping in view the fact that petitioner is stated to be over 80

years old, Rent Controller is directed to expedite the proceedings and endeavour to conclude the same within a period of nine months from the next date before the Rent Controller.

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

OCTOBER 17, 2019

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SANJEEV SACHDEVA, J

