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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 573/2017**
PRITHVI RAJ KHANNA

..... Petitioner

Through : Mr.Vijay Kinger, Advocate.

versus

SUMIT MALHOTRA

..... Respondent

Through : Mr.K.K.Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **12.03.2019**

This petition is filed by the landlord/petitioner to set aside the judgment dated 05.09.2017 passed by the learned ACJ/CCJ/ARC, District Shahdara, Karkardooma, New Delhi in eviction petition ARC No.1203/2016. However, strangely enough, in his revision he prays the eviction suffers from illegality and is liable to be set aside by granting leave to defend but whereas the impugned order itself grant leave to defend to the respondent herein.

Nevertheless, I have perused the eviction petition filed under Section 14(1)(e) DRC Act for one shop bearing private no.II, in property no E-4/12, Krishna Nagar, New Delhi-110051, let out and used as a chemist shop by the respondent herein. The rent is Rs.400/- per month, excluding electricity and other charges. As per the eviction petition the respondent was inducted as a tenant in the premises on 16.05.1999 through a written rent agreement for commercial purposes.

It is alleged the petitioner's son is engaged in the business of

general store in shop no.I and his wife helps him in his business, besides the petitioner. It is alleged his son is willing to extend his general store business and wish to convert it to a big departmental store for which big space in front is required. The petitioner's son has in his possession shop no. I and III in the same property but now wants to add shop no.II to have big space for his departmental store. It is alleged the petitioner has too much stock of general store, some of it is lying in his residential house due to non-availability of commercial space.

Petitioner has one son and two daughters; all are married. It is alleged when his daughters visit his home with their husband and children they feel uncomfortable due to presence of labourers when they enter the residential portion to fetch such stock, hence privacy is required and they need the shop for maximum utilisation of the space and to expand their business.

Prima facie, the need is for *expansion* of the business and is so dealt with by the learned ARC in para 7 of the judgment as under:

“7. After the considering the submissions made by the Ld. Advocates for the parties and perusing the record of the Court file, I find that the first ground taken by the respondent does not raise any triable issue because even if, Sh. Rohit Khanna, son of the petitioner is independent, married and well settled, he would continue to be dependent upon the petitioner, for his need of commercial premises, till he manages to obtain/buy his own commercial premises. In respect of the remaining grounds taken by the respondent, I find that they raise triable issues because the need pleaded by the petitioner that the tenanted premises is^ required for use by Sh.-Rohit Khanna, son of the petitioner, on account of the fact that the existing space available with Sh. Rohit Khanna, son of the petitioner is insufficient for storage of stock of his general store, is actually not supported by the photographs filed by the petitioner,

alongwith the petition. The said photographs do not reflect, if the stock showed therein is in the-residential area of property no. E-4/12, Krishna Nagar, Delhi-110051. Also, the said photographs do not clearly support the plea of the petitioner that the shop no.III, adjacent to the tenanted premises is not locked and is being used by Sh.Rohit Khanna, son of the petitioner.- Further, I find that the remaining grounds taken by the respondent raise triable issues because the need pleaded by the petitioner that the tenanted premises is required for merging of all the three shops at property, no. E-4/12, Krishna Nagar, Delhi-110051, is actually a need for additional accommodation as Sh. Rohit Khanna, son of the petitioner, already has in his possession, shop no.I and III, adjacent to the tenanted premises. In this regard, reference is craved to the law laid down in Sanjay .Chug v Opender Nath Ahuja & Anr., 207 (2014) DLT 271. In the said judgment, the Hon'ble High Court of Delhi has observed as under:

"Admittedly, respondents had in their possession of commercial accommodation from, where their two sons -were operating business, their need projected would be nothing but that an additional accommodation for setting up new business by one of son or expanding existing business - if leave to defend was refused an opportunity to test requirement as averred by landlord Was denied which was not scheme of Act- Petitioner had been able to raise prima facie triable issues which were ignored by Trial Court - Petitioner who was. operating business for last many decades and was tenant. since more than 62 years could not be evicted without trial-or without considering affidavit filed along, with Application for leave to defend in view of settled law on this aspect - There ' was no dispute that Respondent was entitled to have expansion of her business and could also seek additional accommodation for same, but, then, it was necessary to know that space available was either insufficient or not suitable for doing business It was triable issue, which was seen to have been raised, by Petitioner, and projected requirement-of Respondent was required to be tested by Controller.""

Since the petition relates to the expansion of the business and

admittedly the petitioner has in his possession two shops on the ground floor and the photographs filed do not reflect such stock is actually lying in premises E-4/12, Krishna Nagar, New Delhi or if such stock belong to the petitioner's son, hence in the light of these facts, there is no illegality or perversity in the impugned order passed by the learned ARC.

Thus the petition is dismissed. Pending applications, if any, also stands dismissed.

YOGESH KHANNA, J.

MARCH 12, 2019

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