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

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Judgment delivered on: 21.01.2020

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RC.REV. 11/2018

DALIP KUMAR

..... Petitioner

versus

PAWAN KUMAR

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Amarjit Singh, Advocate.

For the Respondent: Mr. Rama Shanker with Mr. Ramesh Thakkar, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 07.11.2017, whereby leave to defend application filed by the petitioner has been dismissed and an eviction order passed.

2. Respondent had filed the subject eviction petition seeking eviction of the petitioner on the ground of bonafide necessity under Section 14(1) (e) of the Delhi Rent Control Act, 1958, from one room, one kitchen, bathroom and common verandah on the ground floor and common toilet on the first floor in property No.X/1371, Raj Garh Colony, Opposite DAV School, Delhi-110031, more particularly as shown in red colour in the site plan annexed with the eviction petition.

3. The ground of eviction taken by the respondent is that the wife of the respondent does not get along with his mother and accordingly, he wanted to shift his parents to the tenanted premises so that they could live peacefully away from his wife.

4. It is contended in the eviction petition that respondent has no other alternative suitable residential space in Delhi where his parents can reside except the tenanted premises.

5. It is further contended that the rooms in occupation of the respondent on the ground floor and the first floor in the subject property are packed with furniture and other household items and gadgets and the first floor is not suitable for the old and aged parents of the respondent.

6. Subject leave to defend application was filed by the petitioner *inter alia* contending that respondent has sufficient accommodation available in the subject property inasmuch as there are two rooms on the ground floor and one room on the first floor, which are available to the respondent and are lying vacant. Besides the said rooms, it is contended that the Wife and mother of the Respondent own another property which has not been disclosed.

7. During the pendency of the proceedings, the father of the respondent expired. Accordingly, the need of the respondent has reduced to that of accommodating only his mother.

8. With regard to three rooms that are stated to be in the possession of the respondent, the case of the petitioner is that the rooms are lying vacant and are available to the respondent for accommodating his mother. On the

other hand the admitted case of the respondent is that are three rooms – two on the ground floor and one on the first floor which are in the possession of the respondent but it is contended that they are packed with furniture and other household items and gadgets.

9. Admittedly Respondent has three rooms in his possession in the subject property. Two rooms are on the ground floor and one on the first floor. Respondent does not reside in the subject property and resides in the property at a distance from this property. There is no explanation as to why respondent has not utilized these three rooms for accommodating his mother when the three rooms are in his possession. It is not the case of the respondent that he has stored furniture and household goods in this property because he has paucity of space in the property where he is presently residing. Respondent has not clarified as to what is the kind of furniture and the household goods which have been stored in the three rooms, which are in his possession.

10. Further, the question as to whether the three rooms are vacant or packed with furniture and other household items requires examination by the Rent Controller.

11. Furthermore, it is the case of the petitioner that the plea that the wife and the mother of the respondent do not get along is also a sham story as both of them have jointly purchased another property in the same vicinity which has not been disclosed. Learned Counsel submits that if there was a dispute, they would not have jointly purchased a property.

12. The Rent Controller in the impugned order has clearly erred in

holding that no triable issue arises and has consequently erred in declining to grant leave to defend the eviction petition to the petitioner.

13. The affidavit filed by the petitioner in support of the leave to defend application, raises triable issues and pleads such grounds, which, if proved, would disentitle the respondent landlord from an order of eviction. Accordingly, leave to defend the eviction petition is granted to the petitioner.

14. List the eviction petition before the Rent Controller on 28.02.2020, on which date petitioner shall file his written statement before the Rent Controller.

15. Keeping in view the facts and circumstances of the case and also the fact that the mother of the respondent is stated to be aged over 80 years, Rent Controller is directed to expedite the proceedings and endeavour to conclude the same within a period of one year from the next date fixed before the Rent Controller

16. Petition is allowed in the above terms.

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

SANJEEV SACHDEVA, J

JANUARY 21, 2020/st