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

% Judgment delivered on: 28.01.2020

+ RC.REV. 96/2019

USHA & ORS

..... Petitioners

versus

SHISH PAL SINGH

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Deepak Vashishtha with Mr. Mahesh Saroj,
Mr. S.P. Yadav and Mr. Rajesh Varma, Advocates.

For the Respondent: Mr. Ramjee Pandey, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

RC.REV. 96/2019 & CM APPL.7509/2019 (stay)

1. Petitioners impugn order dated 20.08.2018, whereby the leave to defend application filed by the petitioners has been dismissed and an eviction order passed.

2. Respondent had filed the subject eviction seeking eviction of the petitioners on the ground of bonafide necessity under Section 14(1) (e) of the Delhi Rent Control Act, 1958, from a shop measuring 5 x 10 feet in property No.D-535, Tagore Garden Extension, New Delhi-110027, more particularly as shown in red colour in the site

plan annexed with the eviction petition.

3. Subject eviction petition was filed by the respondent contending that the respondent is an old age person and he and his wife are suffering from arthritis and are not in a position to climb the stairs, therefore, the ground floor of the said premises is required for their bonafide use.

4. It is further contended that the family of the respondent comprises of one son, his wife and two children and both the children are school going and require a separate study room.

5. Subject leave to defend application was filed by the petitioners contending that the respondent has not disclosed that the respondent is in possession of the part of the ground floor, first floor and second floor and on each floors there are two room, which has been admitted even in the reply to leave to defend application.

6. Learned counsel for the petitioners points out that no site plan depicting the first and second floor or the area on the ground floor has been filed by the respondent.

7. Learned counsel for the petitioners submits that even if the plea of the respondent with regard to requirement were to be taken to be correct, respondent has two rooms on the ground floor, which are sufficient for the respondent and his wife. Besides the respondent and his wife, he has only one married son with two minor school going

children and the accommodation in possession of the respondent, i.e., 6 rooms – two rooms set each on the ground, the first and the second floor, are sufficient for a family of four adults and two children. He further contends that the same is a triable issue and the Rent Controller has not noticed the same.

8. The Rent Controller, in the impugned order, has refused to grant leave solely on the ground that the respondent and his wife are above 60 years of age and unable to climb the stairs.

9. In my view, the Rent Controller has erred in not appreciating that admittedly there are two rooms on the ground floor which could be sufficient for the requirement of the respondent and his wife and there are also four rooms on the upper floors which could be used by the son of the respondent and his children. The Rent Controller has not taken into consideration the available accommodation with the respondent on the ground floor and the upper floors.

10. Perusal of the leave to defend application shows that the petitioner has been able to raise a triable issue and has pleaded show facts, which, if proved, would disentitle the respondent landlord of an order of eviction.

11. In view of the above, the impugned order dated 20.08.2018 declining to grant leave to the petitioners cannot be sustained and is accordingly set aside. Leave to defend the eviction petition is granted

to the petitioner.

12. List the eviction petition before the concerned Rent Controller on 04.03.2020, on which date petitioner shall file his written statement before the Rent Controller.

13. Petition is allowed in the above terms.

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

JANUARY 28, 2020
st

SANJEEV SACHDEVA, J

