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

% Judgment delivered on: 27.02.2020

+ RC.REV. 114/2019 and CM APPL. 8872/2019

AMAN KHATTAR

..... Petitioner

versus

JAWAHAR LAL

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Krishnendu Dutta and Mr. Kapil Gupta,
Advocates.

For the Respondent: Mr. Rajat Aneja and Ms. Rajula Gaur, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner/tenant impugns order dated 16.10.2018, whereby the leave to defend application of the petitioner had been dismissed and an eviction order passed.

2. Respondent/landlord had filed the subject eviction petition seeking eviction of the petitioner on the ground of bonafide necessity under Section 14(1) (e) of Delhi Rent Control Act, 1958 with regard to two rooms on each of the two floors (first floor and second floor) admeasuring approx. 8.5 feet x 18.5 feet area on each of the said

floors of property bearing Shop No. 146, First and Second Floor, Jawahar Hosiery Market, Sadar Bazar, Delhi – 110006.

3. Subject petition was filed by the respondent *inter alia* contending that he requires the tenanted premises comprising of First and Second Floor for his own commercial use of conducting business therefrom because the ground floor portion in occupation of the respondent in the same building is extremely insufficient to carry on his existing business of bags, raincoats etc. which is being carried on in partnership with his 3 sons.

4. It is contended in the eviction petition that all the three sons are married and each of them has a large family to support comprising of their respective wives and children.

5. It is contended that they are carrying on their business together from the ground floor portion of the same property, however, owing to large composition of the family and their growing needs over passage of time, urgent need is felt for more space for running the ongoing business which is being carried on from ground floor.

6. It is further contended that it has become difficult for all the four partners of the Partnership firm to sustain themselves on a meagre income of the Partnership as their families are growing. It is contended that respondent urgently requires additional space on the first and second floor.

7. It is further contended that the tenanted premises is part of the same building in which the respondent and his three sons are carrying on business from the ground Floor and the business of bags and raincoats, which is being carried on by the partnership firm is quite mediocre on account of acute shortage and paucity of space and therefore, the respondent and his three sons besides their family members are finding it very difficult to meet their day-to-day expenditure in these days of high inflation.

8. It is contended that paucity of space on the Ground Floor from where the partnership firm of the respondent is carrying on business is depicted by the fact that the respondent is forced to keep his goods/stocks outside the shop during the day and the first and second floor would pave the way for them to expand their business horizon which would result in generation of more income for the growing needs of the family which is dependent upon the said business for their sustenance.

9. It is further contended in the eviction petition that the respondent had earlier filed the eviction petition on the ground of bonafide necessity against two co-tenants qua a single tenancy, in respect of Shop Nos. 219 and 220, Jawahar Hosiery Market, Sadar Bazar, Delhi and the said premises was required for settling one of the sons i.e. Girish Chugh, who in addition to the continuing business, wanted to start his own independent business in view of the pressing financial needs.

10. It is further contended that respondent is in occupation of Shop No. 6425/1, Factory Road, Nabi Karim, New Delhi – 110055 from where the respondent carries on his own proprietorship business under the name and style of M/s Jawahar Leather House, however, none of his sons have any right or interest therein.

11. It is further contended that the respondent is in possession of a Godown on the First Floor of the Building, bearing Shop No. 240, Sadar Bazar, Delhi which is neither suitable nor feasible for the petitioner in any manner for the conduct of his business.

12. Further, it is stated that respondent is a tenant in Shop No. 167, Katra Bariyan, Delhi, the tenancy of which was in the joint names of the respondent along with the deceased wife of his real brother and after the demise of wife of his brother, there are disputes with the children of his brother and the shop is lying closed for last more than 19 years and no business is being conducted therefrom.

13. It is further stated that respondent is a tenant in a Godown at 96, Khurshid Market, Sadar Bazar, which is in the joint tenancy of the petitioner along with his younger brother and eviction petition has been filed by its landlord against the respondent and his brother from the said premises and the same is pending and there is a threat of eviction therefrom.

14. Subject leave to defend application has been filed by the petitioner contending that respondent is owner of several properties. A

printout from a website was filed along with the leave to defend application. Respondent has categorically denied that respondent is the owner of any of the properties except the properties as disclosed in the eviction petition.

15. It is now an admitted position that apart from the properties as disclosed in the eviction petition, petitioner has not been able to show any other property, which is owned or possessed by the respondent.

16. The main ground of the petitioner seeking leave to defend is that there is no bonafide need of the tenanted premises. It is submitted that need is distinct from a mere desire and an eviction under Section 14(1)(e) of the Delhi Rent Control Act, 1958 is permissible only in the case of a bonafide need as distinct from a mere desire.

17. Learned counsel for the petitioner contends that the main ground raised by the respondent that the income generated from the ground floor of the subject property is insufficient to support the entire family of the respondent has not been substantiated and there is no material placed by the respondent on record to show as to what is the income or that the income is insufficient for meeting the requirements of the family.

18. It is further contended that admittedly, the respondent is carrying on several businesses from several premises and as such, there is no bonafide need. It is further contended that the income tax returns filed by the respondent shows that the return of income filed

by the sons is far in excess of the income of the partnership firm and as such, the contention of the respondent that the income of the partnership firm is insufficient for meeting the requirements of the family is incorrect and not substantiated.

19. Respondent in the eviction petition has disclosed that respondent carries on business of selling bags and raincoats from ground floor of property No. 146, Jawahar Hosiery Market, Sadar Bazar. The tenanted premises are on the first floor of the subject property. Respondent has also stated that respondent had sought eviction of another tenant from property No. 219-220, Sadar Bazar and one of his sons has already started his business therefrom.

20. With regard to property No. 240, Sadar Bazar, which is a godown on the first floor, it is categorically averred by the respondent that the same is not suitable for the purposes for which the present eviction has been filed. The godown at first floor of property No. 240, is at a distance from the tenanted premises. Further, it has also been brought on record that property No. 167 at Katra Bariyan is tenanted shop of which the respondent along with the legal heirs of his deceased brother are tenants and this shop is lying closed from 19 years. It is not the case of the petitioner that that the said shop is functional or open. Rather, the case of the petitioner himself is that said shop is lying closed.

21. With regard to the shop situated at first floor of 96, Khurshid

Market, the case of the respondent is that as the eviction petition has been filed by the landlord against the respondent and his brother, there is a threat of eviction.

22. The main ground propounded by the respondent in the eviction petition is that space in the shop, which is situated on the ground floor of the same property, on the first and second floor of which the tenanted premises is situated, is insufficient for carrying on their business.

23. It is contended by the respondent that during the day, i.e., when the shop is open, goods have to be kept outside the shop as there is insufficient space inside the shop for the same.

24. It is not disputed by the petitioner that respondent keeps his goods and articles outside shop on the street during the day. However, the contention is that everybody in the market keeps the goods outside. Mere fact that every shopkeeper keeps his goods outside does not in itself show that there is sufficient space available inside the shop. It does not sound to reason as to why a shopkeeper shall keep his goods and articles outside the shop on the street to face the elements when there is sufficient space available inside the shop. Clearly, the space on the ground floor of the property is insufficient to accommodate the goods of the respondent and there is need for additional space.

25. The other contention that there is another godown available in

another property also does not appeal to reason as the godown on the first floor on the shop would be far more convenient and suitable than a godown, which is at a distance from the shop.

26. Further, contention of the learned counsel for the petitioner that leave to defend should be granted because there is sufficient income being generated by the sons and no material has been placed by the respondent on record to show that the income generated by the partnership firm or by the businesses carried on by the respondent is insufficient to meet the requirements of the family also does not merit any consideration. The main ground propounded by the respondent in the eviction petition is insufficiency of space on the ground floor of the same property. It is also admitted by the petitioner that goods are kept by the respondent outside his shop on the street.

27. It is settled principle of law that tenant cannot dictate as to how, the landlord has to use the available premises or as to what would be more suitable alternative accommodation than the tenanted premises.

28. Admittedly, respondent is on the ground floor and there is shortage of space and the first floor would be far more convenient and suitable than any other property at a distance.

29. Reliance placed by the learned counsel for the petitioner on the judgments of this Court in *Ranvir Singh vs. Rajinder Kumar Jain* (RC. Rev. 68/2016), MANU/DE/3403/2019 and *Kishan Chand Rathi vs. Uzma Sajid*, (RC.Rev. 91/2019), MANU/DE/3670/2019 to contend

that an eviction under Section 14(1) (e) is to be allowed only in case there is a bonafide need as distinct from a mere desire is misplaced.

30. Said judgments are also not applicable to the facts of the present case. As noticed above, the case of the respondent is not only that the income generated from his businesses is insufficient to meet the requirements of the family but also that there is insufficiency of space on the ground floor, which is substantiated from the fact that respondent is constrained to keep his goods outside the shop during the day. Thus, it cannot be said that there is a mere desire and not a bonafide need. The mere fact that the sons of the respondent are earning and the income tax returns are showing income more than the partnership firm has been generating is also no ground for denying eviction, especially, when one of the grounds pleaded by the respondent is paucity of accommodation for the business which is being carried on.

31. I find no infirmity in the view taken by the Rent Controller that the affidavit in support of the leave to defend application does not raise any triable issue or does not show facts, which if proved, would disentitle the respondent/landlord from an order of eviction.

32. I find no merit in the petition, the petition is accordingly dismissed.

FEBRUARY 27, 2020/PB

SANJEEV SACHDEVA, J.