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

Date of Decision : 05.11.2020

+ **RC.REV. 201/2020 & CM No.22328/2020 (Stay)**

SHRI PAWAN KUMAR SETHI & ORS. Petitioners

Through Mr.Jai Sahai Endlaw,
Mr.Deepak Gupta, Advs.

versus

SHRI ANIL KUMAR SINGHAL & ANR Respondents

Through Mr.Shiv Charang Garg,
Mr.Imran Khan, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This hearing has been held by video conferencing.
2. This petition has been filed by the petitioners challenging the order dated 26.02.2020 passed by the learned Rent Controller (Central), Tis Hazari Courts, Delhi, in Eviction Petition E.No.78832/2016 by which the application seeking Leave to defend filed by the petitioners has been rejected and the petitioners have been directed to vacate the tenanted shop, that is, Shop on the Ground Floor of Premises bearing No.D-28, Kamla Nagar, Delhi.

3. The learned counsel for the petitioners assails the Impugned Order by contending that at the stage of considering grant of leave to defend, the learned Rent Controller was to only consider the probable defence of the petitioner. In the present case, the respondents have pleaded their *bona fide* necessity for the shop in the following manner:

“ix) That the family of the petitioner No.1 consists or himself, his wife. Smt Suman Singhal, two children i.e. one son namely, Shri Anish Singhal, one daughter, Smt. Shikha Kasera. It is submitted that Shri Anish Singhal has his wife and one son, Master Kanav Singhal. Aged, 5 years, studying in 1st standard at Bal Bharti Public School Pusa Road, New Delhi. It is submitted that petitioner No.1 is doing the business of jewelleries on the ground floor of the property in question under the name and style of M/s Dwarka Sons. It is submitted that Shri Anish Singhal is assisting to the petitioner No. 1 in the said business and now, he wants to stand on his own legs and wants to do his own business from the premises in question.

x) That the family of petitioner No.2 consists of himself, his wife, Smt.Neeta Singhal and two children namely Smt. Ritika Gupta, married daughter, and Shri Suraj Singhal, aged 22 years, of marriageable age. It is submitted that the petitioner No.2 is doing business of jewelleries under the name & style of M/s Dwarka Sons from the ground floor of the premises in question. It is submitted that Shri Suraj Singhal is assisting to his father in the said business. It is submitted that Shri Suraj Singhal wants to stand on his own legs and wants to do business of readymade garments because Kamla

Nagar is a big market for selling of readymade garments.”

4. The learned counsel for the petitioners submits that the son of the respondent no.1 was aged about 30 years and therefore could not be said to be dependent upon the respondent no.1 for commercial premises. As far as the son of the respondent no.2 is concerned, though aged about 22 years, was also not stated to be dependent on the respondent no. 2 for the commercial premises. In fact, it was the case of the petitioners that the two children were running a business of Chit Funds from the rear portion of the building, which was shown in the site plan by the respondents as garage. He further submits that the mezzanine floor of the premises was lying vacant and could also be used by the children of the respondents for the business purposes and therefore, the respondents were in possession of adequate alternate accommodation. He submits that the defense of the petitioners, therefore, could not be stated to be *moonshine* so as to deserve a rejection at this stage.

5. On the other hand, the learned counsel for the respondents submits that the Impugned Order has been passed after considering the defence raised by the petitioners and finding no merit in the same. He submits that the children of the respondents were participating in the business run by the respondents and were wanting to now set up their own independent business for which the tenanted premises was required. He submits that barring making a bald statement regarding the use of the garage for separate business by the children, there was

no material placed on record by the petitioners to substantiate such plea. The said plea was in any case, incorrect and false.

6. I have considered the submissions made by the learned counsels for the parties. As observed by the learned Rent Controller in the Impugned Order, barring making a bald statement that children are using the garage portion for running the Chit Fund Business, the petitioners have not filed any document to substantiate this defense. A mere vague denial or averment cannot be considered for granting leave to defend to the tenant. It is a settled law that the petitioners, as a tenant can also not dictate the landlord/respondents to use other premises, which may not be suitable for the business as alternate accommodation. [Reference may be made to ***Ragavendra Kumar Vs. Firm Prem Machinery*** AIR 2000 SCC 354; ***Rishi Kumar Govil vs. Maqsoodan and Ors.*** (2007) 4 SCC 465]. Mezzanine floor on the back of the building cannot be considered as a suitable alternate accommodation for a shop.

7. In any case, as held by Supreme Court in ***Dhannalal Vs. Kalawati and Ors.*** AIR 2002 SC 2572, mere availability of an alternate accommodation cannot be the determinative factor to judge the bona fide requirement, the tenant has to prove that the alternate accommodation is 'suitable' and convenient in all aspects as the Suit accommodation. In the present case, the alternate accommodation pleaded by the petitioners is mezzanine floor and/or garage on the back portion of the building, which cannot be said to be suitable for

running the business as compared to the shop on the main road or on the ground floor.

8. As far as the need of the tenanted shop for settling the children is concerned, it is the case of the respondents that the children were assisting them in the family business and now wished to go independent. This cannot be said to be a fanciful requirement. The plea of the petitioners that the children were running a separate chit fund business was a mere bald assertion with not even prima facie material to substantiate such plea and therefore, was rightly not given any credence by the learned Rent Controller.

9. In view of the above, I find no merits in the present petition and the same is accordingly dismissed. There shall be no order as to cost.

NAVIN CHAWLA, J

NOVEMBER 5, 2020/Arya