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

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Judgment delivered on: 14.01.2020

+ RC.REV. 461/2019

SAURABH SUDHIR

..... Petitioner

versus

MUKESH KUMAR

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr.Peeyosh Kalra and Mr.Tanmay Nagar,
Advocates.

For the Respondent: Mr.Alok Gupta and Mr.D.K.Singh, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 01.06.2019 whereby leave to defend the eviction petition has been granted to the respondent.

2. Petitioner had filed the subject eviction petition seeking eviction of the respondent from one shop forming part of property No.368, Subhash Market, Kotla Mubarakpur, New Delhi, more particularly as shown in red colour in the site plan attached to the eviction petition.

3. The ground of eviction raised by the petitioner in the eviction petition is that the petitioner requires the tenanted shop to settle his wife who is a lab technician holding a degree of B.Sc (MLT-Medical Lab Technology) along with diploma and has experience of over four years in the field.

4. It is contended that the wife of the petitioner is unemployed and wishes to start her own pathological lab/collection centre and for the said purpose she requires all the five shops in occupation of different tenants.

5. It is contended that the tenanted premises is situated at a distance of 2-3 kms from the largest hospital in Delhi. Further it is contended by the petitioner that respondent is the owner of property bearing No.635/22, Subhash Market, Kotla Mubarakpur, New Delhi known as Gole Kuan and the entire property is under the occupation of unauthorised occupants and is not suitable for starting pathological lab/collection centre.

6. Respondent had filed the subject leave to defend application inter-alia contending that petitioner has several shops available in property No.635/22, Subhash Market, Kotla Mubarakpur, New Delhi and commercial spaces which were lying vacant and available to the petitioner.

7. In response to the said averment petitioner has denied the contention and denied that the commercial spaces are lying vacant and available with the petitioner.

8. The Rent Controller has considered the application for grant of leave to defend and also considered the various properties which have been mentioned by the respondent as available and prima facie come to a finding that none of the properties were available to the petitioner, however, with regard to property bearing No.635/22, Rent Controller has held that in view of the stand taken by the respondent that several shops and commercial spaces are available in the said premises and it was obligatory on the petitioner to explain as to what right he had over the property, what is the size, extent, usage, availability of the property, which was not so disclosed. Rent Controller has noticed that petitioner has made only a bald denial and not given any detail or description about the occupants of the property.

9. Rent Controller has further noticed that the said property No.635/22 is also situated in the same market as the tenanted premises and as such the availability and suitability of the same is a matter of trial.

10. It is an admitted case that petitioner is the owner of property No.635/22. With regard to the contention of the respondent that several shops and commercial spaces in the said property are available to the petitioner, petitioner has not placed on record any material to

show as to how much is the space available in the property No.635/22, how many shops/commercial spaces are available and how many of them are occupied and by whom the same are occupied.

11. Once a tenant raises a contention in the leave to defend application that the landlord is owner and in possession of other premises and the landlord admits the properties are owned by the landlord, then it becomes obligatory on the landlord to at least disclose as to who, if not landlord, is in possession and occupation of the said properties and in what capacity.

12. In the eviction petition, petitioner has stated that the property is occupied by unauthorised occupants. Petitioner has neither in the eviction petition nor in the response to the leave to defend application stated as to how many shops/commercial spaces are in the said property and who all are in occupation of the said shops/commercial spaces and in what capacity. Since petitioner has not given any details and disclosed any such fact, the same become a triable issue and the Rent Controller has rightly held that it is a triable issue and accordingly granted leave to defend the eviction petition.

13. Reliance placed by learned counsel for the petitioner on the judgment of this Court in *Harmeet Singh vs. Dalip Kumar & Anr* dated 06.09.2019 in RC.REV.41/2019 is misplaced in as much as in the said case this Court had held that a landlord is obliged to disclose properties which are alternative and suitable and mere non disclosure

of premises which is neither comparable nor an alternative to the tenanted premises would not non-suit the landlord.

14. In the present case, the issue is not with regard to concealment of alternative suitable accommodation but failure to provide any detail of the number of shops/commercial spaces in the alternative property, their occupants and their status.

15. Respondent/tenant has categorically stated that there are several shops/commercial spaces available in the property No.635/22, in response to which apart from a mere denial, petitioner has not disclosed any details thereof. It was obligatory on the part of the landlord to at least have stated as to who all were occupying the shops/commercial spaces in property No.635/22 and what was there status.

16. Since the petitioner has not disclosed the same, it becomes a triable issue as has rightly been held by the Rent Controller that it would require evidence to be adduced by the parties.

17. I find no infirmity in the grant of leave to defend the eviction petition. There is no merit in the petition.

18. The petition is accordingly dismissed.

SANJEEV SACHDEVA, J.

JANUARY 14, 2020/rk