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

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Judgment delivered on: 23.01.2020

+ RC.REV. 223/2017 & CM APPL. 17036/2017 & 54050/2019

M/S AUDIO VISUAL

..... Petitioner

versus

ANJALI MEHRA

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr.Pradeep Kumar Arya, Mr.Raj Karan Sharma, Mr.Aditya Kr.Yadav, Ms.Deepika Khari, Mr.Ashwyn Kalra and Mr.Gaurav Chaudhary, Advocates.

For the Respondent: Mr.Arjun Dewan, Mr.Shahryar Khan and Mr.Akash Arora, Advocates.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 15.12.2016 whereby the leave to defend application of the petitioner has been dismissed and an eviction order passed.

2. Respondent had filed the subject eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 seeking eviction of the petitioner from part of the property bearing No.2/6, Ground Floor, Ansari Road, Daryaganj, New Delhi, more appropriately described in red colour in the site plan annexed to the eviction petition comprising

of one big hall, one common toilet.

3. Respondent had filed the subject eviction petition contending that the property was originally owned by the Hindu Undivided Family of Sh. Ram Narain Mehra who had three sons. Subsequently, a partition took place between the coparceners and the ground floor of the building i.e. 2/6, Ansari Road, Daryaganj, New Delhi came to the share of the husband of the respondent landlady. Her husband sold the property to her on 20.07.1998. Subsequent to the sale deed her husband expired.

4. It is contended in the eviction petition that she resides on the first floor of the subject property which fell to the share of her father-in-law and after his death, a suit for partition and rendition of accounts has been filed by her sister-in-law, wife of the brother of her husband.

5. It is contended that in view of the disputes in respect of the said property, there is no certainty that she would have any place of residence. It is further contended that respondent is also owner of another part of the ground floor which is on rent out and in respect of which another eviction petition has been filed and in the said petition also leave to defend was declined and an eviction order passed. Tenant of the other portion of the property has also filed a Revision Petition impugning the order declining grant of leave to defend.

6. Both the Revision petitions were listed today and taken up for consideration by this Court together.

7. It is contended in the eviction petition that respondent had earlier filed an eviction petition under Section 14-D of the Delhi Rent Control Act being a widow, however, the petition was dismissed on the ground that Section 14-D was not available to the respondent as the letting was neither by her nor by her husband.

8. It is further contended that respondent is also a joint owner of property No.2/16, Ansari Road, Daryaganj, New Delhi which is in occupation of tenants, however, there are proceedings pending between her and the family of her late husband in respect of the said property and directions have been issued to her to render accounts.

9. It is contended that respondent at the time of the filing of the petition had two unmarried daughters and, therefore required a secured place of accommodation for her bonafide need. Further it is contended that she has no other source of income for her sustenance except the rent which is being received by her and in order to overcome her financial difficulties, she along with her daughters intended to use part of the ground floor to establish a small business and the remaining part of the ground floor for the purposes of her residence.

10. It is further contended that for the last 12 years she was suffering from severe joint pains which had aggravated with passage of time and it was difficult for her to climb stairs to the first floor and as such she required the ground floor for residence and for setting up

her business.

11. Subject leave to defend applications were filed by the petitioner contending that the need of the respondent is not bonafide. It is further contended that one of the daughters had got married and further that both the daughters were employed and drawing salary of about Rs.50,000/- per month.

12. It is submitted by learned counsel for the petitioner that pending these proceedings even the second daughter has got married. Besides the above ground it was contended by learned counsel for the petitioner that there is a dispute with regard to the extent of area in the possession of the petitioner. He submits that in the eviction petition it is mentioned that the area in the possession of the petitioner is 400 square feet whereas it is only 280 square feet.

13. It is further contended that the respondent is also owner of a portion of a property bearing No.2/16, Ansari Road, Daryaganj, New Delhi which has been let out to one *Amar Ujala* on a monthly rent of Rs.1,25,000/-.

14. Eviction petition has been filed by the respondent contending that she is personally residing in a property which had fallen to the share of her father-in-law, in which after his demise there are several co-sharers and a Suit for Partition is pending.

15. Further, in respect of property No.2/16, Ansari Road,

Daryaganj, New Delhi it is contended that said property is also subject matter of the Suit for Partition and directions have been issued to her to render accounts with regard to the rent being received by her.

16. Even the case of the petitioner is that the property bearing No.2/16, Ansari Road, Daryaganj, New Delhi is not vacant or available to the respondent for occupation as the same is in occupation of a tenant.

17. It is not in dispute that the first floor of the subject property i.e. 2/6, Ansari Road, Daryaganj, New Delhi, where Respondent is residing and the property No.2/16, Ansari Road, Daryaganj, New Delhi are the subject matter of litigation.

18. Respondent has contended that in view of the pending litigation there is an uncertainty with regard to her occupation of the first floor and as such she requires a secure accommodation for herself. Further she has contended that the only source of income of the respondent is the rental that she receives from the ground floor of property No.2/16, Ansari Road, Daryaganj, New Delhi. It is submitted by learned counsel for the Respondent that as there is a direction to render accounts, she is uncertain about the share that will be allotted to her out of the rental that she is receiving.

19. It is in these circumstances, she has filed the eviction petition contending that she requires a secure accommodation for herself and her daughters and to augment her income that she requires the subject

tenanted premises for starting of a business along with her daughters.

20. The mere fact that the daughters have got married pending the proceedings, would not in any manner diminish the ground of eviction pleaded by the respondent. It is an admitted position that she does not have any male member in her family to look after her and the only family members are her daughters.

21. Furthermore, the respondent in the eviction petition has asked for accommodation for herself for residence and a business premises wherefrom she would augment her own income. It cannot be said that the need of the respondent is not bonafide.

22. Petitioner has not been able to show that the Respondent has any other suitable alternative accommodation available for her residence and for starting a business.

23. Petitioner has not pleaded any fact which, if proved, would disentitle the respondent/landlady from an order of eviction. There is no infirmity in the view taken by the Rent Controller in holding that no triable issue arises from the grounds taken in the leave to defend application filed by the petitioner.

24. With regard to the contention of learned counsel for the petitioner that the accommodation in possession of the petitioner is 280 square feet and not 400 square feet, as pleaded in the eviction petition, it is observed that respondent had also filed a site plan along

with the eviction petition, demarcating the area in possession of the petitioner in red colour.

25. Petitioner apart from merely disputing the area, has not placed on record any site plan to controvert the site plan filed by the respondent or contended that the area shown in the site plan to be in possession of the petitioner has been incorrectly depicted. On this ground also no triable issue arises.

26. I find no infirmity in the view taken by the Rent Controller in declining leave to defend the eviction petition to the Petitioner. I find no merit in the petition.

27. The petition is accordingly dismissed.

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

SANJEEV SACHDEVA, J
JANUARY 23, 2020/rk