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

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Judgment delivered on: 04.03.2020.

+ RC.REV. 547/2018

KAUSHALA DEVI BHARDWAJ

..... Petitioner

versus

BAGWAN SINGH BHANDARI

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr.P.K.Dash, Mr.B.C.Pant, Advocates

For the Respondent: Mr.Praful Jindal, Advocate along with respondent in person.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner landlord impugns order dated 03.10.2018, whereby the leave to defend the eviction petition has been granted to the respondent on the ground that since it is a case of additional accommodation normally leave to defend should be allowed.

2. Petitioner had filed the subject eviction petition seeking eviction of the respondent from portion of First Floor of House No.1132-A/76, consisting of one room, kitchen combined latrine, bathroom, more particularly as shown in red colour in the site plan

annexed with the eviction petition.

3. Petitioner had filed a petition under Section 14(1)(e) of the Delhi Rent Control Act on the ground of bonafide necessity inter-alia contending that the family of the petitioner comprises of petitioner herself aged about 65 years, her husband aged about 75 years along with three married sons, two married daughters and their respective families.

4. It was contended that one of the sons has expired and his widow along with her school going child are in possession of one room on the ground floor along with kitchen and toilet on the first floor of the suit property. It is contended that the petitioner and her husband are in possession of two rooms on the first floor. One married son of the petitioner namely Sh.Yogesh Bhardwaj and his family consisting of his wife and two school going girls are using two rooms along with kitchen and toilet on the second floor of the property and another married son namely Sh.Pawan Bhardwaj and his family consists of his wife and one school going girl child and are using third floor of the suit property.

5. It is contended that the accommodation available for the petitioner is scarce and the school going grand children are facing great difficulty in studies due to lack of separate space/separate room.

6. It is further contended that petitioner is religious and there is no specific room available for worship, accordingly the family requires

one pooja room. Further it is contended that the married daughters of the petitioner frequently visit the house of the petitioner on occasions of festivals and holidays and because of lack of accommodation petitioner cannot accommodate them and space is required to accommodate the married daughters and other relatives and guests who visit the petitioner.

7. It is contended that the petitioner and her family are in possession of only seven rooms, one on the ground floor and two each on the first, second and third floors.

8. Subject leave to defend application was filed by the respondent contending that the widowed daughter-in-law does not reside in the suit property and has got remarried and is living with her husband at a different place. Further it is contended that both the sons of the petitioner are in possession of five rooms on the second and third floors and there is enough accommodation available with the petitioner for their accommodation.

9. It is further contended by the respondent in his leave to defend application that petitioner has not sought eviction of other tenants who are occupying the ground floor, the accommodation adjoining to the tenanted premises as well as in occupation of the third floor.

10. The petitioner in response to the leave to defend application has categorically denied that the widowed daughter-in-law has got married. It is submitted that she is in occupation of one of the rooms

and though she stays at her parental home, however, whenever she comes to this property she stays in the subject property and uses the room in her occupation.

11. Subject leave to defend application has been allowed by the impugned order solely on the ground that it is a case of additional accommodation and the Rent Controller has relied on the judgment of the Supreme Court in *S.M.Mehra vs. D.D.Malik, 2001 (1) SCC 256* to hold that in case of additional accommodation normally leave to defend has to be granted and since the petitioner's requirement was for additional accommodation, it in itself becomes a triable issue.

12. Clearly the Rent Controller has erred in relying on the judgment of the Supreme Court in *S.M.Mehra vs. D.D.Malik, (Supra)*. The Supreme Court in *S.M.Mehra vs. D.D.Malik, (supra)* did not lay down as a principle of law that in all cases of additional accommodation, leave to defend the eviction petition has to be granted. Said judgment was passed in the facts of that case.

13. The assessment as to whether leave to defend has to be granted or not is based on the factual matrix of each case. In a particular case, even though it may be a case of additional accommodation, if the facts are such that even if the contention raised by the tenant in his leave to defend application is considered on its face value it may still show that the accommodation in possession of the landlord is far insufficient for his requirement. In such a case, even though it may be

a case of additional accommodation leave to defend is not to be granted.

14. In the present case as per the petitioner, the family of the petitioner comprises of 11 family members and the accommodation in possession of the petitioner is only seven room. Even if the contention of the respondent tenant were to be accepted that the daughter-in-law does not reside in the property, even then the number of admitted family members of the petitioner occupying the property are nine and the petitioner has only seven rooms in their occupation.

15. Further, there is no material placed by the respondent on record to show that the widowed daughter-in-law has got remarried except for making a bald averment, which is specifically denied by the petitioner. No name of the alleged new husband of the daughter-in-law or the address has been mentioned.

16. Even from the own showing of the respondent, petitioner has far less accommodation than what is required by the petitioner for a comfortable living.

17. It is settled position of law that the tenant cannot dictate to the landlord as to how landlord has to make use of the available accommodation or how the landlord has to adjust himself. The landlord who is having shortage of space cannot be asked to squeeze herself and her family in lesser accommodation merely to accommodate the petitioner.

18. Clearly the accommodation in possession of the petitioner and his family is far less than the requirement as projected by the petitioner in the eviction petition.

19. This Court has held in *Shree Ram Sharma Versus Mohd. Sabir* (2011) 178 DLT 1 that a landlord can seek eviction for his visiting married daughters in case there is insufficient accommodation.

20. Admittedly, the members of the petitioner's family are large in number, the accommodation in their occupation is not disputed. This Court in the cases of *Amar Nath v. Kiran Watt*, (1994) 56 DLT 97 and *Silvertone Mfg. Co. of India v. Smt. Usha SOI*, (1994) 55 DLT 563 while considering the bonafide requirement of a landlord held that the need of the landlord to have a puja room was justified.

21. An owner/landlord is the best judge of his requirements and so long as his judgment is not fanciful or malafide, the Court should not substitute its own opinion. The landlord has a right to make himself more comfortable.

22. However, as noticed hereinabove, the family members admitted by the respondent tenant himself (even excluding the daughter-in-law) are in excess of the number of rooms admittedly available with the petitioner.

23. The Rent Controller has misdirected himself in granting leave to defend the eviction petition to the respondent. The Rent Controller

has clearly acted in exercise of his jurisdiction with material irregularity and erred in granting leave to defend the eviction petition. in the facts and circumstances of the present case.

24. Accordingly, the impugned order dated 03.10.2010 is set aside. Leave to Defend application filed by the Respondent is dismissed.

25. Decree of eviction is passed in favour of the petitioner and against the respondent thereby directing the respondent to vacate and hand over to the petitioner, the peaceful vacant possession of the tenanted premises i.e. portion of First Floor of House No.1132-A/76, consisting of one room, kitchen combined latrine, bathroom, more particularly as shown in red colour in the site plan annexed with the eviction petition.

26. However, in view of Section 14(7) of the Delhi Rent Control Act, the order shall not be executable for a period of six months from today.

27. Petition is allowed in the above terms.

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

SANJEEV SACHDEVA, J

MARCH 04, 2020

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