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

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Decided on: 05.08.2021

+ RC.REV. 90/2021, CM APPL. 20576/2021, CM APPL. 20577/2021,
CM APPL. 20578/2021, CM APPL. 20579/2021 & CM APPL.
24435/2021

M/S GEETA PRESS

.... Petitioner

Through: Mr. Alok Kumar, Sr. Advocate with Ms.
Manisha A. Narain, Mr. Amit Kumar Singh
and Mr. Varun Maheshwari, Advocates.

versus

MS. MADHU RASTOGI

.....Respondent

Through: Mr. Anil Sapra, Sr. Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (ORAL)

The hearing was conducted through video conferencing.

1. Issue notice. Notice is accepted on behalf of the respondent. At joint request of the learned counsel for the parties, the petition is taken up for disposal.
2. The learned Rent Controller's order dated 08.01.2021 apropos eviction of the petitioner-tenant from the rented premises, is impugned on the ground that it has erred in law.
3. The leave to defend had raised various contentions. Primarily they are as follows: (i) it is not proven that the son was financially dependent

upon his mother – the landlady, (ii) there were suitable alternate spaces available to her, in which her son could be accommodated, (iii) the tenanted premises could not be used for the activities proposed by the son under the Municipal Laws, (iv) the property above the tenanted premises was available to the landlady, where the son could be accommodated v) the eviction petition is replete with the errors and concealment, vi) the first floor of the building in which the tenanted premises are located is vacant and it could well have been made available to the petitioner's son, for his purported new business of publication the eviction was sought, vii) that the landlady and her husband are also owners of the newly incorporated company, which is engaged in the business of desktop publishing – the tenant alludes thereby that the son could join the parents in the same business. According to the petitioner, these were triable issues and the application should have been allowed.

4. The tenant says that much after filing of the application for leave to defend and an issue which was not under consideration in the eviction proceedings, it has got to know that the landlady's property bearing No. XI/4347, Gali 4C, Ansari Road, Darya Ganj, New Delhi-110002, was let out by her to one M/s Asiatic Publishing House; that property was earlier being used as a godown by her husband. The tenant further contends that correct and relevant details of other properties owned by the landlady were not disclosed -- that she has committed a fraud. It is argued that fraud vitiates all judicial acts, be it ecclesiastical or temporal. Reliance is placed on the dicta of the Supreme Court in *S.P. Chengalvaraya Naidu Vs. Jagannath and*

Others. (1994) 1 SCC 1, which inter alia observed as under:

“Fraud avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.”

5. The aforesaid position of law, about fraud vitiating everything, is well established. However, what is to be seen is how the impugned order has dealt with each of the issues raised in the leave to defend and whether there is any triable issue was raised by the tenant. This examination would also determine whether the contention apropos fraud has any substance.

6. The eviction order has dealt with each of the issues as under:-

“....

In the present case the petitioner has enumerated all the properties available with the petitioner and her family. The only defence taken by the respondent is that the petitioner has 255 sq yds area available on the first floor of the suit property and petitioner firm Rajshi Educom Pvt Ltd is a firm in which son of petitioner is also director having total authorise and paid up capital of Rs.1 lac.

Ld counsel for the petitioner has argued that the abovesaid firm namely Rajshi Educom Pvt Ltd has been incorporated only in 2017. It has been stated in the petition that petitioner is having her publication house by the name of TOP Publication and son of the petitioner has started Rajshi Educom Pvt Ltd and he wants to

establish the entire publishing house at the tenanted premises. The petitioner has stated in the petition that the first floor of the property is being used by the petitioner for her own business as a godown. It was on the respondent to show that the first floor is lying vacant. However, the respondent apart from making bald allegation, has not placed on record any document to show that any space is available with the petitioner which can be utilized by her son for the projected bonafide need. Moonshine defence has been taken by the respondent which is not supported with any document or proof. The defence is thus rejected.

It has been alleged by the respondent that the tenanted premises would not be suitable for the petitioner as the petitioner cannot do warehousing wholesale trade of books/publishing in the walled city.

In the present case, eviction petition has been filed stating that son of petitioner wants to set up his digital publication office. Furthermore, circular no. DC (City)/WST/2008/0183 dated 09.06.2008 has been filed by the respondent. As per the same, book publishing is to be shifted out of walled city. However, the same can be used for retail trade, office and book store for the wholesale trade of books/publishing. The said fact is not disputed fact. The defence is accordingly rejected.

That the petitioner has given misleading description of the property in question.

The petitioner has annexed site plan with the petition, however, no site plan has been filed by the respondent. As per the petitioner, the tenanted premises is premises no. 2609 i.e. entire ground floor situated at Gali Battu Mal, Nai Sarak, Delhi-110006. The respondent has not disputed the area. The defence is thus rejected being baseless.

The eviction petition is not maintainable as necessary permission has not been taken u/s. 19 of Slum Area Improvement and Clearance Act. It has been held that

permission u/s. 19 of Slum Area Improvement & Clearance Act is not required for the purposes of petition u/s. 14(1)(e) DRC Act (Madan Lal Gupta Vs. Ravinder Kumar 2000 (2) RCR 698 (SC) 17 (1980) Delhi Law Time 344 and Shafait Ali Vs. Shivamal AIR 1988 SC 214). The defence is accordingly rejected.

The petitioner has not come with clean hands and had made an attempt to evict the tenant in 2009 by serving notice for termination of tenancy.

The petitioner himself had placed on record the said notice. However, tenant had nowhere stated that the tenancy was over by the notice. The petitioner being the rightful owner and landlord was at liberty to send the notice for termination, however that does not mean that the present need of the petitioner is not bonafide. In order to avail leave to defend, the respondent has to take some cogent defence. The present defence is rejected being baseless.

That the respondent trust is using the tenanted premises for selling religious books and medicines, and no permanent partition had been made, as alleged by the petitioner. That the respondent requires the tenanted premises and is running charitable Trust Board.

It is well settled law that the need of the respondent is not to be considered. The only ground for leave to defend is whether the defence raised would dis entitle the petitioner of the relief claimed. (Ajit Singh Vs. Inder Saran & Ors, 1979 (1) RCR, 602).

Accordingly, the defence taken is dismissed.

No further defence has been taken by the respondent.”

7. The leave to defend does not specify whether the son is a part of the parents' business. Even assuming that he is assisting them, such assistance can neither estop him nor limit his aspirations to start his own business or dream big. Could there be any law that purports to

limit humans aspirations, to dream to better one's lot, to reach the top of one's vocation, to move away from one's parent's old form and style of business, to not adapt to and adopt new technologies for more economical and convenient ways of doing business? The answer can only be in the negative. The son aspires a new enterprise using new technology. There is no bar to it.

8. The Court is informed that "Top Publication" is a proprietorship of the landlady. Similarly, all the other business enterprises/companies are owned by the parents either individually or together, to which the son is not a party.
9. The new company M/s. Rajshi Educom Private Limited has been set up so that the son could start his own business and chart his future in the new world of desktop publishing; this form of publishing requires a plush amenable office space -- equipped with computers, scanning-machines, etc. It does-away with preparing, examining proofs printed on paper and/or storing physical copies of printed books, etc. The needs of a publishing company in the present day are far different from what it was earlier. The landlady's dependent son, a graduate from a university in the NCR; he aspires to adapt and keep himself abreast with the latest technology in the publishing world and towards this objective, to make his office amenable to meet the challenges of the competitive market.
10. It has been the landlady's case that the tenanted premises on the ground floor would be most suitable for the son's proposed enterprise, especially since it is located in the hub of the publication business. All this has been spelt out in the eviction petition, which

reads *inter alia* as under: -

“ ...

xvii. The son of petitioner Sh. Shivam Rustogi has graduated with a degree in Fine Arts i.e. bachelor of fine arts (animation) in the year 2016 from Amity University. He has shown keen interest in the family Business of Publication. He liked to expend the business in his own way by setting up Private Limited Company and going digital. Thus, as planned to set up his own paraphernalia of at Publication House. He has set up Rajshi Educom Private Limited. He also took order from various customers including IGNOU. The cramped space at shop no. 4093, Nai Sarak, Chawri Bazar, Delhi-110006 premises is not suitable and grossly inadequate for business of publication by the son. Thus, son of petitioner has no suitable place to setup office of his private limited company in Delhi. He is dependent upon Petitioner for space of his business. As such tenanted premises is required for the bonafide necessity/requirement for opening and running an office at Delhi by petitioner's son and their company. The petitioner has no other suitable alternate accommodation from which her son can run his publication business.

xviii. It is for this need / requirement, which is bonafide, the present petition under section 14(1) (e) of the Delhi Rent Control Act has been filed. That the petitioner's son is dependent upon her to provide accommodation. A publication House is a unique business, which requires more space and the tenanted premises is ideal for the need/requirement of the son of petitioner. The area is known hub for the publishers. All writers, retailers, students, customers etc. knows the area as wholesale market for the publishers. As such the demised/ tenanted premises is required bonafide for setting up an office which is not only suitable, however, it is ideal owing to its locations and easy accessibility to the customers as

well as to other individuals who are dealing in the said business. The space available in tenanted premises is also suitable for expending business of publication.

xix. The socio-economic condition of the said premises provide growth opportunities both professionally and economically, which undoubtedly is a house of multitude opportunities.

xx. The petitioner is having few other properties which she has disclosed honestly and fairly however, the said properties are fully utilized, occupied and not suitable for the bonafide need of the son of the petitioner, which requires sufficiently large space. The said other properties are already fully occupied and utilized and do not have enough space, one is situated at the interior of the galies, another on the first floor and another is lower ground floor and not located at the prime location as per the need / requirement for the expansion of the business/ establishing an office by the son of the petitioner. The said premises are thus used for godown purposes, which is also essential part of publication business. The business of petitioner and her husband is also increasing day by day and they also require all the spaces.

xxi. It will be beneficial for the life of son of petitioner to establish / start an office in this property at prime location of Delhi having sufficient space. The location of the premises is such that it is ideal and easily noticeable by people passing from that site. The chances of expansion of business are much higher while working from this premises. The road on which is the property is situated is also commercial. This ingress egress of small vehicles and people are much easier in the location of this property. The area is sufficient for business. Therefore, the demised/required for bonafide requirement/need of petitioner's son."

11.The landlady's has disclosed that she has another property, at Ansari

Road, which is in a basement/lower ground floor; that the same is neither suitable nor convenient for setting up the son's new office. Who would want to start new business from a basement, when more attractive and suitable space can be made available on the ground floor. Visibility of an office space, its attractiveness, convenience of access to the visitors, authors, students and others connected with the trade, ease of parking of vehicles are some prime factors in which attract business and assist in establishing and augmenting a nascent publishing enterprise. A publisher needs to provide a comfortable and amenable environs that would encourage and facilitate discussions over a manuscript, proofs etc.

12. The tenant has occupied the premises for more than 70 years and is in the publishing business. Yet it objects to the landlady's son starting a commercial enterprise from the same premises. The landlady has disclosed about the other property -- a lower ground floor is not suitable for her son. Its subsequent leasing-out, as may be was not an issue in the eviction proceedings and was not an issue raised to be tried. In any case, the subsequent leasing-out of an already disclosed non-suitable property cannot be regarded as concealment or fraud. The tenant's arguments in this regard are untenable.

13. The learned Senior Advocate for the respondent submits that the tenant has, since long, shifted its business to Sahibabad, Ghaziabad, U.P., in much larger space with modern amenities; that the tenant owns various other properties in the NCR; that the tenanted premises are not being used for the purpose of publishing. Yet the tenant's are

holding-on to the premises for reasons best known to them. Apropos the suitability of the tenanted premises for the son's bonafide need, he stresses upon the settled principle, that the prerogative to determine the suitability of an accommodation rests solely with the landlord.

14. This Court in *Sudesh Kumari Soni and Ors. V. Prabha Khanna and ors.*, RC.REV. 44/2004 held *inter alia* as under:

“24. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

25. Suitability has to be seen from the convenience of the landlord and his family members and on the basis of the circumstances including their profession, vocation, style of living, habits and background. Landlord is the best judge of his residential requirement. In view of well settled law, I hold that accommodation available with the petitioner is insufficient as against total family members. Hence the petitioner has made out a case under Section 14(1)(e) of Delhi Rent Control Act and is entitled for relief claimed.”

15. It is settled law that the tenant cannot dictate or instruct a landlord as to how and which property should be used for which purpose. A part of the leave to defend application in essence doubts the need for the son to start his own business and wonders why would he do so, when the parents were already in the business. All this wondrous excitement is averred, effectively, to stress that the son should somehow adjust himself in his parents' running businesses or

otherwise start his new enterprise from the parents' business locations/spaces, so as to obviate the need of the tenant's eviction.

16. The Supreme Court in *Sarla Ahuja v. United Insurance Company Ltd.* (1998) 8 SCC 119 held *inter alia* as under:

“ ...

14. The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

17. The Court is informed that for a publisher, a lot of space is required for the storage of books, and quite a few properties were being used for storage. The learned Senior Advocate for the landlady submits that approximately 2 lakh copies of published books have been stored in spaces owned/occupied by the landlady. Therefore, other than the tenanted premises occupied by the petitioner-tenant, she has no suitable accommodation to provide to the son. He asserts that the properties owned by the landlady have been truthfully disclosed in the eviction petition, the personal use of the enumerated properties or the occupation by tenant(s) or otherwise their non-availability or their non-suitability for the son's business have been disclosed. That

she has not concealed anything from the court.

18. The impugned order has concluded for cogent reasons, that the landlady has established *inter-alia* that i) the property was required *bona fide* for her dependent son who was starting a new digital publishing business, ii) the ground floor premises occupied by the tenant, is the only, indeed most suitable space for the proposed enterprise iii) the tenanted premises are located in the hub of the publication industry and iv) the other premises owned by the landlady are already put to use, as disclosed in the eviction petition. The eviction order rightly concluded that no triable issues were raised by the tenant.
19. In view of the above discussion, the Court finds that the impugned order does not suffer from any infirmity and does not call for any interference.
20. The petition is without merit and is accordingly dismissed, along with pending applications.

NAJMI WAZIRI, J

AUGUST 05, 2021

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