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

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Decided on: 25.02.2022

+ RC.REV. 164/2021 & CM APPL. 41529/2021 & CM APPL
41530/2021

+ SHIV KUMAR Petitioner

Through: Mr. Gaurav Bharadwaj, Adv.

versus

JAIBEER SINGH

..... Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE NAJMI WAZIRI****ORDER**

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25.02.2022**NAJMI WAZIRI, J. (ORAL)**

The hearing was conducted through video conferencing.

1. The petitioner/tenant impugns the order of eviction dated 22.02.2021, on the ground that the landlord has not specifically denied the tenant's contention regarding his two sons - for whose benefit the tenanted property was sought, nor has the landlord stated anything apropos the other properties owned by him. The impugned order has dealt with the petitioner's contentions *inter alia* as under:-

".....3. In the leave to defend application along with the accompanying affidavit filed by respondent, it is stated that the petitioner has no-where pleaded that he is the owner of



the tenanted premises which is necessary ingredient to be pleaded by the petitioner and for this reason the present petition is liable to be dismissed. The petition is also not maintainable as petitioner has himself has stated that the tenanted premises is in dangerous condition and thus the same cannot be used in the present condition. The petitioner has concealed the material fact that suit is filed by the respondent for declaration, possession and permanent injunction in respect of shop bearing no. 2 in property no. 348/8, Jai Complex, Shiva Market, Pitampura which the petitioner along with his brother got demolished in connivance with the officials of North MCD without notice to the respondent. The adjoining two shops are used by the respondent as godown and another shop of one Vidyawati were got demolished by the petitioner and his brother. The present petition is filed by the petitioner in counterblast to the said suit filed by the respondent. As the petitioner has concealed the factum of the pendency of the suit with the respondent, the present petition is liable to be dismissed. The petitioner does not require the tenanted premises for any bona fide reason. The petitioner has wrongly alleged that the tenanted premises is not used by the respondent. The same was taken on rent to be used as godown for storing marbles and hardware goods. Both the sons of the petitioner are employed in Gurgaon and their wives are working as school teachers. The petitioner has also not stated as to which business his sons intended to carry. The present petition is filed for earning more income in garb of meeting the expenditures of expending family of the petitioner. The petitioner and his family have number of properties in Pitampura village, where they have developed the commercial complexes; one such complex is Jai Complex and the family of petitioner earns hefty income from rent.



The petitioner in past also got various premises/shops vacated from the tenants and have been letting out the same at an enhanced rent to increase their rental income. The petitioner after getting the tenanted premises vacated shall re-let it at an enhanced rate. The building in which the tenanted premises is situated is five storey in which three floors are commercial and two are residential. It is denied that the respondent is the owner of entire Dharampal Complex and fact is that he is owner of one half share in that property.

4. In the reply to the said application, petitioner has reiterated the facts as stated in the petition and denied the averments made in the application. It is stated that the petitioner is the owner of the tenanted premises and the electricity connection in the premises is in his name. It is further stated that respondent has himself stated that litigations between the parties qua one of the shop in the suit property is pending wherein he himself has mentioned petitioner as landlord and owner of the property in question and hence, respondent is now debarred by rule of Estoppel to claim that the petitioner is not the owner of the tenanted premises. It is denied by the petitioner that the present petition is filed in counterblast of the suit filed by the respondent. It is further stated that the suit filed by the respondent is not regarding the tenanted premises and hence, it cannot be claimed that petitioner deliberately concealed the material facts or has filed this petition in counter blast of that suit. It is further stated that the respondent has made bald and baseless averments that the sons of the petitioner are employed in Gurgaon. It is also specifically denied that petitioner after getting the tenanted premises vacated shall re-let on enhanced rates. It is stated that the tenanted premises is required by the petitioner as



his family has no other reasonable suitable alternative space available except the tenanted premises. It is further stated that the respondent has himself admitted to be owner of Dharampal Complex to the extent of half share and is having own sufficient space to conduct his business and does not require the tenanted premises and the same being occupied by the respondent just in order to extort hefty sum of money in lieu of vacating the tenanted premises.

5. Rejoinder to the reply of the petitioner filed by the respondent wherein he has denied all the averments of the petitioner.

6. Detailed arguments have been addressed by both the parties on the present application. Same are considered. Record perused.

7. Under section 14(1)(e) of the Delhi Rent Control Act, a landlord/land lady will be entitled to an order of eviction, if he/she is able to show that-

(a) the premises in question were let out for residential purpose or commercial purposes [as per the law laid down by the Hon'ble Supreme Court in Satyawati Sharma v. Union of India and another, 148 (2008) DLT 705 (SC).],

(b) he/she is the landlord/land lady and owner of the suit premises,

(c) the premises is required bona fide by him/her for occupation as residence for himself/herself or any



member of his family dependent upon him/her for residence and for any person for whom the premises are held, and

(d) the landlord/land lady or such person has no other suitable residential accommodation.

8. In the present case, respondent has denied the ownership of the petitioner qua the tenanted premises. Respondent has also contended that there is no bona fide requirement of the tenanted premises and petitioner has other suitable alternate accommodation/premises available for the purpose for which he requires the tenanted premises.

9. Regarding the denial of ownership qua the tenanted premises by the respondent, it is stated by the petitioner that he is the owner of the tenanted premises and the electricity connection in the premises is in his name. Further, respondent in his Affidavit in support of his leave to defend application has stated that petitioner and his family members including his brother have number of properties in Pitampura village, where they have developed the commercial complexes and one of such complex is Jai Complex and the families earn hefty income from rent. Considering the own admission of the respondent and the fact that respondent has nowhere stated as to if petitioner is not the owner of the suit property then who else has better claim than the petitioner in the suit property. Hence, mere denial of ownership of the tenanted premises in petition is not suffice to deny his title.

...



11. Hence, from the above discussed facts and in the light of above mentioned authorities, status of petitioner being owner of the tenanted premises and relationship of the petitioner and respondent being landlord and tenant is safely concluded for the purpose of deciding the present application.

12. Regarding the issue of bona fide requirement of the landlord, it is contended on part of respondent that there is no bona fide requirement for tenanted premises by the petitioner for meeting the expanding needs of his family. It is stated by the respondent that both the sons of the petitioner are employed in Gurugram and hence, petitioner cannot claim that he needs the tenanted premises to start business for his sons. It is also stated that petitioner has not disclosed as to which business his sons want to start and hence, contention of the petitioner that he requires the tenanted premises for his bona fide requirement cannot be accepted. Respondent has nowhere mentioned as to where exactly the sons of the petitioner are working and as to who is the employer. Merely making bald averment that both the sons of the petitioner are working in Gurugram is not suffice to claim that needs of the petitioner is not bona fide. The other contention raised by the respondent that as petitioner himself stated that the tenanted premises is in dilapidated condition, then how petitioner can claim that the same shall be used by his sons to start a new business. To this point, it is contended on part of petitioner that the tenanted premises shall be used only after renovation and thus respondent cannot say that as the tenanted premises is not in fit condition at present then the same cannot be used even in near future. The submission of the respondent that as the tenanted premises is not stated to be in usable condition then the same cannot be used even in near future is not



found to be acceptable. Respondent has failed to show that sons of the petitioner are gainfully employed or are carrying any business and thus it cannot be denied that the requirement of the petitioner is not genuine....”

2. In the application for leave to defend the tenant had stated that both the sons of the petitioner namely Aakash and Abishek were employed in Gurgaon, as under:-

“...(f) THAT the Respondent/deponent submits that both the sons of the Petitioner namely Aakash and Abishek are employed in Gurgaon. The name of the employer companies were two sons of the Petitioner are employed could not be found by the Respondent/Deponent within short period of 15 days in which the Respondent/Deponent is required to file the present Affidavit.

...”

3. The said averment is a bald statement. It does not disclose any specifics as to where the sons were employed. In the absence of any specifics, there is no ground for the issue to be examined or tried. The impugned order has rightly rejected the issue of the sons being employed. Even if it was found that the sons were employed, it would not necessarily take away their dependency for starting a business, should they so need the space. This issue has been duly dealt with in the impugned order, as quoted hereinabove.
4. The learned counsel for the petitioner submits that the pleadings are not decisive. He relies upon the dicta of the Hon'ble Supreme Court in *Jaspal Kaur Cheema & Anr vs. Industrial Trade Links & ORS.*, (2017) 8 SCC 592, which reads, *inter alia*, as under:



“...7. In terms of Order 8 Rule 3 of the Code of Civil Procedure, 1908 (for short “the Code”), a defendant is required to deny or dispute the statements made in the plaint categorically, as evasive denial would amount to an admission of the allegation made in the plaint in terms of Order 8 Rule 5 of the Code. In other words, the written statement must specifically deal with each of the allegations of fact made in the plaint. The failure to make specific denial amounts to an admission. This position is clear from the decisions of this Court in Badat and Co. v. East India Trading Co. [Badat and Co. v. East India Trading Co., (1964) 4 SCR 19 : AIR 1964 SC 538] , Sushil Kumar v. Rakesh Kumar [Sushil Kumar v. Rakesh Kumar, (2003) 8 SCC 673] and M. Venkataramana Hebbar v. M. Rajagopal Hebbar [M. Venkataramana Hebbar v. M. Rajagopal Hebbar, (2007) 6 SCC 401] .

...”

5. The petitioner submits that evasive denial of averments cannot be treated as denial of specific averments; that the tenant had contended that the sons were employed, therefore, for the landlord to merely say that the said tenant’s contention is wrong was not sufficient; instead the landlord should specifically deny the tenant’s contention.
6. The father has said that the sons were unemployed. If it was the tenant’s case that the sons were employed, then the employer’s name or the office where they were allegedly working or employed, should have been mentioned. It was not so done. A statement that the sons were employed in another city, is bald, vague and unsubstantiated. It does not raise an issue to be tried. All that the learned Rent Controller had to see was whether any triable issue had been raised in the



application for leave to defend. No triable issue was found, as noted in the impugned order of eviction. The rationale for denying the leave to defend cannot be faulted.

7. The petition is without merit and is accordingly dismissed, along with the pending applications.

NAJMI WAZIRI, J

FEBRUARY 25, 2022/dss

