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

% Judgment delivered on: 31.01.2023

+ CM(M) 270/2020 & CM APPL. 4062/2022

ATUL GUPTA

..... Petitioner

versus

BHARAT BHUSHAN & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Manish Vashisht, Senior Advocate with
Mr. Dhruv Rohatgi, Advocate.

For the Respondents : Mr. N. K. Nayyar, Advocate.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioner challenges the impugned order dated 16.12.2019 passed by the learned ARC (Central District), Tis Hazari Courts, New Delhi in Eviction Petition No. 744/2018 titled “Atul Gupta vs. Bharat Bhushan & Ors.”, whereby the leave to defend to the respondent was granted *vide* the impugned order.

2. Mr. Manish Vashisht, learned Senior Counsel appears for the petitioner and draws attention of this Court to the impugned order specially para 9 at page 34 and submits that the entire submissions of the parties was crystallized in one paragraph and leave to defend was granted without, apparently, any application of mind at all.

3. Learned counsel submits that the grounds raised by the respondent tenant regarding earlier execution petitions filed under Section 14 (1) (e) Delhi Rent Control Act, which were successfully decreed in his favour and subsequently sold, were taken against the petitioner to support the contention that there is no *bona fide* need accruing to the petitioner in respect of the present shop.

4. Learned Senior Counsel also drew the attention of this Court to the copies of the earlier eviction petitions, were filed in the year 2016 and 2017 by the petitioner.

5. Mr. Vashisht, learned Senior Counsel submits that the averments were clear in those petitions that they were in respect of the need of both the sons of the petitioner and not in respect of his own *bona fide* need.

6. Mr. Vashisht, learned Senior Counsel submits that these two relevant aspects were disclosed in the present eviction petition by the petitioner in his eviction petition as well as his reply to the leave to defend filed by the respondent.

7. Based on the above, learned Senior Counsel submits that the submissions and the pleadings placed on record by the petitioner were not considered by the learned Trial Court and mechanically and laconically the order granting leave to defend was passed in a perfunctory manner.

8. Per contra, Mr. Nayyar, learned counsel appearing for the respondents draws attention of this Court to page 118 of the paper book to submit that the eviction petition E-80388/2016 titled “Atul Gupta vs. Chander Prakash Kapoor” was withdrawn by the petitioner on 11.10.2018, which indicates that the petitioner did not ever have any

bona fide need under Section 14 (1) (e) of DRC Act.

9. Mr. Nayyar, learned counsel for the respondent also submits that the shop involved in the aforesaid eviction petition was thereafter sold to the same tenant against whom the eviction petition was originally filed.

10. Mr. Nayyar further submits that the learned Trial Court was correct to reach its finding insofar as the sale of the two shops concerning the two eviction petitions filed in the year 2016 and 2017 is concerned, since both were premised on the basis of *bona fide* need under Section 14 (1) (e) of DRC Act and despite the alleged *bona fide* need, the petitioner sold the same.

11. Learned counsel submits that it was only after the respondent filed the documents of sale of the premises involved in the earlier eviction petition that the learned Trial Court granted leave to defend.

12. Mr. Nayyar submits that the petitioner deliberately concealed the fact regarding the sale of the first shop/ property involved in E No. 744/2018.

13. Learned counsel further submits that the question of the learned Trial Court granting leave to defend without application of mind is incorrect and was granted on a vital issue as to whether any *bona fide* requirement was there at all or not.

14. This Court has heard the submission of learned counsel for the parties as well as perused the documents drawn attention to and after perusing the impugned order, is of the considered opinion, that the learned Trial Court has not applied its mind to the contentions raised in the reply to the leave to defend filed by the petitioner.

15. Learned Trial Court has recorded substantially the grounds of

both the parties, however, when it came to the application of mind in regard to the contentions raised by either sides, the same is conspicuous by its absence in the impugned order.

16. The only conclusion drawn by the learned Trial Court is crystallised in para 9 at page 34, which is as under :

“9. Without going into the merits of the case, the very fact that petitioner has sold two shops within one year proceeding the date of filing the present eviction petition casts the doubt on the bona-fide requirement of the petitioner.”

17. A perusal of the contents of para 9 itself shows that the Trial Court has itself considered the sole aspect of the petitioner having sold his two shops within one year preceding the date of filing of the preceding the date of filing of the present eviction petition and had doubted the *bona fide* requirement of the petitioner on that basis.

18. Learned Trial Court has not examined as to why and on what basis, the earlier eviction petitions were filed and consequently, the reasons as to why the properties were sold.

19. This Court is refraining from entering into the merits of the matter purely for the reasons that it appears to this Court that this is a fit case for remit, since the Trial Court has apparently not applied its mind to the facts and the contentions raised by both the parties

20. In view of the aforesaid discussions, this Court quashes and sets aside the impugned order dated 16.12.2019.

21. It is informed that the next date of hearing is fixed for 14.02.2023.

22. The learned Trial Court is directed to re-hear the application for leave to defend on 14.02.2023 or any date subsequent thereto, as per its convenience.

23. The learned Trial Court in any case is directed to decide this application for leave to defend within the next two months from the date of receipt of this order.
24. Copy of the present order be transmitted to the concerned ARC for further proceedings.
25. In view of the above, the present petition along with pending application is disposed of with no order as to costs.

JANUARY 31, 2023/nd

TUSHAR RAO GEDELA, J .

