



2024:DHC:3543



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 26.04.2024
Judgment pronounced on: 03.05.2024

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RC.REV. 63/2024 & CM APPL. 12292/2024 (stay)**RAJAN VARMANI**

..... Petitioner

Through: Mr Pavan Narang, Mr Samant Singh,
Mr Himanshu Sethi, Mr Ashok
Kumar and Ms Aishwarya Sharma,
Advs.

versus

KAMAL CHAND JAIN

..... Respondent

Through: Mr Nitin Alhawat, Mr Shyam Babu,
Mr Shitij Alhawat and Mr Mohit
Gulati, Advs.

CORAM: JUSTICE GIRISH KATHPALIA**J U D G M E N T**

1. By way of this petition, brought under proviso to Section 25B(8) of the Delhi Rent Control Act, the petitioner/tenant has assailed order passed by the learned Additional Rent Controller, Central District, Delhi whereby application of the petitioner/tenant for leave to contest the eviction proceedings under Section 14(1)(e) of the Act was dismissed. On service of notice, respondent/landlord entered appearance through counsel. I heard learned counsel for both sides.

2. Briefly stated, circumstances leading to the present petition are as follows.

RC.REV. 63/2024

Page 1 of 7 pages

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2.1 The present respondent, claiming himself to be owner of shop bearing no. 6034, Jawahar Nagar, Bunglow Road, Kamla Nagar Market, New Delhi (hereinafter referred to as “the subject premises”), filed eviction petition under Section 14(1)(e) of the Act, pleading that he became owner of the larger premises bearing No. 6034, 01-UB, Jawahar Nagar, Delhi comprising of ground floor to third floor without terrace by virtue of decree and judgment dated 16.05.1980 passed in a civil suit, and the subject premises form part of the said larger premises; that the present petitioner was inducted by him as a tenant in the subject premises in the year 1986 and the present petitioner has been running a business of confectionary products from there; that his wife Smt Snehlata and daughter Monika were running a business of garments under the name and style Indra Sons till the year 2008 from ground floor of the said larger premises but they had to close down the said business due to his ill health and marriage of Smt. Monika Jain; that he is solely dependent on rental income and business run by his wife and daughter; that he is suffering with neurological disorders and undergoing medical treatment; that his average monthly expenditure is Rs. 1,00,000/- and they are unable to meet the same; that under these circumstances, he is in *bona fide* requirement of the subject premises so that his wife and daughter may run their business from there as he has no reasonable suitable alternate accommodation.

2.2 On service of summons in the prescribed format, the present petitioner appeared before the learned Additional Rent Controller and filed



an application seeking leave to contest the proceedings, in which he expressed doubt on the neurological illness of the present respondent and further pleaded that the said larger premises is a very big property, which has been partly rented out to third parties, thereby generating substantial rental income and part of the same is being used by the present respondent for his residential purposes; that in comparison with rest of the said larger premises, the subject premises are quite small in size; that the present respondent has concealed the rent being received by him from other tenants in the said larger premises; that the plea of the present respondent *qua* requirement of the subject premises for business of wife and daughter is not sustainable in law; that size of the subject premises is too small to open a garment business; and that the present respondent has also concealed his ownership of many more shops, which can be used by his wife and daughter.

2.3 The present respondent filed reply to the application for leave to contest, reaffirming the contents of the eviction petition and denying the contents of the application for leave to contest.

2.4 After hearing both sides, the learned Additional Rent Controller by way of the impugned order dismissed the application for leave to contest, holding that no triable issue was made out from the rival pleadings.

2.5 Hence, the present petition.



3. During final arguments, learned counsel for petitioner took me through the above material and contended that the impugned order is not sustainable in the eyes of law. It was argued on behalf of petitioner that the present respondent had concealed in the eviction petition that the subject premises, bearing shop No. 6034 consists of two shops and not one shop. It was also argued that there is no financial need of the present respondent to seek eviction of the petitioner for the purposes of using the subject premises for business of his wife and daughter. Learned counsel for petitioner argued that even if requirement of the present respondent is considered *bona fide*, he can utilize rest of the portions of the said larger premises for business purposes of his wife and daughter.

4. On the other hand, learned counsel for respondent supported the impugned order and contended that the present petition is devoid of merits. Learned counsel for respondent explained that there are only two shops in the said larger premises, out of which the shop bigger in size is already occupied by another tenant and rent from the same is a major source of earning for the respondent, so it is only the subject premises shop, which being smaller in size can be used by wife and daughter of the respondent.

5. In rebuttal arguments, learned counsel for petitioner contended that plea of the present respondent *qua* his neurological illness and medical expenses has to be proved by way of trial, so leave to contest ought to have been granted.



6. To begin with, contention of the learned counsel for petitioner that the respondent concealed that the subject premises consists of two shops and not one is totally contrary to the pleadings and documents on record. At *pdf* 78 of the paperbook is the site plan of the said larger premises filed by the present respondent, clearly depicting a larger shop annexed with a smaller shop, numbers whereof are 6033 and 6034. The larger shop, as mentioned above, is already occupied by a tenant while the smaller shop is the subject premises, occupied by the present petitioner. The larger shop admittedly being in possession of another tenant, it cannot be said that the same is available as reasonably suitable alternate accommodation. Besides, not every non-disclosure amounts to concealment; the non-disclosure of property which is not available to the landlord cannot be treated as concealment fatal to the eviction petition as held in the case of ***Ram Narain Arora vs Aska Rani***, (1999) 1 SCC 141. As regards claim of the petitioner that the respondent owns many more shops, what to say of adducing any reliable material in support of this claim, the petitioner did not even disclose specific details of the alleged shops. So, on this count also there is no substance in the resistance set up by the present petitioner.

7. Broadly speaking, the major plank of petitioner's resistance to the eviction order is that the subject premises being too small in size to carry out a business of garments, the respondent must get the larger shop vacated. This plank of resistance must fail for two reasons. Firstly, the larger shop



being already in occupation of another tenant, cannot be treated as vacant shop available to the respondent as reasonably suitable alternate accommodation. Secondly, as mentioned above, the respondent has explained in detail that the said larger shop is fetching substantial rent which is the only income for the respondent, suffering with neurological illnesses and the consequent medical expenses, while the subject premises being much smaller in size is fetching monthly rent of hardly Rs. 600/-, therefore, decision of the present respondent to get the subject premises vacated and give the same to his wife and daughter for their garments business cannot be looked down as lacking *bona fide*.

8. Most importantly, it is trite that the landlord has absolute choice of the premises which he wants to get vacated in order to fulfil his requirement. Reference in this regard can be drawn from the judgments in the cases of *Shiv Sarup Gupta vs Dr Mahesh Chand Gupta*, (1999) 6 SCC 222; *Ragavendra Kumar vs Firm Prem Machinery & Co.*, (2000) 1 SCC 679; *Sait Nagjee Purushotham & Co. Ltd. vs Vimalabai Prabhulal*, (2005) 8 SCC 252; and *Anil Bajaj vs Vinod Ahuja* (2014) 15 SCC 610. That being so, the absolute discretion of the present respondent to seek eviction of the subject premises instead of larger shop cannot be treated as a matter of triable issue so as to grant the petitioner leave to contest.

9. So far as evidence of neurological illness is concerned, I find no force in the argument of learned counsel for petitioner that proving the



2024:DHC:3543



illness in the present case would be a triable issue. Even if assuming that the respondent fails to prove his neural illness, it would be inconsequential because the requirement set up in the present case is to enable the wife and daughter of respondent to start their garments business. Even if the petitioner is completely healthy, there would be no impact on the decision of his wife and daughter to commence their independent business.

10. In view of the aforesaid, I am unable to find any infirmity in the impugned order, so the same is upheld and the present petition as well as pending application are dismissed.

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