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

+ **RC.REV. 197/2022**

VIJAY MITTAL & ANR.

..... Petitioners

Through: Mr. Satyam Thareja and Ms.
Vasundhara, Advs.

versus

SANJEEV KUMAR & ORS.

..... Respondents

Through: Ms. Kritika Gupta, Adv. for R-10, 11.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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22.08.2022

CM APPL.36162/2022 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

RC.REV. 197/2022 and CM APPL.36161/2022

1. The present petition has been filed assailing the Eviction Order dated 21.02.2022, passed by Ld. SCJ-cum-RC, Central District, Tis Hazari Court, Delhi in RC ARC No.77929/2016.
2. Learned counsel for the petitioner draws attention to the following portions of the written statement filed on behalf of the petitioners regarding suitable alternative premises being available with the respondents:

“The contents of para 18 (a) (30) of the amended eviction petition are incorrect and are denied. It is far-fetched to say that the 'premises suit' are required by the petitioner No. 1 for his own bonafide need, as alleged in the para under reply. It is also incorrect to say that the accommodation already available with the petitioners at the site in reference being the shop / property bearing



Municipal No. 4583, Gali No. 52, Reharpura, Karol Bagh, New Delhi - 110 005 is merely a store room and / or that the same is incapable of being used as a shop / show room for conducting business in jewellery. The aforesaid room / shop is admittedly located on a road 20' wide and adjoins the 'premises in suit'. The same is lying locked, unused and unoccupied. In case the petitioner No. 1 was actually suffering from all those ailments which he propounds have been bestowed upon him by God Almighty, he would have by now started operating from the aforesaid portion of the property bearing Municipal No. 4583 instead of waiting for the 'premises in suit' to be got vacated by him in these frivolous proceedings. It is denied that the aforesaid premises bearing Municipal No. 4583, Gali No. 52; supra, cannot be used as a shop, for the aforesaid premises are not located on a road meant for mixed land use /commercial purposes. The building in reference, as per the version of the petitioners themselves, is single building and is located on the main Arya Samaj Road. Therefore, all what is propounded in the text of the eviction petition and in particular in para 18 (a) (30) thereof with reference to Master Plan - 2021 is far-fetched; and frivolous."

3. He further draws attention to the cross-examination of respondent no.1 (PW-1) with regard to the aforesaid premises i.e. property bearing Municipal No. 4583, Gali No. 52, Reharpura, Karol Bagh, New Delhi - 110005. The relevant portion of the cross-examination sought to be relied upon is as under:

"Portion wherein my grandfather used to reside in the property 4583 in the year 1966 shown encircled portion A in the site plan Ex.PW-1/16 (circle has been put today). It is wrong to suggest that there was no residential accommodation in this portion and nor does it exist today. After the death of our grandfather we converted that accommodation into a store which exists even today. Vol. one pantry and toilet also exists in that portion. It is wrong to suggest that this encircled portion A still in my possession. Vol. It is in possession of my brother. After the death of our grandfather the



premises was always used as a store. Vol. even my father used to go and take rest in that space after the death of my grandfather. It is true access to this encircled portion A is available both from rear Gali and from front road again said it is accessible only from Gali No.52 and not from the main Arya Samaj Road except that there is door from property no.4552 to have a access into this encircled portion. Premises 4552 is in occupation of my brother ever since it fell vacant from Panna Lal jewelers. My father Om Prakash Gupta was never in occupation of the premises 4552 for business purposes. It is wrong to suggest that there is no space where one can go and take rest in the premises 4583 as it is only a space open to sky. Constructed premises in that space comprises "Wooden kadies and Agra I stone slabs". Panna Lal Sarraf has vacated premises 4552 much prior to my spinal disease/ailments. I do not remember 'now in which year Panna Lal Saraaf vacated that premises or that how many year before my spinal problems arose that he vacated the premises. I cannot confirm or deny if Panna Lal Sarraf vacated premises 4552 in the year 2007-08. I do not remember but document must be on record to show as to in which year eviction petition against Panna Lal Sarraf was filed.

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"I do not remember if I have got scribed all these facts appearing in para 1 of my affidavit evidence. I may not deny or affirm if these details were mentioned in my affidavit evidence first time. 4583 premises has an attached toilet and a pantry/kitchen but I cannot affirm or deny if area of this property 4583 is 50 sq.ft. It is however wrong that a vehicle car can be or is being brought and parked in front of the gate of this property 4583. Width Gali No.52 is about 12 ft. I cannot comment if in the lease deed executed by DDA the width of the gali on the front side of property 4583 and gali on the back side is the same. Vol. May be on the date of execution of lease situation was so, but as on today .width of gali 52 is 12 ft. approximately."

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4. Learned counsel for the petitioner also relies upon the cross-



examination of respondent no.2 (PW10/A) wherein it has been deposed as under:

“My date of birth is 29.01.1967. My education qualification is Bachelor of Arts but I could not completed. It was B.A. Pass course. I have properties, residential and commercial in Delhi as described now, one property a shop in Uttam Nagar and one more commercial property bearing no.4551, 4552 and 4583, 4584 facing backside Gali No.52, Regarpura, Delhi. I do not recall the width of Gali No.52, even I cannot tell it approximately. I cannot confirm or deny if width of Gali No.52 is 20 ft. Plus, I do not recall it at all.”

5. He submits that even though it was strenuously emphasised by the petitioner that the eviction petition was liable to be dismissed in view of availability of suitable alternative accommodation viz. premises, bearing Municipal No. 4583, Gali No. 52, Reharpura, Karol Bagh, New Delhi – 110005, the impugned order does not even record the said contention, nor renders any findings with regard to.

6. Issue notice.

7. Learned counsel, as aforesaid, appears and accepts notice on behalf of respondent nos.10 and 11.

8. Issue notice to the remaining respondents, on necessary steps being taken by the petitioners, through all permissible modes, including electronically, returnable on 31.10.2022. *Dasti* in addition.

9. In the meantime, there shall be a stay of execution of impugned Eviction Order dated 21.02.2022.

SACHIN DATTA, J

AUGUST 22, 2022/cl