

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

Judgment reserved on: 31.08.2009

% **Judgment delivered on: 15.09.2009**

+ **C.R. P. No. 833/2003**

I.M. SETHI Petitioner
Through: Mr. Rajesh Yadav and Ms.
Ruchira V. Arora, Advocates.

versus

M/S. TRADE LINKS LIMITED Respondent
Through: Mr. Girdhar Govind and Ms.
Noorun Nahar Firdausi,
Advocates.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

J U D G M E N T

VIPIN SANGHI, J.

1. I have heard learned counsel for the parties and proceed to dispose off this revision petition.

2. The petitioner is the landlord in respect of the tenanted premises with the respondent. In the year 1996, the petitioner preferred an eviction petition under Sections 14C (on the ground

that he has retired from government service) and 14(1)(e) (on the ground of bona fide requirement of the petitioner and his family) of the Delhi Rent Control Act 1958 (the Act) to seek eviction of the respondent from the tenanted premises. The petitioner had, prior to the filing of the eviction petition against the respondent, also preferred another eviction petition against another tenant, one Ms. Neeru Verma, also on the ground of eviction contained in Section 14C of the Act in respect of portion under her tenancy. During the pendency of the eviction petition against the respondent, the petitioner obtained possession of the premises let out to Ms. Neeru Verma upon succeeding in his petition under Section 14C. Consequently, the eviction petition filed against the respondent was amended in December, 2000. The ground of eviction under Section 14C was, therefore, held to be not available to the petitioner any longer to seek eviction of the respondent herein. The petitioner does not press for eviction of the respondent on the ground of eviction contained on Section 14C of the Act. Therefore, the impugned order needs examination only on the ground of bona fide requirement of the petitioner.

3. In the impugned order dated 21.04.2003 passed by the learned Additional Rent Controller, Delhi he has returned findings in favour of the petitioner in so far as the question of ownership of the tenanted premises is concerned, and about the existence of the relationship of landlord and tenant between the petitioner and the

respondent. These findings have not been assailed by the respondent in any proceeding. These findings have, therefore, attained finality. On the question of purpose of letting the finding returned was that the same was composite i.e. residential-cum-commercial. On question of bona fide requirement of the petitioner, the Court returned a finding against the petitioner looking to the accommodation that became available with him consequent upon Ms. Neeru Verma being evicted from a portion of the property. Consequently, the eviction petition has been dismissed by the impugned order.

4. During the pendency of this petition, the Supreme Court has rendered its decision in ***Satyawati Sharma v. Union of India & Anr.*** (2008) 5 SCC 287. On account of the aforesaid decision being rendered, the issue whether the premises was let out for residential-cum-commercial purpose or only for residential purpose has become irrelevant. Even if it is assumed that the purpose of letting was residential-cum-commercial, the petitioner would be entitled to maintain the petition on the ground contained in Section 14(1)(e) of the Act. Consequently, the only aspect on which the impugned order needs to be examined in this revision petition is with regard to the approach of the learned ARC in assessing the bona fide requirement of the petitioner to claim eviction of the respondent from the premises under its tenancy. In this light I proceed to narrate a few background facts.

5. The property bearing No.13B/4, Uttari Marg known as 13B/4, Sant Gadge Marg, Northern Extension Area, New Delhi was owned by Sh. J.R. Sethi, father of the petitioner. Sh. J.R. Sethi died leaving a Will dated 06.07.1971. As per the Will Smt. Dayawati, his widow, remained the owner during her lifetime and after her death, as per the said Will the property devolved upon the petitioner and his brother Sh. R.C. Sethi. After the mother's death, as per mutual settlement between the petitioner and his brother the ground floor of the said property and the left side garage block was taken by Sh. R.C. Sethi, while the first floor and Barsati floor along with right side garage block was taken by the petitioner. Thus, the petitioner became the exclusive owner of the first floor portion as also the Barsati floor portion.

6. The premises in question with the respondent/tenant consists of one bedroom, one servant quarter, one store room and one bathroom on the first floor and two rooms on Barsati, one mezzanine room above garage and terrace above garage block with open toilet, which has been clearly shown in red in the site plan attached with the amended eviction petition.

7. The case of the petitioner in his amended eviction petition was that he did not own any other property in Delhi except the aforesaid property, that too jointly with his brother Sh. R.C. Sethi. The family of the petitioner, at the time of filing of the petition

consisted of himself, his wife, two married daughters and one unmarried daughter. The petitioner stated that he had retired on superannuation from Central Railway as Chief Mechanical Engineer on 30.09.1995. At the time of his superannuation, he was posted at Bombay and after his retirement he shifted to Delhi on 07.06.1996 along with his family members and had been residing with his in-laws at 5B, Link Road, Jangpura Extension on account of paucity of accommodation. The petitioner stated that though he had obtained possession from the other tenant Ms. Neeru Verma and he was in possession of the portion vacated by her, the said portion was not sufficient for his bona fide requirements and that of his family. The requirement of the petitioner set out in the amended petition was as follows:

- “(i) One Bed Room for the Petitioner and his wife
- (ii) One dressing room.
- (iii) One Bed Room for an unmarried daughter.
- (iv) Two Bed Rooms for the married daughters of the Petitioner who off and on visit the house of the Petitioner with their husband and children as per the normal Hindu customs.
- (v) One Guest Bed Room.
- (vi) One Study Room for unmarried daughter.
- (vii) One Study and Consultation Room for the Petitioner.
- (viii) One Drawing-cum-dining Room.

- (ix) One Pooja/Meditation Room.
- (x) One Kitchen with a store, toilets and open terrace.
- (xi) Two Rooms required as servant quarters for full time domestic servants with toilets.
- (xii) One Box room for storage.”

8. In its written statement, the respondent admitted to being in occupation of two bedrooms, one store room, one bathroom on the first floor, two Barsati rooms with open terrace at the Barsati floor, one room, open toilet and open terrace above the garage block. There is no doubt that whatever portion of the property No.13B/4, Uttari Marg/Sant Gadge Marg, Northern Extension Area, New Delhi the respondent is in possession of, is in its capacity as a tenant under the aforesaid lease only, and not otherwise. The respondent claimed to be a tenant in the premises since 05.11.1971. It was stated that from the other tenant Ms. Neeru Verma, the petitioner had obtained possession of drawing room, dining room, study room, office, three bedrooms with attached bath, kitchen, two verandah, corridor on the first floor, open space/terrace and a toilet on the second floor and a garage.

9. Leave to defend the eviction petition was initially declined by the ARC, but that decision was reversed by this Court on 17.11.1997. Accordingly, the matter went through a regular trial. The petitioner appeared as PW-1. He stated that his family consists

himself, his wife, three daughters of which the elder two were married and the youngest was staying with the petitioner. He stated that he had two grandchildren and two sons-in-law. At the relevant time his younger daughter was doing her M.A. (Psychology) from Delhi University. He also deposed that he retired as Chief Mechanical Engineer from Central Railway in September, 1995. The accommodation available with him, as per his deposition comprised of three bedrooms, one dressing room, three bathrooms, front verandah, back verandah which has been extended by removing the partition wall of the adjoining small room which was of the size of 11.5 ft. x 10 ft., and one garage. The reason for removing the partition wall of the small room was stated as follows:-

“This partition wall I had to remove as the corresponding partition wall on the ground floor was removed by my brother and consequently when there was no support for the wall, I had no other option but to remove it.”

10. He further deposed as follows:

“During the pendency of this case, I recover possession of one office room, two bedrooms, dining-drawing room, three bathrooms, front verandah and back verandah, kitchen and garage from a tenant Mrs. Neeru Verma vide an eviction order dated 13.8.98 passed by Mrs. R. Kiran Nath, the then Ld. Rent Controller. The accommodation presently available with me is highly insufficient. **I need one bedroom for my wife and me with and attached dressing room and bathroom**, one bedroom for my unmarried daughter with bathroom and study room, **two bedrooms for my two daughters and**

grandchildren. My married daughters keep coming to me as per Hindu customs as well as for their professional assignments. One guest room, one office room for my consultancy services. One room for my assisting staff. One room for my wife and her professional work for giving tutions as she is a trained and qualified teacher. I need two servant quarters for the servant, garage, drawing-dining, kitchen, puja room, store room, box room and terrace etc. My eldest daughter Malini Vaidya w/o Jayesh Vaidya has done her M.S. Economic and Finance and she is presently working EGON ZENDER in Singapore. My son-in-law is in charge of foreign equities in the Standard Chartered Bank. They have two children aged 5 and 7. My daughter, son-in-law and grand children are Indian citizens with Indian passport. My second daughter has done MBA and she is at present accompanying her husband Sh. Samudra Sen, who has gone to USA for second MBA. She is working there on temporary basis. Both of them are Indian Citizens and Indian Passport holders. Both my daughters, son-in-laws and grand children want to come back to India. As I have no son I am also keen that my daughters, sons-in-law and grand children come and stay with me. Both my daughters and sons-in-law have applied for job in MNCs and banks. My eldest daughter and son-in-law had once taken up an employment in Delhi after coming from USA. Neither my daughters nor their husbands own any property in Delhi. **My wife did her B.A., B.Ed. from Delhi University. She has taught at many schools including D.P.S. in Delhi, St. Joseph Varanasi, C.J.M. at Mumbai. At present she is giving tutions at home. There is no proper room at home for this purpose. Therefore, she sometimes operate from verandah and drawing room and she cannot take up more students due to lack of space. I am a graduate of Institutions of Mechanical Engineers,**

London. At present I have been taken up consultancy relating to Mechanical Engineering and Railway related projects. At present I have got three projects in hand, from Pan India Consultants, and Aryeal Exporters P. Ltd.” (emphasis supplied).

11. The petitioner deposed that he had started his consultancy services being graduate of Institution of Mechanical Engineer, London, and having the experience of working as Chief Mechanical Engineer with the Railways. He disclosed the details of his various professional clients and stated:

“I have no proper place to work on the projects and I work from the drawing room. It disrupts the working as well as living. I cannot operate from the offices of Principles as a condition of awarding projects is that they will not be providing me any space and they do not have offices in Delhi. It has an adverse effect on my work as I cannot call my clients for discussion. There is no proper space for display, discussion, sitting space for staffs and ultimately there is delay in execution of work. My clients have told me to have proper arrangement in future otherwise they will not award me any work. **I need one room on the first floor for my personal office and one barsati for my staff, computers and other equipments.** (emphasis supplied).”

12. Though no such averment was made in the eviction petition, with regard to the requirement of his wife for accommodation to run tuition classes, in his deposition as extracted above, the petitioner put forth her requirement as well of one room to take tuition classes at home.

13. Pertinently, no objection was raised by the respondent to the petitioner leading evidence with regard to the requirement of his wife, on the ground that the same had not been pleaded in the eviction petition. On the contrary the respondent allowed the said deposition to come on record and even went ahead to cross-examine the petitioner extensively on these aspects. With regard to the requirement set up by the petitioner for his wife the cross-examination of the petitioner, conducted on 09.07.2002, reads as follows:

“She was teaching in school in Bombay and was also giving private tuitions. After coming to Delhi, she is not working but giving private tuitions. She is submitting her income-tax returns every year. She is showing her income-from private tuitions in the income-tax returns which she is filing. I have not brought the income-tax returns of my wife but I can produce the same after speaking to the C.A. My flats situated at Bombay, mentioned above are lying vacant.”

14. On 28.8.2002 the petitioner (PW1) was again cross examined on the same aspect and that portion of the cross examination reads as follows:-

“It is incorrect that my wife is not taking any private tuitions or that she is not showing the income from tuitions in her income tax returns.”

15. Similarly, with regard to the requirement of one room for the petitioners staff, although not pleaded in the eviction petition,

was spoken about by him in his examination, without any objection or challenge. On this aspect, there was no cross examination at all.

16. The learned ARC rejected the evidence led by the respondent and did not accept the testimony of the respondent's only witness Roshanlal. Pertinently, the decision of the learned ARC in rejecting the testimony of Shri Roshanlal on the ground that he was incompetent to depose on behalf of the respondent has not been challenged by the respondent in any proceedings and even in these proceedings, no submission was made by learned counsel for the respondent in this regard.

17. The discussion with regard to the bona fide requirement of the petitioner and his family is contained in paras 29 and 30 and the same reads as follows:-

“Moreover, as regards the accommodation which is already available with the petitioner, it is not in dispute that during the proceedings of the case, petitioner got possession of the premises which was under his other tenant Smt. Neeru Verma. Pleadings pertaining to her such other tenant has been placed on record and has been proved as Ex.PW1/R-1 and it becomes very obvious that Neeru Verma was in possession of one drawing-cum-dining room, study room/office, three bed rooms with attached bath, kitchen, two verandahs and corridor on the first floor.

In such petition against Neeru Verma, petitioner had also claimed that he was in possession of only one small bedroom on the first floor. Since Smt. Neeru Verma has already vacated the portion which was with her,

petitioner is now in occupation of one drawing and dining room, a study room/office and four bedrooms besides other amenities. The size of the family of the petitioner is not big. He is having three daughters and his two daughters are already married and his only one unmarried daughter is residing with him. He can very well reserve one room for himself and for his wife. One room can be kept exclusively for his unmarried daughter; one room for his visitors and one room can be utilized for office work and even then he has one surplus room with him. He can use this room as pooja room if he so desires. Petitioner has also sought one room exclusively for his wife for her office work. However, no such stand has been taken in the petition and, therefore, requirement in this regard is found to be beyond pleadings and, therefore, cannot be considered at all."

18. Learned counsel for the petitioner submits that the approach of the learned ARC in assessing the bona fide requirement of the petitioner and his family is erroneous and the learned ARC has failed to consider the testimony of the petitioner. He submits that the small room admeasuring 11.5' x 10' which was earlier available with the petitioner had to be demolished and the said area merged with the back verandah on account of the fact that on the ground floor his brother had removed the load bearing wall. He refers to his deposition made in this regard which was never challenged by the respondent.

19. He submits that, first and foremost, the learned ARC erred in assuming the availability of four rooms with the petitioner. The petitioner had only three rooms available on the first floor, which had been vacated by Ms. Neeru Verma, apart from one room

designated for office purposes. Learned counsel for the petitioner further submits that his requirements for his own professional office has also not been correctly assessed in the light of the unrebutted evidence led by the petitioner. It had come out in the petitioner's deposition that he requires one room for his consultancy services and one room for his assisting staff. However the learned ARC has taken into account only one room for office work of the petitioner. He further submits that even though there was no specific pleading in respect of the requirement of one room for the petitioner's wife to run her tuition classes, or for the petitioner's staff, the petitioner had led his evidence in this regard without any objection from the respondent and the respondent had availed of ample opportunity to cross examine the petitioner on this aspect. In spite of that being the position, the learned ARC has disregarded the said requirements of the petitioner's wife on the ground that the said requirement had not been specifically set out in the eviction petition. The requirement of one room for the petitioner's assisting staff has not been dealt with at all.

20. Learned counsel for the petitioner submits that, on the face of it, there is a calculation error committed by the learned ARC. He submits that the learned ARC has assumed the availability of, inter alia, one study room/office and four bed rooms with the petitioner as aforesaid. In fact there are only three bed rooms, apart from the one room/office. This is because the room in the

back verandah shown as a room admeasuring 11.5' X 10' in the plan Exhibit C-1 does not exist as it has had to be merged with the back verandah. One room has been assigned for the petitioner and his wife, one room has been assigned for his then unmarried daughter who was residing with the petitioner, one room has been assigned for visitors and one room has been assigned for office work. The learned ARC held that even then there is one surplus room available with the petitioner which could be used as a puja room. He submits that this is patently wrong, as there are in fact only three bed rooms with one study room/office. As opposed to the availability of the said accommodation, the requirement of the petitioner is at least of one room for himself and his wife, two rooms for his three married daughters with their respective husbands and grand children, two rooms for his office including his staff, one room for his wife's tuition classes and one room for puja. Therefore the minimum requirement of the petitioner is of seven rooms. As opposed to this the petitioner has three bed rooms with attached bath rooms, and one study/office.

21. Learned counsel for the petitioner also submits that the respondent is holding on to the suit premises merely to harass the petitioner and to extract money from him for vacating the tenanted portion. He submits that the respondents are, in fact, not occupying the suit premises for over a decade. He refers to the photographs filed by the petitioner before the Supreme Court in

SLP(Civil) No. 5694/1998 which show the condition of the Barsati Floor, where two rooms in occupation of the respondent are situated. These photographs have been filed in these proceedings as well.

22. He also refers to the telephone bills in the name of Sh. Roshan Lal, the employee of the respondent, installed at the suit premises which show that no calls have been made from the said telephone connection for a long time. He even relies on the tabulation filed on record with regard to the consumption of electricity in the tenanted premises. The number of units consumed is either zero or only a few units spread over the years.

23. On the other hand, Mr. Girdhar Govind, learned counsel for the respondents submits that the accommodation available with the petitioner is more than sufficient for his needs and the needs of his family. At the time when the amended eviction petition was filed, of the three, one of the daughters of the petitioner was unmarried. Over the years, even she has got married and is not residing with the petitioner. He submits that in these revision proceedings this court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. The order of the Additional Rent Controller has to be tested on the touchstones of "*whether it is according to law*". It is only for this purpose that this court may enter into re-

appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable, or is one that no reasonable person acting with objectivity could have reached on the available material. In support of this proposition Mr. Girdhar Govind relied on the decision of the Supreme Court in AIR 1988 SC 852 **Hiralal Kapur Vs. Prabhu Choudhury** and AIR 1999 SC 2507 **Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta**.

24. Having heard the arguments of learned counsel for the parties and having examined the impugned order, the record including the testimony of the petitioner and having examined the case law cited by the respondent, I am of the view that the impugned order passed by the learned ARC is not according to law and the same deserves to be set aside, and an eviction order passed against the respondent.

25. The respondent was initially inducted as a tenant in the property in question in the year 1971 by the father of the petitioner Sh. J.R. Sethi at a monthly rent of Rs. 1200/-. Even according to the respondent, in the year 1981 the respondent vacated a portion of the tenanted premises and according to the respondent it continued to remain in occupation of two bed rooms, one store room, one bath room on the first floor, two barsati rooms, open terrace at the

barsati floor and the terrace above the garage block, one room, open toilet and open terrace on a monthly rent of Rs.1,500/-.

26. The petitioner was a young man in 1971 when the premise was let out by his late father. He served with the Indian Railways and retired as Chief Mechanical Engineer on 30.09.1995. As he was posted in Bombay at the time of his retirement, he shifted to Delhi on 07.06.1996 along with his family and started residing with his in-laws at 5-B, Link Road, Jangpura Extension on account of paucity of accommodation in the said property, of which he became the owner of the first floor with barsati and one half of the garage block after the demise of his parents and on partition between him and his brother Sh. R.C. Sethi. Since the petitioner was a retired government servant, he invoked Section 14 (C) of the Delhi Rent control Act and filed a petition for eviction of the tenant Ms. Neeru Verma who was in occupation of three bed rooms with attached bath rooms, drawing room, dining room, front verandah, back verandah, kitchen and garage and one study room on the first floor of the said property. The petitioner had already preferred an eviction petition against the respondent as well, and during the pendency of the eviction petition against the respondent, the petitioner obtained the aforesaid portions from Ms. Neeru Verma. Accordingly, the petitioner amended the eviction petition as the portions vacated by Ms. Neeru Verma were still falling short for the petitioner and his family to meet all his requirements.

27. The petitioner has deposed, and it has not been rebutted that one room admeasuring 11.5 X 10 ft. in the back verandah was lost on account of the removal of the wall and the said area was merged with the back verandah. This was done as his brother Sh. R.C. Sethi had removed the wall on the ground floor which was taking the load of the wall on the first floor. The family of the petitioner consisted of himself, his wife, his two married daughters and sons in law and their children, and one unmarried daughter at the time when the eviction petition was amended. In the meantime his third daughter who was unmarried has also got married and is residing in her matrimonial home.

28. The Rent Controller, despite it being brought on record that the room admeasuring 11.5' X 10' was no longer available as it was merged with the back verandah on account of removal of the load bearing wall on the first floor, assumed existence of the said room. This, in my view, was a conclusion which could not have been derived on the basis of the testimony of the petitioner and this assumption of the learned ARC, betrays lack of reason and objectivity.

29. The learned ARC has also brushed aside the requirement of the petitioner's wife of one room for holding tuition classes merely on the ground that the same was not pleaded in the eviction petition. No doubt, in a civil proceeding a party can prove only that

case which he has pleaded. However in my view, in proceedings for eviction instituted under the Delhi Rent Control Act, and even more so in proceedings for eviction on the ground of bona fide requirement of a landlord and his family, this rule cannot be very strictly applied for the simple reason that during the course of such proceedings, which may take long years to get finally decided, there are bound to be additions and deletion of family members with the older generation passing away and the new generation coming up; with children getting married, moving out for studies or for work, and older generation retiring etc. It is not necessary that at every stage one or the other party should amend his pleading to bring on record such additions or deletions. The court can take cognizance of such developments as they occur from time to time on the basis of affidavits and testimonies.

30. The Supreme Court in ***Pasupuleti Venkateshwarlu v. The Motor & General Traders*** AIR 1975 SC 1409 while dealing with a case relating to eviction of a tenant governed under the Rent Control Act rejected the argument that the High Court could not have taken cognizance of subsequent events in the following words:-

“4. We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that

the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief for the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice-subject, of course, to the absence of other disentitling factors or just circumstances..... We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. “

31. The said view has consistently been followed in subsequent decisions. I may refer to one decision of this Court in **Anand Gopal Jhingran & Ors. V. Arjun Dev**, 57 (1995) DLT 312, which in turn places reliance on a earlier Supreme Court decision in the case of **M/s Variety Empire V.** AIR 1985 SC 207. Though there is authority to suggest that in Civil Proceedings subsequent events should be incorporated in the pleadings of the parties (See AIR 2002 SC 665), that decision does not deal with a proceeding under the Rent Control Legislation. It deals with a civil suit. It did not deal with a situation like the present, wherein one party has led evidence beyond his pleadings to incorporate subsequent events, without any

objection from the opposite side and the opposite side has even availed of its right to cross examine the witness even with respect to such evidence.

32. Section 37 of the Delhi Rent Control Act, inter alia, provides:

“(1) No order which prejudicially affects any person shall be made by the Controller under this Act without giving him a reasonable opportunity of showing cause against the order proposed to be made and until his objections, if any, and any evidence he may produce in support of the same have been considered by the Controller.

(2) Subject to any rules that may be made under this Act, the Controller shall, while holding an inquiry in any proceeding before him, including the recording of evidence.

(3)

33. Therefore, the primary guideline laid down by the statute is that the Rent Controller has to necessarily comply with the principles of natural justice. The practice and procedure of a Court of Small Causes, including relating to the recording of evidence has been made applicable in respect of the proceedings before the Rent Controller. This is subject to any Rules that may be made under the Act. Rule 23 of the Delhi Rent Control Rules, 1959 states that *“In deciding any question relating to procedure not specifically provided by the Act and these rules the Controller and the Rent Control Tribunal shall, as far as possible, be guided by the provisions*

contained in the Code of Civil Procedure, 1908". The use of the expression "*as far as possible, be guided by the provisions contained in the Code of Civil Procedure 1908*" shows that *per se* the provisions of the Civil Procedure Code are not applicable to the proceedings before the Rent Controller. However the procedure prescribed in the Civil Procedure Code guides the procedure that the Rent Controller may adopt "*as far as possible*". In my view, it may not be possible, or at least it may not be feasible in all situations to amend the pleadings, particularly where a petition for eviction has been preferred on the ground of bona fide requirement because of the nature of such proceedings. The relevant facts do not get fixed on the date of filing of the petition and keep fluctuating with the passage of time. The Act prescribes a special summary procedure for such petitions in Section 25B, which is different from the procedure adopted in the case of eviction petitions filed on various other grounds under the Act. The insistence on amendment being made in such proceedings to bring on record every subsequent event would defeat the purpose of enacting Section 25B of the Act as it is bound to delay the proceedings before the Controller. In any event, if such an objection is not raised at the earliest by the opposite party, the same cannot be permitted to be raised later on.

34. This Court in a recent decision reported as ***P.C. Jain and Ors. V. J.K. Soni***, 156 (2009) DLT 760 rejected the argument of the tenant founded upon Order 2 Rule 2 C.P.C., by observing that the

Additional Rent Controller is not a civil court and that the provisions of the Civil Procedure Code are not applicable to the Rent Controller in toto. The Act provides for its own procedure for deciding eviction petitions and is a complete Code in itself. The rules of procedure have been framed under the Act. In paragraphs 7 and 8, the Court observed as follows:-

“7. A perusal of Sections 36 and 37 shows that the Rent Controller has been vested with certain powers of not only civil court but also powers of criminal nature and the Rent Controller is a separate authority in itself. Section 37 provides the procedure to be followed by the Rent Controller has to be as per the rules made under the Act and the Controller for disposal of the matters before it has to adopt practice and procedure of small causes court. It is nowhere provided that the Rent Controller has to follow the Civil Procedure Code.

8. Even otherwise, the Delhi Rent Control Act is a piece of social legislation and it was enacted in order to protect the tenants from frivolous eviction petitions. At the same time, in order to do justice to the landlord and to avoid placing such restriction on their rights to evict the tenants as to destroy their legal rights to the property, certain salutary provisions have been made by the legislation to give relief to the landlord.....”

35. I may refer to the decision of this court in **Gurcharan Singh V. R.N.Chaudhary**, 21(1982) DLT 477. The fact situation in that case was very similar to the situation presented in this case. The eviction petition had been filed by the landlord on the ground of bona fide requirement u/s 14(1)(e) of the Act. In his examination,

the landlord had led evidence with regard to his financial status and his physical condition, neither of which was pleaded in the eviction petitioner either originally or by way of amendment. The Additional Rent Controller dismissed the eviction petition filed by the landlord. However the Additional Rent Control Tribunal reversed the said decision by taking note of the fact that the landlord had suffered a heart attack and was hospitalized and that he had even been advised to reside on the ground floor, which was in occupation of the tenant. Pertinently, even in that case, the Tribunal noticed that the testimony of the landlord with regard to his suffering a heart attack and his being advised to reside on the ground floor had not been challenged by the tenant in his cross examination. Before this Court the tenant, in his second appeal, contended that in the eviction petition no details of his family had been mentioned by the landlord; there was no mention of any illness of heart attack or difficulty of age as a ground of bona fide requirement; no details were at all mentioned as to the present accommodation available with the landlord; no details of the status of the landlord were disclosed. It was contended that the non disclosure of these facts militates against the bona fide requirement of the landlord.

36. This Court considered the evidence led by the landlord with regard to his status, business and income as well as evidence brought on record with regard to the illness of the landlord. With regard to the illness of the landlord, this Court held as follows:-

"25. This was a subsequent development. It is true that the landlord could have amended eviction petition to plead his ill-health also as a ground for eviction of the tenant but the fact remains that these were developments during the pendency of the eviction proceedings of which the tenants had full notice.

26. In view of the application of the landlord for his examination on commission, a Local Commissioner was appointed and the statement of the landlord was recorded on commission on 3-6-1974. In this statement, the landlord stated on oath that "recently I have suffered heart attack and doctors advised me not to come up and down. I am staying on the first floor because I do not have accommodation on the second floor." This statement on oath was not even challenged by the tenant in cross-examination of the landlord."

37. The argument of the tenant that as the aspect of unsuitability of the existing accommodation with the landlord was not pleaded, and without amendment of the petition subsequent events relating to illness of the landlord could not have been taken into account by the Tribunal, nor could evidence be led in that behalf by the landlord was rejected by the court in the following words:-

"28. There can be no doubt that in cases of ejectment on the ground of bona fide requirement of the landlord, the Court is entitled to take into consideration the developments that may have taken place till the time of passing of order of ejectment in order to mould the relief. It is also true that cases of illness must be proved by best evidence. The subsequent developments should, however, relate to the requirement of the landlord. It is another thing as to how

the subsequent developments should be pleaded and/or proved. ***As I stated earlier the petition for ejectment can always be amended but failure to amend the petition does not mean that the subsequent events cannot be considered. Rules of natural justice require that the tenant should have full notice about it and should have time and opportunity to rebut it. In the present case, much before the evidence of the tenant commenced, the illness of the landlord was brought to the notice of the court as well as of the tenant and that is why the landlord was allowed to be examined on commission. The landlord even deposed about it in his testimony and this was never challenged in cross-examination. Thus, no prejudice has been caused to the tenant by non-amendment of the ejectment application. In fact, when the evidence of the landlord was being recorded and he was deposing about his illness because of heart attack, no objection was taken on behalf of the tenant to the recording of such evidence. Nor was the fact of illness challenged, as stated earlier.***

29. All rules of procedure, as has often been held, are for advancement of justice and it will be travesty of justice to deny the relief to the landlord at this stage.” (emphasis supplied)

38. The court took into account the facts which were proved, even without pleading and without any challenge raised by the opposite party. [see also ILR (1980) Del 94, 1981 (17) RCR 697, 81 (1999) DLT 374, 549, 655].

39. Pertinently, in the present case even the respondent is seeking to rely on one such event, namely, the marriage of the third unmarried daughter of the petitioner during the pendency of these

proceedings to say that her requirement no longer subsists for one dedicated room in the suit premises. This subsequent fact has neither been pleaded nor proved on record by either party.

40. In my view, what is crucial in such proceedings is that no party should be taken by surprise, and every party should have sufficient opportunity to meet the case of the other. Pertinently, when the petitioner led his evidence, and in his examination in chief (which was conducted in open Court) put forth the requirement of the petitioner's wife for one room for holding tuition classes and his own requirement of one room for his staff assisting him in his office, the said testimony was not objected to on the ground that the same was beyond pleadings. Even more pertinent to note is the fact that the respondent cross-examined the petitioner on the first aspect and even at that stage did not confront the petitioner with the lack of any pleading in this regard. On the second aspect there was no cross-examination at all. The fact that the testimony of the respondent's witness has been rejected is a separate issue, but what is important note is the fact that the respondent did not venture to lead any evidence of its own to meet the requirement for the petitioner's wife as disclosed in the petitioner's evidence or his own requirement for another room for his staff in his office.

41. The requirement of the petitioner's wife for one room to hold tuition classes has to be viewed in the light of the fact that she

is a qualified teacher having attained the necessary educational qualification. It has also to be viewed in the light of the fact that she had been teaching in schools in Delhi and Bombay. The petitioner had deposed that even after coming to Delhi, his wife had started taking private tuition classes. The petitioner also stated that she was showing her income from private tuitions in her income tax returns which she is filing. The petitioner had retired as aforesaid and, therefore, to gainfully utilize her time and also add to the family's income, it is not unnatural for the petitioner's wife to continue to take tuition classes and pursue her teaching career while residing in the portion in the petitioner's occupation. This stand of the petitioner is highly probable and there is no reason not to believe the same.

42. Similarly, the requirement of the petitioner of two rooms for his office-one for his own consultation room and one for his staff should have been viewed in the light of the fact that the petitioner being a Consultant Engineer requires a room for himself where he can entertain his clients, hold discussion and give consultation. Being a Mechanical Consultant Engineer, it is reasonable to assume that he would have other skilled and clerical staff working under him. They possibly cannot be accommodated in the same office room as that of the petitioner. The requirement of space to keep office equipment such as computers, printers, fax machine etc., also has been ignored by the learned ARC even though the

petitioner had led evidence to show that he requires one room for himself and one room for his staff/equipment. There was no reason to disregard the testimony of the petitioner in this regard.

43. The petitioner had amended the eviction petition some time after the portion of the suit property was vacated by the erstwhile tenant, Ms. Neeru Verma. It appears only after having settled down in the premises vacated by Ms. Neeru Verma, the respondent's wife has taken up the task of imparting tuitions upon discovering the potential for imparting tuition of children in the neighbourhood. Similarly, it appears that only upon actual use by the petitioner of the premises available with him for his office purpose, he felt the need for a separate room to accommodate his staff and computers etc.

44. Therefore, in my view, the learned ARC has erred in law in disregarding the testimony of the petitioner with regard to the requirement of one room for his wife to hold tuition classes and his own requirement of two rooms for running his office. The order passed by the learned ARC, in my view, has led to miscarriage of justice and the same is, therefore, not in accordance with law.

45. The learned ARC has also not taken into account the fact that the petitioner and his wife being retired persons would need frequent visits by his three married daughters, son-in-laws and grand children who have also grown up since the time of filing of the

eviction petition. Their requirement cannot be pegged down at only one room. Whenever they visit them, they would require at least two rooms. Viewed in the aforesaid light, I am of the opinion that the reasonable requirement of accommodation of the petitioner is: (1) One room for himself and his wife; (2) two rooms for his three married daughters, son-in-laws and grand children as and when one of them visits the petitioner. This requirement could get heightened if more than one married daughter decides to visit the petitioner at the same time; (3) two rooms for the petitioner for running his office – one room for himself and one for his staff, office equipment etc., (4) one room for the petitioner's wife to be able to run her tuition classes; (5) One puja room. Apart from the aforesaid, the petitioner requires one drawing room, one dining room, kitchen. He already has these other areas available with him. Consequently the minimum requirement of the petitioner is seven rooms. As opposed to this, even according to the learned ARC he has four rooms available with him i.e. three bed rooms and one office room. He is short of at least three rooms.

46. Consequently I am of the view that the impugned order passed by the learned ARC cannot be sustained as the same is not in accordance with law - the learned ARC having failed to apply the settled legal principles and having arrived at a wholly unreasonable conclusion which in my view, no reasonable person acting with objectivity could have reached on the basis of the material available

on record. The learned ARC has ignored the weight of the evidence and has proceeded on a wrong premise of law and has arrived at his conclusions on the basis of established facts which betray the lack of reason and/or objectivity. The eviction petition filed by the petitioner is allowed. The respondent is granted six months time to vacate the suit premises. The petition stands allowed with costs quantified at Rs.25,000/-.

(VIPIN SANGHI)
JUDGE

SEPTEMBER 15, 2009
as/dp