

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

% **Judgment reserved on: 11.09.2009**
Judgment delivered on: 06.10.2009

+ **RC.REV. NO. 34/2009**

MUKESH KUMAR Petitioner
Through: Mr. Pankaj Gupta, Advocate

versus

RISHI PRAKASH Respondent
Through: Mr. Rishi Prakash, respondent in person.

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. In challenge in this revision petition is the order dated 20.04.2009 passed by Sh. Balwant Rai Bansal, ARC (Central) Tis Hazari Courts, Delhi in E-380/08 titled as "Sh. Mukesh Kumar Vs. Sh. Rishi Prakash" whereby the learned ARC has granted to the respondent tenant, the leave to defend the eviction petition preferred by the petitioner/landlord under Section 14 (1) (e) of the Delhi Rent Control Act.

2. Undisputedly, the petitioner is the landlord in respect of

premises let out to the respondent comprising of one room situated at the second floor of property bearing no.3649, Gali Rura Acharwali, Chawri Bazar, Delhi, 110006 as shown in red colour in the site plan filed by the petitioner/landlord as annexure 'A' with the eviction petition. The respondent was inducted as a tenant in the said premises on 08.12.1980 at a monthly rent of Rs. 75/-. It was enhanced to Rs. 99/- per month w.e.f. 01.07.2001. The petitioner claims that the same was further enhanced to Rs. 600/- per month by issuing a notice in consonance with the decision of this court in **Raghunandan Saran Ashok Saran (HUF) Vs. UOI** 95 (2002) DLT 508 (DB). However, according to the respondent the rent is Rs.99/- per month as the respondent does not admit the increase of rent to Rs. 600/- per month.

3. The petitioner preferred the eviction petition on the ground of bona fide requirement by disclosing that he is carrying on his business in hardware, rubber and iron goods, aluminum and brass doors and window fittings, industrial and other trolley wheels, Castor wheels etc. at 3663, Chawri Bazar, Delhi-110006. He disclosed that he has three sons. His second son Shri Pankaj Gupta is a practicing Advocate. He stated that he requires the tenanted premises for his second son Shri Pankaj Gupta who intends to start/maintain his office as a lawyer. He further stated that the petitioner has no other suitable space to meet the requirement of his son. The petitioner also contended that the tenanted premises is lying locked / unutilized which shows that the same is not required by the respondent.

4. Upon issuance of notice in the prescribed form the respondent, who is himself an advocate, filed his application to seek leave to defend the eviction petition. The respondent contended that the petitioner is not the owner of the property bearing no. 3649, Gali Rura Acharwali, Chawri Bazar, Delhi – 110006 (herein referred to as “property bearing No.3649”). He admitted that he is the tenant in respect of suit premises under the petitioner. The respondent contended that the petitioner had not made a complete disclosure of the accommodation available with him. It was contended that the petitioner is already in possession of more than sufficient and suitable accommodation for his requirement, which is lying vacant. The respondent contended that property bearing no.3649 in which the suit premises is situated is comprised of four floors, out of which the petitioner is already in actual physical possession of entire first floor, third floor and fourth floor. In addition, the petitioner is also in actual physical possession of shop nos. 2 and 11 on the ground floor which are lying vacant. It was averred that the petitioner has recently got possession of shop nos. 2 and 11 on the ground floor and the entire first floor of the said property from the earlier tenants/occupants. The respondent also contended that even according to the plan filed by the petitioner, the first floor consists of as many as 5-6 rooms, one bath room cum latrine (one toilet for common use) and open terrace which has been recently vacated by the earlier tenant M/s. Saraswati Publications. It was also averred that the entire first floor is in possession of the petitioner and is being used by his son Sh. Pankaj

Gupta, Advocate as his office. It was further averred that the other two sons of the petitioner namely Sh. Rajiv Gupta and Amit Gupta are carrying on business with the petitioner under the name and style of M/s. Mukesh Kumar and Sons in property bearing no. 3663, Chawri Bazar, Delhi. Various other allegations were made by the respondent against the petitioner of harassment. However, the same are not relevant to these proceedings. The petitioner filed his reply to the application seeking leave to defend, and the respondent also file his rejoinder. The learned ARC has, as aforesaid, granted leave to defend to the respondent on the basis of the pleadings for the parties.

5. The submission of learned counsel for the petitioner is that the impugned order has not been passed in accordance with the law. To further substantiate his submission, learned counsel has referred to the reply filed by the petitioner to the above said application filed by the respondent/ tenant to seek leave to defend the eviction petition. In the said reply the petitioner, inter alia, made the following categorical statements :

“.....In this behalf, it is submitted that the property bearing no. 3649, Gali Rura Achar Wali, Chawri Bazar, Delhi – 110006 has available office space/rooms only at the second floor of the said property and the rented premises in question is situated at that floor itself. Rest on the portion/space in the said property is being used by the other tenants and occupants including the petitioner either for trading purpose or for storing the goods as godown.”

“.....Presently the petitioner is maintaining the said stock at the shop-cum-godown space available at the ground floor of the property, at

the first floor of the property, third floor of the property and in the tin shed built up at the roof at the third floor. In maintaining the said stock at such places, the petitioner has to incur huge expenditure in the form of loading and unloading charges/cartage besides the goods which are stocked in the tin shed at the roof of third floor get damaged being exposed directly to sunlight and rain. The said expenditure can be substantially reduced in case more space is available to the petitioner at lower floors. Besides maintaining the stock at present available space is otherwise very difficult as for meeting the requirements of the customer in business frequent visits are required to made to the godown. Therefore, the petitioner is otherwise in genuine and bonafide need of more space at lower floors including ground floor for his business and it is thus cannot be said/concluded that petitioner has sufficient space as sought to be contended by the respondent/tenant. Without prejudice to above it is submitted that for the purpose stated in the petition, rented premises is the most suitable as the same was being used for office of an advocate and is required for identical purpose."

"In reply to the averments/contents stated in respect to first floor of the property it is submitted that the entire first floor is being utilized/used by the petitioner for storing his goods/stocks for his trade/business requirement. Due to the space constraints, the petitioner is constrained to store goods in the open area of said floor exposing them directly to the sun and rain. Therefore, it is incorrect to say/suggest on behalf of the respondent-tenant that the petitioner is having sufficient accommodation as contended to in para under reply."

".....It is submitted that the size of the rented premises in possession of the respondent tenant is almost similar to the size of lawyer's chambers as available in Court complex. Further since the rented premises was being used as the office of a lawyer and the same is required for maintaining the similar office, it is submitted that the said accommodation is the

best suitable accommodation which is required by the petitioner genuinely and bonafidely.”

6. The respondent filed his rejoinder to the aforesaid reply of the petitioner. In his rejoinder the respondent, inter alia, stated as follows:

“.....It is denied that any stocks are required to be maintained by the petitioner for the purpose of business run by him. It is also emphatically denied that the petitioner has ever maintained any stocks on the ground floor and first floor of above described property of which suit premises forms part. In fact there is no godown space on ground and first floor portion of the property in question. The first floor portion of the property has always been used as office accommodation by the earlier tenants and the same is still being used as office by Sh. Pankaj Gupta, Advocate 2nd son of petitioner, since the time of its vacation by the tenant. As is rightly admitted by the petitioner he has been carrying on his entire business activities including maintaining of business stocks, if any from shop no. 3663, Chawri Bazar, Delhi for the last more than 30 years or so which is a very big/ spacious shop and is more than sufficient for petitioner’s business activities. All other commercial activities connected with the business of petitioner, if any, though not admitted are being carried on by him on the 3rd and 4th floor of the above described bigger suit property.”

“.....It is emphatically denied that tenancy premises is in any manner suitable for the office of Sh. Pankaj Gupta, Advocate, son of petitioner, as the same is a very small kothri, measuring about 7’.5” x 10’.11” and the same is being used by respondent for keeping his law-books, decided case files and other records as the same has been rendered unusable as a result of illegal activities of petitioner, whereas said son of petitioner is running his office in entire 1st floor of property in question as already submitted.”

7. Learned counsel for the petitioner submits that the learned

ARC did not correctly understand and comprehend the pleadings of the parties. He submits that the learned ARC while allowing the respondent's application to seek leave to defend the eviction petition observed as follows:

"9. The petitioner has set out a case in the petition that the petitioner is owner and landlord of the suit premises and he is running business in hardware, rubber, iron goods etc. and the suit premises are required by the him bonafidely for his second son who intends to start his office as lawyer and petitioner has no other suitable space to meet this requirement. **On the other hand, the respondent has categorically stated in his leave to defend application supported with the affidavit that the petitioner is having sufficient and suitable accommodation and the petitioner has got shop no. 2 & 11 at the ground floor of property no. 3649, Gali Rura Achar Wali, Chawri Bazar, Delhi - 6 which are lying vacant along with entire first floor of the said property. The petitioner has not controverted this fact in his reply to leave to defend application. Similarly, the respondent has categorically averred that the first floor of the said property consists of 5-6 rooms along with facility of bathroom cum latrine and the same has been recently vacated by earlier tenant namely M/s. Saraswati Publications and the entire first floor is in the possession of petitioner which is being used by his son Sh. Pankaj Gupta as his office. The petitioner, in his counter affidavit and reply to leave to defend application, has not refuted this fact. Therefore, the respondent has raised a triable issue that the petitioner is having sufficient accommodation and the alleged need of the son of the petitioner who intends to start his business as lawyer stands satisfied when he is running his office at the first floor which is in the possession of the petitioner.** (emphasis supplied).

10. So far the contention of the petitioner that the petitioner only requires the particular space for running office of his second son at the second floor and petitioner has no other suitable space and the petitioner needs the accommodation for keeping the goods at the lower floors is concerned, **the petitioner has nowhere stated in his petition that he needs the lower floors for keeping the goods or that he is shortage of space for keeping the goods. The petitioner has only set out his case that he requires the tenanted premises for the bonafide requirement of his second son as his office but as the petitioner is having two rooms at the ground floor and entire first floor in his possession which has been recently vacated and same is being used by his son as his office as asserted by the respondent which has not been denied by the petitioner.** Therefore, the respondent has raised a triable issue that whether the petitioner requires the tenanted premises bonafidely or not.” (emphasis supplied)

8. He submits that the approach of the learned ARC while dealing with the application of the respondent was erroneous. By reference to the above extracted averments contained in the reply filed by the petitioner to the respondent's application to seek leave to defend it is contended that, on the face of it, the learned ARC has erred in concluding that the petitioner had not contraverted the allegation of the respondent that the entire first floor of the said property was lying vacant or that it was being used by the petitioner's son Shri Pankaj Gupta, Advocate. He submits that the petitioner had categorically and repeatedly stated that apart from the second floor, the entire property bearing no.3649 was being used either by other tenants/occupants or by the petitioner for trading purpose or for

storing his goods. It has also been stated that the petitioner maintains the stock at the shop-cum-godown space available at the ground floor, the first floor, the third floor and in the tin shed built up at the roof of the third floor. In view of such categorical and repeated averments made in the reply, learned counsel for the petitioner submits, that the learned ARC gravely erred in concluding that a triable issue arises regarding the availability of the first floor of property bearing no.3649 with the petitioner for the purpose of running of his professional office by the petitioner's second son who is a practicing Advocate. He further submits that the learned ARC has completely failed to appreciate the reply filed by the petitioner to the application seeking leave to defend, inasmuch as, he has concluded that the petitioner has not refuted the allegation that the first floor premises was being used by his son Sh. Pankaj Gupta as his office.

9. Learned counsel for the petitioner further submits that since the eviction petition had been filed specifically to address the need of the petitioner's son Shri Pankaj Gupta, Advocate for office space, in the eviction petition the petitioner was obliged to disclose the availability of only that accommodation with the petitioner which is suitable for the said purpose, and the petitioner was not expected to disclose the availability of other accommodation that the petitioner may have, and which is being used by the petitioner for his own aforesaid business. As that accommodation (which was being used by the petitioner for his own trading business in hardware) was not available with the petitioner for the purpose of setting up his son's professional office, the petitioner

could not have been expected to state about the same in the eviction petition. He submits that when the respondent alleged the availability of the accommodation on the ground floor and the first floor in property bearing no.3649 with the petitioner (in his application seeking leave to defend), the petitioner comprehensively dealt with the same and refuted the allegation of the respondent. He submits that a triable issue would not arise merely because the respondent had alleged the availability of alternative suitable accommodation on the ground floor and first floor of property bearing No.3649, and also alleged that the first floor of property No.3649 was being used by Shri Pankaj Gupta, Advocate as his office. He submits that such bald averments, without any supporting evidence to even, prima facie, establish their correctness, would not give rise to a triable issue.

10. He submits that the respondent had resorted to making deliberately and knowingly false statements in his application seeking leave to defend, only with a view to somehow seek leave to defend the eviction petition. He submits that no material whatsoever has been filed by the respondent in support of his case that Sh. Pankaj Gupta, the second son of the petitioner was running his professional office from the first floor of property bearing no.3649. A bald assertion of the respondent in this regard could not have been given credence by the learned ARC. Mr. Gupta, learned counsel for the petitioner further submits that the petitioner, even as per the respondent's admission is storing the goods in which he trades on the third floor and the terrace covered with tin shed over the third floor. He submits that the articles

stored by the petitioner on the terrace floor are exposed to the vagaries of weather and often gets spoiled. He submits that it is unthinkable that the petitioner would use the third floor and the terrace floor for storing his goods and not use the lower floors for the said purpose when the petitioner has to incur substantial expense towards labour charges and breakage in transporting the goods to the higher floors. He submits that this fact itself shows that the stand taken by the respondent is totally baseless and unsubstantiated. Learned counsel for the petitioner has placed reliance on the following decisions in support of his submissions:

1. **V.K. Sarin v. Pigott Champman & Co.**, 46 (1992) DLT 352
2. **Meenakshi v. Ramesh Khanna & Anr.**, 60 (1995) DLT 524
3. **Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta**, 80 (1999) DLT 731
4. **Rajender Kumar Sharma & Ors. v. Smt. Leela Wati & Ors.**, 155 (2008) DLT 383

11. The respondent, on the other hand submits that the petitioner did not state in the eviction petition that he requires any portion of property bearing no.3649 for his own business. He did not even disclose that he is using any portion of the said property for his own trading business. He submits that only in response to the respondent's application the petitioner stated that the petitioner is using two shops in the ground floor, the first floor, the third floor and the terrace above covered with tin shed for purpose of storing the goods in which he

trades. He submits that if the petitioner's action had been bonafide, he would have come out with the said disclosure in his eviction petition. He further submits that in the reply filed by the petitioner to the respondent's application to seek leave to defend, the allegation of the respondent that the first floor premises of property bearing no.3649 was being used by the petitioner's second son, who is an advocate, for his office, has not been denied. He further submits that he has not made any irresponsible statements in his application seeking leave to defend or in his rejoinder to the reply filed by the petitioner. He submits that his challenge to the ownership of the petitioner cannot be said to lack bonafides. He submits that the tenant is entitled to raise the issue with regard to the ownership of the tenanted premises, as it is essential for the landlord to also be an owner of the tenanted premises to be able to maintain a petition under Section 14 (1) (e) of the Delhi Rent Control Act. He seeks to place reliance on the decision of the Supreme Court in ***Sheela & Ors. v. Firm Prahlad Rai Prem Prakash***, AIR 2002 SC 1264 in support of his submission.

12. In these proceedings this Court is not hearing an appeal from the order passed by the learned ARC. It is not for the Court to take a different view merely because the Court is so inclined on the basis of the materials placed on record by both the parties. The scope of these proceedings is to examine whether the impugned order has been passed in accordance with the law, that is, in accordance with the established principles of law. It is the approach of the learned ARC

which is under examination, to see, whether it is misdirected or not.

13. Having heard the arguments of the parties and perused the record, the case laws cited by both the parties, I am of the view that the impugned order cannot be sustained as it does not appear to be in accordance with the law. The approach of the learned ARC cannot be said to be rational and one which a prudent person would adopt.

14. It has been held in **K.K. Sarin** (supra) that due to paucity of accommodation the tenants are likely to plead facts with a view to create triable issues even in a case where there may be none, so as to seek leave to defend the eviction petition filed on the ground of bona fide requirement of the landlord. This is so because upon grant of leave to defend, the eviction proceedings are likely to take considerable time for disposal as a regular trial would ensue. Therefore, even if a tenant has no triable issue to raise, he still endeavors to prolong the litigation so as to postpone the date when he is faced with eviction. This factor, in my view, is even more pronounced in this case as the respondent himself is a seasoned advocate. In the present case, the so called defence set up by the respondent, which appears to have impressed the learned ARC, is that the son of the petitioner Sh. Pankaj Gupta, Advocate is already running his professional office on the first floor of property bearing no.3649 after the same was vacated by his tenant M/s. Saraswati Publications. According to the learned ARC, the contradictory stands of the parties with regard to the user of the first floor of property bearing no.3649

gave rise to a triable issue particularly when, according to the learned ARC, the petitioner has not disputed the respondent's allegation that the petitioner is running his office from the first floor of the said property.

15. On the face of it, the approach of the learned ARC appears to be rather simplistic. However when one marshals all the facts and circumstances which have come on record, and considers the fact that the primary defence of the respondent has not been corroborated by any material on the record, on the application of the case law cited by the petitioner, it cannot be said that the approach of the learned ARC was correct, legal or according to law. As held by this Court in **K.K. Sarin** (supra), while deciding the application seeking leave to defend, what is required of the Rent Controller is to observe the rules of natural Justice and to give opportunity to both the parties to produce the facts and the material on which they rely. When the leave to defend is sought by the tenant he must make out a prima facie case raising such pleas from which a triable issue would emerge. A bald plea, without anything more, particularly when the nature of the plea in defence is such that, if true, it would leave a trail of evidence to establish its existence, and which would be easily available for everyone to see and pick up, cannot be accepted as prima facie disclosing a triable issue.

16. In the present case, apart from contending that the son of the petitioner Sh. Pankaj Gupta, Advocate is already running his professional office from the first floor of property bearing no.3649 the

respondent has failed to produce any material whatsoever in support of this submission. Had there been any truth in the submission worth consideration, the respondent would have produced at least some evidence to, prima facie, raise a triable issue. An office of an advocate would have a name plate, he would be listed in the bar telephone directory with complete details of his office address and telephone numbers. He would undertake postal correspondence at and from his official address. He would print his office address on his visiting card, and even put it on his vakalatnama and filings in Court. He may even have an electricity connection in his name to run his office. He would be seen in his office premises on a daily basis with and without his clients. It was, therefore, not difficult for the respondent, who is himself a practicing advocate, to produce photographs or other documents along with his application to seek leave to defend to substantiate his plea that Sh. Pankaj Gupta, Advocate is, in fact, running his office from the first floor of property bearing no.3649 where he too is located. Pertinently, no such material has been placed on record. A bald assertion has been made by the respondent that Sh. Pankaj Gupta is running his office from the first floor of premises bearing no.3649.

17. On the other hand, it can be seen that the respondent is taking contradictory stands with regard to the user of property bearing no.3649 by the petitioner for his trading business. In his rejoinder to the reply filed by the petitioner to his application to seek leave to defend, at one stage the respondent states that stocks are not

required to be maintained by the petitioner for the purpose of the business run by him. In the same paragraph he later contends that the petitioner is carrying on his business on the third and the fourth floor of property bearing no.3649. Consequently, in the same breath, the petitioner states that no stocks are required to be maintained by the petitioner and he also says that for his trading business, the petitioner is utilizing the third and the fourth floor for stocking his goods.

18. There is no fourth floor as alleged. In fact, it is the terrace above the third floor which merely has a tin roof. It, therefore, stands admitted that the third and the terrace floors are being utilized by the petitioner for his trading business. From the nature of the trade carried out by the petitioner, it is evident that he is dealing in hardware articles which by their very definition generally are heavy items. The petitioner had categorically stated that he is utilizing the portion / space available in property bearing no.3649 for storing his goods as a godown. He had categorically stated that he is maintaining the stock at the shop-cum-godown space available at the ground floor of the property, the first floor of the property, the third floor of the property and in the tin shed build on the roof of the third floor. The petitioner also stated that to stock the goods on the upper floors the petitioner has to incur huge expenditure towards loading and unloading and cartage and that the goods stocked in the tin shed on the roof of the third floor often get damaged being exposed to the sunlight and rain. It, therefore, does not stand to reason that the petitioner would not utilize the shops on the ground floor and the first floor premises for

godown purposes, and would carry the load by incurring additional expenditure to the third floor or the terrace above it.

19. The learned ARC, in my view, has gravely erred in his approach by concluding that the petitioner had not controverted the allegation that the accommodation on the ground floor of property bearing no.3649 consisting of two shops bearing no. 2 and 11 and the entire first floor of the said property are lying vacant. From the above extracted statements made by the petitioner in his reply it is evident that the petitioner categorically and repeatedly stated that he is maintaining his stocks at the shop-cum-godown space available on the ground floor, at the first floor, the third floor and under the tin shed on the roof of the third floor of property bearing no.3649. I fail to understand what else the petitioner was required to state to enable the learned ARC to understand that the first floor of the said property was not being used by the petitioner's son as an office. In my view, the learned ARC has resorted to hair splitting by concluding that it had not been denied by the petitioner that his son was running his office on the first floor of property bearing no.3649. The statements/depositions of the parties have to be read in a sensible way by employing ones intelligence and rationality to get to their meaning and purport, and not in a superficial and hypertechnical manner thereby missing the point urged by the party. Once the petitioner stated that he is using, inter alia, the first floor of property bearing no.3649 for the purpose of godown to stock his goods, it obviously means that he also contends that his son was not running his office from the said portion.

20. The learned ARC has obviously not perused the reply of the petitioner to the application seeking leave to defend when he observed *“the petitioner has nowhere stated in his petition that he needs the lower floors for keeping the goods or that he has shortage of space for keeping the goods”*. He has also failed to appreciate the law on the subject.

21. Firstly, the petitioner was not obliged to discuss in his eviction petition the manner in which the lower floors were being used by him as these floors were being used for a totally different purpose than the purpose for which he required the tenanted premises. The bona fide requirement set up in the petition was for setting up of the office of his son who is an advocate. The two shops on the ground floor and the first floor, according to the petitioner, were being used for stocking his trading goods.

22. As the portion situated on the ground floor (the two shops) and the first floor, the third floor and the terrace above the third floor in property bearing no.3649 were being used by the petitioner for stocking his own trading goods, it could not be said that the said portions were “available” with the petitioner, as they were already being utilized by him for his business. He was not obliged, in these circumstances, to specifically make a disclosure with regard to these portions as they were not “vacant” and “available” with him for the purpose for which he required the tenanted premises. A landlord, while seeking the eviction of a tenant on the ground of bona fide

requirement for himself or his family members dependant upon him, is not expected to disclose the manner in which he is utilizing the accommodation available with him, if the accommodation with the tenant in respect of which he files the eviction petition is required by him for a purpose different from the purpose he is occupying and using the accommodation already available with him. For instance, the extent of residential accommodation available with the landlord who seeks the eviction of the tenant from a purely commercial or industrial premises, is wholly irrelevant. Similarly, when in the present case, the requirement of the petitioner was for the purpose of setting up of the professional office of his son on the second floor of property No.3649, it was not necessary for him to have disclosed in the eviction petition the fact that the ground floor, first floor, third floor and terrace floor portions of property no.3649 were being utilised by him for the purpose of storing and stocking the goods in which he trades. The failure of the petitioner to disclose in the eviction petition itself, the manner in which the other portions of property No.3649 were being occupied and used cannot ipso facto lead to the conclusion that the requirement of the landlord is not bona fide or that it raises a triable issue. The Supreme Court, in ***Sangram Singh V. Election Tribunal Kotah***, AIR 1955 SC 425 observed:

“16. Now a code of procedure must be regarded as such. It is ‘procedure’, something designed to facilitate justice and further its ends : not a penal enactment for punishment and penalties; not a thing designed to trip people up.....”

23. In ***Madan Gopal V. Mamraj***, AIR 1976 SC 461, the Supreme Court observed:

“26. It is well settled that pleadings are loosely drafted in the Courts and the Courts should not scrutinise the pleading with such meticulous care so as to result in genuine claims being defeated on trivial grounds.....”

24. In ***Union of India V. Jyoti Chit Fund***, AIR 1976 SC 1163, the Supreme Court held:

“7. Processual law is neither petrified for purblind but has a simple mission-the promotion of justice. The court cannot content itself with playing umpire in a technical game of legal skills but must be activist in the cause of deciding the real issues between the parties. And one guiding principle is not to exaggerate the efficacy of procedural defects where issues of public concern are involved and a public authority vitally interested in the correct principle alerts the attention of the court to the problem. A broadened view of locus standi leads to the futility of technical flaws where larger issues are involved-and that is the trend of modern processual jurisprudence. These general considerations were trite, yet too often ignored, and so need reiteration. Further, the consumers of justice can have scant respect for a procedural policy which is obsessed more with who sparks the plugs of the court system than with what the merits of the rights or wrongs of the relief are. A shift on the emphasis, away from technical legalistics, is overdue if the judicature is not to aid its grave diggers. We express the view strongly so that hopefuls may be dissuaded from taking up court time by playing up technicalities.”

25. The Courts have repeatedly held that mere failure to plead even the necessary ingredients in an eviction petition is not fatal to its maintainability [see **Laxmi Kant Mukt V. Jitender Kumar Aggarwal**, 1980(18) DLT 40; **M.M.Mehta V. Chaman Lal Kapur**, ILR 1980(1) Del 94; **Amrit Lal V. Jagpal Singh Verma**, 1996 (63) DLT 621; **Ram Gopal V. Basheshar Nath**, 1979 (16) DLT 215; **Mohan Lal Duggal V. Inder Mohan Sharma**, 1999(81) DLT 655 and **Narain Devi V. Vinod Kumar**, 1979 (16) DLT 258]. In the present case, there is no such “failure”. The so called “failure”, if any, is only that the petitioner has not in the first instance disclosed how he is occupying and using the various portions of property No.3649.

26. In my view, the factum of the petitioner not having discussed the user of the ground floor, the first floor, the third floor and the terrace above the third floor of property bearing no.3649 in the eviction petition itself does not tantamount to suppression of any material fact by the petitioner which could dent the petitioner’s bona fide need for suitable accommodation for setting up his son’s office.

27. In any event, upon this aspect being raised by the respondent in his application seeking leave to defend, and the same having been comprehensively dealt with by the petitioner, the Rent Controller was obliged to examine whether the tenant had raised a triable issue or not by examining the application seeking leave to defend and the reply filed to the said application by the landlord. The learned ARC has, however, not even conducted a prima facie evaluation of the

respective pleas of the parties to evaluate whether any triable issue arises in the case in hand or not.

28. I may also note that the respondent, despite being aware of the position in law that the “ownership” of the landlord for the purpose of maintaining a petition under Section 14(1)(e) of the Act is not required to be an absolute ownership of the property, and that it is sufficient if the landlord is a person who is collecting the rent on his own behalf and, if the premises are vacated, he is entitled to retain possession of it on his own, went on to allege that the petitioner is not the owner of the tenanted premises, without stating anything more. He does not say as to why, according to him, the petitioner is not the owner. He does not say that the petitioner is a receiver, or a trustee in respect of property bearing No.3649. He does not name any other person, who according to him, is the real and beneficial owner of the tenanted premises.

29. The tenant, no doubt, is entitled to raise all defences available to him in his application seeking leave to defend, but he cannot be seen to be shooting in the dark and raising all and sundry frivolous pleas in an irresponsible manner, only with a view to somehow get the desired leave to defend the eviction petition. Such conduct of the tenant will certainly mar his credibility and the Controller will see through such tactics on his part. He will not succumb to such moves of the tenant. Else, the same would defeat the purpose of providing a summary procedure for the disposal of such cases, and would lead to

miscarriage of justice.

30. Apart from raising this frivolous plea regarding the petitioner's ownership, the respondent, as aforesaid, also blew hot and cold by taking contradictory stands. The stand of the respondent that the petitioner does not require any space for maintaining godown to stock his goods appears to be absurd considering the fact that the petitioner is in the trading business of hardware and other articles and is having his business premises in a wholesale market namely Chawri Bazar. It is clear that the respondent has raised the aforesaid pleas only for the purpose of somehow raising a triable issue. The defence set up by the respondent cannot, therefore, be said to be bona fide. Such conduct of a tenant has been frowned upon by this Court. Reference may be made to the decision in **Meenakshi** (supra) where this court, inter alia, observed:

"3. In view of this nature of the case of the tenant on the question of ownership of the petitioner, it is clear that the denial of ownership is malafide and is intended solely to prolong the case. I am of the view that the respondent tenant is taking this plea totally with the malafide object of protracting the proceedings. I find no substance in such a vague and frivolous plea on the question of ownership of the petitioner. A tenant who has been living in the premises for about twenty years and seen the petitioner living with her mother in the same house on the first floor has gone to the extent of saying that the petitioner is not the daughter of Smt. Kamlawati. This shows the extent to which the tenant is prepared to go. The tenant seems to be a person having no respect for truth and one who in order to achieve his object is prepared to speak all sorts of lies.

4.xx xx xx xx xx xx xx

5. xx xx xx xx xx xx xx

6. Mere denial of ownership of the landlord does not mean that every case must be sent for trial involving years. The Controller has to assess the strength of the case of the tenant regarding denial of ownership of the petitioner. For this, guidelines have already been laid down in various decisions. Mere denial of ownership is no denial at all. It has to be something more. For this, first and foremost thing which has always been considered as a good guide is does the tenant say who else is the owner of the premises if not the petitioner ? In the present case, the tenant does not say anything except denying petitioner's ownership. The tenant is completely silent on this aspect. Merely by saying that the petitioner is not the owner, the tenant is trying to ensure that the case drags on for years for trial. If leave is granted on basis of such vague pleas, it will encourage the tenants to deny ownership of the petitioners in every case. The tenants are well aware that once leave to contest is granted, the cases go on for trial for years. Their purpose is achieved. Keeping this in mind, the Controllers should rather have positive approach in such matters so as to discourage such vague and frivolous pleas which are most of the time false to the knowledge of persons raising them.

7. The object of the requirement contained in Clause (e) that the petitioner should be the owner of the premises is not to provide an additional ground to the tenant to delay the proceedings by simply denying ownership of the landlord of the premises and thereby putting him to proof by way of full fledged trial. The object seems to be to ensure that the provision is not misused by people having no legal right or interest in the premises. Unfortunately, the Controllers have started misreading the provision which results in

converting the proceedings into suits as if they are meant to determine title to property. In proceedings under Section 14(1)(e) of the Act, the tenant is never a contender for title to the property. When the tenant does not even aver that there is any other person having a better title to the property, what is the worth of a plea of denial of ownership of the petitioner? While dealing with the question of ownership in cases under Section 14(1)(e) of the Act, the Controllers should keep these aspects in mind while considering the application of the tenants for leave to contest.”

31. Similarly in ***Rajender Kumar Sharma and Ors.*** (supra) observed as follows:

“10. Section 25B was inserted by the legislature in Delhi Rent Control Act as a special provision for eviction of the tenants in respect of specified category of cases as provided therein. Where a landlord seeks eviction on the basis of bonafide necessity, a summary procedure is provided and tenant has to seek leave to defend disclosing such facts which disentitled the landlord from seeking eviction. Where a tenant pleads, in leave to defend preposterous prepositions and makes such averments which are palpably false and the landlord in his reply affidavit to leave to defend is able to show to the ARC that all facts stated in leave to defend, were palpably false, ARC is not precluded from considering the falsity of such facts on the basis of material placed by the landlord before it. If the leave is granted on mere assertions that landlord was owner of the premises, of which he is not, then in every case the tenant would get leave by just naming any premises with which landlord has no concern. In the present case, the landlady has specifically shown that the premises about which tenant made allegations that she was co-owner, did not belong to her and she placed on record documents showing that she had no share in the premises and premises was a house of 50 square yards in occupation of 22

adult persons among others whose names appeared in the voter list. There is no reason why the learned ARC should not consider these documents. Similarly tenant falsely alleged that the landlady was owner of the second floor of the premises in question without placing on record any documents regarding ownership of second floor by the landlady. The landlady had a right to show to the ARC at a very first stage that the second floor was not owned by her, but owned by someone else.

11. The tenant made preposterous claims in respect of accommodation available with the landlady and included in this the areas which were not owned and not in possession of the landlady. He included second floor of the property which was owned by some other person and was in possession of other person. He included adjoining property which was not owned by landlady and was owned by other persons. Thus, the affidavit filed by the tenant was shown to be false by the landlady on the basis of documents placed by it. No Rent Controller is supposed to grant leave to defend to the tenant on the basis of a false affidavit and false averments and assertions. Such affidavit should be outrightly rejected by the Rent Controller. Only those averments in the affidavit are to be considered by the Rent Controller which have same substance in it and are supported by some material. Mere assertions made by a tenant in respect of landlord's ownership of other buildings and in respect alternate accommodation are not to be considered sufficient for grant of leave to defend. If this is allowed, the whole purpose of Section 25B shall stand defeated and any tenant can file a false affidavit and drag a case for years together in evidence defeating the very purpose of the statute. The Rent Controller is thus not precluded from considering the material placed before it by the landlord in response to leave to defend to show that the tenant's assertions and averments were totally false.

12. It is settled law that for the purpose of Section 14(1)(e) of Delhi Rent Control Act, a landlord is not supposed to prove absolute ownership as required under Transfer of Property Act. He is required to show only that he is more than a tenant. In this case, the landlady had placed on record the documents by which she became owner. The attornment given by the erstwhile landlord in her favour as well as an admission made by the tenant by filing petition under Section 27 of Delhi Rent Control Act acknowledging the landlordship of landlady. Thus, the conclusion arrived at by the ARC regarding ownership and relationship of landlord and tenant were based on sound legal position and the cogent material before it."

32. Considering the aforesaid aspects, I am of the view that the need of the petitioner was clearly bona fide. The tenanted accommodation was the most suitable to meet the requirement of the petitioner's Advocate son to set up his professional office. The need of the petitioner as made out appears to be sincere and honest and not a mere pretence or pretext to evict the respondent tenant. Viewed in the aforesaid light it can be said that the need of the petitioner to occupy the tenanted premises is natural, real sincere and honest [see ***Shiv Swarup Gupta*** (supra)]. I am of the view that the respondent did not raise any triable issue which required a trial, and for which the respondent was granted leave to defend the eviction petition. The same has been granted by adopting an erroneous approach and on a perfunctory reading of the submissions of the parties. Accordingly, I set aside the impugned order and reject the respondent's application seeking leave to defend the eviction petition. Eviction order is accordingly passed against the respondent and in favour of the

petitioner in respect of the suit premises which is shown in red colour in the site plan filed by the petitioner along with the eviction petition as annexure 'A'. The respondent is entitled to remain in occupation of the premises for a period of six months from today. Petition stands disposed off leaving the parties to bear their respective costs.

(VIPIN SANGHI)
JUDGE

OCTOBER 06, 2009
dp/rsk