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HIGH COURT OF DELHI : NEW DELHI

RCR No. 52/2010 & CM No. 4459/2010 (Stay)

% Judgment reserved on: 29th July, 2010

Judgment delivered on: 30th Aug, 2010

Shri Vinod Arora,
S/o Late Sh. Chiman Lal Arora,
Resident of 12, New Colony,
Model Basti,
New Delhi- 110 005

....Petitioner

Through: Mr. Ravi Gupta, Sr. Adv. with
Mr. Pawan S. Bindra & Mr.
Ankit Jain, Advs.

Versus

Sh. Deepak Aggarwal,
S/o Sh. S. K. Aggarwal,
Resident of 12, New Colony,
Model Basti,
New Delhi-110 005

....Respondent

Through: Mr. J. S. Bakshi, Adv.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

By way of present petition filed under Section 25B (8) of Delhi Rent Control Act, 1958 (for short as 'Act') petitioner has challenged eviction order dated 2nd February, 2010 passed by Additional Rent Controller (for short as 'Controller') Delhi.

2. Respondent/landlord filed petition for eviction under Section 25B read with Section 14 (1) (e) of the Act against petitioner/tenant stating that he is owner/landlord of entire ground floor of premises bearing no. 12 New Colony, Model Basti, New Delhi. A portion of ground floor measuring 254 sq. feet, is under his occupation, while Petitioner is a tenant under him and area under his tenancy is 1224 sq. feet.

3. It is further stated that respondent is running sanitary and hardware business and is agent of companies namely Polycrete Enterprises, Astro Age Cast Tech. Ltd. etc. His wife Smt. Kavita Jain, is in the business of manufacturing and retail of sanitary and hardware goods under the name of M/s Rishab Enterprises. Respondent is also agent of courier company M/s Overnite Express. All the aforesaid

businesses are being carried out from the said small portion in occupation of the respondent on the ground floor.

4. Respondent and his dependent family members are facing great difficulty in carrying out the said business due to paucity of space so much so the respondent has to keep stocks of the hardware and sanitary items at his residence at 1C/47, New Rohtak Road, New Delhi at a distance of 5 Km from his business place which is causing great financial loss to him. He is also suffering in his business because he cannot display his articles for want of appropriate showroom and a contiguous godown as is normally required in such businesses.

5. Respondent also wants to expand the business with his daughter Ms. Samiksha aged 19 years, a final year graduation student and his son Master Nirransh aged 17 years, a 12th class student. His daughter would join him in the business full time after her graduation and the son part time after his 12th class after college hours and full-fledged after three years when he completes his graduation.

6. Respondent requires the tenanted premises bonafide for himself and his dependent family members. He wants to make a proper

showroom to display the goods. A separate counter for business of courier is also required.

7. Respondent or anyone of his dependent family members have no other reasonably suitable accommodation for the purpose for which the tenanted premises are required. Respondent's residential premises is 5 Km away from the suit premises and is not a reasonably suitable alternate accommodation.

8. In the leave application, petitioner took the plea that respondent is in habit of filing petitions on false and frivolous grounds which were earlier dismissed by various courts. Respondent has filed present petition on the false ground that he is running sanitary and hardware business. Respondent has also falsely alleged that he is the agent of companies namely Polycrete Enterprises and Astro Age Cast Tech Ltd. etc. Respondent never carried on any business whatsoever of sanitary and hardware and was not the agent of alleged companies or any other company.

9. Wife of the respondent is not dependent upon him. She is independent financially and even otherwise, she never carried on any

manufacturing business or any business even of retail under name of M/s Rishab Enterprises at 12, New Colony, Model Basti, Delhi. Smt. Kavita Jain has been doing retail business on a very small scale at 1C/47, New Rohtak Road, New Delhi and is in possession of entire property bearing no. 1/C 47, New Rohtak Road, New Delhi. Area of this house is 300 sq. yards, consisting of ground floor, mezzanine floor, first floor and barsati floor. She herself is running the said business. She however, sometimes employ a helper in the said business. At no point of time she ever owned or possessed huge stocks which cannot be accommodated at 1C/47, New Rohtak Road, New Delhi.

10. Respondent has also sufficient land at Ghevria, Rohtak Road, New Delhi, which is very near to the suit premises.

11. It is further alleged that there is sufficient space at 1C/47, New Rohtak Road, New Delhi and the stocks of several lacs can be stored therein. Smt. Kavita Jain has no financial resources to own and store stocks of several lacs. By carrying out a business on a small scale at 1C/47, New Rohtak Road, New Delhi i.e. mixed used land, she has

been able to get nearby customers and she cannot afford to shift her business to the premises in disputes.

12. Premises in dispute are situated at Model Basti, Delhi and in this locality there are no shops or showrooms of sanitary and hardware business. It is not a locality where customers will visit to purchase sanitary or hardware articles. Respondent has concocted a story that he requires the premises for proper show room to display the sanitary and hardware articles. Respondent himself is in possession of part of 12, New Colony, Model Basti, Delhi where he is carrying on a business of courier service. The accommodation now in his occupation is more than requirement for carrying on courier service business. The said business even if expanded to any volume will not require accommodation more than the accommodation already in his occupation.

13. It is further alleged that daughter of respondent is a student and hence she does not require any accommodation as there is no proposal as yet that she intends to carry on any separate business of her own. Similarly, minor son of respondent is still a student of a school and

plea taken by respondent for his requirement is frivolous and highly untenable in law.

14. It is also alleged that respondent has sufficient accommodation in the front and back on the ground floor of 12, New Colony, Model Basti. Business of M/s Rishab Enterprises is on a very small scale and for carrying on the said business, no additional accommodation is required.

15. Lastly, it is alleged that respondent has not raised any ground for bonafide requirement.

16. In reply to leave application, it is stated by respondent that his wife is dependent upon him for the purposes of accommodation. Petitioner is blowing hot and cold in the same breath as at one point he states that wife of respondent is independent financially and at other point he states that Smt. Kavita has no financial resources to own and store the stock. It is also stated that no business is being carried out by respondent or his wife at 1C/47, New Rohtak Road, New Delhi, except that due to paucity of space at 12, New Colony, Model Basti, Delhi, sometimes goods are stored at 1C/47, New

Rohtak Road, New Delhi.

17. It is further stated that respondent has no land at Ghevria, Rohtak Road in his name or in the name of his wife or children. They are trustees of a Jain temple situated at Ghevria Village, which is at a distance of 26 km from 12, New Colony, Model Basti, Delhi. In any event, petitioner cannot suggest the respondent to satisfy his needs from temple land.

18. Premises at 1C/47, New Rohtak Road, New Delhi cannot be used for commercial purposes even otherwise this is not a viable place. Smt. Kavita Jain is financially sound to invest any amount apart therefrom, she can take a loan to meet the business expenses.

19. Lastly, it is stated that tenant is nobody to dictate terms to the children of respondent if they want to carry on business from the tenanted premises.

20. Vide impugned order, Controller dismissed the application for leave to contest and passed an eviction order.

21. First contention made by learned counsel for petitioner is that the averments made in eviction petition only spelt out respondent's

desire to seek eviction on the ground of personal requirement and these averments do not establish respondent's need for obtaining the suit premises.

22. In support, learned counsel for petitioner relied upon *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta (1999) 6 Supreme Court Cases 222*, where it was observed;

“12. A perusal of Section 14 of the Act shows that the law has imposed restrictions on the recovery of possession, of any premises by landlord from a tenant notwithstanding any law or contract to the contrary. However, an order for recovery of possession is permissible on one or more of the specified ground. One such ground is the premises let for residential purposes being required bona fide by the landlord for occupation as residence for himself or for any member of his family dependent on him. What is a bona fide requirement is not defined in the Act. The words 'need' and 'require' both denote a certain degree of want with a thrust within demanding fulfillment. 'Need' or 'requirement' qualified by word 'bonafide' or 'genuine' preceding as an adjective - is an expression often used in Rent Control Laws. 'Bonafide or genuine need' of the landlord or that the landlord 'genuinely requires' or "requires bona fide" an accommodation for occupation by or use for himself is an accepted ground for eviction and such expression is often employed by Rent Control legislation draftsman. The two expressions are

interchangeable in practice and carry the same meaning.

13. Chambers 20th Century Dictionary defines bonafide to mean “in good faith : genuine”. The word 'genuine' means 'natural; not spurious; real: pure: sincere'. In Law Dictionary, Mozley and Whitley define bonafide to mean 'good faith, without fraud or deceit'. Thus the term bonafide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by 'requires' is much more higher than in mere desire. The phrase 'required bonafide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant.”

23. Other decision relied upon is *Sh. T.V.Krishnan vs. Smt. Prativa Devi* 1987 (1) Rent Control Reporter 512, in which court held;

“There must be an element of need and not mere desire.”

24. In *C. M. Mehta vs. M. P. Bhalla* 1985 (2) All India Rent Control Journal 159, court observed;

“The expression ‘bonafide requirement’ means that

the requirement of the landlord is genuine and his claim is not motivated by extraneous consideration. Mere wish or desire is not sufficient. There must be an honest and genuine need. He must also prove that accommodation available with him is not reasonably suitable.”

25. In *Inderjeet Kaur vs. Nirpal Singh* (2001) 1 Supreme Court

Cases 706, court held;

“Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under Clause (e) of the proviso to Sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend, parties rely on affidavits in support of the rival contentions.”

26. It is further contended that respondent has not filed any documents with eviction petition to show that he bonafidely requires the suit premises nor had he filed any documents like Income Tax

Return etc. to show that he has to expand his business and have sufficient funds or his business is growing.

27. Other contention is that respondent is not carrying on any business of sanitary and hardware as alleged. Documents filed by respondent do not show that he is in the business of sanitary and hardware. Respondent has concealed that his wife is financially independent. She is doing retail business on small scale from property No.1-C/47, New Rohtak Road. Respondent is in possession of 300 sq. yards in that premises. Moreover, respondent's wife does not possess stock which cannot be accommodated in the said property.

28. It is further contended that admittedly respondent is in possession of part of the suit premises from where he is carrying on business of courier services and that space with him is more than sufficient for running courier services. Even if said business is to be extended, there is enough space available in that premises.

29. Other contention made by learned counsel is that since children of respondent are studying, as such the plea that premises are required to expand business for respondent's daughter and son is false.

30. It is also contended that certificates relied by respondent in order to prove that he is in business of hardware and sanitary items are only ten years old and as such they could not be taken on the face value.

31. On the other hand, it contended by learned counsel for respondent that in revision, powers of this Court are limited and no new facts can be add during the course of revision.

32. It is also contended that petitioner admits in the affidavit filed along with application for leave to defend that respondent's wife is independent financially and she has been doing the retail business in the property situated at New Rohtak Road whereas on the other hand, respondent also states that wife of respondent has no financial resources to own and store the stock.

33. Other contention is that petitioner in his affidavit admits that respondent is himself in possession of part portion of Model Basti and is carrying on business of courier services. Petitioner also does not dispute that business of Rishab Enterprise is being carried on by wife of the respondent.

34. It is further contended that there is no dispute about the family members of respondent who are dependent upon him. In the eviction petition, respondent has categorically stated that he requires the tenanted premises bonafide for himself and his dependent family members and he wants to make a proper showroom to display the sanitary and hardware articles and a contiguous godown is also required. Respondent has also stated in the eviction petition that he needs a separate counter for the business of courier services.

35. Lastly, it is contended that it is also not in dispute that residential premises of respondent is situated at New Rohtak Road, which is at a distance of 5 km away from the suit premises and are not reasonably suitable alternate accommodation. In support learned counsel cited:-

(i) ***Sarwan Dass Bange vs. Ram Prakash***
167 (2010) Delhi Law Times 80.

36. Present petition has been filed under Section 25B (8) of the Act. A full Bench of this Court in ***Mohan Lal Vs. Ram Chopra and another, 1982 (2) Rent Control Journal 161*** exhaustively considered

the provisions of Section 25B of the Act. On the scope of the proviso to sub-section (8) of this Section, after examining the judgment of Supreme Court in *Hari Shanker and others. Vs. Rao Girdhari Lal Chowdhury*, A.I.R. 1963 S.C. 698 and *Bell and Co. Ltd. Vs. Waman Hemraj*, AIR 1938 Bombay (223) it was laid down as follows:-

“In our opinion the jurisdiction of the High Court under proviso to section 25B (8) has to be interpreted, keeping in view the legislative intent. The revision under section 25B (8) cannot be regarded as a first appeal and nor can it be as restricted as the revisional jurisdiction under Section 115 CPC. The High Court would have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed or the Controller has acted in excess of his jurisdiction or has not exercised the jurisdiction vested in him. A finding of fact arrived at by the Controller would not be interfered with by the High Court unless it can be shown that finding has been arrived at by misreading or omitting relevant evidence and this has resulted in gross injustice being caused. If none of the aforesaid circumstances exist the High Court would not be entitled to interfere with the order of the Controller in exercise of its jurisdiction under proviso to Section 25B (8) of the Act.”

37. Upon examination of above judgment it may safely be held that this court in exercise of the powers vested by proviso to sub-section

(8) of Section 25B of the Act may reappraise the evidence only for a limited purpose of ascertaining whether the conclusion arrived at by the Rent Controller were wholly unreasonable that no reasonable person acting with objectivity could have reached on the material available to test the order of the Rent Controller on the touchstone of whether it is in accordance with law.

38. In *Praveen Jain & Ors (Shri.) Vs. Dr. Mrs. Vimla, 2009 IV AD (Delhi) 653*, this court observed;

“The powers of this Court under Section 25B(8) are not appellate powers and this Court has only to see that the Trial Court had acted in accordance with law and not transgressed the limits of its jurisdiction.”

39. In *Rajinder Kumar Sharma & Others Vs. Smt. Leela Wati & Ors, 155 (2008) DLT 383*, the court observed;

“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.”

40. In *N. C. Daga Vs. Inder Mohan Singh Rana*, AIR 2003

Supreme Court 587, the court observed;

“It was held that before leave to defend is granted, the respondent must show that some triable issues which disentitled the applicant from getting the order of eviction against the respondent and at the same time entitled the respondent to leave to defend existed. The onus is prima facie on the respondent and if he fails, the eviction follows.

41. In *Frank Anthony Public School Vs. Smt. Amar Kaur*, 1984

(6) Delhi Reported Judgment 47, it was held;

“The legislature has devised a "special procedure for the disposal of the application for eviction on the ground of bonafide requirement". It is modelled on Order XXXVII of the Code of Civil Procedure. The object is to reduce delays in litigation. The object is to introduce a "summary trial" in place of full length trial.”

42. In *John Impex (Pvt.) Ltd. Vs. Dr. Surinder Singh & Ors.* 135

(2006) Delhi Law Times 265 this Court held;

“The conspectus of the aforesaid judgments shows that the broad principles have been set down of the requirement of a landlord not being a mere whim or fanciful but that it should be a genuine need of the landlord. It is only then that the requirement can be said to be bona fide within the meaning of under Section 14(1) (e) of the said Act. This would

naturally require all the necessary matrix in terms of the factual averments and the evidence to be adduced in that behalf. Simultaneously it has to be kept in mind that the landlord is the best judge of his requirement and a tenant cannot dictate the terms on which the landlord should live. The bona fide requirement of the landlord would also depend on his financial status and his standard of living. The ARC found in favor of the landlord/owner and thus what has to be considered is whether there is any illegality or jurisdictional error in the impugned order and not to sit as an appellate court though the scope of scrutiny in a rent revision would be more than a revision petition under Section 115 of the Code of Civil Procedure, 1908.”

43. In *Ram Babu Aggarwal Vs. Jay Kishan Das*, 2009 (2) RCR

455, Supreme Court observed;

“However, as regards the question of bonafide need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no bonafide need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business,

and sometimes they are successful in the new business also.”

44. In ***Shamshad Ahmad & Ors. Vs. Tilak Raj Bajaj (deceased) though LRs and Others***, 152 (2008) Delhi Law Times 301 (SC), Supreme Court observed;

“In our opinion, the grievance voiced by the learned Counsel for the appellants is well founded that the above grounds and reasons were irrelevant and extraneous so far as the requirement of the landlords was concerned. The authority can undoubtedly decide whether the need or requirement of landlords was or was not bona fide. It can record a finding against the landlords if such requirement is not proved. But the authority cannot decline the prayer of the landlords on the ground that they belonged to upper class society having facilities of car, etc. Similarly, the Prescribed Authority was wrong in commenting on the experience of the landlords in business of readymade garments. Again, the authority went wrong in stating that if the applicants wanted to do business in readymade garments, they needed ‘an office’ and place of godown for preparation of readymade garments to be exported.”

45. In ***Sarwan Dass Bange (Supra)*** observations made by Supreme Court in ***Baldev Singh Bajwa Vs. Monish Saini***, (2005) 12 SCC 778 have been quoted as under;

“It was held that the legislative intent is of expeditious disposal of the application for

ejectment of tenant filed on the ground of requirement by the landlord of the premises for his own occupation; a special category of landlords requiring the premises for their own use has been created; if there is any breach by the landlord, the tenant is given a right of restoration of possession; the landlord who evicts a tenant on the ground of own requirement is not only prohibited from letting out the premises or disposing of the same but also required to use the same for his own residence only. It was held that these restrictions and conditions inculcate in built strong presumption that the need of the landlord is genuine; the conditions and restrictions imposed on the landlord make it virtually improbable for the landlord to approach the Court for ejectment of tenant unless his need is bona fide - no unscrupulous landlord in all probability, under this Section, would approach the Court for ejectment of the tenant considering the onerous conditions imposed on him. It was further held that this inbuilt protection in the Act for the tenants implies that whenever the landlord would approach the court his requirement shall be presumed to be genuine and bona fide. It was further held that a heavy burden lies on the tenant to prove that the requirement is not genuine. The tenant is required to give all the necessary facts and particulars supported by documentary evidence if available to prove his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord; a mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's

favour that his requirement of occupation of the premises is real and genuine”

46. In *Sarla Ahuja Vs. United India Insurance Company Limited*;

AIR 1999, SC 100, Apex court observed;

“The crux of the ground envisaged in Clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

47. It would be relevant to quote here the findings of the trial court which read as under;

“It is the settled law that landlord has the liberty to decide what to do and what not to do regarding the premises of which he is the owner/landlord and the tenant cannot dictate the terms to the landlord and advise him what to do and what not to do, on his

own property. It has been further held in a number of judgments that the landlord must be regarded as a sole judge of his requirements and he cannot be denied the right to choose any portion of his property. It has been held further that if the demand of landlord conveys impression of sincerity and absence of oblique motive, the demand has to be regarded as bona fide.

Now in the case in hand, the petitioner has been able to show prima-facie on record that he is in business of hardware and sanitary. The respondent has admitted in categorical terms that petitioner is in possession of 254 square feet whereas the tenanted premises is consisting of 1224 square feet. The respondent has himself admitted that the petitioner is also in the business of courier services and so far as Smt. Kavita Jain is concerned, the respondent has admitted himself that she is carrying on a small business at her residence. It has also to be seen that at one point of time the respondent has submitted that Smt. Kavita Jain wife of petitioner is financially independent whereas in the same reply/affidavit at another point of time, the respondent has submitted that she has not independent resources and income to collect stocks.

In the light of the aforesaid discussion, I am of the opinion that the respondent has utterly failed to show the existence of any triable issue which would dis-entitle the landlord/petitioner from obtaining the order of eviction.”

48. In light of principles of law enunciated in above judgments with regard to the scope of Section 14 (1) (e) and Section 25 B (8) of the

Act, it is to be seen whether any gross illegality or material irregularity has been committed by the Controller or he has acted in excess of his jurisdiction.

49. Eviction petition filed by respondent/landlord is under Section 14(1) (e) read with Section 25 B of the Act. The words used in Section 14 (1) (e) of the Act are;

“That premises let for residential purposes are required bonafide by the landlord for occupation as a resident for himself or for any member of his family dependent upon him.”

50. Respondent in eviction petition has categorically stated that “**he requires the tenanted premises bonafide for himself and his dependent family members.**” Relevant para in this regard read as under;

“The petitioner requires the tenanted premises bonafide for himself and his dependant family members. He wants to make a proper showroom to display the sanitary and hardware articles. A contiguous godown is also required. A separate counter is also required for the business of courier services. The petitioner also wants to expand the business with his daughter Ms. Samiksha aged 19 years a final year graduation student in Hindu College, University of Delhi and his son Master Nirransh aged 17 years a 12th class student joining

him. The daughter shall join the petitioner in the business full time and after her graduation and the son part time after his 12th, after his college hours and full-fledged after three years when he completes his graduation.”

51. Reading of above para shows that respondent requires the tenanted premises;

- (i) for himself and his dependant family members;
- (ii) he wants to make a proper showroom to display sanitary and hardware articles;
- (iii) a contiguous godown is also required;
- (iv) a separate counter is also required for the business of courier services and
- (v) he also wants to expand the business with his daughter and son who are studying at present and will be joining him.

52. Thus, respondent in eviction petition has mentioned about his requirements in clear and unequivocal words. It is not only ‘a mere desire’ to get the premises vacated but he needs the same for above stated requirements. So, it cannot be said that respondent does not

require the premises for himself and for his family members dependent upon him.

53. Now, coming to the bonafide requirement, admittedly respondent is in possession of part of the suit premises from where he is carrying on his courier services business. Respondent needs a separate counter for courier business. His wife is running her own business of manufacturing and retail of sanitary and hardware goods under the name of M/s Rishab Enterprises.

54. In affidavit petitioner himself admits **“that the fact remains that the business of M/s Rishab Enterprises is on a very small scale and for carrying on the said business, no additional accommodation is required.”**

55. As far as sanitary and hardware business is concerned, respondent has placed on record photocopy of Central Sales Tax Registration Certificate, according to which M/s Rishab Enterprises is carrying on business of sanitary and hardware at premises no. 12, New Colony, Model Basti, New Delhi. Also as per copy of certificate issued by Polycrete Enterprises, the authorized manufacturers and

suppliers of Polycrete Manhole Covers, respondent is their authorized representative for Polycrete Manhole Covers and allied products. Respondent has also placed on record copy of resolution of Astro-age Cast –Tech Ltd., according to which respondent is their authorized representative for marketing and supply of investment casting manufactured by the company.

56. Above documents clearly shows that in addition to courier business, respondent and his wife Smt. Kavita are carrying on the business of sanitary and hardware at premises no. 12, New Colony, Model Basti, Delhi.

57. It would not be out of place to refer para 7 and 15 of the affidavit of petitioner in which he is blowing hot and cold at the same moment. Relevant portion of these paras read as under;

“7. That Smt. Kavita Jain, the wife of the petitioner is not dependant upon the petitioner. She is independent financially and even otherwise the petitioner’s wife Smt. Kavita Jain never carried on any manufacturing business. The said Smt. Kavita Jain never carried on any business even of retail under name of M/s Rishab Enterprises at 12, New Colony, Model Basti, Delhi. The said Kavita Jain has been doing the retail business on a very small scale at IC/47, New Rohtak Road, New Delhi and

is in possession of the entire property bearing No. 1/C 47, New Rohtak Road, New Delhi."

"15. That the petitioner has not filed details of the business of his wife. The fact remains that the business of Rishab Enterprises is on a very small scale and for carrying on the said business, no additional accommodation is required."

58. In para 15 of the affidavit, petitioner categorically admitted that business of M/s Rishab Enterprises is being carried out though on a very small scale.

59. This fact that respondent is in occupation of portion of ground floor measuring 254 square feet of Model Basti premises has not been challenged at all by petitioner. Admittedly, area under the tenancy of petitioner is 1224 sq. feet. Since respondent as well as his wife are carrying on different type of businesses in the premises in question and when their grownup daughter intend to join business with respondent and keeping in view the fact that area available with respondent is about 1/5th of petitioner's area, requirement of respondent/landlord to expand his business and for keeping stock of various sanitary and hardware articles as well as for expanding courier business, cannot be

said to be a mere desire. By no stretch of imagination, it can be said that requirement of respondent is neither genuine nor bonafide.

60. In view of the aforesaid, in my considered view, it cannot be said that the impugned order suffers from any infirmity or erroneous exercise of jurisdiction.

61. The petition is hereby dismissed with costs of Rs.20,000/- (Twenty Thousand only).

62. Costs be deposited by way of cross-cheque with Registrar General of this court, within four weeks from today.

63. List for compliance on 4th October, 2010.

CM No. 4459/2010 (stay)

64. Dismissed.

30th August, 2010

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V.B.GUPTA, J.