

* **HIGH COURT OF DELHI: NEW DELHI**

R.C.R.No. 125/2010 & CM No. 10204/2010 (stay)

% Judgment reserved on: 30th September, 2010

Judgment delivered on: 27th October, 2010

Navneet Lal
S/o Sh. Hira Nand
R/o C-214/E, Ground Floor
Street No.8, Majlis Park,
Delhi – 110 033

....Petitioner.

Through: Mr. Sudhanshu Batra,
Sr.Advocate with Mr. Bhuvan
Gugnani, Advocate

Versus

Deepak Sawhney
S/o Mr. Badrinath Sawhney
R/o C-45, Nehru Road
Adarsh Nagar
Delhi – 110 033

....Respondent

Through: Mr. N.N.Aggarwal with
Mr. Rohit Gandhi, Advocates.

2. **R.C.R.No. 126/2010 & CM No. 10206/2010 (stay)**

Ram Kumar Bansal
S/o Sh. Brahma Nand Gupta
R/o D-13/13A, Prithviraj Road
Adarsh Nagar (Extension)
Delhi – 110 033

....Petitioner.

Through: Mr. Sudhanshu Batra,
Sr.Advocate with Mr. Bhuvan
Gugnani, Advocate

Versus

Deepak Sawhney
S/o Mr. Badrinath Sawhney
R/o C-45, Nehru Road
Adarsh Nagar
Delhi – 110 033

....Respondent

Through: Mr. N.N. Aggarwal with
Mr. Rohit Gandhi, Advocates.

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 this common judgment, above two petitions filed under Section 25-B (8) of Delhi Rent Control Act, 1958 (for short as 'Act') are being disposed of.

2. Vide impugned order dated 30th January, 2010, Additional Rent Controller (for short as 'Controller') Delhi, dismissed the applications for leave to contest along with affidavit filed by petitioners/tenants and eviction order was passed in favour of respondent/landlord.
3. Brief facts are that, shops in question situated on the ground

floor of property No. C-45, Nehru Road, Adarsh Nagar, Delhi, were let out to the petitioners by respondent for non-residential purposes, of which respondent is the owner.

4. It has been alleged by respondent that earlier suit property was owned by Sh. Purshottam Dass Sawhney and Smt. Bhojwanti Sawhney, grandparents of the respondent. After death of Sh. Purshottam Dass Sawhney, his wife Smt. Bhojwanti Sawhney became the sole owner and landlady of the demised premises. However, on 20/1/2007, unfortunately she also expired and left behind registered will bequeathing the demised suit shops in favour of the respondent. Thus, respondent has become the absolute owner and landlord of the demised shops as he has stepped into the shoes of Smt. Bhojwanti Sawhney.

5. Respondent is living with his family on the first floor of property bearing No. C-45, Adarsh Nagar, Delhi, which consists of three bedrooms, drawing-cum-dining, kitchen, bathroom/WC. On second floor, there is Pooja Room. Respondent's family consists of himself, his father, mother and a younger sister. His father is an Engineer and is now leading a retired life. Respondent's father and

mother are totally dependent on him financially and also for the purpose of residence.

6. Respondent as well as his younger sister are of marriageable age. Respondent is getting married in the month of June, 2009. Thereafter, he would ever require more space for himself and his wife. His younger sister is planning to get married in the near future. However, due to paucity of accommodation, marriage of respondent and his younger sister is being delayed.

7. Father of respondent is 69 years old and is suffering from various serious ailments. In 2007, respondent's father was operated for left knee replacement and since then has been unable to walk freely. On 17.2.2008 his father suffered paralytic stroke. He was admitted in Max Super Speciality Hospital, Saket, New Delhi and remained in the hospital for almost ten days. During his hospital stay, he was also detected to be suffering from "Tubercular Synovitis" of right knee. Since then he is completely confined to bed and is totally invalid. He requires round the clock care. Due to this paralytic stroke, his speech has also suffered. He has developed severe contracture in both his right and left leg. Due to the contracture, he is

unable to straighten his legs and hence cannot walk. To remove the contracture and to relax the muscles, on the suggestion of the Neurologist, Dr. J.D.Mukherji, Botox injections have been administered to his father. For Botox treatment to bear fruit, it is mandatory that respondent's father is taken for physiotherapy, which is virtually impossible as he cannot bear his weight alone and cannot be carried downstairs. Respondent is the sole male member in his family. If respondent's father is not taken for physiotherapy, the contracture in his legs will become permanent and then his condition will become incurable.

8. Father of respondent had to be admitted in hospital in March 2008 and in February, 2009 as he has suffered from chest pain and Seizure disorder. Condition of his father is really critical and doctors have advised him that he has to be taken to the hospital immediately, if he suffers from any further seizures, without loss of time. Respondent being working and his mother single handedly takes care of his father and she is alone at home. Since respondent's father is totally invalid and in case of emergency his mother has to hunt for at least four persons to carry his father down stairs, as there are almost

20 stairs. The process of moving his father from the first floor to ground floor is a time consuming one and at time is critical for saving his life. Father of respondent has also to be taken to the hospital for his regular physiotherapy and speech therapy sessions. The respondent has to take his father downstairs, but moving him downstairs is a herculean task. First, he has to be lifted from the bed and placed on the wheelchair. Then respondent has to take him to the stairs where he is again shifted on a chair and then the chair has to be lifted by four people and in this way father of respondent is carried downstairs. The task of moving him downstairs is extremely strenuous and this exercise drains him out completely. On the contrary, if he is moved downstairs respondent can easily transport him to car alone and take him to the hospital as per requirement. Further, doctors have advised that while he is being shifted for hospital visits, great care is to be taken, so that he may not suffer further injuries as there is no muscle movement on his right side.

9. Father of respondent is living like a prisoner, confined to his room. This confinement is affecting his mental and physical health. He gets despondent at times. His surroundings are to be changed to

uplift his mood. Respondent wants to take him to the near by park on a wheel chair which is hardly 20 metres away from the house, so that he can enjoy nature and get some fresh air. Respondent is inept in providing basic leisure to his father as his living on the first floor. Respondent wishes and also feels that it is his paramount duty to get best medical treatment for his father, so that his condition improves. Respondent requires a medical attendant/nurse for 24 hours to take care of his father, but due to the paucity of accommodation he is unable to hire their services, which is affecting his father's health.

10. Respondent is the owner of 5 shops on the ground floor and all the shops are occupied by tenants including the petitioners, which are more particularly shown in red colour in the site plan annexed with eviction petition. Total area of these shops comes to approx. 380 sq. ft. No other space on the ground floor is available to the respondent. Rest of the portion of the ground floor owned and occupied by others is more particularly shown in green colour in the site plan annexed with the eviction petition. Respondent requires the accommodation on the ground floor urgently to take care of his father and for his own needs. Respondent at least requires four rooms on the ground floor.

Two rooms are to be joined, so that a proper hospital kind of bed can be fitted into the room with stretcher, so that his father can be shifted easily to and from his bed. The room will also accommodate the wheelchair which is also to be frequently used by his father. This room has to be so big that it can also accommodate a bed for the attendant. Father of respondent requires 24 hours care and thus another room is required for keeping a nurse who can provide all medical help at emergent hours which would also be used for the visiting doctors, specialists, medical attendants and the family members, where they can sit. Furthermore, respondent requires one room for himself as he also finds it difficult to climb stairs. Moreover, provision for WC/Bathroom and a pantry is to be made in one of the rooms. Thus, respondent requires whole of the ground floor portion owned by him for himself and for his family.

11. The demised premises are located in a property which is having residential use as a predominant use. Otherwise, suit property can be used for residential as well as commercial purposes. Respondent has no other reasonable suitable residential accommodation which can satisfy his above needs.

12. In the affidavit filed along with the leave application by petitioner Sh. Navneet Lal in (RCR No. 125/2010) it is alleged that respondent has filed present petition with malafide intention just to get the premises vacated. Respondent is neither the owner nor have any right to file the present petition because as per contents of Petition, property has not been transferred in his name. The *mala-fide* intention is apparent as respondent is seeking vacation of shops with motive to give them at higher rate of rent and it is admitted that area under tenancy is Commercial and not residential. Moreover, provisions of Section 14(1) (e) of the Act are not applicable in the present matter. There are triable issues which cannot be decided without evidence. Respondent is taking plea of requirement of the premises on bonafide ground due to illness of his father, which infact is a false plea. It is further alleged that petition is liable to be dismissed on the ground that respondent wants to get the possession of shops for residential purpose, which itself shows that it is a false plea.

13. Whereas, petitioner Ram Kumar Bansal in (RCR No.126/2010) has alleged that respondent has no locus standi to file the present eviction petition as he is not an owner of the property in question and

it does not fulfill the essential ingredients of section 14(1) (e) of the Act. It is pertinent to mention here that Smt. Bhojwanti Sawhney had executed a WILL in favour of the respondent and after her death, respondent became the beneficiary of the WILL. It is a settled law that the WILL does not show the ownership of any property. The title of the property is now under a cloud. It is further stated that respondent has not shown any reasonable ground for the requirement of the suit premises. The petition has been filed with the sole objective to evict the petitioner and sell the tenanted premises or let out the same at higher rent. A bare perusal of the petition would show that grounds alleged in the petition are vague and are based on conjectures and surmises. The affidavit raises various triable issues and pertinent question of law and thus the petitioner is entitled to leave to defend the eviction petition. The grounds mentioned in the eviction petition are totally false because property in question consists of Ground floor, first floor and second floor. There are two rooms, Kitchen, lobby, bathroom and w.c. on the first floor and there is one room on the second floor. It is important to mention that entire ground floor of residential part is vacant. Respondent's family consists of himself, his

father, his mother and his sister. Respondent is working in I.B.M. and has been provided with suitable accommodation by the employer, and he lives in the accommodation provided by his employer.

14. The story set up by respondent about his father illness is totally false. Father of respondent is perfectly hale and hearty. Present petition has been filed by showing the shortage of the accommodation only with the object to justify his malafide motive in filing the petition and respondent from the very beginning, has been harassing the petitioner by all possible means and methods with the object to get the premises vacated.

15. Petitioner in its reply to the leave applications has stated that applications for leave to defend does not discloses any fact entitling the order for leave to defend to contest the present petition and it does not disclose any triable issue. Moreover, during pendency of the petition, petitioner has got married on 29th June, 2009.

16. It is further stated that accommodation in possession of the petitioner has been correctly mentioned and family of petitioner has also been correctly described. It is further stated that petitioner had resigned from IBM in September, 2007 and while he in service, he

was not provided any accommodation by the employer and petitioner has always been living in the property in question.

17. It is contended by learned counsel for the petitioners that admittedly, premises in question are commercial in nature, therefore, putting to use the commercial premises for residential purpose is not only untenable but against the master plan for Delhi 2021.

18. Further, property in question is a free hold property and is declared as mixed land used in the master plan implying thereby that the ground floor of the premises is to be used for commercial purposes alone. Moreover, petitioner has already paid conversion charges for the use of shop in question for commercial purposes. Learned counsel further contended that back portion of the ground floor is available with the respondent which had deliberately not been disclosed by him.

19. It is also contended that during pendency of the present petitions, respondent has got possession of two shops situated on the ground floor.

20. It is further contended by learned counsel for petitioner that in *Satyawati Sharma (dead) by LRs. vs. Union of India & Anr. (2008) 5 SCC 287*, Supreme Court nowhere stated that premises let out for

non-residential purposes can be got vacated for residential purposes under Section 14(1) (e) of the Act.

21. Lastly, in support of his contentions, learned counsel relied upon decision of this Court in *Nitin Garg vs Naresh Kumar Arora & Anr.* CM (M) No. 1164/2009, decided on 23rd October, 2009.

22. On the other hand, it is contended by learned counsel for the respondent that as per *Satyawati Sharma (supra)* classification made between premises let out for residential purposes and non-residential purposes in the matter of eviction of tenant on the ground of bona fide need of the landlord, has been held as irrational, arbitrary and violative of Article 14 of the Constitution of India.

23. It is also contended that petitioners nowhere dispute that father of respondent is not ill and he wants to shift on the ground floor due to medical grounds.

24. It is further contended that as per site plan filed by respondent, back portion of the ground floor where shops in question are situated, is residential one and is occupied by other persons and same is not in possession of respondent. Moreover, the two shops got vacated during the pendency of these petitions, does not meet the requirement of the

respondent and his family members. As such respondent can seek eviction of the shops which are situated on the ground floor for himself and for members of the family dependent upon him for their accommodation.

25. In support, learned counsel cited following judgments:-

i) Bharat Bhushan Vij vs. Arti Teckchandani, 153 (2008) DLT 247;

ii) Chunni Lal & Anr. vs. Vidya Devi & Ors., 138 (2007) DLT 224;

iii) Munni Devi vs. Manmohan Verma & Ors., 134 (2006) DLT 298;

(iv) Bhagwati vs. Vijay Rani, in RC. Rev. No. 18/2010 decided on 5th April, 2010

v) Kasturi Lal vs. Bakshi Ram, 19 (1981) DLT 329;

vi) R.P.Sharma vs. Shrimati Mohini Vij, 1978 (2) RCR 345;

vii) Sham Singh Bisht vs. Sushil Bhatia, 46 (1992) DLT 460;

viii) Sudesh Kumar Soni & Anr. vs. Smt. Prabha Khanna & Anr., 2008 IX AD (Delhi) 657;

ix) Sarwan Dass Bange vs. Ram Prakash, 167 (2010) DLT 80;

x) Prativa Devi (Smt.) vs. T.V.Krishnan,
(1996) 5 SCC 353;

xi) Rajender Kumar Sharma & Ors. vs. Leela Wati & Ors.,
155 (2008) DLT 383;

xii) Gurcharan Singh vs. Saraswati Devi,
157(2009) DLT 743;

xiii) Tahira Begum vs. Sumitar Kaur,
166 (2010) DLT 443 and

xiv) Satyawati Sharma (supra)

26. There is no dispute about relationship of landlord and tenant between the parties. As far as letting purpose is concerned, same is for non residential purpose. In *Satyawati Sharma (supra)* Supreme Court held,

“The premises let out either for residential or commercial purposes can be got vacated by the landlord for bonafide requirement”.

27. Petitioner’s case is that respondent is not the owner of property in question, since no probate of the will has been obtained by him.

28. It is well settled that it is not open for the tenant to dispute the title of the landlord. The question as to whether will is valid or not can only be challenged by the LRs of the deceased. Tenant is a stranger to the will and as such he has no locus standi to challenge the same.

29. 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.”

30. 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.

31. 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.”

32. In *Rajinder Kumar Sharma & Ors.(supra)*, 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.”

33. In *Nem Chand Daga Vs. Inder Mohan Singh Rana*,⁹⁴ (2001)

Delhi Law Times 683; 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.

34. 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.”

35. 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."

36. The averments made by the respondent in its eviction petition with regard to accommodation available with him on the ground floor

and grounds on which he requires the shops in question, have nowhere been disputed or challenged by the petitioners in their leave applications. These averments read as under:-

“That the petitioner is the owner of 5 shops on the ground floor and all the shops are occupied by tenants including the respondent which are more particularly shown in red colour in the site plan annexed herewith. The total area of these shops comes to approx. 380 sq. ft. No other space on the ground floor is available to the petitioner. The rest of the portion of the ground floor owned and occupied by others is more particularly shown in green colour in the site plan annexed herewith. The petitioner requires the accommodation on the ground floor urgently to take care of his father and for his own needs.

That the petitioner at least requires four rooms on the ground floor. Two rooms are to be joined, so that a proper hospital kind of a bed can be fitted into the room with stretcher, so that his father can be shifted easily to and from his bed. The room will also accommodate the wheelchair which is also to be frequently used by his father. This room has to be so big that it can also accommodate a bed for the attendant. The father of the petitioner requires 24 hours care and thus another room is required for keeping a nurse who can provide all medical help at emergent hours which would also be used for the visiting doctors, specialists, medical attendants and the family members, where they can sit. Further more the petitioner requires one room for himself as he also finds it difficult to climb stairs. Moreover, provision for WC/Bathroom and a pantry is to be made in one of the rooms. Thus the petitioner

requires whole of the ground floor portion owned by him for himself and for his family.”

37. Now coming to the question as to whether decision of *Satyawati Sharma (supra)* is applicable to the facts of the present case or not, since premises in question have been let out for commercial purposes and respondent requires the same for residence for himself and for his family members. In *Satyawati Sharma (supra)* Supreme Court has observed:-

“In view of the above discussion, we hold that Section 14(1) (e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter’s right to seek eviction of the tenant from the premises let for residential purposes only.”

38. In view of the above observations made by the Court, there is no force in the contentions of the learned counsel for the petitioners.

39. Regarding bona fide requirement of the respondent and his family members dependent upon him, the trial court held;

“So far as contention that the father of the petitioner is hale and hearty and there is no bonafide requirement of the petitioner at ground

floor for his father, in the entire affidavit of the respondents it has not been denied that he is the retired person, his age is also not denied by any of the respondent and the photographs of the father of the petitioner as well as medical documents especially the certificate dated 08.04.08 issued from Max Super Speciality Hospital makes it clear that the father of the petitioner is paralyzed on the right side and during the pending proceedings the petitioner himself also got married and thus requirement of petitioner for ground floor appears to be bonafide.”

40. It has been admitted by the learned counsel for the respondent that during the pendency of present petitions, respondent has got vacant possession of two shops.

41. As per site plan area of two shops in question is very small, as such vacation of these shops would not meet the entire requirement of respondent and his family members.

42. Now, coming to the question as to whether respondent has any alternative accommodation or not, the concept of alternate accommodation means that accommodation which is “reasonable suitable” for the landlord. As to alternative accommodation disentitling the landlord to the relief of possession, it has been held time and again that it must be reasonably equivalent as regards

suitability in respect to the accommodation he was claiming. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. It is to be observed that it would be incorrect to suggest that the question of accommodation, actually in possession of the landlord, being 'reasonably suitable' is to be judged solely in the context of physical sufficiency of the accommodation and that the Court may hold that accommodation is insufficient having regard to various circumstances, such as, the social status of the family or traditions and customs observed by it. As long as the landlord is able to establish that he in good faith and genuinely wishes to occupy the premises in possession of the tenant and that good faith or genuineness is of a reasonable man, it would not be open to the

Controller to weigh the claim of the landlord in a fine scale and that the viability of the other accommodation will have also to be considered from the stand-point of a reasonable landlord. It is further to be observed that the law does not require the landlord to sacrifice his own comforts and requirements merely on the ground that the premises is with a tenant and for deciding whether or not the alternative accommodation available to the landlord is suitable or not, the social customs, conventions and habits, usage and practices of the society cannot be completely ruled out and termed as irrelevant. The problem had to be approached from the point of view of a reasonable man and not that of a whimsical landlord.

43. In *S.N.Kapoor v. Basant Lal Khatri AIR 2002 SC 171*, the Court observed;

“No material has been brought on record and no proof has been made by the tenant by any positive material that it is neither genuine nor bona fide or reasonable but a mere excuse to get rid of the tenant. Though the choice or proclaimed need cannot be whimsical or merely fanciful yet certain amount of discretion has to be allowed in favour of the landlady too and Courts should not also impose its own wisdom forcible upon the landlady to arrange her own affairs, according to their own perception carried away only by the interests or hardship of the tenant and inconvenience that may

result to him in passing an order of eviction. In adjudging the claim under Section 14-D what is required to be substantiated is that the landlady is a widow and that she wants the premises for her own residence and that the claim by her is bona fide and not a feigned one. So far as a claim under Section 14 (1) (e) is concerned, the very requirement has to be shown not only to be bona fide but the move of the landlord/landlady to seek the eviction of the tenant must be genuine.”

44. 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.”

45. In *M/s 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.”

46. 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.”

47. Supreme Court in *Prativa Devi (supra)* reiterated that the Landlord is the best judge of his residential requirement and has a complete freedom in the matter and it is no concern of the courts to dictate to the landlord how, and in what manner he should live. The Supreme Court deprecated the solicitous approach of the High Court and held that there is no law which deprives the landlord of the beneficial enjoyment of his property.

48. In *Kuldeep Mahajan vs. Krishna Uppal and Others, 97 (2002) DLT 619*, this Court has observed that where landlady filed a petition on the ground of bona fide requirement as she and her husband are of old age and landlady's intention was to shift residence for better medical treatment of her husband, no malafide was attributed and it was held that a person afflicted by Arthritis would not find it convenient to reside on first floor when ground floor is also owned by her. The observations made by the Court read as under;

“The fact remains that the landlady and her husband are of old age, which has itself been found to be similar to other ailments justifying eviction. It is also argued that the brothers have not categorically stated that they will take care of their sister. Even if there may be a strain or distance in the relationship between siblings, there is a natural tendency for them to specially care for each other in the twilight of their lives. A party need not state the obvious; the obverse ought to have been brought out in cross-examination by the tenant. If the ARC was satisfied of the existence of bonafides, far be it for the High Court to come to a different conclusion in its revisionary jurisdiction. I am also unable to find malafides in a wife’s intention to shift residence for better medical treatment of her husband. In any event, a person afflicted by arthritis would not find it convenient to reside on the first floor when the ground floor is also owned by her. Far too much is sought to be read into the ownership issue of the petitioner, even if her father’s Will is to be discounted, she is competent to seek eviction as one of the co-owners, by succession. The argument that medical records pertaining to the heart-problems of the petitioner’s husband were not produced loses significance since the tenant did not challenge her brother’s testimony of visiting him in the course of his two hospitalizations.

The ARC has carefully considered all these aspects before arriving at his conclusion that the landlady required the premises bona-fide for her personal use. None of the findings are perverse or contrary to the evidence put forward. As has been emphasized by the Division Bench of this Court in Sushila Devi’s case (supra), objections of this nature cannot be allowed since bonafides are essentially a state of mind consisting of subjective considerations. Such

considerations are not amenable to interference by the High Court in its revisional powers.”

49. Decision of Nitin Garg (supra) is not at all applicable to the facts of the present case, since in that case petitioner has in the petition given detailed facts only as to how he needs urgent finances because of his growing family but not as to his need/requirement of tenancy premises for commercial purposes.

50. Thus, petitioners have failed to raise any triable issue in these cases, which if proved might disentitle the respondent from getting an order of eviction in his favour. The trial court has given a detailed and reasoned order which does not call for any interference nor the same suffer from any infirmity or erroneous exercise of jurisdiction.

51. Both petitions are hereby dismissed with costs of Rs.20,000/- (Rupees Twenty Thousand only) each.

52. Petitioners are directed to deposit the costs by way of cross cheque with Registrar General of this court, within four weeks from today.

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53. Dismissed.

54. Copy of this Judgment be placed in the connected matter.

55. List for compliance on 29th November, 2010.

October 27, 2010
mw

V.B.GUPTA, J.