

HIGH COURT OF DELHI : NEW DELHI

RC. REV. No. 124/2010 & CM No. 10165/2010

% Judgment reserved on: 27th August, 2010

Judgment delivered on: 12th November, 2010

Smt. Viran Wali,
W/o Late Sh. Jatinder Nath Gupta,
R/o E-62, Amar Colony,
Property No. 60-A,
Lajpat Nagar-IV,
New Delhi.

....Petitioner

Through: Mr. A. S. Chandiok, Sr. Adv.
with Ms. Jyoti Mehndiratta,
Adv.

Versus

Sh. Kuldeep Rai Kochhar,
S/o Sh. Brij Mohan,
R/o First Floor,
C-IV/23, Amar Colony Market,
Lajpat Nagar-IV,
New Delhi- 110024.

....Respondent

Through: Mr. Sudhir Nandrajog, Sr. Adv.
with Ms. Saahila Lamba, Adv.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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.

Present petition has been filed under Section 25B (8) of the Delhi Rent Control Act, 1958 (for short as 'Act') against impugned order dated 2nd March, 2010 passed by Rent Controller (for short as 'Controller') New Delhi. Vide impugned order, application for leave to defend filed by petitioner was dismissed and eviction order was passed in favour of respondent and against the petitioner.

2. Brief facts are that, respondent is the owner/landlord of one shop with covered verandah on ground floor being part of the property bearing no. C-IV/23, Amar Colony (Market), Lajpat Nagar-IV, New Delhi. Rent deed dated 1.1.74 was executed by the petitioner, whereby tenanted shop was let out to her at a monthly rent of Rs.180/. The shop is being used by the petitioner as general store since inception of the tenancy. Respondent, who is aged about 77 years, had been earning his livelihood by working in the field of sale and marketing of books. He was in employment of M/s India Books Distributors from 1981 to 2000, and worked as a Branch Manager

with M/s Teksons Book Shop from 2001 to February 2008. Respondent, who is unemployed since 2008, has gained vast experience in the book trade during the period of his employment. Family of respondent consists of himself, his wife, four sons and their family namely; Sh. Dilbagh Kochhar, aged about 46 years having wife and two minor children, Sh. Sunil Kumar Kochhar, aged about 44 years having wife and two minor children, Sh. Raj Kumar Kochhar, aged about 43 years having wife and one minor daughter and Sh. Rajesh Kochhar, aged about 40 years having wife and one minor daughter.

3. Property bearing no. C-IV/23, Amar Colony (Market), New Delhi consists of half basement floor, ground floor, first floor, second floor and third floor. Basement floor is meant for storage and parking purpose. The tenanted shop is on the front side of the ground floor. In the back portion of the ground floor, elder son of respondent namely, Dilbagh Kochhar is running his office as a Chartered Accountant since 1996-97 and is dependent on the respondent for the purpose of said accommodation. First floor is occupied by the respondent, his wife and his son Sunil Kumar Kochhar and his family. The second floor of

the building was sold by the respondent in 1997 and the same is not in possession and ownership of the respondent. The third floor of the building is in occupation of Raj Kumar Kochhar, son of the respondent. The fourth son of the respondent namely, Rajesh Kochhar is living separately in Sushant Lok, Gurgaon. Mr. Sunil Kumar Kochhar, who is living with the respondent on the first floor was also in the books trade and was in the employment of M/s Teksons Book Shop from May 2003 to April 2008. Mr. Sunil Kumar is no more employed with M/s Teksons, and has also gained a lot of experience in book trade. Respondent and his son Sunil Kumar Kochhar are unable to meet the expenses of life by the meager salaries and they want to utilize their experience in the field of books trade by establishing their own joint business in the sale and marketing of the books in the tenanted shop occupied. Respondent and his dependent son Sunil Kumar, have no other alternative suitable property to carry out the business of the books, except the tenanted shop. The respondent, thus need the tenanted shop bonafidely for establishing his business jointly with his son Sunil Kumar Kochhar in the tenanted shop.

4. In affidavit filed along with application for leave to defend it is

stated by the petitioner that respondent, on his own showing, has a basement available to him. This basement measures approx. 15'x30' i.e. 450 sq.ft. appx. and is larger by one and a half times than the shop premises used by the petitioner, which is 15'x20' i.e 300sq. ft. appx. only. Said basement is in commercial area and can be used for commercial purposes. The said basement was earlier also being used as a commercial area by the earlier tenant, Shri Virender, who was running a business of financial services under the name and style of Auto Choice. The aforesaid tenant vacated the premises in or about February, 2008 and since then the basement is lying vacant.

5. On respondent's own showing he and his son Sunil, were both working with M/s Teksons but left the said employment on their own in February 2008 and April 2008, respectively. If it is the case of the respondent that he wants to carry on the business of trading in books, the said premises had been and have been available to him and or to his son now for almost one year but respondent did not set up any business there, during this period. The plea therefore that he needs the suit premises for running a business, is false.

6. It is further stated that respondent has, on his own showing an

alternative accommodation available to him within the said shop premises at C-4/23, Amar Colony, New Delhi, from where the business of books can be carried out conveniently and comfortably.

7. It is further stated that M/s Teksons Books Store where respondent and his son were employed is also housed in a basement area in South Extension and the entrance to the said shop is almost the same as the entrance to the basement presently available to the respondent. Further the area available for entry to the basement is barely three feet and it cannot be used for any parking purpose. Present eviction petition has been filed with mala-fide intentions, knowing fully well that respondent has sufficient accommodation for himself and or his allegedly dependent son. There is therefore, no bona-fide need of the landlord in respect of the premises being used by the petitioner.

8. In the counter affidavit filed by the respondent, it is stated that basement in the suit property is only half basement, that is, measuring about 15 ft. x 23 ½ ft. This basement is not a full basement but is a half basement towards the back lane of the property. It is further stated that basement does not have any opening towards the front. The

opening in any case can only be created on the public land being the footpath or through the tenant's suit property, that is, through the front portion of the shop for which the eviction is being sought. This clearly shows that the basement is not easily accessible to be used as a shop. Further, basement is also unsuitable for use as a shop because, as admitted by the petitioner, its only access is from the back lane. Even this access is narrow, congested and not suitable for customers.

9. It is further stated that the tenant cannot dictate to the landlord as to which premises or which portion of the premises would be suitable for his shop. Basement shop and or a shop with entrance from the back lane will not attract customers, or walk-in customers and even the customers who are informed about the address of the shop will find it difficult to locate the same. Moreover, girls and ladies customers will not like to enter the shop from the back lane. Thus, the basement is not suitable for use as a shop.

10. It is also stated that the basement is also not permissible to be used for commercial purpose and it can only be used for purposes like parking, storage of household items, water pumps, air conditioner equipment etc. Without prejudice, respondent also stated that in case

the basement is used for commercial purpose, then the said user 'may' attract conversion charges as also such user will make the area of the basement to be counted towards the F.A.R. This would mean that the area available to the respondent for his family in the upper storey will be reduced, which in any case is very limited and less than required.

11. It is further stated that the ground floor shop opens towards the main market on the front road. There is proper access to the shop through the street and it will attract walk-in-customers. It has good frontage for display and signage and it will be convenient for ladies and girls customers to enter the shop and the customers will not be suffocated by narrow entrance or congested space due to full open frontage towards the street.

12. It is denied that the basement is lying vacant. The said basement is being used for storage of household items and for parking of cycles etc. It is also denied that the plea that the suit premises is required for running of a book shop is false. It is relevant to note that while respondent retired from M/s Teksons, but his son Mr. Sunil Kochhar has to resign because various shops of M/s Teksons were sealed by the municipal authorities and M/s Teksons were cutting down their staff.

The requirement of the suit property for the shop is genuine and the present accommodation is not sufficient.

13. It is contended by learned counsel for the petitioner that Controller fell in grave error in ignoring that leave to contest has to be granted once the tenant raises issues which if proved would non suit the landlord. The Controller could not have obviated trial at this stage, by going into the merits of the grounds raised by the petitioner, as final conclusion could be reached only after evidence is led. Petitioner having raised several issues of fact so the trial is essential and therefore controller should have granted leave to contest.

14. It is also contended that respondent, on his own showing has that basement available to him which is larger by one and a half times than the disputed shop. The said basement is in commercial area and can be used for commercial purposes. Moreover, said basement was earlier also being used as a commercial area by the earlier tenant, Shri Virender, who was running business of financial services and this fact has not been disputed by the respondent.

15. Other contention is that as per eviction petition, respondent wants to carry on the business of trading of books, but in spite of the

fact that earlier portion having being vacated by the earlier tenant more than year ago, the respondent did not set up any business there during this period. Thus, this plea that respondent needs the tenanted portion for running the business, is false.

16. It is further contended by learned counsel for petitioner that as per case of the respondent, basement floor is not suitable for carrying on the business since basement is meant for storage and parking purpose. However, the area available for entry to basement is three feet approximately and the same cannot be used for parking purpose at all. Respondent being unemployed since 2008, has not made any attempt till date to start business in the basement which is lying vacant.

17. It is also contended that as Building Bye laws of Municipal Corporation of Delhi, basement can be used for office and commercial purposes. The only intention of the respondent is to get the premises in question vacated and there is no bonafide requirement of the respondent.

18. It is also contended by learned counsel that at initial hearing, petitioner gave an offer that if access to the basement is given from the

front portion, then petitioner is willing to consider shifting to the basement floor of the suit property, which respondent refused to accept.

19. On this point learned counsel cited case law ***Dinesh Kumar Vs. Yusuf Ali***, **2010 (6) SCALE 41**, where the court held;

“Partial eviction of the tenant could serve the purpose of both the parties.”

20. In ***Rajinder Singh Vs. Mange Lal***, **73 (1998) Delhi Law Times, 177**, cited by learned counsel this court held;

“That where there was sufficient accommodation with the landlord and his requirement was demonstrated by the tenant as artificial and not real, leave to contest could be granted.”

21. On the other hand, it has been contended by learned counsel for respondent that in entire affidavit of the petitioner, bonafide need of respondent has not been denied. The only defence raised by petitioner is that respondent/landlord is having a basement available with him and since the basement is in commercial area, the same can be used for commercial purposes and earlier also the said basement was being used for commercial purpose by the earlier tenant.

22. It is contended by learned counsel for respondent that tenant cannot dictate the landlord as to which premises or which portion of the premises would be suitable for his shop and in what manner and for what purpose the landlord should use his property.

23. It is also contended that shop in question is situated on the ground floor where there are better prospects of business, other than the basement. As per Municipal Bye-laws, basement can be used only for storage and parking purpose. Even otherwise, basement which is having entry from the back lane is not suitable for running the business by the respondent, since he will not get good customers. Since, basement is not easily accessible for use as a shop and it has entry from the back lane, it will not attract customers. On the other hand, shop situated on the ground floor occupied by petitioner, is more suitable to be used as a shop than the basement which opens towards the back lane.

24. Learned counsel in support cited following judgments;

(i) ***Sarla Ahuja Vs. United India Insurance Company Ltd.,***
(1998) 8 SCC 119;

(ii) ***Mahendra Trivedi Vs. Jai Prakash Verma,***
157 (2009) DLT 690;

- (iii) ***Dhanalal Vs. Kalawatibai;***
(2002) 6 SCC 16;
- (iv) ***Krishna Kumar Gupta Vs. Swadesh Bhushan Gupta,***
152 (2008) DLT 556 and
- (v) ***Mohd. Usman Vs. Siraj Ahmed,***
154 (2008) DLT 342.

25. There is no dispute about the relationship of landlord and tenant between the parties. As far as letting purpose is concerned the same is for commercial purpose. In ***Satyawati Sharma Vs. Union of India,*** 2008 (5) SCC 287, Supreme Court has held,

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

26. 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.”

27. 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.

28. 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.”

29. In *Rajinder Kumar Sharma & Ors. Vs. Leela Wati & Ors., 155*

(2008) Delhi Law Times 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.”

30. 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.

31. 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.”

32. In *Sarwan Dass Bange Vs. Ram Parkash, 2010 IV AD (Delhi)*

252, 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.”

33. The only question which arises for consideration in the present case is, as to whether basement in occupation of respondent/landlord, can be used for the purpose of book shop and whether respondent/landlord is to be dictated by the petitioner, as to which portion is more suitable for running the book shop and in what manner respondent/landlord should use that portion.

34. Admittedly, tenanted premises are situated on the ground floor. It is not the case of petitioner, that beside basement, respondent is

having any other suitable and readily available accommodation with him in the entire premises. Respondent has categorically stated that basement is not suitable for him to carry on the business, as the same is being used for storage and parking purposes. Even if the basement is available with the respondent, then why respondent who is the landlord of the premises, should be forced to work from the basement, when he can get the tenanted premises vacated which is more suitable and also situated on the ground floor, for running his business.

35. It sounds really strange that owner/landlord should be at the mercy of the tenant for running his own business in the property owned by him as per the dictates of the tenant. It is a well known fact, that any shop situated on the ground floor is more convenient than a shop situated in the basement of the premises. Respondent being the owner/landlord of the premises in question, has all the right and choice to start his own business in the premises more suitable and most convenient to him.

36. Any business which is being run from the ground floor of the premises, will obviously attract more customers than the business being run from the basement. It is the settled law, that a tenant cannot

dictate the landlord as to how and in what manner the landlord should use his own property.

37. Respondent in his eviction petition in clear and unequivocal terms has mentioned about his requirements. It is not only the “mere desire” of the respondent to get the premises vacated but he needs the same for his above stated requirements. So, it cannot be said that respondent does not require the premises for himself and his son dependent upon him for accommodation for the purpose of starting business.

38. 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. 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.

39. 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.”

40. In *Sarla Ahuja (Supra)* 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 in 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.”

41. 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.”

42. 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.”

43. In *Mukesh Kumar and Rishi Prakash*, 2009 (2) RCR, 485,

this court has observed;

“ 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 utilized 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.”

44. In *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*, JT 1999

(5) SC 201, the court observed;

“The availability of an alternate accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to bonafides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the Court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another

principal ingredient of Clause (e) of Sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available than the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternate residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternate accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.”

45. Lastly, the proposal given by the petitioner at the initial hearing was found not feasible by the respondent and as such respondent cannot be forced to accept any such proposal which is neither feasible nor suitable to him.

46. Thus, petitioner has failed to raise any triable issue in this case, which if proved might disentitle the respondent from getting an order

of eviction in its 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.

47. Present petition is hereby dismissed.

48. Parties shall bear their own costs.

CM No.10165/2010

49. Dismissed.

November 12, 2010
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V.B.GUPTA, J.