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

% *Judgment pronounced on: October 04, 2013*

\+ **RC. Rev. No.94/2012 & C.M. No.3730/2012**

ANIL KUMAR SHARMA ..... Petitioner
Through Mr.H.S. Sharma, Adv.

versus

KAMLESH BHATNAGAR ..... Respondent
Through Mr.Dinesh Agnani, Sr.Adv. with Mr.Rajiv K.Sharma & Ms.Shoma Chaudhuri, Advs.

\+ **RC. Rev. No.96/2012 & C.M. No.3806/2012**

ANIL KUMAR SHARMA ..... Petitioner
Through Mr.H.S. Sharma, Adv.

versus

KAMLESH BHATNAGAR ..... Respondent
Through Mr.Dinesh Agnani, Sr.Adv. with Mr.Rajiv K.Sharma & Ms.Shoma Chaudhuri, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J.**

1. The abovementioned two petitions have been filed by the petitioner under section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act") against the eviction orders dated 8th November 2011 passed by the learned Rent Controller (North-East District), Delhi dismissing the leave to defend applications of the petitioner. Since the facts

of the two petitions as well as the issue sought to be decided by this Court in both the matters are the same, thus, both the petitions are decided by this common order.

2. The respondent filed eviction petitions against the petitioner on the ground of bonafide requirement in respect of two shop bearing private No.1 and private No.2 at the Ground Floor of the property bearing No.C-395, Main Market, Bhajanpura, Delhi-110053 (hereinafter referred to as "the tenanted shops") as per the provisions of Section 14 (1) (e) of DRC Act. The tenanted shops were let out to the petitioner in July, 1977 but there was no written agreement between the parties.

3. It was contended by the respondent that the petitioner had sublet the tenanted shop No.1 to one Sh.Ram Kumar Sharma illegally and without the written consent of the respondent. Further, the respondent stated that she is a widow lady aged about 70 years and required the tenanted shops for her bonafide needs as she wanted to run her own business there from with the help of her daughters and sons-in-law and had no other suitable accommodation for the same. It was also stated that since each of the tenanted shops are very small in size, she would require both shops for her aforementioned purpose.

4. In the leave to defend applications, the petitioner contested the need of the respondent and contended that the respondent had concealed material facts. It was stated that the husband of the respondent had retired from DJB and was getting family pension. After his death, the respondent was getting approximately Rs.15,000/- as pension besides rent which was more than sufficient for her survival. It was stated that the respondent is aged about 70 years and is not physically in a position to run any business in the said shop.

The petitioner contended that the remaining portion of the premises except the tenanted shop was lying locked and the respondent could earn handsome income by rent by letting out the said portion. It was stated that the respondent had no son and only two married daughters who were living in their respective matrimonial homes, in fact the respondent was also living with them. While on the other hand the petitioner is aged about 52 years having two marriageable daughter, wife and old aged mother. The petitioner stated that he is the only earning member in his family and there was no other source of income except the tenanted shop. It was further stated that he was a semi-educated person and had been in tenancy since 1977 and it was next to impossible for him to earn livelihood by arranging another shop in the same locality. The petitioner specifically denied the allegations made by the respondent that the petitioner had sublet the tenanted shop No.1 to one Ram Kumar Sharma.

5. While deciding the matter vide the impugned order, the learned trial Court in Para 15 of the impugned order observed as follows:

> "Perusal of the record shows that the respondent has nowhere challenged the fact that the petitioner is not having any other suitable commercial premises to start her business. The ground taken by the respondent that the requirement of the petitioner is not bonafide is also not substantiated by any material on record. The arguments of the respondent in the application for leave to defend that she can enhance her income by letting out the residential portion of her premises is also without any merits. The tenant cannot dictate terms to the landlord as to how he or she should live or enhance her income. The grounds of comparative hardship of the tenant as mentioned in paras 7 to 9 of the application for leave to defend are also not relevant for the purpose of disposal of the present application as comparative hardship faced by

> the tenant in case of eviction is not relevant in disposal of the eviction petitions under DRC Act. The respondent has also failed to substantiate that the petitioner is having income of more than Rs.15,000/- p.m. whereas the petitioner has filed copy of her bank passbook which shows that petitioner is only receiving Rs.6,025/- p.m.as pension and further the rent realized by her from the shops is merely Rs.725/- p.m. Hence, in the present age, when the inflation is running into double digits, income of Rs.6,750/- can hardly be considered as sufficient for the survival of the petitioner."

For the aforesaid reasons, the learned trial Court opined that that the petitioner had failed to raise any triable issues or to disclose such material facts as would disentitle the respondent from getting eviction orders. Accordingly dismissing the leave to defend applications of the petitioner, eviction orders were passed against the petitioner.

6. Aggrieved by the impugned orders so passed against him, the petitioner has assailed the same on the grounds mainly that the impugned order is illegal, unfair, perverse and contrary to law as well as facts and circumstances of the case and material on record.

7. The issue before this Court is, whether said findings call for any interference by this Court in revisionary jurisdiction in view of the facts and circumstances of the present case or not. It is settled law and it has been held from time to time by various courts that while exercising jurisdiction under Section 25(B)(8), this Court does not act as a Court of appeal. This Court has only to see whether the learned ARC has committed any jurisdictional error and has passed the order on ignorance of material available before it which makes the order not in accordance with law.

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.

8. It has been held in ***Precession Steel and Engineering Works & Anr. Vs. Prem Deva Niranjan Deva Tayal***, AIR 1982 SC 1518 wherein the apex court observed thus:

> "If the averments in the affidavit disclosed such facts which, if ultimately proved to the satisfaction of the Court, would disentitle the landlord from recovering possession, that by itself makes it obligatory upon the controller to grant leave." It is further held that "the jurisdiction to grant leave to contest or refuse the same is to be exercised on the basis of the affidavit filed by the tenant. That alone at that stage is the relevant document and one must confine to the averments in the affidavit."

In the case of ***Charan Dass Duggal Vs. Brahma Nand***, (1983) 1 SCC 301, it is held that leave to defend must be granted where tenant raises triable issues making out a prima facie case against the landlord's eviction suit on the ground of personal requirement. In another case titled as ***Mohd. Illyas Vs. Nooruddin & Ors.***, 184 (2011) DLT 590, it is held that in a case

of bonafide requirement, the submission of tenant is that the landlord has not approached the court with clean hands and he has a huge property which can be fit for needs of the respondent and it is a triable issue.

In ***Mangat Rai Vs. Kedar Nath***, 1980 (4) SCC 276, it is held that where the Rent Acts afford a real and sanctified protection to the tenant, the same should not be nullified by giving a hypo-technical or liberal construction to the language of the statute which instead of advancing the object of the Act may result in its frustration. The Rent Acts have primarily been enacted to give protection to the tenants.

9. From the scheme of the Act, it is evident that if tenant discloses grounds and pleads a cause which prima facie is not baseless, unreal and unfounded, the Controller is obliged to grant him leave to defend his case against the eviction sought by the landlord. The inquiry envisaged for the purpose is a summery inquiry to prima facie find out the existence of reasonable grounds in favour of the tenant. If the tenant brings to the notice of the Controller, such facts as would disentitle the landlord from obtaining an order for recovery of possession, the Controller shall give him leave to contest. The law envisages the disclosure of facts and not the proof of fact.

10. In ***Rachpal Singh & Ors. Vs. Gurmit Kuar & Ors.***, (2009) 15 SCC 88, it is held that if triable issues are raised then the controversy can be properly adjudicated after ascertainment of truth through cross examination of witnesses who have filed their affidavits and other material documents. Burden is upon the landlord to prove his requirements.

11. Relying on the aforementioned judgment, it was observed by this court that it is evident that the petitioner tenant was able to raise certain issue, the veracity of which ought to be tested. Rent Control laws were

enacted to strike a balance between the rights of the tenants as well as those of the landlord. The petitioner tenant was able to raise certain triable issues and cannot be thrown out at this threshold. Doing so would defeat the purpose for which the Act was created.

12. Let me now discuss the issue involved in the present cases, as to whether the impugned order passed by the learned trial Court is legally correct, or whether the learned trial Court legally has come to the conclusion of rejection by the petitioner on the basis of the facts of the present cases.

13. Firstly, let me reproduce the grounds on the basis of which the respondent sought eviction of the two tenanted shops. The same read as under:-

(i) The respondent who is a widow lady of aged about 70 years, is the owner-landlady of the suit premises and the tenanted premises are required bonafide for her own use and occupation.

(ii) The petitioner Sh.Anil Kumar Sharma is a tenant in respect of Shop Private No.1 with effect from July, 1977 at a monthly rent of ₹250/-.

(iii) The tenancy is according to English Calendar month starting from 1st day of every English month and expires on the last day of the same month.

(iv) As per the judgment of the Supreme Court reported as III (2008) SLT 553, in case titled as ***Satyawati Sharma (dead) by L.Rs. vs. Union of India & Anr.***, Section 14(1)(e) of the DRC Act is declared ultravires doctrine of equality enshrined in

Article 14 of the Constitution of India and as such, the premises under the tenancy of the petitioner is required bonafide by the respondent for running her own business and the petitioner/ tenant is under obligation and bound to vacate the same.

(v) The suit premises under the tenancy of the petitioner/tenant is required bonafide by the respondent for herself for running her own business. She has no other suitable commercial accommodation with her for running her business to earn livelihood for herself and she does not want to depend upon others including her daughters and sons-in-law.

(vi) The respondent wants to open One Stop Shop including Cyber Café, PCO, Photostat, Stationery, Typing, Fax, Air & Rail Booking by engaging the services of employees, with the help and support of her daughters and sons-in-law.

(vii) For the above said set up, she requires the premises in question boanfidely including other two shops, so that her aforesaid business can be accommodated and run smoothly.

(viii) The shop bearing Private No.1 is measuring 7'9" x 15' (adjoining to Chamoli Bakers & Confectioners). Since the premises in question is a very short space, therefore, she requires other two shops to set up her own business bonafidely.

14. The petitioner in both matters have denied each and every grounds mentioned in the eviction petitions in his affidavit filed along with the applications for leave to defend. The allegation of sub-tenancy is also denied by the petitioner.

It is not necessary here to discuss each and every triable issue raised by the petitioner in his application in view of limited scope of revisionary jurisdiction for interference under Section 25-B(8) of the Act. However, the relevant issue raised by the petitioner in his affidavit in para-7 of the affidavit which is extracted as under:-

> "…..that the ground floor of the said property bearing No.C-395, Main Market Bhajanpura, Delhi is covered/ constructed about 80% and there are four rooms excluding kitchen, latrine, bathroom and verandah and at the first floor, there are three rooms and the kitchen, latrine, bathroom and one room at the second floor. The entire house except the said shops is lying locked under the lock in key of the petitioner/landlady……
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> …..that there are two married daughters of the landlady/petitioner and there is no son and she is living with her daughters. The daughters are living in their respective matrimonial homes. One daughter is living at Keshav Puram, Delhi and the other one is living at Pune, Maharashtra."

15. In reply affidavit of the respondent, the said corresponding para has been dealt with by the respondent which reads as under:-

> "7. That I say that the contents of para No.7 of the application are wrong and denied except that the property is constructed. It is specifically wrong and denied that the entire house is lying locked under the lock in key of the petitioner, as alleged in the para under reply. It is submitted that the petitioner is occupying the house and is using the same for her residence. It is specifically wrong and denied that the petitioner is living with her daughters, as alleged. It is submitted that the petitioner has been visiting occasionally to her married daughters. Since the premises in question required bonafidely by the petitioner, as mentioned in the petition, therefore, the respondent has no right to dictate his terms upon the petitioner regarding letting out of residential premises."

16. Let me again discuss para-7 of the affidavit of petitioner/tenant wherein it was specifically mentioned that the suit property is covered/ constructed about 80% and there are four rooms excluding kitchen, latrine, bathroom and verandah on the ground floor and at the first floor, there are three rooms and the kitchen, latrine, bathroom and one room at the second floor. The entire house except the said shops is lying locked under the lock in key of the respondent/landlady.

17. There is no specific reply on behalf of the respondent who has evasively denied the said para, rather it was neither admitted nor denied that there are four rooms on the ground floor, three rooms at the first floor and one room set at the second floor. Not only that, the respondent in her eviction petition has not disclosed the said accommodation available with her. Even the site plan of selective portion of the suit property has been filed by the respondent.It is also pertinent to mention here that even in the present revision petition, same ground is taken in ground F, but reply of the respondent remained the same i.e. vague and not specific.

18. Under these circumstances, it is evident that the respondent has failed to disclose the ownership of rest of the portion containing 4 rooms at the ground floor, three rooms set at the first floor and one room at second floor. The respondent is seeking the prayer to evict the tenant on the ground floor of bonafide requirement for starting business for herself in the absence of disclosing complete accommodation of three floors even by not filing the complete site plan. Thus, the finding of the learned ARC that the petitioner has challenged the fact that the petitioner has no other alternative accommodation is wrong, perverse as it overlooks the disclosure the facts that the respondent has got more than reasonably suitable space available at

the rest of the portion of the ground floor, first floor and second floor as disclosed in the plaint. The said finding of learned ARC is not in accordance with law governing evaluation of leave defend application and is thus required to be interfered with by this court.

19. A careful reading of the provisions of the Act would reveal that the tenant who comes within the purview of the Rent Control Act is a protected tenant and the grounds of the eviction are enacted in the form of proviso to the Section 14 of the Act as an exception to the general rule which is that the tenant is a protected person within the meaning of the Act.

20. Therefore, the eviction proceedings as provided under the provisions of the proviso to Section 14 (1) of Delhi Rent Control Act are an exception to the general rule of protection of the Act. Thus, the initial onus to establish the ground of the eviction as contained in the eviction petition is on the landlord as it is the landlord who is pleading an exception in the form of eviction proceedings under the Act. Consequently, the Rent Controller who is seized of the eviction proceedings has to necessarily keep in mind that it is the landlord who has to establish the ground of eviction as pleaded in the petition.

21. It is equally noteworthy to mention that it is not that the Delhi Rent Control Act merely protects the tenants against the unjust and unreasonable evictions from the landlord and the landlords. The Act attempts to balance out the protection and also protects the landlord by providing special procedure for eviction. Section 14 (1) (e) which enables the landlord to seek eviction on the ground of bonafide requirement is one such protection given to the landlord wherein the landlord can seek quick and swift eviction of the premises by adopting the special procedure laid down under the provisions

of Section 25 B of the Act. This protection has been given to the landlord as there may be some genuine reasons for which the landlord may require the premises for his own requirement. For the said reason, the special provisions are enacted under Section 25 B of the Act in order to avoid delay in the proceedings.

22. The legislative intent behind the special nature of the provisions which are Section 14 (1) (e) and Section 25 B has been aptly explained by the Supreme Court of India in the case of ***Bega Begum and Ors. Vs. Abdul Ahmed Khan (dead) by LRs and Ors.*** [1979] 2 S.C.R. 1 wherein the Supreme Court observed thus:

> "Section 25B of the Delhi Rent Control Act was inserted in the statute by Act 18 of 5976 and was given retrospective effect from 1-12-75, with the sole object of simplifying the procedure for eviction of tenants in case the landlord requires the premises bonafide for his personal occupation. **The Legislature in its wisdom thought that a short and simple procedure should be provided for those landlords who generally want the premises for their bonafide necessity so that they may be able to get quick and expeditious relief.** [865 G-H, 866 A-B] **Section 25B does not govern all grounds open to a landlord for evicting the tenant but it is confined only to the ground in section 14A and proviso to section 14(1)(e). In other words, the bonafide necessity of the landlord has been put in a separate class or category having regard to the peculiar incidents of his right. Section 14A also relates to a special situation where the landlord under the Government Rules is asked to shift to his own house, if he has one or in a house that belongs to his spouse, failing which he has to pay a penal rent which almost takes away a major part of his salary. Thus, such a landlord becomes a class by himself**. The statute thus puts personal necessity of the landlord as a special class

> requiring special treatment for quick eviction of the tenant and cuts out delays and plugs all the loopholes, which may cause delay in getting the relief by the landlord. **The classification made by the legislature is in public interest and is in complete consonance with the objectives sought to be achieved. The landlords having personal necessity have been brought together as a separate class because of their special needs and such a classification cannot be said to be unreasonable particularly where the legislature in its obvious wisdom feels that the Landlords should get this relief as quickly as possible.**" (**Emphasis Supplied**)

23. It is true that the special provisions are provided in order to protect the landlord in the case of genuine need or the requirement of the landlord so that the immediate relief can be provided to him. However, the need has also been felt by the courts that the expression bonafide need or requirement has to be meaningfully construed so that the relief should be made practical and genuine one and not whimsical or fanciful desire.

The Supreme Court in its judgments has also interpreted the meaning of the "bonafide requirement" as something which is a genuine need and not desire, but not a fanciful need. The Supreme Court has emphasized this aspect of the genuineness of the need in the case of ***Deena Nath Vs. Pooran Lal*,** (2001) 5 SCC 705 by observing in the following manner:

> "**The Legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bonafide which is intended to avoid the mere whim or desire**. **The 'bonafide requirement' must be in praesenti and must be manifested in actual need**

> **which would evidence the Court that it is not a mere fanciful or whimsical desire**. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in sub-section (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, **the Court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the city/town is available**. The judgment/order of the court/authority for eviction of a tenant which does not show that the court/authority has applied its mind to these statutory requirements cannot be sustained and the superior court will be justified in upsetting such judgment/order in appeal/second appeal/revision. **Bonafide requirement, on a first look, appears to be a question of fact. But in recording a finding on the question the court has to bear in mind the statutory mandate incorporated in Section 12(1)(f). If it is found that the court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bonafide requirement would cease to be a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment**."
>
> (**Emphasis Supplied**).

24. Applying to the said legal position, it is apparent that the impugned order passed by the learned Rent Controller nowhere discussed the case of the petitioner in para-7 of the affidavits. It is not examined in the impugned order that the respondent has not stated the said material facts in the petition

and the petitioner when filed a leave to defend application along with affidavit questioned the bonafide of the respondent by stating that there are four rooms on the ground floor, three rooms at the first floor and one room at second floor, which were not fully disclosed by the respondent. There was no plausible explanation from the side of the respondent. In the absence of the same, the respondent at the initial stage of summary proceedings is not entitled for the eviction of commercial accommodation.

25. It is submitted that Learned ARC has not evaluated the case of the petitioner on the twin requirements of the section 14 (1) (e) of the DRC Act which have been time and again emphasized by the courts in India which are that the premises are bonafidely required by the landlord for his residencial or for the benefit of the person claiming under him and the availability of no other reasonably suitable accommodation with the landlord. Once, the petitioner has disclosed in the affidavit that there is enough space available with the respondent on the same premises at ground floor, first floor and second floor and there is no likelihood of the respondent starting business at the said premises and the respondent thereupon does not contravert the said plea with sound justification but gives evasive response, the same by itself is sufficient to doubt the genuineness of the need and if not need that there is exists availability of the reasonability of the alternative accommodation. Thus, the finding of the learned ARC that on perusal of the material available on record shows that there exists no challenge as to availability of alternative accommodation and finding as to genuineness of the need suffers from ignorance material on record and is flawed approach towards testing the case of the petitioner on the law governing the scope of enquiry at the time of deciding the leave to defend application and thus vitiates the order as

not passed in accordance with law warranting interference of this court under the revisionary powers as per section 25 (8) of the Act.

26. This Court is of the considered view that in case, it would cause injustice to the case of the tenant on merit, it was incumbent upon landlord to have disclosed other accommodation existing in premises and to explain the same to be in his possession or not. In the absence thereof, the tenant will have to get an opportunity of trial.

27. From the averments made by the petitioner in his affidavit which are specifically not denied by the respondent, it appears that there must be more accommodation at the ground floor and in the absence of any disclosure made by the respondent, it is difficult to assess the correct position and that it would certainly require to be tested.

28. From the above reasons, it is clear that the entire approach of decision making of the learned Rent Controller in the impugned order suffers from legal infirmities and is contrary to the approach and permissible extent of enquiry required for the purposes of grant or non grant of the leave to defend which clearly makes the impugned order illegal and unsustainable warranting interference of this Court.

29. The question is whether the respondent requires the suit property and her requirement comes within the four corners of Section 14(1)(e) or not. The said issue in my opinion could be properly determined only if leave to defend is granted to contest the matter. This matter does not need a summary procedure in view of reasons mentioned above whereby I feel and I am of the considered opinion that the petitioner has raised triable issue regarding bonafide requirement of the respondent which could be decided only after trial.

30. It is not a thumb rule in every case that the application for leave to defend must be refused by the desires of the landlord otherwise, the tenants would lose statutory protection. That would definitely defeat the intention of the legislation. I am of the view that in the application for leave to defend must be judged and decided on case to case basis and not in a mechanical manner. Each case has to be determined as per its own merit and in case the court has doubt in its mind about the genuineness of need of the landlord or the matter requires fact finding then it would be better to postpone the final decision on eviction by granting leave to defend so that truth may come out at the time of trial.

31. Therefore, the impugned orders are set aside and the leave to defend is granted. The revision petitions are accordingly disposed of.

32. The parties are directed to appear before the learned Rent Controller concerned for further directions on 24th November, 2013.

**(MANMOHAN SINGH)**
**JUDGE**

**OCTOBER 04, 2013**