

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

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Judgment Reserved on: July 08, 2013

Judgment Pronounced on: August 22, 2013

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RC. Rev. No.136/2012 & C.M. No.5383/2012

DR. JAIN CLINIC PVT LTD

..... Petitioner

Through

Mr.G.P.Thareja, Adv. with
Mr.Alok Kumar, Ms.Manisha
Agarwal & Mr.Neeraj Gupta, Advs.

versus

SUDESH KUMAR JASSAL

..... Respondent

Through

Mr.Neeraj Kishan Kaul, Sr.Adv. with
Mr.Tejas Karia, Mr.Karan Mehra,
Mr.Swapnil Gupta, Mr.Arjun Palli &
Mr.Sanyat Lodha, Advs.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The abovementioned revision petition under Section 25B of the Delhi Rent Control Act, 1958 (hereinafter called the “Act”) has been filed by the petitioner assailing the order dated 13th December, 2011 passed by the learned RC whereby the application for leave to defend filed by the petitioner was rejected in the eviction petition preferred by the respondent, mainly, on the ground that the respondent is the owner of the demised premises and bonafidely require the premises for his own residence and has no other alternative accommodation. Thus, as per the learned RC, the respondent’s case falls within the ambit of Section 14(1)(e) of the DRC Act.

The brief facts leading up to the passing of the impugned order and consequently the present petition are enunciated as under:

2. It is stated that the petitioner is the tenant of the respondent in the suit property situated at A-14, Ground Floor, NDSE-II, New Delhi-110049.

3. The said property which consists of three bedrooms, one drawing room, one kitchen, two bathrooms, and including verandah, front lawn, parking place and back courtyard (hereinafter referred to as the “Demised Property”) was given on lease to the petitioner for residential purposes.

4. The tenancy was created on 15th November, 1983.

5. At the time of filing of the eviction petition, the case of the respondent was that he along with his father, Late Sh.Kewal Krishan Jassal had executed an agreement with the petitioner whereby the demised premises was given on lease to the petitioner for the residential purposes only and for no other purposes. After the sad demise of the respondent’s father on 17th September, 1989, the premises became the sole property of the respondent pursuant to Deed of Family Settlement dated 11th May, 2007 executed between the legal representatives of late Sh.Kewal Krishan Jasal. The mutation of the said property was also effected in the name of the respondent by the Municipal Corporation of Delhi vide Mutation Order dated 30th April, 2010.

6. It has been the case of the respondent in the eviction petition that the respondent is 64 years of age and is suffering from serious ailments, i.e. a chronic skin disease called *Plaque Psoriasis* and is under the care of, and receiving ongoing treatment from Royal Victoria Infirmary Hospital in the United Kingdom. As part of the treatment for this disease, respondent is receiving UVB Phototherapy under which he is exposed to ultra violet radiation from artificial sunlight sources. The respondent is also suffering

from *Psoriatic Arthritis*, as a result of which he has joint pains in his hands, wrists, feet and legs due to the cold climatic conditions in the United Kingdom. He is undergoing the treatment for this disease from Rheumatology Department of the Freeman Hospital in Newcastle upon Tyne, United Kingdom, since 2002. The respondent has been advised that the best therapy for *Plaque Psoriasis* and *Psoriatic Arthritis* is to have maximum exposure to natural sunlight and living in a warmer region like India. He has been strongly advised by doctors to shift to a warmer region on account of the abovementioned ailments.

7. It has also been stated in the eviction petition that Prof. N.J. Reynolds, Consultant Dermatologist at New Castle upon Tyne Hospitals, has recommended the respondent to shift to India for the treatment. Besides him, Dr. P.N. Platt, Consultant Rheumatologist at the New Castle upon Tyne Hospitals, has also recommended to respondent to shift to warmer climatic conditions and has advised him to shift back to India. The respondent would be undergoing the phototherapy treatment for the fourth time. On account of his illness, he has decided to shift to India and stay in the premises which is owned by him. Thus, the respondent is in bonafide requirement of the premises and has no alternative residential accommodation to stay in India. On account of the nature of the disease and the treatment, the respondent would be required to live in New Delhi at the premises in order to receive better medical attention.

8. The respondent would require the entire premises as he would be residing in the premises with his wife and would be receiving his children and relatives settled in the United Kingdom from time to time. Besides this, it is stated that the petitioner is also liable to vacate the premises on the ground of using the same for commercial purposes, even though they were

leased for residential purposes only and for no other purpose. The respondent never granted any permission to the petitioner to use the premises for commercial purposes. The use of the premises for the purposes of running a clinic by the name of Dr. Jain's Clinic is in violation of the agreement and also detrimental to the interests of the respondents. The premises was once sealed by the authorities on account of usage of the premises for commercial purposes by the petitioner.

9. The application for leave to defend was filed by the petitioner, inter-alia, on the following grounds:-

- (i) The respondent is not the owner of the suit property. The alleged illness suffered by the respondent i.e. *Plaque Psoriasis* and *Psoriatic Arthritis* can be managed by Ibuprofen, a simple pain killer. The Psoriasis is a heredo-familial disease. It is not a chronic disease. It can be managed. The adequate treatment of the disease is available in UK. The sunshine is available in UK also. The respondent need not shift to India merely to have sunshine or natural light.
- (ii) The medical advises filed with the petition do not show that any doctor has recommended the respondent to shift to India, rather the alleged advises show that they are procured and/or merely record the respondent's statement of his alleged keenness to move back to his house in India.
- (iii) The respondent is a British citizen. He has lived in UK for the better part of his life. There is no reason for him to shift to India at this stage of life.

10. In rejoinder of his application for leave to defend, additional grounds were also taken namely that the pleadings have been signed by Ms. Neelu

Jassal (who is the wife of the respondent) on the basis of a General Power of Attorney (GPA) executed by the respondent but that does not give power to her to file such affidavit. As the pleadings are signed by her, it indicates the respondent is not interested in the matter. Lastly the printout of the internet advertisement at *matrimonial.com* for the marriage of the son of the respondent wherein an information was given by the son of the respondent in the advertisement that, *“the parents’ plan to semi retire and reside in a to be newly constructed 2nd Family Home in the Coastal/Riviera region of the South of Spain in the future mainly for climatic and lifestyle reasons. This would also act as a regular holiday home for the whole family.*

11. After considering the rival submissions of both the parties, the learned Senior Civil Judge-cum-Rent Controller (South), Saket Courts, New Delhi dismissed the application of the petitioner for leave to defend vide impugned order dated 13th December, 2011. Six months time was granted to the petitioner to vacate the demised premises at Ground Floor of House No.A-14, NDSE Part-II, New Delhi. The learned trial Court has rejected all submissions of the petitioner.

12. I have gone through the records of the present case including the impugned order and the grounds raised in the petition. I have also considered the submission advanced by the learned counsel for the parties at the bar. Having gone through the submissions of the learned counsel for the petitioner and also the grounds raised in the petition, it can be seen that the petitioner is merely re-agitating the grounds which has already been raised and rejected by the learned Rent Controller. The said grounds mainly are that the respondent is ill advised to shift to India on account of his ailment and the son of the respondent stated in the matrimonial advertisement available online that the respondent is intending to retire in the southern part

of Spain and some other technical grounds on the basis of which the petitioner intends this court to interfere with the impugned order and intend this court to grant the leave to defend. Let me now evaluate the submissions raised by the learned counsel for the petitioner one by one and find out whether there is any case made out by the petitioner warranting the interference by the revisionary court or not.

13. The first submission of the learned counsel for the petitioner is that the respondent is not the owner of the suit property who has relied upon the Deed of Settlement as evidence of his title in the suit property. It is argued that the chain of documents which were part and parcel of family settlement have not been filed by the respondent.

This aspect has been dealt with the learned Rent Controller. In any case, it can be seen that it is not denied by the petitioner that the respondent along with his father, Late Sh.Kewal Krishan Jassal had executed an agreement with the petitioner wherein the demised premises was given on lease to the petitioner for residential purposes only and for no other purpose. It is the case of the respondent that after the demise of the respondent's father on 17th September, 1989, the respondent became the sole owner of the property by virtue of Deed of Family Settlement dated 11th May, 2007 executed between the legal representatives of late Sh.Kewal Krishan Jassal. It has also come on record that on the basis of the same, mutation of the suit property was also effected in the name of the respondent by MCD vide Mutation Order dated 20th April, 2010. It is the admitted position that the copies of the Deed of Settlement and the Mutation Order dated 20th April, 2010 were filed by the respondent along with the list of documents.

14. It is settled law that in the context of the Delhi Rent Control Act what appears to be the meaning of the term "owner" is that vis-a-vis the tenant

the owner should be something more than the tenant. The position in law is that the “ownership” of the landlord for the purpose of maintaining a petition under Section 14(1)(e) of the Act is not required to be an absolute ownership of the property, and that it is sufficient if the landlord is a person who is collecting the rent on his own behalf. The imperfectness of the title of the premises can neither stand in the way of an eviction petition under Section 14(1)(e) of the Act, nor can the tenant be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying the rent to the landlord. The tenant inducted by landlord is estopped and cannot dispute the title of his landlord in view of the provisions of Section 116 of the Indian Evidence Act without there being any subsequent change in the situation. This aspect has been discussed in the following judgments:

- i. ***Shanti Sharma Vs. Smt. Ved Prabha***, AIR 1987 SC 2028
- ii. ***Zahid Hussain thr. LRS Vs. Aenul Haq Qureshi thr. LRS***, 2005 (1) RCR 323
- iii. ***Ram Chander Vs. Ram Pyari***, 109 (2004) DLT 388
- iv. ***Mukesh Kumar Vs. Rishi Prakash***, 174 (2010) DLT 64
- v. ***Rajender Kumar Sharma & Ors. Vs. Smt. Leela Wati & Ors.***, 155 (2008) DLT 383
- vi. ***Meenakshi Vs. Ramesh Khanna & Anr.***, 60 (1995) DLT 524
- vii. ***Tej Pal Gupta Vs. Rattan Singh***, 160 (2009) DLT 726
- viii. ***Kamla Rani & Ors. Vs. Texmaco Ltd.***, 139 (2007) DLT 61
- ix. ***Keshar Lal H. Pardeshi Vs. Vithal S. Patole***, (2005) 10 SCC 249
- x. ***Ramesh Chand Vs. Uganti Devi***, 157 (2009) DLT 450
- xi. ***M.M. Quasim Vs. Manohar Lal Sharma***, (1981) 3 SCC 36
- xii. ***B.R. Anand Vs. Prem Sagar***, 2002 (1) RCR (Rent) 234

- xiii. ***D. Rani Puri Vs. Chanan Lal***, 65 (1997) DLT 313
- xiv. ***Shree Ram Sharma Vs. Mohd. Sabr***, 178 (2011) DLT 1
- xv. ***Bharat Bhushan Vij Vs. Arti Teckchandani***, 153 (2008) DLT 247
- xvi. ***Jiwan Lal Vs. Gurdial Kaur & Ors.***, 57 (1995) DLT 262

15. The petitioner has not disputed the fact that the petitioner has been paying rent to the respondent. It is also a matter of fact that when the present petition was filed which was listed before Court on 23rd March, 2012, the petitioner agreed to pay the user charges at the market rate to the respondent which was fixed tentatively @ ₹60,000/- per month and the same were being duly paid. Even otherwise, there can be no dispute that there was sufficient material placed on record by the respondent about the title of the suit property which now rests with the respondent. The objection is thus not sustainable and is rejected. The finding of the learned RC on the aspect of the title of the respondent is thus in accordance with law.

16. The second submission of the learned counsel for the petitioner is that the respondent/landlord had not filed his own affidavit in support of eviction petition as well as in reply to the petitioner/tenant's application for leave to defend. Instead, in the pleadings an affidavit was filed by Ms. Neelu Jassal wife of the petitioner as his Attorney. The counsel has relied upon the GPA which was executed by the respondent and argues that no specific power was given to said Ms. Neelu Jassal to file the affidavit and in the absence of any such power granted by the respondent/ landlord, the affidavit filed by his wife is unauthorized and could not be read in the pleadings and also argued that since the respondent has failed to file his affidavit, it establishes that he is not interested in prosecuting his case of eviction and his wife cannot depose before the Court as a witness on his behalf to seek eviction of the tenant. Learned counsel has referred the following judgments:-

- (i) ***Ram Prasad vs. Hari Narain and others***, AIR 1998 Rajasthan 185, (Paras 8, 9 & 10).
- (ii) ***Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd. and others***, AIR 2005 Supreme Court 439, (Paras 12, 13, 14 & 22).
- (iii) ***Vidhyadhar vs. Mankikrao and another***, AIR 1999 Supreme Court 1441, (Paras 15 & 16).
- (iv) ***Smt. S. Padmavathamma vs. Smt. S. Sudha Rani and others***, AIR 2004 Andhra Pradesh 309, (Para 2).

It is admitted position that the petitioner did not raise this objection in the affidavit filed along with application for leave to defend. Legislature has provided Summary Trial under Chapter-III of the Delhi Rent Control Act and under Section 25 of the Delhi Rent Control Act, the procedure has been prescribed to deal with the petition under Section 14 of the Delhi Rent Control Act. From the date of service of the summon fifteen days' time is granted to the tenant to file the leave to defend application and to plead all such grounds alongwith detailed affidavit in order to disentitle a landlord from obtaining an order of eviction. In view of procedure laid down by the Parliament, unless the permission is granted by the court to raise the subsequent evidence the normal practice is that while deciding the revision petition only the leave to defend application can be considered and no new plea can be allowed to be raised and can be considered. However, in order to satisfy my conscious let me deal with the argument addressed by learned counsel for the petitioner.

The relevant clause of the GAP executed by the respondent authorizing his wife Ms.Neelu Jassal reads as under:-

“.....to appear for and represent me in all the Courts, civil, criminal or revenue, revisional or appellate in any registration offices and to sign, execute, verify and file

plaints, written statements and petitions in any Court as my Advocates think proper to do so.”

17. From the said authority, it is beyond the cavil of any doubt that the respondent has authorized his wife to appear and represent him in all the Courts, Civil, Criminal or Revenue and to sign, execute, verify and file complaints, written statements and petitions in any Court as think proper. The said authorization given by him to his wife to verify and file an affidavit on behalf of the respondent is clear and without any condition. With regard to objection raised that the respondent is not interested in the matter, the decisions referred by him do not help the case of the petitioner, as in all the judgments, the Court observed that a Power of Attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party.

18. There is no doubt that for the purpose of bonafide requirement, the landlord normally must depose so that the Court could know the state of his mind. If the landlord does not step into the witness box to bring before the Court legal evidence to prove his requirement, then it cannot be said that he reasonably and bonafidely requires the premises. It is settled law that the landlord can delegate the authority to conduct a case but normally, he should not delegate the duty to depose. It is also true that if the party whose presence is necessary in Court in witness box for the purpose of his cross-examination does not appear, avoids his appearance without any valid reason and instead authorizes another person to appear as a witness on his behalf, then obviously an inference can be drawn by the Court that he is not interested in the matter. However, such situation in the present has not reached as while passing the impugned order, the learned trial court was merely dealing with the petitioner’s application for leave to defend wherein

the court was evaluating the tenable case raised by the petitioner. When the GPA filed by the respondent itself was giving the ample authority to his wife and was legally valid, there was no occasion for the learned RC to conduct a trial on the aspect of the power of attorney when it did not cast any doubt as to the genuineness of the need of the respondent or for that matter the legal authenticity of the document. Thus, it was neither the stage for the learned RC to draw any adverse inference nor the said challenge merely being raised by the petitioner makes the said aspect as triable issue when the GPA is otherwise legally executed.

As far as the filing of the petition through GPA holder is concerned, it is settled law that the eviction petition can be signed, verified and instituted by the Attorney duly appointed under an authenticated document and the same cannot be dismissed on the ground that it was not signed, verified and instituted by the landlord. There is no law that an eviction petition can only be signed and verified by landlord alone and not by his attorney. Reliance in this regard can be placed on the following judgments:-

- (i) ***Raj Bahadur & Others vs. Sushila Devi Nigam & Others***, 19 (1981) Delhi Law Times 407. (para 8)

“8. Next it is contended on behalf of the appellants that landlady Smt. Sushila Devi Nigam did not appear as a witness and Therefore no order of eviction can be passed. I may mention that the husband of the landlady appeared as a witness. He was her general attorney. He has deposed about all the facts necessary for the grant of relief to the landlady. The landlady is to prove the facts in order to obtain an order of eviction. The facts may be proved by her own statement or by the statement of her witnesses or by admission of the tenants. In the present case the ownership of the landlady, the purpose of letting of the suit premises is not now in dispute. As regards the family members and the accommodation available on record there is ample evidence

led by the landlady consisting of her husband and others and also admission on behalf of the appellants, in view of the overwhelming evidence in support of the facts required to be proved to obtain an order of eviction it is not mandatory that the landlady should appear as a witness. At best it can be said that the landlady took a risk by not appearing as a witness but the landlady cannot be non-suited simply on the ground that she has not appeared as a witness. The evidence of her husband is sufficient to entitle her to an order of eviction. Learned counsel for the appellants has referred to Nanalal Goverdhandas & Co. & others v. Smt. Sauratbai Lilachand Shah, AIR. 1980 Bombay, a case under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 wherein the landlady was not examined in support of her case and her suit on ground of bona fide requirement was dismissed. With respect to the learned Judge deciding the Bombay case it seems to me that the facts in every case differ. If there is sufficient evidence on record, a plaintiff cannot be non-suited simply on the ground that he has not appeared as a witness. Thus I am of the view that in the facts and circumstances of the present case it was not necessary for the respondent-landlady to appear as a witness and her failure to appear as such does not disentitle her to obtain an order of eviction against the appellants. A learned Judge of this court in Khurshid Haider v. Zubeda Begum. 1979 RLR 161 has held that for proving the ground of personal requirement under Section 14(1)(e) of the Act it was not essential that the petitioner-landlady must herself depose.”

- (ii) ***Yogesh Singh Sahotra vs. Niranjana Lal Gupta***, 20 (1981) Delhi Law Times 264. (para 6)

“6. Under this provision it is, Therefore, clear that an attorney is entitled to act on behalf of the donor of power, that he is the recognised agent of the party under the Code. I am, therefore, of the view that the eviction petition was properly signed, verified and instituted by a recognised agent of the petitioners as the attorney is duly appointed under the general power of attorney dated January 5, 1980. No provision of law has been brought to my notice that an eviction application can only be signed and verified by the landlord alone and not by his

attorney. I am, therefore, of the view that order of the Additional Controller is contrary to law. The impugned order dated August 25, 1980 is therefore set aside. The eviction petition is restored to its original number and the same is remanded to the Additional Controller for disposal in accordance with law. Parties are directed to appear before the Additional Controller on May 18, 1981. No order as to costs.”

19. Thus, the said objection on the power of attorney also does not raise any issue which makes the impugned order bad in law and thus the same is meritless.

20. Third submission of the learned counsel for the petitioner is that the respondent has failed to make out a case of any necessity of the suit property much less of a bonafide necessity. He submits that assuming that the respondent suffers from *Plaque Psoriasis* and *Psoriatic Arthritis*, the documents filed by the respondent would show that he has responded to the first line of treatment. Hence, there is no necessity for him to come to India for this purpose. It is also stated that the respondent is a British citizen and has lived in UK for better part of his life. There is no reason or occasion that he would shift to India at the end of his life. The said disease can be better managed in UK, as the adequate treatment of the disease mentioned by him is available there. The sunshine is available in UK also. Thus, the respondent need not shift to India for the purpose of having the sunshine and natural light.

It is argued that the documents do not show that any doctor has recommended the respondent to shift to India, rather the advices show that the documents are procured. Even otherwise, the eviction order has been passed against the Allahabad Bank whereby the respondent has also got the first floor of the suit property vacated and so the demand of the respondent is

otherwise complete as he can be shifted to 1st Floor of the property. Lastly, the internet printout shows that the respondent may live in the coastal/Riviera region of the south of Spain in the future mainly for climatic and lifestyle reasons. The following decisions are referred to:

- (i) ***Nanlal Goverdhandas & Co. and others vs. Smt. Samratbai Lilachand Shah***, AIR 1981 Bombay 1, Paras 22 & 23.
- (ii) ***Precision Steel & Engineering Works and another vs. Prem Deva Niranjana Deva Tayal***, AIR 1982 Supreme Court 1518, Paras 12, 14, 18 & 22.
- (iii) ***Charan Dass Duggal vs. Brahma Nand***, (1983) 1 SCC 301.
- (iv) ***Rachpal Singh and Ors. Vs. Gurmit Kaur and Ors.***, (2009) 15 SCC 88.
- (v) ***Shri Virendra Pal vs. Sri Daljit Singh Sandhu***, 1978(1) All India Rent Control Journal 365.
- (vi) ***Shri Jitendra Singh Verma vs. Manohar Lal Aggarwal***, 1977(2) All India Rent Control Journal 761.

21. I am of the view that again the learned Rent Controller has comprehensively dealt with this aspect of ailment of the respondent and the dispute raised by the petitioner to this effect. The respondent in his eviction petition also filed the documents which are cogent and clear evidence about his disease. The respondent has filed the documents evidencing UVB Phototherapy treatment received by him as well as treatment for *Psoriatic Arthritis* disease and also the advice given by the Specialists in UK to have maximum exposure to natural sunlight and to live in a warmer region like India. Copy of the said advice was also placed on record. The document pertaining to the recommendation by Prof. N.J. Reynolds to the respondent to shift to India for the treatment was also filed with the eviction petition. Another recommendation by Dr. P.N. Platt was also filed. In view of the sufficient evidence produced by the respondent along with the eviction

petition, the respondent's case is established without any doubt that he is suffering from serious ailments. Under these circumstances, the petitioners attempt to challenge the need of the respondent by disputing the position of the petitioner and saying that the respondent has been ill advised to stay in India is unreasonable and does not really cast any doubt as to the genuineness of the need of the respondent. It should be remembered that the law requires the tenant in order to succeed in the leave to defend application must show some facts which cast a serious doubt as to the genuineness of the need of the landlord and show the landlord has other reasonably suitable accommodation. In the instant case, the respondent's case is that the respondent requires the premises for his own residence as a complete area and has no other reasonably alternative accommodation available with him. The petitioner has not been able to show any circumstance which casts any doubt as to genuineness of the requirement of the respondent except by disputing that the ailment of the respondent does not require him to stay in India. The said stand is merely disputed by the petitioner but that by itself does not show as to how the need of the respondent is not genuine on account of his ailment. The need of the respondent is genuine as perhaps the respondent is of the view as per the advise available to him that he can cured by residing at a place like India having sunlight and by disputing the same, the petitioner cannot be heard to say that the need of the respondent is not genuine when as a matter of fact the respondent is ailing and there is an advice which is available on record suggesting the respondent to shift at the warmer region. Under these circumstances, the mere dispute of the fact on the aspect of the ailment does not cast any doubt on the genuineness and bonafides of the need of the respondent but rather reflects upon the petitioner's unreasonable stand by dictating the terms upon the respondent

when it can be said the respondent genuinely requires the said premises for his own ailment. The petitioner/tenant cannot dictate the terms at least on the count of the health of the respondent by calling upon him to stay at his will when the respondent has choice as well as the requirement as per the advice available to him. (This aspect that the tenant cannot dictate the terms to the landlord who resides outside to adjust or to fit in at the place lesser in any manner has been dealt by the Apex Court in the case of ***Sarla Ahuja vs. United India Insurance Co. Ltd.***, AIR 1999 SC 100 which are equally apposite to the present case.)

22. With regard to the matrimonial advertisement given by his son on internet at *matrimonial.com*, the said internet advertisement is not given by the respondent himself. The same might have been given by his son. The said plea was neither taken by the petitioner in the application for leave to defend nor in his affidavit. The argument of the petitioner is that the respondent is likely to settle in South of Spain in future in view of the internet matrimonial advertisement given by his son and therefore, he does not require the suit premises. The said submission is also without any merit. Firstly, the said advertisement has not been given by the respondent himself. Further, there is no confirmation or any evidence in order to show that in future, he would permanently stay in Spain. Further, the said aspect also nowhere raises any doubt on the ground on which the eviction is sought, i.e. the requirement of the respondent of the said premises on account of ill health and he has no other alternative accommodation available. Thus, the said advertisement as shown by the petitioner does not persuade this court to interfere with the finding which has been correctly arrived at by the learned RC as there is no error in law which can be found on any count.

23. Section 14(1)(e) of the Act nowhere provides that the bonafide need of the landlord/owner should be in respect of residential premises for a permanent residence only. It is settled law that if the landlord/owner is settled outside India but his visit to India are frequent, his need even for temporary stay in his own premises has to be judged as bonafide need. Therefore, he inspite of having his own property in Delhi cannot be compelled to live in the places other than his own property and to face inconvenience. His lordship Hon'ble Mr. Justice B.N. Kirpal (as his Lordship then was), in *M/s Mehra & Mehra vs. Dr. (Mrs.) Sant Kaur Grewal*, 21 (1982) DLT 196 upheld a claim under Section 14(1)(e) of the Act, by a landlord who was living at Srinagar and wanted her premises in Delhi only to pass winter months, holding that it was her bonafide need. It was held that since the landlady had no other alternative accommodation available to her in Delhi, her need was to be treated as bonafide. In the case of *Saroj Khemka vs. Indu Sharma*, reported in 1999 (49) DRJ 719, a Single Judge of this Court upheld an order of the Controller, rejecting leave to defend application, in case of a landlord/owner who was living abroad and wanted his premises at Delhi for stay in India for short durations. It was categorically observed that an owner cannot be compelled to stay at a Hotel or have an alternative accommodation.

24. Reliance can also be placed upon the case titled as *Sarla Ahuja vs. United India Insurance Co. Ltd.*, reported in AIR 1999 Supreme Court 100. The facts of this matter were that the petitioner who was a widow wanted to shift her residence from Calcutta to New Delhi to occupy her own building which was in the possession of her tenant M/s United India Insurance Company Limited. Though she got an order of eviction from the Rent Controller under Section 14(1)(e) of the Delhi rent Control Act 1958 (for

short “the Act”), a single Judge of this Court non-suited her by reversing the order which she challenged before the Supreme Court by way of Special Leave to Appeal. It was held by the Supreme Court that:-

“.....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.”

In *S.P.Kapoor Vs. Kamal Mahavir Prasad Murarka and Ors.*, 97 (2002) DLT 997, this Court had observed that even the requirement of the landlord to have his premises vacated for his frequent visits to Delhi and for temporary stay in his own premises has to be viewed as bonafide requirement.

25. The ratio laid down in *Charan Dass Duggal Vs. Brahma Nand*, (1983) 1 SCC 301 and *Nanlal Goverdhandhas and Co. Vs. Samratbai Lilachand Shah*, AIR (1981) Bom. 1 is not disputed, but the present case falls in the ambit of cases where the landlord has successfully proved his bonafide requirements which must be honoured and recognized by this Court. The cases relied upon by the learned counsel for the petitioner and the one before this Court being different on facts cannot have identical outcome, and are hence of no assistance to the petitioner.

26. In *Precision Steel & Engineering Works and another vs. Prem Deva Niranjana Deva Tayal*, AIR 1982 SC 1518 the Apex Court has held that the prayer for leave to contest should be granted to the tenant only where a prima facie case has been disclosed by him. In the absence of the tenant having disclosed a prima facie case i.e. such facts as to what disentitles the landlord from obtaining an order of eviction, the Court should not mechanically and in routine manner grant leave to defend. In the present case, there is not even an iota of prima facie evidence to show that any ground of bonafide requirement which has been taken by the respondent is untrue and there are triable issues raised by the petitioner in his affidavit.

As the petitioner has failed to show existence of any triable issue which disentitle the respondent from getting the order of eviction against the petitioner and at the same time entitle the petitioner to leave to defend. The onus even prima facie has not been discharged by the petitioner.

27. The other fact of the matter is that the demised premises was given to the petitioner under lease document to be used only for residential purpose but it is being used for commercial purposes as the petitioner is running a clinic in the name of Jain's Clinic which is also in violation of the agreement.

28. It is settled law that the landlord is the best judge of his requirement and has complete freedom in the manner of the beneficial enjoyment of his property once it is not disputed that the landlord's need is bonafide, it is not proper for the tenant to say that the landlord should shift to the first floor or any higher floor. None of the decisions referred by the petitioner would help his case as the facts in the present case are materially different.

29. The respondent in the present case has specifically pleaded that he needs entire premises due to his ill health for residential purpose with his

wife and would also be receiving his children and relatives from time to time, because of his ill health and he specially wants to reside at the ground floor of his property, thus, it is immaterial if first floor is got vacated by the other tenant. Arguments are also addressed by the respondent's counsel that even if first floor is vacated, still his requirement is not satisfied.

30. In view of the above discussion, it can be seen that none of the grounds raised by the petitioner warrants interference of the revisionary court and order passed by the learned RC is in accordance with the law and suffers from no legal infirmity.

31. For reasons stated above, there is no merit in the petition. The same is hereby dismissed.

However, in the interest of justice, six months time is granted to the petitioner to vacate the demised premises from today. The petitioner during this period shall pay the agreed rent (user charges) as agreed in the order dated 23rd March, 2012 and also shall not sub-let and create any third party interest in the suit property.

32. Pending application also stands disposed of.

33. No costs.

(MANMOHAN SINGH)
JUDGE

AUGUST 22, 2013