

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

% *Judgment reserved on : 1st July, 2013*
Judgment pronounced on: 24th July, 2013

+ **RC.REV. 180/2013**

DEEPAK GUPTA Petitioner
Through Mr.J.P.Sengh, Sr.Adv. with
Mr.Anil Kumar Pruthi, Mr.Anuj
Rajvanshi & Mr.Luvenish Mendiratta,
Adv.

versus

SUSHMA AGGARWAL Respondent
Through Mr.Anuj Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By this order, I shall dispose of the revision petition filed under Section 25 – B (8) of the Delhi Rent Control Act, 1958 by the petitioner assailing the judgment and order dated 5th January, 2013 passed by the learned Rent Controller in the case No.E-48/12 filed by the respondent herein against the petitioner and his sister Poonam Gupta wherein the petitioner was declined the leave to defend in the proceedings and eviction order was passed as a consequence.

2. The brief facts leading upto filing of the present petition can be enunciated as under:

- i) The respondent herein had filed a petition seeking an eviction of the property No.2700 against the petitioner tenant before the learned Rent Controller, Delhi. It was the case of the respondent in the petition that the tenanted premises i.e. one godown (behind shop bearing No.2700) comprised in property bearing No.10-E Mundewalan Street, Sadar Thana, Road, Delhi-110 006 which is shown in red colour in the site plan (hereinafter referred to as 'suit property') was let out to the father of the petitioner namely Shri O.P. Gupta in the year 1952 by the erstwhile owner of the property Sh. Prithvi Chand Goel. The property came to the share of the respondent by way of will of the erstwhile owner.
- ii) The respondent instituted the proceedings against the petitioner under the provisions of the Delhi Rent Control Act, 1958 whereby the respondent pleaded that the suit premises are required on the ground of the bonafide requirement. The said eviction proceedings were registered as Eviction Petition No.58/2008 before the learned Rent Controller. Thereafter the respondent withdrew the said proceedings before the learned Rent Controller by filing an application seeking withdrawal. By way of order dated 2nd February, 2012, the learned Additional Rent Controller allowed the respondent to withdraw the proceedings.
- iii) Later on, the respondent herein again filed the petition under the provisions of the Delhi Rent Control Act before the Rent Controller seeking the eviction of the petition on the ground of the bonafide need. The said eviction was registered as eviction petition No. 48/2012. The summons were issued in the said proceedings.
- iv) The petitioner herein pursuant to summons filed the application as per the provisions of Section 25 –B (iv) of the Delhi Rent Control Act seeking

leave to defend along with his affidavit. The said leave to defend contained several grounds which can be summarized in the following manner:

- a) That the petition filed by the respondent suffers from concealment of fact as it has not been disclosed that the respondent's mother has taken over the possession of the property adjoining the suit premises bearing No. 2698 and 2700, first floor Mundewalan Street, Sadar Thana, Road, Delhi-1100 06 by the orders of the Rent Controller dated 25th September, 2008 and thus her plea that she genuinely requires the premises for herself and her husband is questionable.
- b) It has been further stated that the first floor of the property Nos.2621, 2623, 2696-2700 was sold by the respondent to her nephew Shri Deepak Goyal on 28th August, 2009 and likewise the godown of the said property has been transferred to Mr. Deepak Goel by way of the Gift Deed dated 28th August, 2009 to create an artificial shortage of the accommodation.
- c) It has been contended that the respondent herein/ plaintiff therein has herself filed the earlier eviction petition no. E-58/2008 on the ground of the bonafide requirement and during the pendency of the said petition, the said properties were transferred by the respondent to her nephew and thereafter the said petition was withdrawn by the respondent and filed afresh in the present form. All this would mean that the respondent does not require the accommodation bonafidely.

Besides the above grounds, the petitioner raised other grounds as well which find mention in his affidavit. However, the petitioner has majorly raised the aforementioned grounds in order to question the genuineness of the need of the respondent. The petitioner has also submitted the documents in

the form of the transfer deeds in order to substantiate the grounds raised in the affidavit.

v) The respondent has filed the reply to the said application filed by the petitioner seeking leave to defend and also disputed the grounds as raised by the petitioner questioning her need by providing suitable answers to the same.

vi) The matter thereafter, was eventually heard by the learned Rent Controller and on 5th January, 2013, the learned Rent Controller proceeded to pass an order dismissing the application filed by the petitioner and declining the leave to defend.

vii) Feeling aggrieved by the order dated 5th January, 2013, the petitioner filed the present revision petition raising the several grounds which as per the petitioner makes the order contrary to law and warrants interference of this court under the provisions of Section 25 B of the Delhi Rent Control Act.

3. The matter came up for hearing when Mr. J.P. Sengh, learned Senior counsel appeared on behalf of the petitioner and Mr. Anuj Jain, learned counsel appeared on behalf of the respondent.

4. Mr. Sengh, learned Senior counsel for the petitioner has made his submissions which can be summarized in the following manner:

a) Mr. Sengh, learned Senior counsel for the petitioner argued that the learned Rent Controller has failed to appreciate the challenge which the petitioner has laid to the genuineness of the need of the respondent. Mr. Sengh has explained that that the respondent is seeking the eviction of the property when the same very respondent during the pendency of the earlier eviction petition bearing No.58/2008 had sold the first floor of the property

Nos.2621, 2623, 2696-2700 and gifted one godown of the property Nos. 2621, 2623, 2696-2700 by way of Gift Deed dated 28th August, 2009. Further, the petitioner has raised in the affidavit a plea that the property No.2698 and 2700 which are also adjacent to the premises under the dispute got evicted by the mother of the respondent which the learned Rent Controller himself acknowledge by accepting the submissions of the respondent that the same came to the share of the respondent by way of will of her mother. As per Mr. Sengh, the said discernible facts that the respondent owns the properties evicted through her mother and got her share in will of the properties which are adjacent to the property sought to be evicted and had earlier sold the properties like ground floor and first floor of the properties bearing No. 2698 and 2700 were sufficient to raise a challenge at least at the stage of the leave to defend and the Rent Controller went completely wrong in law in ignoring the said challenge while refusing the leave to defend. Therefore, the said order dated 5th January, 2013 is wrong in law and warrants interference of this court.

b) Mr. Sengh, learned Senior counsel read over the impugned order dated 5th January, 2013 wherein he pointed out that it was the submission of the petitioner before the learned Rent Controller that the properties No. 2698 and 2700 first floor Mundewalan Street, Sadar Thana, Road, Delhi-1100 06 by the order dated 25th September, 2008 were got vacated by the mother of the respondent through the court which came to the share of the respondent but the said fact has been concealed. Mr. Sengh further argued that the learned Rent Controller records that the premises came to the share of the respondent by virtue of the Will but the same does not come in the way of the plaintiff in the instant proceedings.

Mr. Sengh, learned Senior counsel has strongly criticized the said finding of the learned Rent Controller by contending that once the respondent has got two properties evicted in the same area which now belongs to her, then the immediate need of the respondent becomes questionable and his case becomes doubtful. It has been argued that the finding of the learned Rent Controller that the said facts are inconsequential is contrary to the well settled principles laid down by the apex court as well as this court to the extent of enquiry permissible under the law while allowing or disallowing the leave to defend. Thus, the said finding of the learned Rent Controller is contrary to law and the leave to defend ought to have been allowed on this very ground.

c) Mr. Sengh submitted that the non-disclosure of the fact that the landlord had sold the properties nearby the property sought to be evicted prior to the institution of the eviction proceedings is a good ground to question the bona fide need of the landlord as per the well settled law. Mr. Sengh in order to substantiate his submission relied upon the judgment passed by this court in the case of ***Tarun Pahwa Vs. Pradeep Makin***, 2013 (1) CLJ 801 Delhi passed by the learned Single Judge of this court acting under revisionary powers wherein the grant of the leave to defend was upheld by him by observing that non disclosure of the said fact is good ground to question the need of the landlord and it raises a triable issue.

5. Likewise, Mr. Sengh relied upon the judgment passed by another learned single judge of this court in the case of ***Harcharan Singh Vs. Neeraj Sahu***, 190 (2012) DLT 625 wherein the learned single judge again considered the similar ground which is the selling and disposing of the other shops forming part of the property of which the tenanted shop was also a

part as a good ground to allow the leave to defend while acting under the revisionary powers.

In view of the aforementioned submissions advanced by the learned senior counsel for the petitioner and also case laws relied upon, it is prayed by Mr. Sengh that the order dated 5th January, 2013 should be interfered with by this court and leave to defend should be granted to him as the said order is not according to law.

6. Per Contra, Mr. Jain, learned counsel appearing for the respondent has made his submissions which can be outlined in the following manner:

a) Mr. Jain argued that the impugned order dated 5th January, 2013 passed by the learned Rent Controller is in accordance with the law as the said order clearly records the reasons for disbelieving the pleas raised by the petitioner in his affidavit. It has been argued that once the said pleas have been disbelieved by the learned Rent Controller by giving cogent reasons, this court while exercising the revisionary powers should not substitute its own opinion over the reasoning of the learned Rent Controller as the same is not permissible within the scope of enquiry of the revision. Mr. Jain has referred the following decisions in support of his submission :

- i) In the case of ***Ramesh Chand Vs. Uganti Devi***, 157(2009) Delhi Law Times 450, it has been held that while exercising jurisdiction under Article 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 the basis of material available before it. I find no irregularity in the order passed by the learned Addl. Rent Controller.

- ii) Present petition has been filed under Section 25 B(8) of the Act. A Full Bench of this Court in *Mohan Lal v. Ram Chopra and Anr.*, 1982 (2) RCJ 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 Ors. v. Rao Girdhari Lal Chowdhury*, A.I.R. 1963 S.C. 698 and *Bell and Co. Ltd. v. Waman Hemraj*, AIR 1938 Bom (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.”

- iii) In the case titled as *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta*, reported in AIR 1999 Supreme Court 2507, it has been held as under:-

“.....The revisional jurisdiction exercisable by the High

Court under S.25-B (8) is not so limited as is under S.115, CPC nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a Court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of 'whether it is according to law'. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available. Ignoring the weight of evidence, proceeding on wrong premise of law or deriving such conclusion for the established facts as betray the lack of reason and/or objectivity would render the finding of the Controller 'not according to law' calling for an interference under proviso to sub-sec. (8) of S.25-B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law."

- iv) The Supreme Court in another case titled as ***Chaman Prakash Puri vs. Ishwar Dass Rajput and Another***, 1995 Supp (4) **Supreme Court Cases 445** has held with regard to High Court's power to interfere in revision against the finding as to bonafide requirement of landlord. It has been held that if the Rent Controller finds that landlord was in bonafide need of premises, the High Court in revision was not entitled to re-appreciate evidence and reverse the finding.
- b) Mr. Jain has further sought to explain the challenge raised by the petitioner by answering about the properties sold and gifted by the respondent in the year 2009. It has been argued that the said properties were sold and gifted in the year 2009 and thus the same should not come in the

way of the respondent to seek the eviction on the bona fide requirement when the requirement clearly finds mention in the eviction petition. Similarly, it has been argued that the properties bearing No.2698 & 2700 might have come to share of the respondent by way of the will of the mother of the respondent but the same is inconsequential as has been recorded by the respondent. It has been argued that the respondent has clearly mentioned in the eviction petition that she is the owner of the shops bearing No. 2699, 2700 and one mezzanine floor in 2698 all comprising in and part of the same property and the respondent and her husband requires the aforesaid properties as a whole to start their business and separate eviction petitions are pending in this respect. Thus, it has been sought to be argued that the learned Rent Controller did no legal wrong as the petition filed by the respondent clearly disclose the facts in the correct perspective. As per the learned counsel for the respondent, the impugned order is clearly in accordance with the law.

c) Mr. Jain argued that this court should not act as a court of appeal and thus should not re-appreciate the same facts which have not found in favour by the learned Rent Controller. Thus, the impugned order is not required to be interfered with by this court.

d) Mr. Jain reiterated the stand taken by the respondent before the learned Rent Controller by answering all the challenges raised by the petitioner and argued that no triable issue has been raised by the petitioner and thus the leave to defend was rightly rejected by the learned Rent Controller.

7. In view of the aforementioned submissions advanced by the learned counsel for the respondent, it has been prayed that this court should dismiss the revision petition.

8. I have gone through the revision petition, documents filed therewith, petition seeking eviction filed by the respondent and the leave to defend application filed by the petitioner and facts disclosed in the affidavit. I have also considered the submissions advanced by the learned counsel for the parties before this court and I shall proceed to discuss the same in the light of the facts and existing legal position.

9. I think it is for me to firstly emphasize the policy behind the Rent Control legislation which is that the Delhi Rent Control Act is an act which has been enacted for the protection of the tenant by controlling the rate of the rents and unjust and unreasonable evictions in view of the ongoing tenancies in the region of Delhi as is evident from the preamble of the Act of 1958.

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.

10. 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.

11. 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.

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)

12. 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.

Therefore, the Supreme Court in its latest judgments has also interpreted the meaning of the “bonafide requirement” as something which is a genuine need and not desire, a necessity 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).

13. The said judgment of *Deena Nath* (supra) has been passed by the Supreme Court in the context of MP Accommodation Control Act but the provisions regarding “bonafide requirement” under section 12 of the said Act and Section 14 of the DRC Act are in *pari materia* and deserve analogous construction.

14. Upon careful reading of the judgment passed in the case of *Deena Nath* (supra), it is manifest that the court seized of the eviction proceeding has to not only make the enquiry as to whether the bonafide requirement has been raised in the eviction petition but also the requirement of the provision of Section 14 (1) (e) that the landlord has **no other reasonably suitable accommodation**. Thus these are the twin requirements which are to be satisfied conjunctively in order to attract the provisions of the Section 14 (1) (e) of the Act i.e. the bona fide requirement coupled with the reasonably suitable accommodation. This is due to the reason that Section 14 (1) (e) reads “and” in between the two requirements which means that both are to be satisfied together and collectively.

15. In view of the said settled legal position, the reasonability of the suitable accommodation already available to the landlord is one of the potent ground which enables this court seized of eviction proceedings to decide as to whether the provisions of proviso (e) to Section 14 (1) are attracted or not. It cannot be said that the availability of the accommodation already with the landlord as inconsequential unless the Controller arrives at the finding that the said accommodation is not reasonable or suitable one.

16. Applying the said legal position to the facts of the instant case, it can be seen that the order passed by the learned Rent Controller no where conducts the second limb of the enquiry which is the sufficiency or reasonability of the alternative accommodation which is a condition precedent for the applicability of the provisions of the Act.

17. No doubt, the respondent has mentioned in the petition that they do not have any other alternative commercial accommodation and requires the tenanted premises as 3 shops as a whole to start the business but at the same time, the finding as to reasonableness and sufficiency of two shops already available with the respondent has neither been arrived at by the Controller nor has been explained by the landlord as to how the two shops No. 2699 and 2700 which were got evicted by the respondents mother earlier which came to her share were insufficient as an alternative accommodation available to them.

18. On the contrary, the order passed by the learned Controller holds that the fact that the respondent did not disclose the shop No. 2699 and 2700 which were earlier available to the respondent does not come in the way of the respondent to seek the order of the eviction. I find that the said facts would certainly cast some shadow of doubt on bonafides of the respondent to seek eviction or if not the bonafides then the sufficiency and reasonability of the alternative accommodation.

19. As seen above, it is for the landlord to establish that the ground of eviction is squarely attracted, thus, the landlord ought to have stated in the petition not merely that she is the owner of the shop No. 2699, 2700 and miyani portion of 2698 but also as to how the said ownership is not reasonable alternative accommodation to the tenanted premises and what

sort of business is going to be commenced which required the additional accommodation of the godown under the eviction. Further, on the date of filing of the eviction petition which was April 2012, the premises bearing No.2699 and 2700 had already got evicted where as in the eviction petition it has been stated that the separate eviction petitions are pending before the competent court. All these are necessary material facts which can have bearing upon the genuineness of the need in the instant proceedings.

20. Once, the respondent has not stated the said material facts in the petition and the petitioner has filed a leave to defend application along with the affidavit questioning the bonafides of the respondent by stating that the respondent is the owner of the shop No. 2699 and 2700 which got vacated earlier by the mother of the respondent in the eviction proceedings in the year 2008, the learned Rent Controller simply could not have brushed aside the said facts as inconsequential in nature unless the plausible explanation comes from the landlord as to how the same are not reasonably suitable commercial accommodation.

In the absence of the some cogent reasons as is evident from the record and the respondent merely disputing the same calling it as irrelevant and having no bearing, it becomes really a question of trial to be examined as to whether the respondent's need is genuine or not and also whether there is reasonably suitable accommodation already available to the respondent or not.

21. Now, the second question which arises of the consideration is what is the permissible extent under the law within the bounds of which the enquiry as to grant or non grant of the leave to defend under the provisions of Section 25 B of the Delhi Rent Control Act would operate. I find that the

answer of the said question has already given by the Supreme Court of India in the catena of judgments passed by it, which the learned Rent Controller duly note in his order but does not follow as a proposition of law.

22. The Supreme Court in the case of *Charan Dass Duggal Vs. Brahma Nand*, (1983) 1SCC 301 speaking through Hon'ble Desai, J. observed thus:-

“5. What should be the approach when leave to defend is sought? **There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord, leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action** (see Santosh Kumar v. Bhai Mool Singh). At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased, may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.”

In the same judgment, in para 7 it is further observed:-

“7. The genesis of our procedural laws is to be traced to principles of natural justice, the principal amongst them being that no one shall suffer civil or evil or pecuniary consequence at his back without giving him an adequate and effective opportunity to participate to disprove the case against him and provide his own case. Summary procedure does not clothe an authority with power to enjoy summary

dismissal. Undoubtedly wholly frivolous defence may not entitle a person leave to defend. **But equally a triable issue raised, enjoins a duty to grant leave. Maybe in the end the defence may fail.** It is necessary to bear in mind that when leave to defend is refused the party seeking leave is denied an opportunity to test the truth of the averments of the opposite party by cross-examination and rival affidavits may not furnish reliable evidence for concluding the point one way or the other. It is not for a moment suggested that leave to defend must be granted on mere asking but it is equally improper to refuse to grant leave though triable issues are raised and the controversy can be properly adjudicated after ascertainment of truth through cross-examination of witnesses who have filed their affidavits. **Burden is on the landlord to prove his requirements and his assertion is required to be tested more so when it is shown that for long he is staying outside Delhi, that he has a building albeit standing in the names of his sons and daughters where he is staying and at which place he receives his normal correspondence. If in such a situation one can say that a triable issue is not raised, one is at a loss to find out where, when and in what circumstances such an issue would arise. We are, therefore, satisfied that this is a case in which triable issues were raised and both the learned Rent Controller and the High Court were in error in refusing to grant the leave.**” (Emphasis Supplied)

23. Again in the case of *Precision Steel and Engineering Works and Anr. vs Prem Deva Niranjana Deva Tayal*, 1983SCR(1)498, the Hon’ble three judges of the Supreme Court speaking through Hon’ble Justice Desai (as his lordship then was) has clearly laid down the scope and nature of enquiry permissible in law while deciding the question of grant or non grant of the leave to defend in the eviction proceedings approving the view of *Charan Dass* (supra). In the words of Hon’ble Justice Desai, it was observed thus:

“Undoubtedly the procedure prescribed in Chapter IIIA of the Act is materially different in that it is more harsh and weighted against the tenant. **But should this procedural conundrum change the entire landscape of law ? When a landlord approaches Controller under**

section 14(1) proviso (e), is the court to presume every averment in the petition as unchallengeable and truthful ? The consequence of refusal to grant leave must stare in the face of the Controller that the landlord gets an order of eviction without batting the eye lid. This consequence itself is sufficient to liberally approach the prayer for leave to contest the petition. While examining the question whether leave to defend ought or ought not to be granted the limited jurisdiction which the Controller enjoys is prescribed within the well defined limits and he cannot get into a sort of a trial by affidavits preferring one set to the other and thus concluding the trial without holding the trial itself. Short circuiting the proceedings need not masquerade as a strict compliance with sub-section (5) of section 25B. The provision is cast in a mandatory form. Statutory duty is cast on the Controller to give leave as the legislature uses the expression 'the Controller shall give' to the tenant leave to contest if the affidavit filed by the tenant discloses such fact as would disentitle the landlord for an order for recovery of possession. The Controller has to look at the affidavit of the tenant seeking leave to contest. Browsing through the affidavit if there emerges averment - of facts which on a trial, if believed, would non-suit the landlord, leave ought to be granted. Let it be made clear that the statute is not cast in a negative form by enacting that the Controller shall refuse to give to the tenant leave to contest the application unless the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order etc. That is not the mould in which the section is cast. The provision indicates a positive approach and not a negative inhibition. When the language of a statute is plain, the principle that legislature speaks its mind in the plainest language has to be given full effect. No canon of construction permits in the name of illusory intendment defeating the plain unambiguous language expressed to convey the legislative mind. And the legislature had before it order 37, an analogous provision where leave to defend is to be granted and yet avoiding the phraseology of the Code of Civil Procedure, namely, 'substantial defence' and 'vexatious and frivolous defence', the legislature used the plainest language, 'facts disclosed in the affidavit of the tenant'. The language of sub-section S of section 25B casts a statutory duty on the Controller to

give to the tenant leave to contest the application, the only pre-condition for exercise of jurisdiction being that the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of 13; possession of the premises on the ground mentioned in section 14(1) (e). Section 14(1) starts with a non obstante clause which would necessarily imply that the Controller is precluded from passing an order or decree for recovery of possession of any premises in favour of the landlord against the tenant unless the case is covered by any of the clauses of the proviso. The proviso sets out various enabling provisions on proof of one or the other, the landlord would be entitled to recover possession from the tenant. One such enabling provision is the one enacted in section 14(1) proviso (e). Upon a true construction of proviso (e) to section 14(1) it would unmistakably appear that the burden is on the landlord to satisfy the Controller that the premises of which possession is sought is; (i) let for residential purposes; and (ii) possession of the premises is required bona Fide by the landlord for occupation as residence for himself or for any member of his family etc. and (iii) that the landlord or the person for whose benefit possession is sought has no other reasonably suitable residential accommodation. **This burden, landlord is required to discharge before the Controller gets jurisdiction to make an order for eviction. This necessarily transpires from the language of section 14(1) which precludes the Controller from making any order or decree for recovery of possession unless the landlord proves to his satisfaction the conditions in the enabling provision enacted as proviso under which possession is sought. Initial burden is thus on the landlord.** (Emphasis Supplied)

“But what happens if the tenant appears pursuant to the summons issued under sub-sec. 2 of section 25B, files an affidavit stating the grounds on which he seeks to contest the application. **As a corollary it would transpire that the facts pleaded by the landlord are disputed and controverted. How is the Controller thereafter to proceed in the matter. It would be open to the landlord to contest the application of the tenant seeking leave to contest and for that purpose he can file an affidavit in reply but production and admission and evaluation of documents at that stage has no place. The Controller has to confine himself to the affidavit filed by the**

tenant under sub-section 4 and the reply, if any. On persuing the affidavit filed by the tenant and the reply if any filed by landlord the Controller has to pose to himself the only question: Does the affidavit disclose, not prove, facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in Clause (e) of the proviso to section 14(1). The Controller is not to record a finding on disputed questions of facts or his preference of one set of affidavits against other set of affidavits. That is not the jurisdiction conferred on the Controller by sub-sec. S because the Controller while examining the question whether there is a proper case for granting leave to contest the application has to confine himself to the affidavit filed by the tenant disclosing such facts as would prima facie and not on contest disentitle the landlord from obtaining an order for recovery of possession. At the stage when affidavit is filed under sub-section (4) by the tenant and the same is being examined for the purposes of sub-section (5) the Controller has to confine himself only to the averments in the affidavit and the reply if any and that becomes manifestly clear from the language of sub-section (S) that the Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from recovering possession etc. 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 stage is the relevant document and one must confine to the averments in the affidavit. If the averments in the affidavit disclose 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 immaterial that facts alleged and disclosed are controverted by the landlord because the stage of proof is yet to come. It is distinctly possible that a tenant may fail to make good the defence raised by him. Plausibility of the defence raised and proof of the same are materially different from each other and one cannot bring in the concept of proof at the stage when plausibility has to be shown” (Emphasis Supplied)

24. From the mere reading of the afore mentioned illuminating observations of the Supreme Court in the case of *Precision Steels* (supra), it

is apparent that the Controller has a statutory duty to grant the leave to defend if the affidavit discloses the facts which could raise suspicion on the genuineness of the need of the landlord which can in effect disentitle the landlord from recovering the possession on the ground of bonafide requirement. The likelihood of success or the failure of the defence is not really determinative of the question as to grant or not grant of the leave to defend but the real question is tenability of the plea which may raise a suspicion on the need of the landlord which may if proved can also lead to disentitlement to the recovery of the possession. Thus, the plea raising a doubt in the mind of the Controller is sufficient to grant the leave. The Controller can also not record the findings on disputed question of the facts by preferring the one set of facts over and above the other. The merits of the pleas raised are not to be gone into at the time of the grant of the leave to defend by going into the complicated questions of fact. For making the enquiry, the affidavit filed by the tenant is helpful.

25. The views expressed by the Supreme Court in the case of ***Charan Dass*** (supra) and ***Precision Steel*** (supra) are holding the field and have been consistently followed by the Supreme Court till recently and also by this court from time to time. (kindly see the case of ***Inderjit Kaur Vs. Nirpal Singh***, 2001(1) R.C.R. 33 and ***Tarun Pahwa Vs. Pradeep Makin***, 2013 (1) CLJ 801, Delhi.)

26. Applying the legal principles as laid down by the Apex Court in the case of ***Charan Dass*** (supra) and ***Precision Steels*** (Supra) to the instant case and testing the impugned on the touchstone of the said principles, it can be seen that the Rent Controller has proceeded to conduct the enquiry in contradiction to what has been laid down by the apex court in its

judgements. A careful reading of the impugned order dated 5th January, 2013 would reveal that the Rent Controller acted beyond the purview of the jurisdiction vested in it for the purposes of the grant or non grant of the leave to defend. This is evident from the findings that the learned Rent Controller proceeded to answer the defences raised by the petitioner by preferring the controverted facts raised by the respondents denying the pleas raised by the petitioner. This is clearly outside the domain of the permissible scope of the enquiry as laid down by the Apex Court in the case of the *Charan Dass* (Supra) and *Precision steel* (supra).

27. The learned Rent Controller while repelling the plea of the petitioner that there is an artificial shortage of the possession which could have questioned the genuineness of the need of the respondent proceeded to answer the said question by preferring the facts stated by the landlord and by himself observing that the first floor of the premises was not for commercial use. The said finding is clearly going into the merits of the plea raised by petitioner. As it has been emphasized by the Supreme Court that what is important is the tenability of the plea and not the success of the plea. If the petitioner has raised the plea that there is a kind of artificial shortage which has been conducted by the respondent by selling the property during the pendency of the earlier eviction proceedings which were later on withdrawn by the respondent, the said by itself is not a frivolous plea to question the genuineness of the need of the respondent. The learned Controller can thereafter record the disputed fact by the respondent and proceed to prefer one set of facts and decide the plea on merits for disqualification of the leave to contest. The said process of deciding the leave to defend clearly suffers from jurisdictional error or illegal exercise of jurisdiction as mandated by

the law.

28. Similarly, when the petitioner raised that the plea that the respondent has an alternative accommodation available, the learned Rent Controller proceeded to believe the stand of the respondent that the said property belongs to her brother and proceeded to observe that it is merely a bald assertion. This is again contrary to approach of confining himself to the affidavit and examining the tenability of the plea rather than plea on merits.

If the plea has been raised of alternative accommodation, then it was the respondent to show the document to prove that she has no alternative accommodation and not the petitioner as the initial onus to satisfy the criterion as per the provisions of Section 14 (1) (e) was on landlord and not on tenant as seen above. But the Controller acted totally contrary to the said approach vitiating the impugned order.

29. Likewise, when the plea has been raised by the petitioner in his leave to defend application that the respondent had not disclosed in her eviction petition that her mother got the properties No. 2698 and 2700 vacated through the orders of the court in the earlier eviction petition on 25th September, 2008. The learned Controller brushed aside the said fact which could have been tenable plea warranting trial by observing that the said fact has no bearing and does not come in the way of the respondent seeking the recovery of the possession. Again the learned Rent Controller decided the plea on merits by testing its success or failure. On the contrary, the Supreme Court time and again is emphasizing that the true nature of enquiry is to examine the tenable nature of the plea and not the merit of the plea.

30. 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.

31. It is well settled that the revisionary court can interfere with the decision of the Rent Controller if the same is not passed according to law. The expression “according to law” includes the jurisdictional errors or acting contrary to bounds of the provisions of the Act or acting contrary to the permissible scope of enquiry for deciding the proceedings or putting onus of proof on the wrong shoulders. (kindly see the judgment passed by the Supreme Court in the case of ***Malini Ayyappa Naicker Vs. Seth Menghraj Udhavadas*, 1969 (1) SCC 688** wherein the apex court interpreted the expression “according to law”).

32. The question is whether the respondent requires the suit property and her requirement comes within the 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.

33. 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.

34. I have already observed in the preceding paragraphs of this judgment that the learned Rent Controller not merely proceeded to record the findings on the disputed question of facts by choosing one set of facts over the other but has also not considered the prima facie suspicion raised by the petitioner on the genuineness of the need of the respondent or the reasonableness of suitable alternative accommodation, which clearly makes the order contrary to the law.

35. Thus, the submissions advanced by the learned counsel for the respondent are not correct that this court cannot interfere as it is not merely a case of reappraisal of evidence but it is case where the entire approach of the learned Rent Controller suffers from legal infirmities. In view of the same, the impugned order is not sustainable. It has been found that the pleas raised by the petitioner raises the triable issues which are disputed question of facts.

36. Therefore, the impugned order is set aside and the leave to defend is granted. The review petition is disposed of.

37. The parties are directed to appear before the learned Rent Controller for further directions on 14th August, 2013.

(MANMOHAN SINGH)
JUDGE

JULY 24, 2013