

. * IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on: September 13, 2013

+ RC. Rev. No.442/2012 & C.M. No.9444/2013

KHEM CHAND & ORS. Petitioners
Through Mr.J.P.Sengh, Sr.Adv. with
Mr.Rajinder Mathur, Mr.Sumeet
Batra & Ms.Ankita Gupta, Adv.

Versus

ARJUN JAIN & ORS Respondents
Through Mr.Sandeep Sethi, Sr. Adv. &
Mr. Neeraj Kishan Kaul, Sr. Adv. with
Mr.A.K.Tandon, Adv. for R-1.

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

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioners under section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as “the Act”) assailing the order dated 3rd May, 2012 passed by the learned SCJ-CUM-RC (South), Delhi dismissing the leave to defend application of the petitioners herein who were respondent No.1 to 8 before the Rent Controller.
2. Brief facts of the matter are that respondent No.1 (petitioner therein) filed an eviction petition against the petitioners and respondent No. 9 therein i.e. Shri Gurdarshan Singh Uppal under Section 14 (1)(e) read with Section 25B of the Act in respect of property bearing No. 10 Sunder Nagar Market, Sunder Nagar, New Delhi (hereinafter referred to as the “tenanted premises”) as he required the same for commercial purposes for himself and

for other family members dependent upon him. It was stated by the respondent No. 1 that his family comprised of himself, his parents, his wife, one daughter and two sons. It was contended that the daughter of the respondent No.1 had joined him and was helping him in his jewellery business which was being carried out by him in the name and style of M/s Padma Gems from a tenanted property in a neighboring shop No. 9A, Sunder Nagar Market, Sunder Nagar, New Delhi and an eviction petition in respect of this shop was already pending adjudication before Sh. Balwant Rai Bansal ARC (South), New Delhi in the matter titled as Shiv Pratap Seonie v. Narendra Kumar Jain.

3. It was also stated in the eviction petition that there is bonafide need in as much as the sons of respondent No. 1, Akshay and Abhay who have done courses in DRAM S-21, improvisational Acting and FINC-S-158, International Business from Harvard University in 2009, would either join him in his business or start their own business. It was further also stated that the premises available with the respondent No. 1 were not sufficient for himself and for the family members dependent upon him and hence he required the tenanted premises bonafidely for himself and for his family members dependent upon him as he has no other alternative accommodation available to him.

4. In the leave to defend application, the petitioners and respondent No. 2 contested the title of the respondent No.1. It was stated that one Mr. Vishva Sud is the exclusive owner of the tenanted premises. It was contended that half of the property No. 9, Sunder Nagar Market, Sunder Nagar numbered as 9A and the entire first floor and second floor of the

property bearing No. 9, Sunder Nagar is in possession and in occupation of the respondent No.1.

5. The entire first floor of the property No. 10, Sunder Nagar, New Delhi is lying vacant and which is owned and possessed by the respondent No. 1. It was contended that the daughter and the two sons of the respondent No. 1 were not dependent upon him and their educational certificates were issued by unrecognized universities/colleges.

6. It was further contended that that no separate accommodation was required by the respondent No. 1 as he himself admitted that his daughter is working with him and as far the sons are concerned, the respondent No. 1 is not sure whether his sons would join him in his business or start their own business. It was also contended that the respondent No.1 owned two farm houses, one in Rajokrari and another in Bijwasan and one commercial property at Chandni Chowk. It was stated that at Sunder Nagar, many shops and restaurants were being run on the first floor and the barsati floor.

7. It was further contended that Mr. Vishva Sud, owner cum landlord had filed an eviction petition under Section 14(1)(j) & (k) of the Act against petitioners No. 1, 2 & 5 which was dismissed vide order dated 5th December, 2002 and hence this eviction petition was barred by res-judicata.

8. It was furthermore contended that the respondent No.1 in his legal notice dated 10th April, 2005 and the eviction petition filed under Section 14 (1)(b) of the Act against the petitioners and respondent No. 2 in the year 2005 being E No. 14/2009 pending before Shri Manoj Kumar, ARC, Patiala House Courts, New Delhi, the ground of bonafide requirement was not agitated and hence, the present eviction petition was barred by Order 2 Rule 2 CPC.

9. The application for leave to defend was rejected by the learned Controller. The learned Controller with regard to the issue of landlord-tenant relationship observed that even assuming that the title of the respondent No. 1 qua the demised property was imperfect for want of execution of prior sale deed, a tenant cannot take advantage of the same and the same cannot be a valid ground for grant of leave to contest the eviction petition. With respect to the contention of the petitioners that the respondent No. 1 was in occupation of certain portions of other properties bearing Nos. 9 and 9A Sunder Nagar Market, New Delhi respectively, it was observed that respondent No. 1 in his eviction petition as well as the counter affidavit had pleaded that property No. 9A was tenanted premises and an eviction petition was going on with respect to the same and property No. 9 was purchased by father of the respondent No.1. It was observed by the learned trial court that the property over which the respondent No.1 had no legal right cannot be said to be a reasonable alternative accommodation available to the respondent No.1. Furthermore the tenanted premises which is located on the ground floor is more convenient place to run the business of jewellery or any other business as the business which is carried out from the ground floor is expected to attract more customers than the business being carried on from upper floors of the property.

10. i) On the first contention of the petitioners in the leave to defend application that the entire 1st floor of the property No. 10 Sunder Nagar was owned and possessed by respondent No.1, it was observed by the learned Rent Controller that a tenant cannot dictate the landlord as to how he should use his premises. And on the defence put forth many shops and restaurants are being run in Sunder Nagar Market from the 1st and the barsati floors, it

was observed that the same cannot be a ground for grant of leave to contest the eviction petition as the bonafide requirement qua the tenanted premises cannot be judged by the use to which the upper floors of the properties in the same localities have been put but their respective owners.

ii) On the second contention that children were not dependent upon the respondent No.1, it was observed that the same could not be accepted as the children continue to be dependent on their parents even after they are fully settled in their lives. It was observed that in fact it is the responsibility of a father to provide accommodation to his sons and daughter so that they can stand on their legs and earn their livelihood. On the contention that the educational certificates of the children of respondent no.1 were issued from unrecognized universities/colleges and hence the daughter could not be said to have the knowledge of precious stones, it was observed that when a starts a new business, it is not necessary that he should have previous knowledge or experience in the same business.

iii) On the next contention that the respondent No.1 was not sure of whether his sons would join him or start their own business, it was observed that in either of the case, the respondent No.1 would require an additional accommodation. The contention that the respondent No.1 had two farm houses was considered as baseless since respondent No.1 could not have been expected to run a jewellery shop from a farm house.

iv) On the other contention that the petition was barred by constructive res-judicata under Section 11 CPC and Order 2 Rule 2 CPC, it was observed that dismissal of an earlier eviction petition under Section 14 (1) (j) & (k) of the Act by the erstwhile owner cum landlord Mr. Vishva Sud will not

operate as res-judicata to the present eviction petition as the parties in the two eviction petitions are different and the issues involved are also different.

11. It was further observed that submission on the part of the respondent No.1 to project his bonafide need qua the tenanted premises in the legal notice or in earlier the eviction petition under Section 14 (1) (b) of the Act, as contended by the petitioners, would not raise doubt about the genuineness of the requirement of the respondent No.1 as in the case under this ground, a landlord has to plead the factum of subletting on the part of the tenant and it is not necessary for him to make necessary averments regarding bonafide requirement.

12. Observing that all the contentions raised by the petitioners are baseless and frivolous, the learned Rent Controller vide the order dated 3rd May, 2012, dismissed the leave to defend application of the petitioners passing an eviction order against them. Aggrieved by the same, the petitioners have filed the present revision petition before this Court.

13. By way of an application under Section 151 CPC numbered as CM No. 15140/2012 in the present petition the petitioners sought the Court to take into consideration the subsequent events. It was stated therein that after the passing of the impugned order, the daughter of the respondent no.1 has got married on 24th June, 2012 and shifted to Mauritius the alleged requirement of daughter of respondent no.1, if any, after marriage has ceased to exist. However, respondent No.1 in his reply to this application stated that though the daughter of respondent No.1 has got married, only the marriage was solemnized at Mauritius and after her marriage, she has come back to India and is residing at her matrimonial home at Gurgaon. It is stated that she still has interest in gems and jewels and so it would be working with her

father i.e. respondent No.1 to pursue her career in the field of gems and jewels. It has been stated by the respondent no.1 that the eviction petition was being filed not only for the bonafide requirement of the daughter of Respondent No.1 but also for the requirement of himself and his sons. It was further stated that in fact his sons after completion of their graduation in June/July, 2011, to enhance their skills further in the field of gems and jewels, pursued diploma courses in the field of gems and jewels from California USA and now have come back to join their father i.e. respondent No.1.

14. In the rejoinder to the reply filed by respondent no.1 in the present petition and the application CM No.15140/2012, the petitioner has reiterated that the alleged requirement of daughter of respondent No.1 was never there. It is also stated that she has neither acquired any special qualifications in the jewellery business as alleged nor is she expected to join respondent no.1 in the jewellery business.

As for the sons it is reiterated in the rejoinder that they are only stage artists, they have neither any interest nor any acumen in the business of jewellery. It is contented by the petitioners that that they had done their courses for stage artists till the filing of the eviction petition in the year 2010 and did not do any diploma until January, 2012 notwithstanding that the eviction petition is for their alleged requirement also. It is further denied that petitioners have admitted Respondent No.1 as the owner of the tenanted premises in the eviction petition under Section 14 (1) (b) of the Act, it is stated that they have admitted respondent no.1 only as the landlord of the tenanted premises and the ownership is being contested.

15. The matter came up for hearing when Mr. J.P. Sengh, learned Senior counsel appeared on behalf of the petitioner and Mr. Sandeep Sethi and Mr. Neeraj Kishan Kaul, learned Senior counsel appeared on behalf of the respondent No. 1 and made their respective submissions.

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

- Firstly, Mr. Sengh, learned Senior counsel for the petitioner has argued that the learned controller fell in grave error while not granting the leave to defend in the instant case when it was the case of the respondent no. 1 before the rent controller that the property No. 10, Sundar Nagar Market, Sundar Nagar which has been sought to be evicted by the respondent No. 1 is subject to alleged sub-tenancy rights created in favour of the third party and to this effect a separate eviction proceedings under Section 14 (1) (b) of the Act bearing No 14/2009 are pending before Shri Manoj Kumar, Rent Controller, South, New Delhi. It has been argued by Mr. Sengh that once it was a case of the respondent No. 1 that there exists an alleged sub-tenancy, then till the time, the issue as to existence of the sub-tenancy is decided by the learned rent controller before whom the separate eviction petition is pending, the leave to defend ought to have granted as there exists a triable issue as to whether the eviction order if at all passed from the instant eviction proceedings under Section 14 (1) (e) of the Act would be binding on the other tenants or not. This is due to the reason that it is the landlord who has to prove that the other petitioner Nos.3, 4 and 5 and respondent No.9 are the tenants under him and for the same, there exists a triable issue as the summary procedure as envisaged under the provisions of Section 25 B of the

Act cannot predetermine the lis qua subtenancy which is pending between the parties already before the Rent Controller separately.

In order to support his submission, Mr. Sengh, learned Senior counsel for the petitioner relied upon the judgment passed by the learned single judge of this court in the case of *Siri Pal Jain v. Brij Kishore and Others*, reported in 22 (1982) Delhi Law Times, 137 wherein it has been held that in the case of eviction filed against the subtenants, the controller has to grant the leave to defend as it is upon the landlord to prove in the trial as to whether the said eviction order which has been sought against the tenant shall also be binding upon the other subtenants or not. Mr. Sengh also stated that the eviction petition is subsequently filed as an afterthought as there the proceedings are summary proceedings and under the earlier proceedings under Section 14 (1) (b) initiated by the respondent No.1 the trial is mandatory. Thus, there was ill motive on the part of respondent No.1 to initiate summary proceedings against the same parties

- Secondly, Mr. Sengh argued that there exists a reasonably suitable alternative accommodation with the respondent No. 1 which is the first floor of 10 Sundar Nagar market as the respondent No. 1 already is the owner of the said property and the same is in possession of him besides 9A Sundar Nagar which means that the respondent's need is merely a desire and not the felt need but is a fanciful one. It has been argued that the said first floor is a commercial premise and can be used for commercial purposes. Mr. Sengh relied upon the plan which has been filed with the petition and also the records of MCD which show that the property is non residential one. Thus, as per Mr. Sengh, the controller in such a case ought to have granted the

leave to defend as there exists a triable issue as to the sufficiency or reasonableness of the alternative accommodation.

In order to fortify his submission, Mr. Sengh relied upon the judgments passed by the learned single judges of this court in the cases of ***M/s S. K. Sethi & Sons Vs. Vijay Bhalla*** in RCR 268/2012 (Decided on 25.07.2012); ***Aggarwal Papers v. Mukesh Kumar Decd. Through LRs***, 194 (2012) Delhi Law Times 605; ***Vinod Ahuja Vs. Anil Bajaj & Anr***, 194 (2012) Delhi Law Times 203; ***Kishore & Anr v. Prabodh Kumar & Ors***, 2012 (132) DRJ 562; ***Accebeen Steel Pvt. Ltd & Ors v. Jai Shree Khanna*** in RCR 290/2012 (Decided on 23.07.2012) wherein the consistent view has been taken which is that when there exists an alternative accommodation, then the controller or the court should grant the leave to defend so that the issue as to the genuineness of the need may be thrashed out in the full fledged trial. He also referred two decisions of the Supreme Court which were rendered prior to these orders passed by this court, those are :

- i) ***Santosh Devi Soni Vs. Chand Kiran***, JT 2000 (3) SC 397.
- ii) ***S.M. Mehra (Dr.) Vs. D.D. Malik***, (2001) 1 SCC 256.

As per Mr. Sengh, the learned rent controller has completely overlooked the said well settled proposition of law by holding that the tenant cannot dictate terms to the landlord. Mr. Sengh argued that once the first floor of Sundar Nagar market is a commercial property, then it is case where the respondent No. 1 has the alternative accommodation and in such case, the appropriateness of the additional accommodation is required to be considered in trial and not in summary manner by believing the stand of

either side including the respondent No. 1. Therefore, the impugned order as per Mr. Sengh suffers from the legal infirmities warranting the interference of this court.

Thirdly, Mr. Sengh argued that the need of the respondent No. 1 as sought to be relied upon in the eviction petition is itself a mere desire and not the genuine need. This can be seen by mere reading of the statement of case which has been prepared in order to define the bona fide need. As per Mr. Sengh, the respondent No. 1 is himself not sure as to why the said property is required either for his need or the need of his daughter or the need of his sons. It has been argued that so far as the need of the sons and daughters are concerned, the said requirement is merely a fanciful desire as the same is resting upon too many contingencies and likelihoods at least at the stage of deciding the application for leave to defend and the personal requirement of the respondent No. 1 is equally not without doubt in view of the existence of the alternative accommodation. The learned controller as per Mr. Sengh did not even consider this aspect at all while arriving at the finding that there exists a genuine need of the respondent No. 1 to get the premises vacated. There are facts averred in the affidavit which require investigation by evidence. Thus, this impugned order is required to be interfered with by this court.

17. Mr. Sengh also argued some additional grounds as raised in the revision petition but the main stress has been laid on these points which were subletting and existence of the alternative accommodation out of his other submissions. He stated that at present, admittedly respondent no.1 is carrying on business from the shop at 9A Sundar Nagar on the ground floor and in addition to that he has the first floor and the top floor which are

declared as commercial properties and so far no eviction order has been passed against the respondent no.1 with respect to the occupied shop No. 9A, ground floor.

18. It is submitted by him that in case the impugned order is maintained, grave injustice would be done to the petitioners/tenants who have occupied the property for the last many decades which is in the prime area of New Delhi and being tenant, it was occupied long before the purchase of the suit property by the respondent No.1 who wants to evict the petitioners under any circumstance.

In view of the submissions advanced, Mr. Sengh prayed that this court should interfere with the impugned order and grant the leave to defend to the petitioner and others.

19. Per contra, Mr. Sethi, learned Senior counsel for the respondent No. 1 has made his submissions which can be outlined in the following manner:

- Mr. Sethi, learned Senior counsel for the respondent No. 1 argued that this court acting under the revisionary powers as per the Section 25 B of the Act cannot sit as a court of appeal to re-examine the case on facts and to take the contrary view in view of the well settled principle of law settled by the full bench of this court in the case of ***Mohan Lal v. Ram Lal Chopra***, 1982 (2) RCJ 161. In the said case, the full bench of this Court exhaustively considered the provision of Section 25B of the Act. On scope of the proviso to sub-section (8) of this Section, after examining the judgment of Supreme Court in ***Hari Shankar & Ors. Vs. Rao Girdhari Lal Chowdhury*** AIR 1963 SC 698 and ***Bell & Co. Ltd. v. Waman Hemraj***, AIR 1938 Bombay (223), it was laid down that *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.

- As the impugned order does not suffer from any legal infirmity as such and has been passed by the judgments of this court and the same nowhere falls within the permissible extent of the interference as provided under the provisions of Section 25 B of the DRC Act.
- Mr. Sethi, learned Senior counsel for the respondent argued that the petitioners and respondent No.1 nowhere denies the tenancies with that of the respondent No. 1 and had filed the common leave to defend application along with the similar affidavits. The said tenants nowhere state that the eviction order shall not bind them and thus the question of granting the leave to defend on the count of the sub-tenancy does not arise. Therefore, this court should not interfere with the impugned order as the same is justifiably passed with no legal infirmity.
- Mr. Sethi further argued that the first floor of the property No. 10 Sunder Nagar is inconvenient for the respondent No. 1 as the same has entry

from the back lane. The said aspect finds mention in the impugned order. As per Mr. Sethi, learned ARC rightly noted that the tenant cannot dictate the terms to the landlord and also cannot decide what is suitable to him. Thus, as per Mr. Sethi, the ground taken by the petitioners in relation to alternative accommodation should not be accepted as the same is not an alternative suitable accommodation and thus the impugned order has been passed in accordance with law.

- Mr. Sethi argued that there is no infirmity in the genuineness of the need of the respondent No. 1 and there are no doubts which are raised by the petitioners as to the bonafides of the respondent No.1. The impugned order clearly holds that there exists no disputed question of law which is required to be examined in the trial and this court should not upset the findings of the learned Rent controller merely by taking a different view when the order is passed in accordance with law. Thus, this court should not interfere with the order passed by the learned Rent Controller.

20. In view of the submissions advanced, Mr. Sethi prayed that this court should dismiss the revision petition as it has been passed in accordance with the law. The matter was reserved for judgment on 1st July, 2013.

21. However, the matter was mentioned in the Court and the respondent No.1 sought liberty to file an application being No. 12556/2013 in order to bring to the notice of this Court the decision of ***Umesh Verma v. Jai Devi***, AIR 1998 SC 2343 which deals with amendment of the Delhi Rent Control Act, 1958 with effect from 1st December, 1975 inserting Chapter IIIA containing section 25A, 25B and 25C to provide for a summary trial of applications filed on the ground of bonafide requirement, inter alia, under Section 14 (1) (e) of the Act, conferring additional benefits on landlords to

recover immediate possession of premises let out by them. Mr. Neeraj Kishan Kaul, learned Senior counsel appearing on behalf of respondent No.1 argued that the said judgment categorically states, inter alia, as follows:

“In such an application it would be irrelevant to consider as to who out of the respondents to the application is the tenant so long as all of them are joined as respondents in that application. The right of the landlord is to recover immediate possession of the premises and, therefore, if he joins as respondent the person who according to him is the tenant and also the person who claims to be the real tenant and in possession of the premises then the dispute as to who is the real tenant loses all its relevance. The Rent Controller and the High Court failed to consider this aspect and the law laid down in Surjit Singh Kalra 's case (supra). Moreover, in view of the fact that Respondent No.1 who according to the appellant is the tenant and Respondent No. 2 who claims to be the tenant are wife and husband respectively and are residing together in the premises which have been let out, they ought not to have been given leave to defend the application on the ground that there was a bona fide and substantial dispute as to who out of the two is the tenant of the landlord.”

22. It was submitted by Mr. Kaul, learned Senior counsel that the said judgment is a complete answer, to the proposition sought to be canvassed on behalf of the petitioners to the effect that a petition under Section 14 (1) (e) of the Act being a summary procedure is not maintainable against a non tenant and in view of the abovesaid decision, ***Siri Pal Jain*** (supra) has no binding effect.

23. In their affidavit, it was stated by the petitioners that ***Umesh Verma*** (supra) has no bearing on the present matter since it neither considered the judgment of ***Siri Pal Jain*** (supra) nor was the said judgment overruled and that ***Siri Pal Jain*** (supra) applies to the instant case on all force.

24. After hearing C.M. No.12556/2013, the matter was reserved for judgment on 21st August, 2013.

25. I have gone through the records of the present proceedings including the eviction order, affidavit filed by the petitioner, counter affidavit by the respondent No. 1 and the impugned order thereof and have also given my careful consideration to the submissions advanced by the learned counsel for the parties at the bar.

26. I think it is for me to first reiterate the scheme of eviction proceedings as provided under the Act which is an exception to the general rule as provided under Section 14 of the Act that the no order or decree of recovery of possession shall be passed against the tenant. The proviso contained under Section 14 (1) of the Act carves out an exception to the general rule which means that it is upon the landlord to establish that the grounds contained under the provisos are made out.

27. Proviso (e) to Section 14(1) is a special provision which has been enacted by the legislature for the class of landlords who require the premises genuinely and their requirement is bonafide and they do not have any suitable accommodation. The essential ingredients for attracting the proviso (e) of the Section 14 (1) are :

- a) The said premises are bonafide required by the landlord either for himself or for his family member.
- b) The landlord or the family member has no other reasonable suitable accommodation.

These twin thresholds are to be satisfied conjunctively in order to attract the provisions of Section 14 (1) (e) and the absence of even one of the said ingredients clearly makes the said provision inapplicable.

28. The satisfaction of the two requirements bonafide need and no reasonably suitable accommodation has been time and again emphasized by the Supreme Court of India in several cases and more recently in the case *Deena Nath Vs. Pooran Lal*, (2001) 5 SCC 705 wherein the Supreme Court observed thus:

“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).

29. Now the question arises what constitutes a “reasonably suitable accommodation”. The wordings reasonably suitable accommodation are to be interpreted by looking at from the common man’s perspective as to what in the given circumstances can be said a reasonably suitable accommodation. It is essentially a question of fact. In a given case, some premises may not be a reasonably suitable accommodation as the same may be an inconvenient for the landlord to adjust or fit or put him to hardship but in another case it may act as a reasonable suitable accommodation. But one thing is certain which is that the mere denial by the landlord of a particular premise to be categorized as existing accommodation as not reasonably suitable accommodation cannot be said to be a sole ground to determine a reasonably suitable accommodation. It is equally true that the tenant cannot insist that the particular place/ premise can be reasonably suitable accommodation when as a matter of fact it is not.

30. It has to be seen from the eyes of common person’s prudence and the question should be asked as to whether in the particular case a person has a reasonably suitable accommodation or not to reside or to carry on business. If the answer comes in affirmative, then no matter what the landlord says in order to evict the tenant that the provisions of Section 14 (1) (e) of the Act does not get attracted. If the answer comes in negative, then no matter what the tenant states to refute the reasonableness and suitability of the accommodation, the eviction has to follow.

31. There are collective factors which aids to the determination of the reasonableness and suitability of the accommodation include the financial status of the landlord which will help in understanding what can be his reasonable requirement, proximity of the required premises with the existing accommodation where it is required by the landlord or his family members, the availability of the other properties with the landlord within the same location or equivalent place, in the case of commercial premises, the operation of the business by the other persons in the similar area or premises. All these factors are merely inclusive and not exhaustive which may enable to court to arrive at the finding as to what can constitute the reasonably suitable accommodation.

32. In view of the above discussion, it is clear that there cannot be any straight jacket formula to determine what can be reasonably suitable accommodation available with the landlord and it cannot be certainly only depends upon the demands of the landlord. Therefore, one cannot really say that one proposition which may hold good in one case can be equally applied to another case with equal strength without seeing the difference in the facts of the case. Where there is a doubtful case whether a particular accommodation can or cannot act as reasonably suitable accommodation in such cases too, the court seized of the eviction proceedings should postpone the decision making of reasonableness and suitability of accommodation as a fact finding to the trial rather than to evict the tenant by granting the leave to defend.

33. As I have discussed above that the reasonableness and suitability of the accommodation is a question of fact and has to be seen on case to case basis, therefore the proposition that the ground floor is always a reasonable

accommodation than the first floor or the basement cannot be an absolute proposition. This has to be seen on case to case basis as to in which case a basement is not reasonable accommodation available with the landlord and thus ground floor is required and in which case the first floor can act as a reasonable accommodation.

34. In the case of ***Smt. Viran Wali Vs. Sh. Kuldeep Rai Kochhar*** decided on 12th November, 2010 in RC. Rev. No. 124/2010 reported in 174 (2010) DLT 328, this court was concerned with a case where the tenant pleaded that there is an alternative accommodation of basement available with the landlord and thus there is no bona fide need and the alternative accommodation is available. This court while seeing facts in the said case which were that the commercial business is legally impermissible in the basement coupled with fact that the basement normally do not fetch much business when it comes to purely commercial premises arrived at the finding that the business which will be run from ground floor would attract more customer. The said finding was merely a finding of fact and not the finding of law by the court.

35. It is well settled principle of law that the judgments are precedent of the statement of law laid down therein which is called as *ratio decidendi* and not the finding of the fact arrived by the court. Thus, the proposition that the ground floor is always advantageous than any other floor no matter what floor it is, where it is located and what is the prevailing conditions in the area are as to conduct of the business cannot be an absolute proposition of law and cannot be said to be a precedent in each case to negate the argument of the reasonableness and suitability of the accommodation particularly when the application for leave to defend is being considered. At this stage

the court is to see whether averments in the affidavit in support of application for leave to defend discloses facts which need investigation by evidence and trial, the leave to defend normally should not to be refused.

36. Coming back to the facts of the instant case, the petitioner has prima facie shown the MCD records and also the plan which provides that the shops in Sunder Nagar area are being run by few entities on the first floor. It negates the stand of the respondent No.1 before the learned controller that the said first floor is for residential purpose. It can thus be said that there is an availability of the first floor of the premises bearing No.10 Sunder Nagar market with that of the respondent No. 1 which cannot be disputed who claims himself is an owner of the suit premises. It is also not disputed by respondent No.1 that at present, he has in occupation of ground floor and running his business from the ground floor of 9A Sunder Nagar market, Sunder Nagar, New Delhi which is a tenanted premise.

37. The contention of the respondent No. 1 is that the petitioners and other tenants cannot compel the respondent No. 1 to use the first floor or to decide his convenience. I find that the stand of the respondent No. 1 that it is petitioner who is the compelling the respondent No. 1 to shift to first floor and thereby dictating over the respondent No. 1 is not correct. The question is not merely of the tenant dictating the need of the landlord. The question is really of the availability of the alternative reasonable and suitable accommodation. If the tenant is successful in demonstrating that there exists an alternative reasonably suitable accommodation available with the landlord, then it cannot be termed as the tenant dictating the need of the landlord. This is due to the reason if there is a requirement in law that the landlord should not have the other reasonable accommodation for the

purposes of attracting Section 14 (1) (e) of the Act, the tenant is bound to take the plea that there exists an alternative reasonable accommodation. It is upon the court to accept the plea or reject the same. But the same cannot be brushed aside by stating that the tenant cannot dictate the need unless the stand of the tenant is highly unreasonable.

38. It is true that the landlord is the best judge to decide his convenience in the given circumstances and the said fact is given due credence by the courts while examining and testing the availability of reasonableness and suitability of alternative accommodation. It has been laid down by the apex court in number of cases including *Sarla Ahuja Vs. United India Insurance Company*, 1999(1) All India Rent Control Journal 158 that the landlord is the best judge to decide his or her suitable accommodation. But that was only the case where the tenant has attempted to impose his unreasonable position on the landlord by hard pressing the landlord to suffer solely because he is a protected tenant and there does not exist any suitable alternative accommodation within the same area. Like in the case of *Sarla Ahuja* (supra), the question was whether the accommodation available in Kolkata can be suitable alternative to her Delhi property which was sought to be evicted. The Supreme Court answered the question in negative by observing that the landlord is the best judge and tenant cannot impose his whims and unreasonable condition on the landlord.

39. It is true that there are other cases where in the appropriate facts the courts have held that the landlord is the best judge to decide his convenience. The said are the line of the cases where the landlord is put to the extreme hardship by tenant's insistence that he should adjust to inconvenient premises by squeezing his needs. The facts of the present case

are entirely different where the landlord is enjoying the property with in the same location though as a tenant coupled with another property lying vacant within the same location though on the different floor owned by the landlord himself where the business can be carried out as per the market conditions and thereafter the landlord is seeking to vacate the third property in the same location on the basis of bonafide need and non availability of the alternative accommodation which raises the doubt on the need of the landlord as not felt need but fanciful desire. Thus, there exist considerable doubts as to the bonafides of the need of the respondent at this stage of deciding the leave to defend application warranting trial.

40. It is not the thumb rule that in every case the landlord always is the best judge and the court is helpless by not scrutinizing the stand of the tenant while testing the reasonableness and suitability of the alternative accommodation. Actually it depends upon the case to case basis. The courts have otherwise also held consistently that even though the landlord is the best judge to decide his needs and he cannot be compelled by the tenant to accommodate at the place which is lesser in any way than the place which is sought to be evicted, still the court would examine the reasonableness and suitability of the existing accommodation by weighing what is available with the landlord vis-à-vis the plea of the tenant.

41. In the case of ***P. S. Devgun Vs. Dr. S.P. Walia***, 1975 RLR (Note) 66, this court observed thus:

“Although the landlord is entitled to be more comfortable by occupying his own house and in deciding his needs the social customs, habits, etc cannot be completely ruled out, the landlord has to establish to the satisfaction of the controller that firstly, he requires the residential premises bonafide for occupation as a

residence for himself and/ or for any member of his family dependent upon him and secondly, there is no other reasonably suitable accommodation available with him. **The landlord cannot urge that he is an arbiter of his needs. The required satisfaction must be done objectively and cannot be left entirely to the subjective will or mind of the landlord.**

(Emphasis Supplied)

42. The Supreme Court in the case of *M.M. Quasim Vs. Manohar Lal*, AIR 1981 SC 1113 which is a three bench decision passed by the court speaking through Hon'ble Desai, J. (as His Lordship then was) has categorically flawed this approach of mechanically stating that the landlord is the best judge without applying a judicious approach in the matter. In the words of Hon'ble Desai, J. it was observed thus:

“Before turning to the next topic, **a word about the judicial approach to the question of personal requirement of the landlord under the Rent Act would not be out of place.** The learned judge of the first appellate court while upholding the claim of personal requirement of respondent 1 has observed as under:

"It is for the plaintiffs to decide whatever they think fit and proper. It is not for the defendant to suggest as to what they should do. The defendant has led evidence to show that the plaintiffs have got some more houses at Girdih.... The defendant appellant has also filed certified copy of judgment of one suit No. 47/73 which is Ext. only to show that plaintiffs have got a decree for eviction with respect to the other house at Giridih. I have already pointed out earlier that it is for the plaintiffs to decide which of the houses is suitable for them. It is not for the defendant to suggest that the house which will fall vacant in the near future is most suitable house for the plaintiffs".

This approach betrays a woeful lack of consciousness relatable to circumstances leading to enactment of Rent Acts in almost all States in the country. The time honoured notion that the right of re-entry is unfettered and that the owner landlord is the sole judge of his requirement has been made to yield to the needs of the society which had to enact the Rent Acts specifically devised to curb and fetter the unrestricted right of re-entry and to provide that only on proving some enabling grounds set out in the Rent Act the landlord can re-enter. **One such ground is of personal requirement of landlord. When examining a case of personal requirement, if it is pointed out that there is some vacant premises with the landlord which he can conveniently occupy, the element of need in his requirement would be absent. To reject this aspect by saying that the landlord has an unfettered right to choose the premises is to negative the very raison de'etre of the Rent Act. Undoubtedly, if it is shown by the tenant that the landlord has some other vacant premises in his possession, that by itself may not be sufficient to negative the landlord's claim but in such a situation the Court would expect the landlord to establish that the premises which is vacant is not suitable for the purpose of his occupation or for the purpose for which he requires the premises in respect of which the action is commenced in the Court.** It would, however, be a bald statement unsupported by the Rent Act to say **that the landlord has an unfettered right to choose whatever premises he wants and that too irrespective of the fact that he has some vacant premises in possession which he would not occupy and try to seek to remove the tenant. This approach would put a premium on the landlord's greed to throw out tenants paying lower rent in the name of personal occupation and rent out the premises in his possession at the market rate.** To curb this very tendency the Rent Act was enacted and, therefore, **it becomes the duty of the Court administering the Rent Act to bear in mind the object and intendment of the legislature in enacting the same. The Court must understand and appreciate the relationship between legal rules and one of necessities of life-shelter-and**

the way in which one part of the society exacts tribute from another for permission to inhabit a portion of the globe. In

'The Sociology of Law', edited by Pat Carlen, the author examines the rent and rent legislation in England and Wales and observes as under: "The prevailing paradigms of neo-classical economics and empiricist political theory have determined the conceptual insularity of law and legal institutions, with the result that they and other social events appear as random existences independent of their historical formation. The force of any theory of law must of course lie in its explanatory power, and this in turn depends on the wider image of social relations which produces it". (Emphasis Supplied)

43. The aforesaid view of the Supreme Court in *M.M. Quasim* (supra) and other views quoted above are consistently followed by the courts in the country which make it clear that even the landlord is considered to be the best judge to decide his need, the same should be merely a weighing factor in order to decide the reasonableness and suitability of the alternative accommodation and ultimately the said question is to be decided by the rent controller on objective standards and not on the subjective will of the either party be it landlord or the tenant. As I have indicated, the reasonableness and suitability of the available accommodation is a question of fact, it has to be decided on case to case basis by controller by examining the tenability of the pleas of the parties rather than just believing the stand of either side. That is why, I have indicated that the reasonableness and suitability is to be decide from the glasses of man of ordinary prudence as what should be reasonable and suitable in the given circumstances.

44. Applying the said test for examining the reasonableness and suitability of the accommodation to the instant case, it can be seen that the respondent No. 1 is already operating through the tenanted premises at the

ground floor shop bearing No. 9A Sunder Nagar Area which is named as Padam Jewels for which as per the respondent No. 1, there is an eviction proceedings which are pending against his uncle. The said eviction proceedings is yet to be determined. The respondent no. 1 is also owning and is possessing of the first floor of the property No. 10 Sunder Nagar, which is lying vacant and is not being used by him for any purpose where the commercial activities can be carried out as per the case of the petitioner that in the Sunder Nagar market. It is not denied by respondent No.1 that there has been as many shops on first floor which are commercially running by various businessmen being one of elite area. The need which has been defined by the respondent No. 1 in the petition is a broad based which include the respondent No. 1 himself and his dependent sons and daughter and their likelihood of joining the respondent's business. Upon objectively testing the discerning position which has been emerging by weighing the factors collectively cast a doubt as to the bona fide need of the respondent No. 1 in getting the premises vacated and if not bona fide need then at least creates a doubtful case as to availability of the reasonable suitable accommodation.

45. It has been argued that the first floor of the property is not suitable to the respondent No. 1 as the same has entry from the backside of the lane and thus the availability of the said space cannot be said to be reasonably convenient premises. I find that the said aspect of entry from the back lane and thus becoming a unreasonably suitable accommodation as a disputed question of fact on which the finding cannot be arrived at by giving a preference to the one set of facts over the other. It is to be tested in trial as to whether the entry from front side could be available to the respondent No.1

for his convenience. Suffice it to say that in the area like Sunder Nagar where the property rates are touching the sky and the premise in the said area is almost beyond the purchasing power of common man, the availability of the first floor of the property where business can be conveniently carried out lawfully itself is a good ground to doubt the non availability of the reasonable sufficient accommodation when the respondent No. 1 is already carrying out jewellery business in the ground floor of property No. 9A Sunder Nagar. The finding as to entry from the back lane and it is inconvenient to the respondent No.1 is also a matter of fact finding. The same is to be tested in trial as the tenant disputes the said position.

46. It is well settled that the scope of the enquiry of the controller who is seized of the application seeking leave to defend is confined to see the affidavit and enquire as to whether there is tenable ground which has been made out which can casts doubts as to the bona fide need or the availability of the alternative accommodation requiring trial in the proceedings. If yes, the controller is bound to grant the leave to defend as per the statutory mandate and otherwise no. While deciding the leave to defend, the controller is not expected to examine the success or failure of the plea raised but has to examine merely a tenable case. The controller is estopped in view of settled law from recording a finding as to disputed questions of fact. All the above stated propositions of law has been laid down 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)

47. Applying the said tests to the instant case, it can be seen that the learned controller while passing the impugned order has merely applied the proposition that the landlord is the best judge to decide his needs in a mechanical manner and did not test the case of the competing parties on the objective standards. Thus, the impugned order passed by the learned Rent Controller suffers from legal infirmity.

48. The learned Controller legally erred in the not testing the case of both the parties on the objective standards which is the requirement of the law for examining the reasonableness and suitability of the alternative accommodation. The learned controller ought not have just simply observed that the landlord is the best judge to decide his needs but should have considered his plea non availability of reasonable accommodation vis-à-vis the accommodation which the respondent is enjoying presently which is property No. 9 A Sunder Nagar and also coupled with his ownership of first

floor of the property No. 10 Sunder Nagar where such business can be carried out in the event of any future eventuality considering the business at the first floor is permissible in the said area. The availability of the alternative accommodation at the first floor of the Sunder Nagar property should have been weighed with the proposed need of the respondent no. 1 as defined in the eviction which is explained in broad terms which by itself makes it apparent that the need as defined is not a felt need but is the one which can said to be far fetched or based on the desires and imagination. All these facts clearly casts doubts on the on the stands of the respondent no. 1, bonafides of the need of the respondent no. 1 and the conclusion that there is no availability of the alternative reasonably suitable accommodation which cannot be arrived atleast in the summarily manner warranting the leave to defend.

49. In my considered opinion, it is necessary to emphasize that while applying the principle of 'landlord is a best judge' in cases of residential requirement of the properties which are subject matter of commercial tenancy, the court should act cautiously and should not apply the said principal to such cases as liberally as applied to the residential premises. It has to be noted that the judgment passed in the case of ***Satyawati Sharma Vs. Union of India***, AIR 2008 SC 3148, has merely held that the provisions of Section 14 (1) (e) of the DRC Act would be applicable in the cases of commercial premises in the same manner as applicable to the residential premises. However, the principle that the landlord is the best judge to decide his residential requirement and the courts have no business to interfere, cannot be applied as a matter of necessary consequence without application of the judicial mind. This is due to the reason that even though the ground of

the eviction available to the landlord to evict the tenant for both residential and commercial premises is same, still the requirement of the landlord in both the cases may vary from case to case basis. While the question of eviction of residential premises is the one which affects the right to live which is the basic facet of right to life and human dignity as provided in Article 21, and thus the right of landlord to live at the place of his desired choice along with the family members should normally be respected as a part of basic human right and fundamental right to life. On the other hand, the eviction of the commercial premises affects the right of earning and livelihood of one person who is a tenant. The said right to livelihood is equally the other facet of right to life as evident from the reading of Article 21 of the Constitution of India. Thus, in the event of adopting a summary procedure to evict the tenant who is earning his livelihood from a commercial place at the behest of the landlord and proceeding to affect the longstanding status quo of commercial tenancy on the ground of bonafide personal requirement, the court must take a precautionous approach. While deciding the question of genuineness of the need or availability of alternative accommodation, the court must apply its judicial mind rather than merely reiterating the theorem based principle that the landlord is the best judge to decide his need. In that way, the test for evaluating the eviction of commercial properties on account of bonafide need is slightly distinct and more stringent than that of the one relating to residential premises. The court should weigh the competing rights to livelihood of both the landlord and tenant and adopt a balanced approach. Where genuineness of the need or availability of the alternative commercial premises is doubtful, the court should postpone the said issue so that the tenant be granted an opportunity to

contest the proceedings. Doing otherwise would be whittling down the entire policy behind the rent control legislation which is still the law for the time being in force.

50. I have already explained that the learned controller did observe that the ground floor is likely to fetch more customer than the first floor in order to repel the plea the alternative accommodation available with the respondent. However, the said fact has to be seen in the light of the prevailing position existing in the market, nature of customers visiting the market, prominence of the area coupled with the legal permissibility to carry out business at the other floors. The petitioners have pointed out that in the Sundar Nagar market, the shops are allowed to carry on business legally on the first floor, which fact has not been denied by respondent No.1 under these circumstances, the requirement of the respondent No. 1 in getting the ground floor of the same very property No. 10 Sundar Nagar evicted essentially becomes a case of additional accommodation rather than not having an alternative reasonable suitable accommodation. If that is so, the question whether the existing accommodation is sufficient, suitable and reasonable has to be thrashed out in trial in the given facts of the instant case.

51. It is well settled principle of law by the Supreme Courts as well as this court in catena of cases that in the cases where the eviction is sought by the landlord on the ground of the bona fide need and it can be said after seeing the material available on the record that the case is essentially of the additional accommodation rather than having no alternative reasonably suitable accommodation, it becomes a doubtful case which requires the fact finding in the trial and the court should normally grant the leave to defend in

such cases so that the question of the genuineness of the need can be thrashed out completely in the trial.

52. In the case of *Santosh Devi Soni Vs. Chand Kiran* (supra) wherein the Supreme Court observed on similar lines in relation to the case of the additional accommodation in the following words:

“3. The short question is whether in the light of requirement put forward by the respondent- landlady who is who is a widow and is in occupation of the first floor of the building in which the suit premises are situated, leave to defend to the defendant/ appellant could have been refused. As this is the case of additional accommodation and looking to the facts and circumstances of the case, especially in the light of the additional accommodation which is subsequently made available to the respondent as mentioned by the appellant. The question of the respondent’s need was required to be thrashed out on merits by a full fledged trial. This court in the case of Dr. S.M. Misra v. D.D. Malik in Civil Appeal no. 120 of 1990 decided on 11.1.1990 has ruled that in the cases where additional accommodation is asked for in the proceedings under Delhi rent control Act, normally leave to defend should not be refused.” (Emphasis Supplied)

53. This court has already approved the view of the Supreme Court in *Santosh Devi* (supra) and *Dr. S.M. Mishra* (supra) in number of cases decided recently including the case of *M/s S.K. Seth & Sons v. Vijay Bhalla*, 191 (2012) DLT 722 by observing that in the case which is seemingly of additional accommodation, the leave to defend should be granted in such a case.

54. Applying the ratio of *Santosh Devi* (supra) to the instant case, it can be safely said that when the need of the respondent No. 1 is broad based which can include himself, his dependent sons or daughters in the future, the respondent No. 1 is enjoying the possession of the premises No. 9 A Sunder

Nagar and is owning the first floor of the property No. 10 Sunder Nagar where the business can be carried out, the requirement qua the ground floor of property No. 10 Sunder Nagar essentially becomes a case of additional accommodation rather than not having a reasonably suitable accommodation to carry out the business and thus becomes a doubtful case to reject the leave to defend application at the summary stage.

55. The learned controller while ignoring the said proposition of law that wherever that there are accommodations available in the close proximity with in the same area with the landlord for the same purpose, the seeking of eviction within the same area for some floor of the property essentially becomes a case of additional accommodation which can cast doubts on the need or if not need then on the availability of reasonably suitable alternative accommodation clearly erred in law in testing the case of the parties while deciding the leave to defend application. The impugned order so far as it arrives at the finding that there is no reasonably alternative accommodation available with the respondent No. 1 ignoring the principle of law governing the grant of the leave to defend in the doubtful cases involving the additional accommodation clearly suffers from legal infirmity and is not passed in accordance with law warranting the interference of this court.

56. I would also like to state that the need which has been pointed out by the respondent No. 1 in the instant case is quite elaborative one which include the respondent himself or his sons and his daughter and their likelihood of joining the respondent's business which itself creates a doubtful case as to whether the said need is a real, genuine need conceived in good faith or is mere desire based on predilection. As regards the need of the respondent No. 1 himself, I have already expressed doubts based on the

availability of the alternative accommodation which requires trial. So far as the need of the children are concerned, the said need or requirement is not felt *in presenti* which is the requirement of the law but is the need basing upon the likelihood in future which is again contrary to the judgments of the Supreme Court including ***Dina Nath*** (supra). Thus, the learned controller ought not to have simply ignored the need of the respondent which is itself ambiguous and casts doubts on the requirement of the respondent No. 1.

57. It is noteworthy to mention that the respondent No. 1 in his eviction petition himself mentions that the property No. 10 Sunder Nagar is subjected to subletting by the old tenant to petitioner Nos.3, 4, 5 and respondent No.9 through petitioner No.1. The said stand is also taken when the counter affidavit has been filed by the respondent before the learned controller. It has been informed that there is a separate petition seeking eviction of the ground floor of the property No. 10 Sundar Nagar is pending consideration on the ground of the subletting since the year 2005 which has been filed under the provisions of Section 14 (1) (b) of the Act that there is sub-letting without the written consent of the petitioner No. 1. The said petition is pending consideration before the rent controller which has been filed prior to five years the instant proceedings. The learned controller while ignoring the said fact besides others in arriving at the finding that there exists no triable issue and the need of the respondent No.1 is bona fide warranting eviction of the tenants and the alleged sub-tenant clearly acted not in accordance with law.

58. Though in the present case, the respondent No. 1/landlord himself avers that there is case of the sub-letting in the eviction petition as in the instant case.

59. I find that the question of existence of sub-tenancy is disputed question of fact which is an alternative ground available to the respondent No. 1 which is provided under the provisions of the Section 14 (1) proviso (b) of the Act for which a separate eviction proceedings are pending consideration filed at the behest of the respondent No. 1. The question relating to the aspect of sub-tenancy is still sub-judice. The learned Controller below ought to have kept in his mind while deciding the application for leave to defend. The judgment passed by this Court in the case of *Siri Pal Jain v. Brij Kishore and Others* (supra) is applicable in the present case. I do not find merit in the submission of Mr. Kaul, learned Senior counsel, that the judgment of *Umesh Verma v. Jai Devi* (supra) fully covered in the facts of the present case decided. It was observed by the Apex Court in the context of Section 14C of the DRC Act considering the avowed purpose of the said provision which require that there should be lesser pleas permissible to contest to the tenants in such petition under Section 14 C as against the evictions under Section 14 provisos. Thus, the said observations in *Umesh Verma* (supra) cannot be applied to the instant case with equal strength as the instant case falls with the Section 14 provisos which is an exception to the general rule that no eviction order shall be passed unless the provisos are satisfied. It is correct that procedure prescribed under Section 25 B are summary to meet with the requirement of the provisions but the said procedure do not preclude any availability of the pleas as in the case of Section 14 C. thus, both the provisions stand on the different footing. This has been observed by the Supreme Court itself in the *Umesh Verma's* case (supra) by quoting *Surjit Singh Kalra's* case, where the court observed thus:

“The nature of the rights conferred by Sections 14B, 14C and 14D was considered by this Court in Surjit Singh Kalra vs. Union of India [1991 (2) SCC 87]. After comparing the provisions in Sections 14B to 14D with the provisions contained in Section 14(1)(e) this Court held that the provisions in Section 14B to 14D are markedly different from Section 14(1)(e). **It further held that the classified landlords i.e. landlords referred to under Section 14B to 14D, have been conferred with certain rights which are different from the independent of the right under Section 14(1)(e)**”
(Emphasis Supplied)

60. The judgment referred by respondent No.1 is distinguishable which are in addition to and not in derogation to the other grounds. It deals only with the dispute of tenancy and not the question of sub-tenancy. It also does not deal with the issue as to what is the effect of impleading a sub-tenant in a petition filed by the landlord under Section 14(1)(e) of the Act in which it was admitted that earlier petition under Section 14(1)(b) is pending since the year 2005. The said alleged sub-tenant M/s. Ladakh Art Gallery is partnership concern in which one outsider Shri Gurdarshan Singh Uppal is partner since 1986-87 i.e. much prior to the alleged purpose of suit property by respondent No.1 in the year 1999.

Thus, the submission of Mr. Kaul is rejected. Thus, the said aspect also raises a triable issue qua the alleged tenants warranting leave to defend.

61. In view of the aforementioned discussion, it can be said that the order passed by the learned controller is not in accordance with law as the entire approach of the learned controller is legally flawed wherein the learned controller overlooks the availability of the alternative accommodation, ignores the principle of law governing the grant or non grant of leave to defend in the cases of additional accommodation, does not look at the

broadly worded need which raise some doubts, do not weigh the case of the competing parties on objective standards while deciding the aspect of bonafides of the need, also records the findings on the disputed questions of facts which are impermissible in law as per the well settled position in law. Accordingly, the impugned order is not sustainable in law and warrants interference of this court.

62. As I have arrived at the finding that the impugned order is not passed in accordance with law, I do not agree with the submission of Mr. Sethi that this court is interfering merely to arrive at the different view or acting as a court of appeal on facts. I have already pointed out that there are number of legal infirmities in the order which vitiates the entire approach adopted by the learned controller while deciding the leave to defend application which clearly makes the order passed not in accordance with law.

63. In the result, the impugned order dated 3rd May, 2012 is set aside, the leave to defend application is granted. The matter is directed to be listed on 31st October, 2013 for further direction before the learned Rent Controller. In the meanwhile, the tenant is allowed to file their written statement within four weeks from today, replication, if any, within two weeks thereafter. Trial court proceedings are expedited.

64. The petition is disposed of.

(MANMOHAN SINGH)
JUDGE

SEPTEMBER 13, 2013

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