

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

**Date of Decision: 16.05.2014**

+ **RC.REV. 149/2014 & CM Nos. 6650-6651/2014**

DR. RAKESH BHAGAT & ANR. .... Petitioners  
Through: Mr. Rajiv Duggal, Adv.

versus

NEENA AHUJA & ANR. .... Respondents  
Through: None.

**CORAM:**  
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

% **MR. JUSTICE NAJMI WAZIRI (Oral)**

1. This petition challenges an eviction order dated 17<sup>th</sup> October, 2013 whereby the petitioners/tenants' application for leave to defend was dismissed and an eviction order was passed apropos the tenanted property i.e. a shop admeasuring 17 & ½' x 14' on the front side of the ground floor of property bearing No.B-18/1, Ramesh Nagar, Double Storey, New Delhi. The respondents/landlords had sought the eviction of the premises on the basis of bonafide need. Their case was that the premises was let out on 21.4.1986 by a written undertaking for commercial use from where the tenants were running their clinic. The rental was Rs.803/- excluding electricity and water charges. The tenanted premises formed a part of the three shops constructed by the husband of the eviction-petitioner No.1 and father of the eviction petitioner No.2 who expired on 18.1.2010 leaving behind the eviction petitioners and two daughters. The tenanted premises were bequeathed to the eviction-petitioners by a Will dated 19.9.2007. The

eviction-petitioner No.1 is stated to be old and infirm and diseased with various medical ailments, including multiple fractures some time ago, to her right ankle bone, which is being held together with a screw wherein valgus (bone deformity) has developed. It was stated that she has also been advised against climbing stairs, as her left knee has recently been replaced. She has also suffered a stress fracture in the left leg below the knee, because of strain by climbing stairs. She is now bed ridden. She also suffers from depression because of lack of movement as a normal human being and hence she needs the ground floor for easier movement. It is stated that the eviction-petitioners have no suitable accommodation to meet their bonafide need. Instead, it was submitted that the tenant had sufficient accommodation in the form of a shop at Tower 4, 301, Green Villas, Parasvnath, Sohna Road, Gurgaon where the maintenance amount itself was many times higher than the rent being paid by the petitioners. It is also contended that the tenants had been running their clinic from their residential address i.e. C-360, Sarasvati Vihar, Delhi-34.

2. In their application for leave to defend, the tenants had not disputed the relationship of landlord and tenant. However, in the absence of any documentary support thereof they had raised the doubts about the medical condition of eviction-petitioner No.1. The tenants also contended that the eviction-petitioners had not disclosed that substantial money had been accepted by late Sh. Krishan Ahuja, the deceased landlord who had acknowledged and executed an undertaking that the tenants would not be evicted from the premises, but the relevant clause had been struck out by the eviction petitioners while filing the eviction petition; that in reality, the eviction-petitioners intended to re-let out the premises at a higher rent; and

that the tenants did not have any alternate accommodation for running their clinic nor were they running one from their residential address.

3. The eviction-petitioners refuted the tenants' aforesaid arguments. They contended that the petitioner No.1's movements were constrained because of accompanying stresses of age and crippling medical condition. It was impossible for her to use the stairs to reach the first floor hence she was willing and it was necessary for her to shift to the ground floor. It was reiterated that every time the petitioner No.1's return from doctor she had to be lifted by 3-4 persons to reach her to the first floor.

4. The reliance was also placed by the tenants upon the order of the Trial Court dated 24.9.2013 in E.No.115/2012 titled as ***Smt. Neena Ahuja & Ors. Vs. Sh. Gurbinder Singh Kocchar & Ors***, by which the tenant-Gurbinder Singh Kocchar had been granted leave to defend the said petition filed by the same landlords/eviction petitioners. The Trial Court found that of the three shops, one was possessed by the present tenant, another by the landlords and the third by Sh.Gurbinder Singh Kocchar and others. The third shop was sought by the landlord for the purpose of expansion of their business. It was a case of additional requirement whereas the present case was one of the bona fide need of the ground floor to accommodate the aged and infirm petitioner No.1 who did not have any other residential accommodation. Accordingly, the reliance upon the said order was found to be misplaced and not triable issue. The Trial Court also referred to the Supreme Court's dicta in ***Satyawati Sharma vs. Union of India***, AIR 2008 **Supreme Court 3148** which extended "ambit of a petition under Section 14(1)(e) of the DRC Act to commercial premises". Apropos the doubt and triable issue sought to be raised by the tenants recording the medical

condition of the petitioner No.1, the Trial Court relied upon a judgment of this Court in ***Krishan Kumar vs. Vimla Saigal*, 1969 RCR 236; *Avinash Chander vs. Soni Devi*, 1982 (2) RCJ 16 Delhi; *Satyapal vs. Parsani Devi*, 1974 RCJ 256 P & H; *Natha Singh vs. H.P. Nayak*, 1983 (1) RCJ 158 Delhi** and ***N.N. Khanna vs. Leela Malhotra***, CR(R) No.1242/82 dated 1.4.1983 which have held that it would be deemed a bonafide need if the landlord required to shift on ground floor because of medical reason. The Court also relied upon ***Devi Raj Bajaj vs. R.K. Khanna*, 1986 (1) RCR 373, Delhi** which justified the shifting of the landlord to the ground floor because he and his wife were 72 years and 67 years of age respectively. The Trial Court took into consideration the age of the petitioner No.1 being 68 years and her having suffered from serious ailments to her limbs including a knee replacement. It concluded that at that age and stage she could not be expected to recover like a young patient; that in old age, even a normal person would like to stay on the ground floor so as to avoid undue exertion and the risk of slipping and falling down from the stairs.

5. With respect to the issue of undertaking by the petitioner not to evict the tenants, the Trial Court found that there was no such undertaking; hence no triable issue was made. The Court reasoned that the said undertaking of 21.4.1985 was on a plain paper and not on a proper stamp paper hence it could not be taken into evidence. Besides, if the undertaking was to be believed then it would amount to a perpetual lease deed; and an unregistered perpetual lease deed could not be taken into evidence. Therefore, insofar as the said document which could not be taken into consideration for the purpose of perpetual lease deed, the tenancy would be governed by the Delhi Rent Control Act and the petition under Section 14(1)(e) would be

maintainable in case of a bonafide requirement. The Court noted that the Clause 7 of the aforesaid undertaking was deleted; hence there was no embargo upon the landlords/eviction petitioners from evicting the tenants. It was not in dispute that the original copy of the said undertaking was still in possession of the eviction-petitioners (as admitted in para 6 on page 5 of the application for leave for defend). Furthermore, the Court noted that the undertaking did not record any acceptance of money by the late landlord-Sh.S.K. Ahuja, “though said undertaking bears the signatures of both the respondents”. Accordingly, this defence too was found without merit and not considered as a triable issue.

6. The doubts raised by the tenants that the eviction was sought only for the purpose of subsequently re-letting out the tenanted premises at a higher rent was found untenable as this was a common defence raised by almost all the tenants as held by this Court in ***Vinod Kumar Bhalla vs. Sh. Nanak Singh, 1982 (2) RCR (Rent) 715***. The Court observed that after the passing of an eviction order under Section 14(1)(e), the tenant is granted six months’ time to vacate the premises, the landlord is required to occupy the same within two months of vacation of the premises. Section 19 of the Act enjoins strict conditions upon the landlord from re-letting or alienating whole or any part of the premises within three years from the date of obtaining possession from the tenant. Therefore, the tenants’ apprehensions in this regard were found unfounded and rightly rejected. The Trial Court relied upon ***Krishna Chpra & Anr. vs. Smt. Raksha, 2000 Rajdhani Law Reporter 83*** which held that there were sufficient protection/remedy available to a tenant in case of a default by the landlord. No other issues were raised by the tenant, hence upon analysis in view of the settled law that

a leave to defend could be granted only when a triable issue is raised which would be of such nature that will disentitle the landlord from obtaining the eviction order and in the present case no such triable issues having been raised, the Court passed the eviction order. It took into account the dicta of the Supreme Court in ***Baldev Singh Bajwa vs. Monish Saini, (2005) 12 SCC 778*** which held that

*“whenever the landlord would approach the Court his requirement shall be presumed to be genuine and bonafide. .... that a heavy burden lies on the tenant to prove that the requirement is not genuine.....”*

7. The aforesaid judgment also emphasised that the legislative intent of the Act being expeditious disposal of an application for ejectment of tenant on the ground of *bona fide* requirement of the same by a landlord for his own occupation. The Trial Court went to hold as under:

*“17. The whole purpose and import of summary procedure under Section 25B of the act would otherwise be defeated. The prayer for leave to contest should be granted to the tenant only where a prima facie case has been disclosed by him. In the absence of the tenant having disclosed a prima facie case i.e. such facts which disentitles the landlord from obtaining an order of eviction, the Court cannot mechanically and in routine manner grant leave to defend.”*

8. The aforesaid judgment further held that “A special category of landlords requiring the premises for their own use has been created; if there is any breach by the landlord, the tenant is given a right of restoration of possession; the landlord who evicts a tenant on the ground of own requirement is not only prohibited from letting out the premises or disposing of the same but also required to use the same for his own residence only. It

was held that these restrictions and conditions inculcate in built strong presumption that the need of the landlord is genuine; the conditions and restrictions imposed on the landlord make it virtually improbable for the landlord to approach the Court for ejectment of tenant unless his need is bonafide – no unscrupulous landlord is all probability, under this Section, would approach the Court for ejectment of the tenant considering the onerous conditions imposed on him”.

9. The present petitioners have reiterated the same arguments as raised by them in the leave to defend. Particular emphasis has been laid upon the medical condition of the respondent No.1 i.e. the aged landlady and details of the premises occupied by the tenants and the landlords too has been pleaded as grounds for this petition. They have contended that the area occupied by the petitioners was merely 245 sq. feet as compared to the area occupied Dr. Kocchar - who was in possession of shop ‘A’ measuring 390 sq. feet, 56 sq. feet; while was used up in the area for stairs. However, the total area in possession of the respondents was 450 sq. feet. It was contended that the latter area was more than sufficient for the needs of the first respondent. This Court notices from the preceding narration that the eviction of the tenanted shop ‘A’ occupied by Dr. Kocchar was being pursued through another eviction petition. It was needed for commercial use whereas the area in occupation of the present petitioners was for residential need.

10. This Court is conscious of the limited role it has in dealing with the revision petitions under Section 25-B(8) of the Delhi Rent Control Act. This Court in the case of ***Ramesh Chand v. Uganti Devi***, 157 (2009) DLT 450, has held that while exercising jurisdiction under the aforesaid provision, the

Court does not act as a Court of Appeal. The Court has to see whether the learned ARC has committed any jurisdictional error and has passed the order on the basis of material available before it. Moreover, a Full Bench of this Court in ***Mohan Lal v. Ram Chopra and Anr.***, AIR 1982 Delhi 405, exhaustively dealt with Section 25-B of the Act. On the scope of the proviso to Sub-section (8) of this Section, after examining the judgment of the Supreme Court in ***Hari Shanker and Ors. v. Rao Girdhari Lal Chowdhury***, AIR 1963 SC 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.”*

11. Furthermore, the Hon’ble Supreme Court in another case tilted as ***Chaman Prakash Puri v. Ishwar Dass Rajput and Anr.***, 1995 Supp (4) SCC 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. The same court in **Ram Narain Arora v. Asha Rani & Ors., (1999) 1 SCC 141** at para 12 *has held as follows:*

*“It is no doubt that the scope of a revision petition under Section 25-B(8) proviso of the Delhi Rent Control Act is a very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on a firm legal basis approached the matters or record to decide the case. Pure findings of fact may not be open to be interfered with, but (sic if) in a given case, the finding of fact is given on a wrong premise of law, certainly it would be open to the revisional court to interfere with such a matter.”*

12. This Court notices that all the arguments with respect to the medical condition of the respondent No.1/eviction petitioner No.1, about its non-suitability of the tenanted premises, because of lack of requisite amenities for residence, the leave to defend having been granted in Eviction Petition No.115/2012 have been duly addressed in detail by the Trial Court. The Trial Court rejected the tenants’ argument that the tenanted premises could not be used for residential purposes since it lacked requisite facilities. The Court held that a room measuring 17 & ½’ x 14’ was large enough to be equipped with the essential requirements such as a wash room to render it habitable.

13. The tenant’s reliance placed upon **Krishan Kumar vs. Vimla Saigal, 1969 RCR 236** is misplaced. In the said case, the landlord was advised to exercise caution and to prevent excess strain upon himself so as to prevent possible damage to her. The petitioners contended that the present case was

only of knee replacement and with the advancement of medical science sufficient recovery is gained making the patient living a normal life after few months including walking, moderate hiking and some sports also. He submits that stair climbing is an excellent strengthening and endurance activity and that it is also argued that the stress fracture is a temporary disease which is cured between four to seven months from bone grafting. It was argued that the medical prescription of September, 2013 for Ms. Neena Ahuja did not prescribe any medical advice that she should refrain from climbing the stairs. This Court does not find any merit in the said arguments in view of the fact, and as rightly been held by the Trial Court, that with the advancement of age the recovery against injury to the structure of the body, such as the bones and knee joints is not always complete nor as quick as it would be in one's youth. It is settled law that the prerogative to determine the suitability of the premises has to be determined by the landlord in this case; the tenanted premises were the only space available to the landlord which was not an additional requirement, but based upon a need occasioned from her medical condition and physical infirmity, on account of advancement of age and earlier medical operations. The need was established and each of the contentions raised by the tenants had been duly addressed. The reasons for and the conclusion arrived at by the Trial Court are based upon the record, the view taken by it is plausible in law. This Court finds no reason to interfere with the impugned order. The petition is without merit and is accordingly dismissed.

**NAJMI WAZIRI  
(JUDGE)**

**May 16, 2014/ak**