

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

% *Judgment pronounced on: April 16, 2014*

+ **RC. Rev. No.291/2012 & C.M. No.11491/2012**

PURAN CHAND AGGARWAL Petitioner
Through Mr.Anil Sharma, Adv.

versus

LEKH RAJ Respondent
Through Ms.Anju Lal, Adv. with
Ms.Shalu Lal, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner by way of the present petition under Section 25B(8) of Delhi Rent Control Act (hereinafter referred to as “the Act”) has assailed the eviction order dated 23rd January, 2012, passed by Additional Rent Controller-01, East, Karkardooma Courts, Delhi.

2. Brief facts of the case are that the respondent filed an eviction petition against the petitioner in respect of two shops situated in the suit property bearing Khasra No. 186/22, Municipal No. 780A, Banke Bihari Mandir Road, Scooter Market, Jheel Khurenja, Delhi-110051 (hereinafter referred to as “the tenanted shops”). The tenanted shops were let out to the petitioner for last many years on a monthly rent of ₹1,500/- exclusive of other charges. The tenanted shops came to the share of the respondent out of a notional partition amongst the legal heirs of the demised father of the respondent, who was the original owner of a part of the entire suit property. The

respondent and his son were stated to be doing private jobs of selling medicines. Since the respondent and his son wanted to start their own business and their residential accommodation was not sufficient for the same, the respondent required the tenanted shops for himself and his son to start their own business and earn a decent livelihood.

3. The petitioner in the leave to defend application contended that one tenanted shop in the suit property was let out to the petitioner on 4th November, 1962 at the rent of ₹30/- per month, similarly second shop was let out to the petitioner in the year 1965 at the rent of ₹26/- per month and the third shop was let out to the petitioner in the year 1990 at the rent of ₹600/-. The rent was later increased to ₹1,000/- in the year 2001 and ₹1,500/- in 2010. Further, the petitioner objected that the respondent had not disclosed the particulars of the immovable properties which were in his possession and also did not disclose the shop from where the nephew of the respondent was carrying on commercial activities, that is one shop in the suit property. It was averred that the respondent and his family members had sufficient accommodation which had been concealed in the eviction petition and the respondent alongwith his family members was running commercial activities from other portion of the suit property. The bonafide requirement of the respondent was denied. It was contended that the petitioner had spent about ₹2,50,000/- in construction of the tenanted shops and further paid ₹50,000/- in cash to the respondent's brother in the year 1994. The fact of partition having taken place was denied and the suit property was contended to be a joint family property.

4. The petitioner also filed an application subsequently contending that the suit for partition in respect of the suit property was pending in another court and that the share of the respondent in the suit property was uncertain

and hence the eviction petition was not maintainable.

5. In the reply filed by the respondent, the averments of the petitioner were denied and the contentions of the respondent were reiterated. It was stated that the tenanted shops let out to the petitioner at different stages were converted into one shop, having two shutters from outside, having one no. i.e. 780-A. In the rejoinder filed by the petitioner, his stand was reiterated.

6. The learned trial Court while dismissing the leave to defend application of the petitioner vide the impugned eviction order observed with regard to the plea of the petitioner about the commercial activity being done by the nephew of the respondent, that the activity of the nephew or the brother of the respondent on any other part of the suit property had no bearing on the need and requirement of the respondent. It was observed that the petitioner had vaguely stated that the respondent and his family members had sufficient accommodation without disclosing any such alternate accommodation neither was any site plan filed by the petitioner in this regard.

7. With regard to the hardship of the petitioner that he might incur after eviction, it was observed that as per the settled law, while appreciating the bonafide need of the landlord, the Court is not supposed to make a comparative study of the hardships or the needs of the landlord and the tenant.

8. The learned trial Court observed that the petitioner had made bald statement about the payments made to brother of the respondent without disclosing the purpose for which such payments were made by the petitioner. The learned trial Court also opined that even if assumed that any such payment was made, the same would not have any bearing on the eviction petition. The learned trial Court observed that the petitioner had

conceded that the respondent was one of the co-owners of the suit property and that his only plea was regarding the actual partition, however, for the bonafide need, the said plea was not tenable in the opinion of the learned trial Court.

9. Accordingly, in the light of these observations, the learned trial Court opined that the petitioner had failed to disclose sufficient facts so as to raise any triable issues and so the leave to defend application was dismissed vide the impugned order. Aggrieved thereof, the petitioner has filed the present petition.

10. The issue before this Court is, whether said findings in the facts and circumstances of the present case require any interference by this Court in revisionary jurisdiction in view of the facts and circumstances of the present case or not. It is settled law and it has been held from time to time by various courts that the revision under Section 25B(8) of the Act cannot be regarded as a first appeal 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. In other words, this Court has only to see whether the learned Rent Controller has committed any jurisdictional error and has passed the order on the basis of material available before it.

11. A finding of fact arrived at by the Controller would not be interfered 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. 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 would have reached on the material available before him.

12. The Apex Court in *Sarla Ahuja vs. United India Insurance Company Ltd.*, reported in AIR (1999) SC 100 held as under:-

“6. The above proviso indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passes the order. The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is “according to the law”. In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25-B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.”

13. In the case of *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta*, AIR 1999 SC 2507 it was observed:

“The revisional jurisdiction exercisable by the High Court under Section 25-B (8) is not so limited as is under Section 115 CPC nor so wide as that 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 Section 25-B of the Act. A judgment leading to miscarriage of justice is not a judgment according to law."

14. Both the parties have made their submissions. The trial court record has also been summoned as certain documents are necessary to be examined by this Court.

15. The respondent filed the eviction petition claiming himself to be owner and landlord in respect of the tenanted shops. It was specifically stated therein that he is a senior citizen and is doing private job of selling medicines. His son Sushant aged about 30 years is also doing the private job of the same business. He is hardly earning ₹4000/- per month. Son of the petitioner is a married man, having a child. He and his son are doing private jobs and have got enough experience in the marketing and supply of medicines but could not start their business because of lack of space. His shops are occupied by the petitioner.

16. The family of the respondent consists of respondent, his wife, a married daughter, a son with his wife and grandson. Therefore, it is not possible for him to start the business from the residential premises. He bonafidely requires the tenanted shops for his son and for himself.

17. The petitioner has made various submissions as well as raised grounds in the present petition. However, it is settled law that while considering the revision petition, the Court has to restrict itself to the application for leave to defend and affidavit filed by the petitioner and reply filed by the landlord

and not beyond the pleadings unless additional facts are brought on record by the order of the Court.

18. In the present case, the petitioner has raised five issues, which according to him, are triable issues for the purpose of allowing the application for leave to defend.

19. The first issue raised by the petitioner before the Additional Rent Controller was that the respondent has not disclosed in the petition the particulars of the immovable properties of which the respondent and his family members are in possession and also did not disclose from where the respondent's nephew is carrying on the commercial activity, i.e. from Shop No.780-A, Banke Bihari Mandir Road, Scooter market, Jheel Khurenja, Delhi-110051.

20. The said plea of the petitioner has been rejected by the learned trial Court after considering the reply to the application for leave to defend filed by the respondent. It has come on record that there is a notional partition amongst four brothers of the respondent and they are using their 1/4th portion exclusively. It was not necessary for the respondent to disclose the other portions of the suit property which have come to the share of the brothers of the respondent. His brother Sh. Siri Ram was using his 1/4th portion and after his death, his sons are using the said portion as co-owners. It is rightly stated that the respondent has nothing to do with the portion which fell in the share of his brother and nephew.

21. The second plea taken by the petitioner in the leave to defend application was that the respondent and other family members have other alternative space available with them which has been concealed by him. In the reply, it was specifically stated that no details were given by the petitioner any of portion which was being used for commercial activities by

the respondent or his family members. It was specifically denied in the reply that there was any concealment in the entire petition and it was stated that the respondent and his family are residing in the accommodation as per the site plan filed by the respondent. It was specifically denied that the respondent along with his family members is carrying on commercial activities from the other portion of the suit property.

22. In the absence of the details, this Court finds that the plea of the petitioner was just moonshine and without any substance. Therefore, it has been rightly rejected by the learned trial Court.

23. Another plea raised by the petitioner is that the other LR's of the deceased father Sh. Ramji Lal have not become parties. It is settled law that it is not necessary for them to become parties in the eviction petition as they have no interest in the tenanted shops which have come into the share of the respondent. There is no affidavit on behalf of other co-owners to contradict the claim of the respondent. It is sufficient if the LR's of the deceased, by virtue of title become owner and landlord in the tenanted premises and it is not necessary to bring on record each and every legal heir of the deceased in the absence of contrary evidence produced by the tenant. In the present case, neither any such document is available nor is any argument addressed in this regard. Therefore, this issue is also not a triable issue.

24. The following cases are relevant in this regard, i.e. on the issue of co-ownership:-

(i) This Court in ***Ram Dulari thr. LR's v. Om Parkash Gupta & Anr.***, 169 (2010) DLT 301, observed that *the learned Additional Rent Control Tribunal went wrong in holding that the petitioner being owner only of a part of the premises could not have filed the eviction petition unless she was joined by her husband, who was a joint owner of the premises. Even*

otherwise, it is settled law that the court can take into account subsequent events and in this case, the petitioner's husband had died soon after filing of the petition and she became the owner of not only in her own right but as legal heir of her husband of the remaining portion of the premises. Learned Additional Rent Control Tribunal could not have ignored this fact.

(ii) In ***Yashpal v. Chamanlal Sachdeva***, 129 (2006) DLT 200, it was held that *a co-owner can maintain a petition and that the inter se arrangement between owners is no business of the tenant.*

(iii) In ***India Umbrella Manufacturing Co. and Ors. v. Bhagabandei Agarwalla (Dead) by L.R.s and Ors.***, AIR 2004 Supreme Court 1321, the Supreme Court observed that *one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners and this principle was based on doctrine of agency. One co-owner filing a suit for eviction against the tenant does so, on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant.*

(iv) In ***Col. Inderjeet Singh v. Mr. Vikram Singh & Anr.***, 194 (2012) DLT 209, it was observed that *it is a settled principle of law that one of the co-owners can file a suit for eviction of tenant in a property generally owned by the co-owners. (also see M/s. India Umbrella Manufacturing Co. and Others vs. Bhagabandei Agarwalla (Dead) by LRs Smt. Savitri Agarwalla and Ors. AIR 2004 SC 1321, paragraph 6 cited Sri Ram Pasricha vs. Jagannath and Others, 1977 1 SCR 395; Dhannalal vs. Kalawatibai and Others, AIR 2002 SC 2572).* A co-owner filing a suit for eviction does so on his own behalf and in his own right and as an agent of other co-owners. The consent of other co-owners is assumed to be taken unless, it is shown that

other co-owners were not agreeable to eject the tenant and the suit was filed in disagreement.

*In the present case, the suit was preferred by the plaintiff himself. One of the co-owners, cannot withdraw his consent so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallized on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit. (See also **Mohinder Prasad Jain vs. Manohar Lal Jain**, AIR 2006 SC 1471, paragraphs-7 & 8).*

(v) In **Sri Ram Pasricha vs. Jagannath and Ors.**, AIR 1976 SC 2335, it was observed that *jurisprudentially, it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property. The position will change only when partition takes place. It is, therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord and co-owner of the premises is not the owner of the premises within the meaning of Section 13(1)(f). It is not necessary to establish that the plaintiff is the only owner of the property for the purpose of Section 13 (1)(f) as long as he is a co-owner of the property being at the same time the acknowledged landlord of the defendants.*

(vi) In **Sheikh Mohd Zakir & Ors. v. Shahnaz Parveen & Ors.**, 2012 (2) RCR (Rent) 235, it was observed that *in the suit between the landlord and tenant, a third person claiming to be co-owner of the property cannot intervene as the issue of ownership could not be decided in the proceedings under the DRCA..... It is not necessary that all co-owners need to file the petition for eviction.*

(vii) In ***Krishan Lal vs. Rajan Chand Khanna***, AIR 1993 Delhi 1, it was observed that *being a heir, the person will be one of the co-owners of the property and as such will be entitled to file the eviction petition under Section 14(1)(e) of the Act.*

(viii) In ***Fibre Bond (Sales) Pvt. Ltd. vs. Smt. Chand Rani***, 1993(1) RCR 492 it was held that *widow, a co-landlady of the premises can initiate eviction proceedings against the tenant in absence of other co-owners.*

25. The third plea taken by the petitioner in the application for leave to defend was that the respondent has no concern with the business and there is no genuine bonafide requirement. On the other hand, the petitioner is using the tenanted shops for commercial purposes. The respondent wants to throw him out from the said business as one shop in the suit property was let out to the petitioner on 4th November, 1962. The second shop was let out to the petitioner in 1965 and the third shop was let out to the petitioner in 1990. Even the petitioner has spent ₹2,50,000/- in construction. The petitioner has also given ₹2,25,000/- to the petitioner's brother in 1994 as per the details mentioned in the agreement. The respondent has no intention to start his own business from the tenanted shops and even otherwise has no experience of business.

26. In the reply to the application for leave to defend, the respondent specifically denied that the business carried out by the petitioner from the tenanted shops is his only occupation and source of livelihood. It was stated that the son of the petitioner Manmohan Aggarwal has purchased another shop No.18A at Krishna Nagar and is running a Kiryana shop from the said premises. The petitioner is not using the tenanted shops by himself but his son and grandson are running the said business. It was stated by the

respondent that the letting out of the shops at different stages has nothing to do with the present petition, nor the rate of rent. It was denied that the petitioner has spent any amount for construction or has paid a sum of ₹2,25,000/- to the brother of the petitioner in the year 1994 and even otherwise, the respondent has nothing to do with the payment, if made, by the petitioner.

27. As far as business is concerned, it is not necessary that the landlord must show some evidence that he has experience of said business. That is not the requirement of law in order to file the eviction petition on the grounds of bonafide requirement.

28. The following judgments do help the case of the respondent:

Start new business/no experience required

- (i) In ***Ram Babu Agarwal vs. Jay Kishan Das***, (2010) 1 SCC 164, it was observed that “A person can start a new business even if he has no experience in the new business that does not mean that his claim for starting new business must be rejected on the ground that it is a false claim. many people start new businesses even if they do not have experience in the new business and sometimes they are successful in the new business also.”
- (ii) In ***Tarsem Singh vs. Gurvinder Singh***, 173 (2010) DLT 379, it was observed that “If the landlord wants to start his own business in the premises owned by him then by no stretch of imagination, it can be said that the requirement of the landlord for the premises is neither bonafide nor genuine.”
- (iii) In ***Balwant Singh Chowdhary & Anr. vs. Hindustan Petroleum Corporation Ltd.***, 2004 (1) RCR 487, it was held that “It is not

necessary for the landlord to plead and prove the specific business he wants to set up, if the landlord wanted the premises for business purposes.”

- (iv) In **Gurcharan Lal Kumar vs. Srimati Satyawati & Ors.**, 2013 (2) RCR (Rent) 120 it was observed that “*Merely because the exact nature of business has not been described would not take away their bonafide need to carry out a business (when admittedly both the sons are dependent upon petitioner for this need). It was observed that if the business need is not disclosed this would not wipe away the bonafide need of the landlord as has been pressed under Section 14(1)(e) of the DRCA,1958.*”
- (v) In **Raj Kumar Khaitan & Ors. vs. Bibi Zubaida Khatun & Anr.**, AIR 1995 SC 576, it was observed that “*It was not necessary for the appellants-landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody would bind the landlords to start the same business in the premises after it was vacated.*”

Even, after having gone through the pleadings and documents placed on record, it appears to the Court that it is not a triable issue.

29. Learned counsel appearing on behalf of the petitioner, during the course of hearing, has also made his submissions that the three shops were let out to the petitioner from time to time as mentioned above and a single petition for eviction was not maintainable. On the other hand, the argument of the learned counsel for the respondent is that in fact ‘two’ shops were let

out and not 'three' as stated by the petitioner who has demolished the partition wall and joined two shops into one shop. It is a single tenancy. The petitioner has been paying the rent for single tenancy @ ₹1500/- per month. The counsel further states that the single petition for eviction is maintainable. She further states that it is immaterial even if there were three shops let out to the petitioner at different points of time in the same suit property.

30. A single eviction petition is maintainable as held in various cases in which the same aspect has been dealt with. The following are some of such judgments which are necessary to be referred:

- i) In ***Chander Parkash Chawla vs. K.K. Kapoor & Ors.***, reported in 64 (1996) DLT 614, an objection was raised by the petitioner that the first floor and the second floor premises were let out by the petitioner separately at different points of time and were covered by two distinct tenancies - one relating to the first floor and the second relating to the second floor of the premises in dispute. The cause of action in respect of each tenancy was thus distinct and separate, and one could not be joined with the other in the same proceedings. Relying upon the provisions of Order II Rule 3, learned Single Judge of this Court held that assuming that the parties had treated the two lettings as separate tenancies, yet there were common questions of law and fact arising between the same parties and in respect of different portions of the same property, and, accordingly there would be nothing illegal in one eviction petition being entertained and tried in respect of the entire premises though different portions were let out at two different times. It was further observed that such an approach is in the interest of justice

and has the effect of avoiding multiplicity of proceedings.

- ii) In the judgment of the Supreme Court in ***S.M. Gopalakrishna Chetty vs. Ganeshan and Ors.***, AIR 1975 SC 1750, it was held in the context of the Madras Rent Legislation that a single petition with regard to two different tenancies in the same premises was maintainable even where one was for residential purpose and the other was for non residential purpose. Learned Counsel also relied upon the judgment of the learned Single Judge of this Court in ***Mohd. Yusuf v. Ram Nath***, 1972 RLR (N) 36. The case dealt with the factual matrix where there were two separate tenancies between the same landlord and tenant. It was held that a single petition could be filed if there is common question of law and fact. Two premises had been let out in the same building but separately in the said case.
- iii) In the case of ***Gobind Ram vs. Godha Ram***, 1979 (2) RCR, the learned Single Judge of the Punjab and Haryana High Court held that even if two rooms had been let out to the tenant on two different dates and therefore there were two separate tenancies, a single petition for eviction of the tenant was competent and there was no legal bar on the landlord claiming eviction of the tenant from a totality of the premises irrespective of the fact that whether they had been rented out under one rent note or two rent notes.
- iv) In yet another case ***Jamiluddin vs. Shamsuddin***, reported in AIR 1999 All 150, a Division Bench of the Allahabad High Court categorically held that sub-rule (1) of Rule 3 of Order II of the Code clearly permits a plaintiff to unite in the same suit more than one cause of action against the same defendant, or the same

defendants jointly, and a suit cannot be dismissed for joinder in the same suit of several causes of action against the same defendant, or the same defendants jointly. Thus, for ejectment of the same tenant, or the same tenants jointly from two or more tenements, one suit by the landlord is legally permissible and such a suit cannot be dismissed for misjoinder of causes of action.

31. As regards the argument of the petitioner that he has spent ₹2,50,000/- in construction and has also paid ₹2,25,000/- to the petitioner's brother as per agreement, the original agreement was not filed in the trial court. Even otherwise, in case any amount is paid to the brother of the respondent that has no relevance to the facts and circumstances of the present case. Similar is the case of spending money for construction. The petitioner is entitled to recover the said amount, if recoverable in law. The said plea taken by the petitioner does not help the case of the petitioner and it is not a triable issue.

32. The fourth plea taken by the petitioner in the application for leave to defend was that the respondent has not informed as to who is the owner of the suit property after the death of his brother. According to him, the suit property is still in joint possession and no partition has taken place. As such eviction petition was not maintainable.

33. The said argument of the petitioner is without any force. In case the eviction petition is read, it is very clear from the eviction petition that the respondent has stated that the petitioner is the tenant under the respondent for the last many years. The father of the respondent Sh.Ramji Lal was the actual owner of the part of the suit property. After death of his father, his four sons became owner of the suit property in respect of 1/4th portion share of the suit property. A notional partition amongst four brothers took place and they have occupied their own respective portions of their shares. The

two tenanted shops fall in the share of the respondent and the two rooms behind the said shops also fall in the share of the respondent. Some of the brothers already disposed of their respective portions to the third parties. The petitioner has admitted in his pleading that Sh.Ramji Lal was the father of the respondent. He was the actual owner of the part of the suit property. The respondent has also placed on record documents in order to show the ownership of the suit property in favour of his father. It is also not denied by the petitioner that he was paying the rent to the respondent after the death of his father.

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

- i. ***Shanti Sharma vs. Smt. Ved Prabha***, AIR 1987 SC 2028
- ii. ***Zahid Hussain thr. LRS vs. Aenul Haq Qureshi thr. LRS***, 2005 (1) RCR 323
- iii. ***Ram Chander vs. Ram Pyari***, 109 (2004) DLT 388

- iv. ***Mukesh Kumar vs. Rishi Prakash***, 174 (2010) DLT 64
- v. ***Rajender Kumar Sharma & Ors. vs. Smt. Leela Wati & Ors.***, 155 (2008) DLT 383
- vi. ***Meenakshi vs. Ramesh Khanna & Anr.***, 60 (1995) DLT 524
- vii. ***Tej Pal Gupta vs. Rattan Singh***, 160 (2009) DLT 726
- viii. ***Kamla Rani & Ors. vs. Texmaco Ltd.***, 139 (2007) DLT 61
- ix. ***Keshar Lal H. Pardeshi vs. Vithal S. Patole***, (2005) 10 SCC 249
- x. ***Ramesh Chand vs. Uganti Devi***, 157 (2009) DLT 450
- xi. ***M.M. Quasim vs. Manohar Lal Sharma***, (1981) 3 SCC 36
- xii. ***B.R. Anand vs. Prem Sagar***, 2002 (1) RCR (Rent) 234
- xiii. ***D. Rani Puri vs. Chanan Lal***, 65 (1997) DLT 313
- xiv. ***Shree Ram Sharma vs. Mohd. Sabr***, 178 (2011) DLT 1
- xv. ***Bharat Bhushan Vij vs. Arti Teckchandani***, 153 (2008) DLT 247
- xvi. ***Jiwan Lal vs. Gurdial Kaur & Ors.***, 57 (1995) DLT 262

35. The other ground taken by the petitioner is that the petitioner has raised sufficient grounds for which the petitioner is entitled to relief for leave to defend the eviction petition filed under Section 14 (1)(e) of the Act and on the face of the record, the respondent is not entitled for eviction order sought by him.

36. It is also settled principle of law that the landlord is entitled to seek eviction of tenanted premises not only for himself/herself, but for other dependant family members. There is no dispute that the parents are under moral obligation to help establish their sons in business and can seek eviction of the tenanted premises for them. Reference in this regard can be made to the case of ***Joginder Pal v. Naval Kishore Behal***, (2002) 5 SCC 397, where the Supreme Court held that:

“The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use..... Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be the obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord.”

Some of the other judgments which deal with the similar issue are:-

- i) ***Kharati Ram Khanna & Sons. vs. Krishna Luthra***, 2010 (172) DLT 551, wherein it was observed that *the requirement of the landlord to settle down her two sons separately and independently was found to be genuine and bonafide.*
- ii) In ***Labhu Lal vs. Sandhya Gupta***, 2010 (173) DLT 318, it was observed that *the landlord's son and daughter in law are dependent for accommodation on respondent the requirement of the landlord's son and daughter in law for expanding clinic being run in premises in question is genuine.*
- iii) In ***Sh. Ravinder Singh v Sh. Deepesh Khorana*** (RC. Rev. No.3/2011, Date of decision: 10th December, 2012), it was observed that *the son of the respondent is unemployed and is dependent on respondent for his livelihood. It is nothing but bona fide for the respondent to require the suit shop to set up a computer business for his son and to help him find a source of income and subsequently settle down in life.*

iv) In **Brij Mohan vs. Shri Pal Jain**, 49 (1993) DLT 543, it was observed that *it is settled law that grown up children require separate rooms to live in a manner he or she likes.*

v) In **Ram Babu Aggarwal v. Jay Kishan Das**, 2009 (2) RCR 455, the court recognized *the right of the landlord for possession of his property for setting up a business for his son.*

37. Accordingly, in the light of these observations, I agree with the finding of learned trial Court who opined that the application filed by petitioner did not disclose grounds as it would disentitle the respondent from obtaining an order for recovery of possession on the grounds specified under Section 14(1)(e) of the Act. The leave to defend application has been rightly rejected by the impugned order.

38. Therefore, I am of the considered view that the bonafide requirement alleged by the respondent is genuine and he was entitled for the relief of eviction, as no triable issues are apparently raised. The impugned order does not suffer from any infirmity. The petition is accordingly dismissed.

39. In the case of **Mohd. Ayub vs. Mukesh Chand**, (2012) 2 SCC 155, it was observed that *“the hardship Appellants would suffer by not occupying their own premises would be far greater than the hardship the Respondent would suffer by having to move out to another place. We are mindful of the fact that whenever the tenant is asked to move out of the premises some hardship is inherent. We have noted that the Respondent is in occupation of the premises for a long time. But in our opinion, in the facts of this case that circumstance cannot be the sole determinative factor. That hardship can be mitigated by granting him longer period to move out of the premises in his occupation so that in the meantime he can make alternative arrangement.”*

40. Considering the hardship explained by the petitioner in his application for leave to defend as well as orally at the time of hearing, coupled with the fact that it is a commercial property which is being used by the petitioner for the last many years and in the interest of justice, equity and fair play, the petitioner is granted time upto 31st December, 2014 to vacate the tenanted shops. During this period, the petitioner shall not sublet or create any third party interest in the tenanted shop and after the expiry of said period, the petitioner shall hand over the peaceful and vacant possession of the tenanted shops to the respondent.

41. The present petition is accordingly disposed of with these directions.

42. No costs.

(MANMOHAN SINGH)
JUDGE

APRIL 16, 2014