

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

+ **RC.REV.Nos.347/2014, 342/2014 & 344/2014**

% **30th October, 2014**

1. **RC. REV. No.347/2014 and C.M. Nos.17682/2014, 17684-86/2014**

M/S. KHEM CHAND RAMESH KUMAR Petitioner
Through: Dr. N.K. Khetarpal, Advocate.

VERSUS

SMT. VIJAY MEHRA AND ORS. Respondents
Through: Sh. S.N. Choudhri, Advocate for
respondent Nos.1 to 5.

2. **RC. REV. No.342/2014 and C.M. Nos.17403-06/2014**

RADHEY SHYAM GOEL Petitioner
Through: Dr. N.K. Khetarpal, Advocate.

VERSUS

SMT. VIJAY MEHRA AND ORS. Respondents
Through: Sh. S.N. Choudhri, Advocate for
respondent Nos.1 to 5.

3. **RC. REV. No.344/2014 and C.M. Nos.17468-71/2014**

PRADEEP TRANSPORT COMPANY Petitioner
Through: Dr. N.K. Khetarpal, Advocate.

VERSUS

SMT. VIJAY MEHRA AND ORS. Respondents
Through: Sh. S.N. Choudhri, Advocate for
respondent Nos.1 to 5.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

RC. REV. No.347/2014 and C.M. Nos.17682/2014, 17684-86/2014

1. This rent control revision petition is filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') impugning the judgment of the Additional Rent Controller dated 4.7.2014 by which the Additional Rent Controller has dismissed the leave to defend application of the present petitioner; and who was the respondent no.6 in the eviction petition; and has decreed the *bonafide* necessity eviction petition filed under Section 14(1)(e) of the Act with respect to the tenanted premises i.e the entire property no.4082-87, Naya Bazar, Delhi-6 comprising of ground floor (comprising of four halls; one of the halls having been partitioned into seven portions), first floor (comprising of six rooms and two halls) and the second floor (comprising of seven rooms). The present

petitioner claims to be a tenant in the portion which is marked in dark green colour in the site plan filed with the eviction petition and this portion is one room on the ground floor of the property. As per the case of the landlords (respondent nos.1 to 5 herein) the petitioner was an illegal sub-tenant.

2(i) It is relevant, at this stage, to state that in the eviction petition a total of eight persons were arrayed as respondents with the present petitioner arrayed as respondent no.6 in the eviction petition. Present petitioner is only an illegal subtenant who was inducted by the tenant/respondent no.6 herein/respondent no.1 in the eviction petition. As per the eviction petition, only the respondent no.1 in the eviction petition was a tenant whereas respondent nos.2 to 8 to the eviction petition were pleaded to be illegal subtenants. The tenant being the respondent no.1 in the eviction petition filed his leave to defend application, and separate leave to defend applications were also filed by the respondent nos.2 to 8 in the eviction petition; though through the same counsel. Whereas respondent nos.2 to 7 in the eviction petition pleaded that they were independent tenants and not illegal subtenants as was the case of the landlords, respondent no.8 in the eviction petition claimed that he had become owner by adverse possession and that

even his father was owner on account of his being in adverse possession of the portion presently with the respondent no.8 in the eviction petition.

(ii) Alongwith the eviction petition, a site plan was filed by the landlords/respondent nos.1 to 5 herein showing possessions of different portions of the property by the different respondents in the eviction petition. In the site plan in separate colours the separate portions in possession of the different respondents in the eviction petition were depicted. The exact details with respect to possessions of different portions of the different respondents can be understood from para 20 of the eviction petition and which reads as under:-

“20. Relief claimed:

Under the above circumstances it is therefore respectfully prayed that this Hon'ble Court may be pleased to pass an order of eviction in favour of the petitioners and as against the respondent No.1 and the persons, viz, the respondent nos.2 to 8, who are claiming through the respondent no.1, directing them to vacate and handover to the petitioners the vacant and peaceful possession of the tenanted portion in the building in question viz. property No.4082-4087, Naya Bazar Delhi, more appropriately outlined in dark red colour in the annexed site plan as was let out to the respondent no.1, including the portions with various sub-tenants, i.e. respondent nos. 2 to 8, which are marked as 'A' on the ground floor and first floor of the building in question and shown in pink colour are in occupation of respondent no.1; the portions marked 'B' on the ground floor, Mezzanine floor and the first floor of the building in question and shown in blue colour are in occupation with sub-tenant the respondent no.2 herein; the portion marked 'C' on the ground floor of the building in

question and shown in brown colour is with sub-tenant the respondent no.3 herein; the portion marked 'D' on the ground floor of the building in question and shown in yellow colour is with sub-tenant the respondent no.4 here-in; the portion marked 'E' on the ground floor of the building in question and shown in violet colour is with sub-tenant the respondent no.5 here-in; portion marked 'F' on the ground floor of the building in question and shown in dark green colour with sub-tenant respondent no.6 here-in; the portions marked 'G' on the ground floor of building in question and shown dark blue colour with sub-tenant respondent no.7 herein; the portion marked 'H' on second floor of building in question and shown in orange colour with sub-tenant respondent no.8 here-in;

Any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be also granted in favour of the petitioner and as against the respondent."

3. A reference to the eviction petition shows that the entire suit/tenanted premises were owned by one Sh. Madan Lal (predecessor-in-interest of respondent nos.1 to 5 herein) and who had purchased the same in the year 1967. Sh. Madan Lal had executed a Will dated 16.12.1970 in favour of his wife Smt. Bimla Wati and who after the death of Sh. Madan Lal became the owner of the property. Smt. Bimla Wati had executed a Will dated 10.10.1991 in favour of her two sons, namely Sh. Manmohan (wrongly typed as Madan Mohan in the impugned judgment) and Sh. Jagmohan and these two sons became co-owners of the suit property on the death of Smt. Bimla Wati. Sh. Manmohan died leaving behind the Will dated 17.6.2001 bequeathing his share in the suit property to his wife and

who was petitioner no.1 in the eviction petition and the respondent no.1 herein. Sh. Jagmohan had died intestate and his share devolved upon all his legal heirs, the other petitioner nos.2 to 5 in the eviction petition (petitioner no.2 was the widow of Sh. Jagmohan) and who are arrayed as the respondent nos.2 to 5 herein. Accordingly, the five petitioners in the eviction petition were pleaded to be the co-owners of the entire premises.

4(i) The family of the respondent no.1 herein comprises of herself, her two sons, namely Sh. Rishibijli and Sh. Gautam Mehra, and one married daughter namely Smt. Poornima Chowdhary. All the children of the respondent no.1 are married. Respondent no.1 resides with her son Sh. Gautam Mehra in Amritsar. The other son Sh. Rishibijli is married and has one daughter and lives in a rented accommodation at Greater Kailash in New Delhi and for which he is paying rent of Rs.52,000/- per month. In the eviction petition, it was the case of the landlords/respondent nos.1 to 5 herein that the respondent no.1 regularly visits Delhi and she finds it difficult to reside with her son Sh. Rishibijli in the rented accommodation and that as a result of which she has to on many a times stay in a hotel alongwith Sh. Gautam Mehra her other son who also visits Delhi.

(ii) It was further the case of the respondent nos.1 to 5 in the eviction petition that Sh. Rishibijli is unnecessarily paying the rent and living in a tenanted premises though the suit premises are available to the family. A total of seven rooms for residential requirement was pleaded in the eviction petition for Sh. Rishibijli and his family being a drawing room, dining room, one bedroom for Sh. Rishibijli and his wife, one bedroom for the children, one guest room, one store room and one puja room.

(iii) The grand-daughter of the respondent no.1 (daughter of Smt. Poornima Chowdhary) is living at Delhi for pursuing her education, and she is living with Sh. Rishibijli, and for her requirement two rooms are wanted. Besides the total of these nine rooms, the usual amenities of a kitchen, bathrooms etc etc are pleaded as being required.

(iv) Since Sh. Gautam Mehra with whom the petitioner no.1 in the eviction petition lives at Amritsar regularly visits Delhi, two rooms are required for and during his stay at Delhi.

(v) Accommodation is also required for Smt. Poornima Chowdhary who also visits Delhi.

(vi) Petitioner no.2 in the eviction petition (the respondent no.2 herein) who resides at Amritsar also visits Delhi with her children and in

spite of availability of the suit premises they are forced to live in a hotel which is not only an expensive proposition but the same is also very frustrating both because of unnecessarily spending of moneys and also because of the fact that there is an accommodation of the landlords being the suit premises, which they cannot use.

5. Therefore, residential need is pleaded to exist with respect to Sh. Rishibijli and his family who lives in a rented accommodation, the requirement of respondent no.1 who visits Delhi frequently, requirement of the grand-daughter of the respondent no.1 who is living with Sh. Rishibijli in the rented accommodation and the requirement of the respondent no.2 who visits Delhi alongwith her family members. The petitioners in the eviction petition therefore effectively pleaded requirement of rooms with respect to two married families being the respondent no.1 and her sons and the respondent no.2 and her family members who are the petitioner nos.2 to 5 in the eviction petition.

6. Besides the residential need claimed for the families of the petitioners in the eviction petition, the suit premises are also pleaded to be required for the commercial purposes because both the sons of the respondent no.1 namely Sh. Rishibijli and Sh. Gautam Mehra who are

working at senior positions with M/s Amritsar Transport Company Pvt. Ltd want to leave their jobs for starting their own businesses in Delhi. M/s Amritsar Transport Company Pvt. Ltd. belongs to another group of the family. These two sons of the respondent no.1 are already carrying on transport businesses under the name and style of M/s Mehra Sons and M/s Bijli Carrier, but they have no place/accommodation in Delhi for carrying on their businesses at Delhi which they want to start. The businesses of M/s Mehra Sons and M/s Bijli Carrier pertain to plying of trucks throughout India, and since there is no accommodation available at Delhi, the businesses of M/s Mehra Sons and M/s Bijli Carrier are being carried on from Amritsar by attaching the trucks of these businesses with M/s Amritsar Transport Company Pvt. Ltd. For carrying on the businesses of transport by the sons of the respondent no.1 accommodation is required at Delhi and which accommodation will be used for the purposes of office, goods booking/and delivering agency, storage of goods etc etc. The suit premises are pleaded to be very suitable for the transport business as the same is located in an area which has in its adjacent areas the commercial hubs of Old Delhi. Since the suit premises will be used jointly for residential and commercial purposes therefore loading and unloading at odd hours is possible from the suit

premises since the family of the petitioners will live in the suit premises. It is also pleaded by the petitioners in the eviction petition that as a result of not having of space in Delhi, trucks of the sons of the respondent no.1 are parked wherever possible and as a result of which there is great difficulty in the rainy and winter seasons of threat of damage to the goods and also inconvenience to the drivers/cleaners/helpers who are forced to stay in the trucks. Respondent nos.1 to 5 herein therefore have pleaded need for at least 12 rooms for running of both the businesses and which, as stated above, would be used towards various aspects of businesses of M/s Mehra Sons and M/s Bijli Carrier.

7. The present petitioner, respondent no.6 in the eviction petition, contested the eviction petition by filing his leave to defend application. In the leave to defend application, the present petitioner stated that he was inducted as a tenant in the year 1951 and he continued to pay rent to Sh. Madan Lal Mehra till the year 1998 but thereafter no one turned up to claim the rent. The present petitioner denied that he was an illegal sub-tenant in the premises. It was further the case of the present petitioner that need of the petitioners in the eviction petition, the respondent nos.1 to 5 herein, is not *bonafide* though the number of family members of the petitioners are not

denied and it is also not denied that the family of Sh. Rishibijli is living in a rented accommodation at Greater Kailash and paying rent of Rs.52,000/- per month.

8. Though the present petition is being disposed of on the aspect of entitlement to leave to defend taking the petitioner to be a tenant/legal sub-tenant, the petitioner herein (respondent no.6 in the eviction petition) actually alongwith respondent nos.2 to 8 have been rightly held by the court below as illegal sub-tenants in terms of the discussion and conclusions rightly given in paras 38, 39, 44 and 45 of the impugned judgment and which read as under:-

“38. Respondents no. 2 to 7 have pleaded facts which are contradictory and vague, with regard to their status in premises in question. Respondent no. 2, 6 and 8 did not mention in their affidavits, as to who had inducted them as tenants in premises in question. They did not mention the terms and conditions of the tenancy. Further none of the respondents placed on record any document with regard to the inception of their tenancy. As per petitioners, Late Sh. Madan Lal Mehra, had died in the year 1991 and his death certificate is on record. Moreover respondents did not dispute the said factum of death of Late Sh. Madan Lal Mehra. If that was the case, then I failed to understand as to how respondents no. 2 continued to pay rent to Late Sh. Madan Lal Mehra, till 1995 and who had issued the rent receipts relied by him. Similarly was the case with respondent no. 4 who claimed to be tenant since 1996 and similar was the case of respondent no. 5 and 6 who paid rent to Late Sh. Madan Lal Mehra till 1995 and 1998 respectively. There was no proof on record, which could indicate that Late Sh. Madan Lal Mehra had given his consent to respondent

no 2 to 7 to give the rent to respondent no. 1 so that he can receive the said rent from respondent no. 1. Besides that all the respondents except respondent no. 8 claimed that after sometime, when Late Sh. Madan Lal Mehra and his agents failed to come to them for receiving rent, then they inferred that Late Sh. Madan Lal Mehra had given his consent to them to occupy the premises in question as tenants. The said inference, to my mind had no basis. It is simply a thought of the said tenants. The said tenants could have shown their bonafide by approaching the legal representatives of Late Sh. Madan Lal Mehra and clarifying from them about their status in the premises in question. Instead they continued to keep mum and bask in the glory of ignorance. For such negligent/ignorant attitude, no credence can be given to the claim of the said respondents.

39. Apart from that respondents no. 2 to 7 asserted that they were inducted as tenants by Late Sh. Madan Lal Mehra in various years, ranging from 1951 till 1996. They have also stated in their affidavits that Late Sh. Madan Lal Mehra started taking rent only after 1984. Those respondents viz. respondent no. 3, 4, 5 and 7 who were inducted as tenants after 1984 failed to mention as to how they knew that Late Sh. Madan Lal Mehra had started taking rent only after 1984 by himself or by his agent. Further they failed to mention, as to how the said factum of rent being taken by Late Sh. Madan Lal Mehra was relevant for their case as it was taken by Late Sh. Madan Lal Mehra prior to inception of their tenancy. Respondent no. 2 and 6 were inducted in the premises in question in 1972 and 1951 respectively. The said respondents again failed to mention as to how Late Sh. Madan Lal Mehra used to collect rent prior to 1984. Aforesaid versions of the respondents were contradictory and had no sound basis. The said version, did not get the support from respondent no. 1 and therefore the whole picture projected by the said respondents was hazy, on which no triable issue can be framed. Even if chance is given to the said respondents to lead evidence, then also the evidence which will come on record, will give a confused picture as the basis of the version of the said respondents is in itself not clear.

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44. Further, contrary arguments have been taken by respondent no.2 to 7 that even if the version of the petitioner is believed that respondent no.2 to 7 are sub-tenants of respondent no.1, then also, being lawful sub-tenants no eviction can be sought against such sub-tenants. However, respondents have not placed on record any document which will go on to prove that they are the lawful sub-tenants of respondent no.1. If a sub-tenancy is created without the written consent of the landlord, then, it cannot be said to be a lawful sub-tenancy and therefore, the respondents cannot allege that they are the lawful sub-tenants and they cannot be evicted as no written consent has been obtained by the respondent no. 1 from the petitioners or their predecessor-in-interest to create any such tenancy.

45. The next bone of contention of the respondent is that if a sub-tenancy is created before 09.06.1952, then, the sub-tenancy is admitted to be lawful sub-tenancy, even if, no written consent of the landlord is obtained. In such a situation, Section 16,17& 18 of DRC Act comes to the rescue of the landlord. Section 17 (2) of DRC Act spells out that if before the commencement of this Act any premises has been lawfully sublet by the tenant, the sub-tenant is obliged to give notice to the landlord of creation of such tenancy within six months of the commencement of this Act. In the present case, no document has been filed by the respondents no. 2 to 7 to show that they have given notice of the creation of sub-tenancy to the petitioners or their predecessor-in-interest. Only, the service of notice saves the sub-tenants from eviction, even if, a decree of eviction is passed against such a tenant u/s 14 and further confers on such sub-tenant an independent right of a tenant. Conjoint reading of Section 16,17 & 18 of DRC Act makes it clear that it is obligatory on the sub-tenant to give notice to the landlord within six month of commencement of the Act, if this sub-tenancy is created before commencement of the Act to become a lawful sub-tenant. Thus, the contrary stand of respondents no. 2 to 7 in their pleadings and arguments also fail to go in their favour.”

9. Before this Court, the present petitioner has argued the following aspects for setting aside the impugned judgment and for grant of leave to defend:-

(a) The sons of the respondent no.1 herein are in fact owners of M/s Amritsar Transport Company Pvt. Ltd. and they are not employees in M/s Amritsar Transport Company Pvt. Ltd.

(b) The sons of the respondent no.1 namely Sh. Rishibijli and Sh. Gautam Mehra, do not want to expand their businesses of M/s Mehra Sons and M/s Bijli Carrier to New Delhi from Amritsar and in any case since the respondent nos. 1 to 3 already have some accommodation in the suit premises with them comprising of one hall on the ground floor, another hall on the first floor and two rooms on the second floor, hence, the case of the respondent nos.1 to 5 would be only for additional accommodation and therefore a triable issue arises for grant of leave to defend.

(c) The sons of the respondent no.1 are financially independent and therefore the respondent no.1 cannot claim that her two sons are dependent upon her for providing of residential or commercial accommodation.

(d) The respondent nos.1 to 5 herein have an accommodation at New Delhi being premises no.3981-3983, Naya Bazar, Delhi and which has been

let out to M/s Amritsar Transport Company Pvt. Ltd. and consequently this accommodation can be used by the respondent nos.1 to 5 and if so used consequently there would be no *bonafide* need.

(e) The suit premises are located in a 'slum area' and therefore it is not possible to expect that the family members of the petitioners in the eviction petition would like to live in the area in question.

(f) Since the respondent nos.1 to 5 in the eviction petition admit that two shops have been sold in the years 2007 and 2009, therefore, it should be held that *bonafide* necessity eviction petition is not maintainable.

10. At the outset, I must state that the Additional Rent Controller has passed a very thorough and exhaustive judgment in the present case dealing with every aspect of the matter. The impugned judgment exhaustively deals with the legal position of grant of leave to defend when triable issues arise, what are the facts of the present case with respect to the requirement of the respondent nos.1 to 5 herein for residential and commercial need, the details of their family members, lack of honesty and substance in the stands taken up by the main tenant who is the respondent no.1 in the eviction petition and the respondent no.6 in the present petition,

aspects related to availability of alleged alternative suitable accommodation etc etc, and has thereafter dismissed the leave to defend applications.

11. Let me now turn to each of the points which are argued on behalf of the present petitioner before this Court and deal with them.

12(i) The first argument which is urged is that the sons of the respondent no.1 are owners of M/s Amritsar Transport Company Pvt. Ltd and it is wrongly stated by the respondents no.1 to 5 that the two sons are only employees therein. It is argued that there is no *bonafide* need because once the sons in fact own the company M/s Amritsar Transport Company Pvt. Ltd, they cannot be employees, and therefore they would not be wanting to start their own businesses from Delhi carried on in the names of M/s Mehra Sons and M/s Bijli Carrier at Amritsar. Related with this aspect is the argument urged on behalf of the petitioner that transport companies M/s Mehra Sons and M/s Bijli Carrier are only decoy companies of M/s Amritsar Transport Company Pvt. Ltd. inasmuch as M/s Amritsar Transport Company Pvt. Ltd. is owned by the sons of the respondent no.1 herein.

(ii) In support of the argument, learned counsel for the petitioner took me through Annexure P-2 and which is a page downloaded from the internet website containing some information pertaining to M/s Amritsar

Transport Company Pvt. Ltd. On the basis of this webpage, it is argued that since the predecessor-in-interest of the respondent nos.1 to 5 herein namely Sh. Lala Sain Dass (Bijli Pehalwan) had started this company, consequently it should be taken that sons of the respondent no.1 are owners of M/s Amritsar Transport Company Pvt. Ltd. I cannot agree. A reference to this single website page simply shows that the ownership long back of the company was of Lala Sain Dass, but, the webpage nowhere shows that the sons of the respondent no.1 presently have controlling interest or ownership interest in the company. Be that as it may, to satisfy my judicial conscience, I put a pointed query to the counsel for the respondent nos.1 to 5 as to whether they would be ready to state on affidavit and face perjury if it is found that ownership and controlling interest in the form of shareholding or by any method in M/s Amritsar Transport Company Pvt. Ltd. is of the sons of the respondent no.1 and they are found to own M/s. Amritsar Transport Company Pvt. Ltd. and to which query counsel for the respondent nos.1 to 5, on instructions from Sh. Rishibijli who is son of respondent no.1 and also the attorney of respondent nos.1 to 5, states that except having a miniscule 4.67% share holding in the company M/s Amritsar Transport Company Pvt. Ltd., none of the respondent nos.1 to 5 or their family members have any

shareholding in this company and that actually the ownership of the company vests with another group of the family. In my opinion, self-serving bald averments of ownership of M/s Amritsar Transport Company Pvt. Ltd. as being allegedly owned by the sons of the respondent no.1 cannot raise any triable issue. If on bald averments, leave to defend will have to be granted, then, in all cases on self-serving averments, every tenant can claim that triable issues arise. I would also like to note that it was not too difficult for the present petitioner to have obtained documents from the Registrar of Companies with respect to shareholdings of M/s Amritsar Transport Company Pvt. Ltd. if really the ownership/shareholding/controlling interest was vested with the respondent nos.1 to 5 herein or their family members, and for which there was sufficient time because the eviction petition was filed way back in the year 2012, but the present petitioner has obviously not chosen to take any documents from the Registrar of Companies because he would be aware that the families of the respondent nos.1 to 5 herein do not have any controlling interest or majority shareholding of M/s Amritsar Transport Company Pvt. Ltd. In view of the above discussion the first argument urged on behalf of the petitioner is therefore rejected. I also reject the self-serving argument urged on behalf of the present petitioner that M/s

Mehra Sons and M/s Bijli Carrier are allegedly decoy companies of M/s Amritsar Transport Company Pvt. Ltd. because as stated above mere self serving statements cannot create triable issues.

13(i) The next argument which is urged on behalf of the present petitioner is that the sons of the respondent no.1 herein do not want to expand their businesses from Amritsar to Delhi, and even if they want to, the existing accommodation available in the suit premises being one big hall of 400 sq. feet on the ground floor, another hall of about 300 sq. feet on the first floor and two rooms on the second floor be sufficient alternative accommodation.

(ii) In my opinion, even this argument is without any substance and does not raise any triable issue because it is not disputed that M/s Mehra Sons and M/s Bijli Carrier are in fact carrying on transportation business and they own various trucks and that the suit premises are pleaded to be required for joint purpose of residence of families and for commercial purposes, and as a result of which position over 20 rooms, halls etc are required (for both the purposes jointly) and therefore the existing available accommodation of two halls and two rooms is quite clearly grossly insufficient.

The very fact that the petitioner admits that the firm M/s Mehra Sons and M/s Bijli Carrier are decoy companies of M/s Amritsar Transport Company Pvt. Ltd. shows that in fact business of transport are being carried out by the sons of the respondent no.1 in the names of M/s Mehra Sons and M/s Bijli Carrier. Once transport business is being carried out by the sons of the respondent no.1, one has to also accept as correct that the trucks of the businesses would exist and various employees who work in the trucks and ply the trucks also would need accommodation whenever the trucks are at Delhi. It is thus not reasonable to expect that if accommodation is available with the respondent nos.1 to 5 herein, that the employees of the sons of the respondent no.1 should not have a roof over their head for their overnight stay at Delhi when they come with their trucks, including in the difficult rainy seasons and winter seasons.

(iii) Also, only one hall on the ground floor, in my opinion, is surely insufficient for the use as an office for the two businesses of M/s Mehra Sons and M/s Bijli Carrier because the ground floor hall is just about 400 sq. feet. If after all regular offices have to be run of two business of M/s Mehra Sons and M/s Bijli Carrier, then, they will require sufficient space for offices, rooms for meetings with customers, accounts section, rest section for

the employees, storage/godown space and various other related aspects of the transport businesses. Therefore, one hall on the ground floor of about 400 sq. feet is not sufficient. Also, the small hall of about 300 sq. feet on the first floor besides two rooms on the second floor are to be used for residential purposes and not commercial purposes. It is extremely relevant to note that the respondent nos.1 to 5 herein have categorically pleaded that they would be required for the purposes of the businesses to stay in the property because of the odd hours in the transport businesses with respect to the loading and unloading of trucks and therefore the existing vacant space available in the suit premises at the ground floor for commercial purposes has to be understood with the additional requirement for residential purpose of the family of the respondent nos.1 to 5 herein , and therefore, in my opinion it cannot be argued on behalf of the present petitioner that the residential and commercial needs of the families of the respondent nos.1 to 5 be split up/broken up merely because the tenancy of the present petitioner or the tenant and other sub-tenants are sought to be continued. The Additional Rent Controller, in this regard, has rightly observed that the family needs to stay together and these relevant observations in the impugned judgment dated 4.7.2014 are made in paras 29 to 33 and which paras read as under:-

“ 29. Petitioners no. 1 and 2 are widow landladies. Petitioner no. 1 has two sons and one daughter. Petitioner no. 2 has three daughters. All the children of petitioners are married and have families. Respondents have not disputed the aforesaid family status of petitioners. They have not raised the issue that there is some tussle or some strained relations between the family members of the petitioners. Therefore I had no ground to doubt the prima facie interest of petitioners, in trying to live together. Based on that premise, off and on visits of petitioner no. 1 to the rented house of her son in Delhi, was not something which can be doubted. In that situation, it was obvious that petitioner no. 1 felt the pinch of not getting sufficient accommodation in Delhi for her stay, despite having premises in question. Factum of insufficient rented accommodation of Rishibijli, was not disputed. Therefore the obvious corollary was that petitioner no. 1 had to stay in hotels, during her visits, as alleged by her and that give rise to her bonafide requirement of premises in question. Other petitioners, also visit Delhi and the problem faced by petitioner no. 1 is also faced by them, as per the contents of petition. That is no exception.

30. Linked with the aforesaid aspect is the fact that Rishibijli has to pay a very high rent for his rented accommodation. As per petitioners, he require seven rooms for his comfortable living, considering the family members of petitioners. The said factum cannot be doubted. Rishibijli is a family person and if he requires his business premises in close vicinity to his residence, then that by itself is a reasonable approach and cannot be criticized. One of the daughters of petitioner no. 1 is living with Rishibijli for completing her education and her presence has resulted in shrinking of space available with Rishibijli. For maintaining balance of family and business, if Rishibijli needs premises in question, then it is a reasonable approach.

31. Petitioner no. 1, petitioner no. 2 and son of petitioner no. 1 namely Gautam Mehra are residing in Amritsar, in a joint property and if they want to shift to premises in question, for residing, then it is not a doubtful fact. Coupled with the said aspect is the fact that other family members of petitioners can also meet at a common place, under a common roof. And that can best take place, if the said common roofs

is owned by petitioners. Therefore I found that so far as requirement of residence is concerned, there is a bonafide requirement among petitioners, qua the property in question.

32. Moving on to the business requirement, I found that both sons of petitioner no. 1 are employed in M/s. Amritsar Transport Company Pvt Ltd, and have attained experience, spanning over a decade. Both of them want to start their own business from the premises in question, which is present in an area which is hub of business activities. There is nothing strange about their objectives. Both of them, want to start transport business, in which they have attained experience for which they require space and premises in question offer them the same.

33. Petitioners are also doing business under the name and style of M/s. Mehra Sons and M/s. Bijli Carriers. Both the said businesses are related to plying of trucks for transporting goods from one place to other. The said business require space and is functional at odd hours. For meeting out the said requirements, premises in question, are best suited, as per the site plan and claim of petitioners. Respondents were not able to show that the said claim of petitioners was baseless. Viewed from this angle also, I found that there was bonafide need of petitioners, in claiming premises in question for doing their business activities. Moreover, son of the petitioners intend to shift to tenanted premises and also run their business from the said premises keeping in mind the odd hours of their line of business and their need to balance family with work, which is a vital right which cannot be denied to them merely because once upon a time the said tenanted premises was given on rent. Further, petitioners have categorically stated that neither they nor any member of their family dependent upon them is having any additional, suitable, residential or commercial space available in Delhi for the purpose of residence or business. Respondents have vaguely alleged that Sh. RishiBijli, son of petitioner no. 1 owns a house in which he was earlier staying as tenant in Greater Kailash, New Delhi but the respondent has failed to place on record any proof of the same. On the contrary, petitioners have filed registered lease deed in respect of

their house in Greater Kailash, which goes on to prove that Rishi Bijli is mere tenant and not owner of the said house.”

(iv) I completely adopt and accept the reasonings and conclusions given by the Additional Rent Controller in paras 29 to 33 of the impugned judgment.

14(i) The next argument which is urged on behalf of the petitioner is that the sons of the respondent no.1 are financially independent and therefore respondent no.1 cannot claim any accommodation for her sons.

(ii) This argument in my opinion need not detain me because now in a catena of judgments it has been held by the Supreme Court that merely because the children are financially independent, will not mean that they are not family members, and that it is settled law that a landlord/landlady even with respect to needs of their children who are financially independent can surely require accommodation for their family members. After all, when persons live in a society, surely it is most incongruous to hold that merely because children become financial independent, parents would not like to provide them with accommodation if and once the parents do have accommodation for the needs and requirements of their family members. This argument urged on behalf of the petitioner is also therefore rejected.

15. The next argument which was urged on behalf of the petitioner was with respect to the additional accommodation and that aspect I have already considered above because I have held that the need with respect to the residential and commercial needs in the facts of the present case have to be seen as a whole.

16(i) The next argument which is urged on behalf of the petitioner is that the suit premises are situated in a 'slum area' and therefore it would not be possible to expect that families of the respondent nos.1 to 5 will live in a 'slum area'.

(ii) The expression 'slum area' with respect to the specified areas in walled city of Delhi is only a misnomer because the Slum Areas (Improvement and Clearance), Act was passed in the year 1956 and today in the year 2014 really there are no slum areas in the walled city area of Delhi which has one of the most flourishing commercial and residential hubs in the entire country. Some of the richest people in the country live in the walled city of Delhi and also carry on their businesses from there. In fact, I have considered this aspect in the judgment in the case of *Yogindar Kumar Jaiswal and Ors. Vs. Shashibala and Ors.* in RC. REV. No.222/2014

decided on 4.9.2014, and the relevant portion of that judgment reads as under:-

“6. Also, the contention that the son Sh. Sunil Kumar with his family would not be interested in shifting to a ‘slum area’ is a misnomer because unfortunately most of the areas of the walled city of Delhi such as Chandni Chowk for some reason continued to be called ‘slum areas’ because of the Slum Areas (Improvement and Clearance) Act, 1956, whereas the ground reality is that probably some of the richest and the most financially influential people stay in the walled city of Delhi. Therefore, merely because only technically an area is classified as a slum area will not mean that the area in fact is an area where there are slums. It is therefore a complete misnomer for the petitioners to contend that the tenanted premises are in a slum area. To complete narration on this aspect it may be noted that lacs of people with their families stay in the walled city area of Delhi in huge buildings and which is hence not a slum area. The walled city area is in fact also a flourishing hub for all types of commercial activities.”

(iii) I therefore reject the argument that since the premises are situated in a ‘slum area’, the need of the respondent nos.1 to 5 cannot be said for the tenanted/suit premises to be *bonafide*.

17. The last argument urged on behalf of the petitioner was that since the respondent nos.1 to 5 have sold two shops therefore the eviction petition is not *bonafide*. This argument is also not a valid argument raising a triable issue because petitioners have stated in para 19(vi) in the eviction petition that two shops were sold on account of financial crisis and the same could not be used independently of the other portions, of the building in

question and hence the same were sold. In my opinion, mere selling of two shops, and that too more than three to five years before filing of eviction petition when a financial crisis was pleaded to exist (which is not disputed in the leave to defend application) and since also the two shops could not have been used independently of the other portions of the building which were/are required for the *bonafide* need, this aspect cannot create a triable issue for grant of leave to defend. Selling of the two shops, which have been sold for genuine reasons more than three to five years before filing of the eviction petition, cannot be held to be available alternative suitable accommodation for dismissing the present *bonafide* necessity eviction petition for the whole premises and for grant of leave to defend.

18. An extremely important aspect for dismissal of this petition is that before this Court on behalf of the petitioner no arguments were raised to counter the residential needs of the respondent nos.1 to 5 herein, and once there is a genuine residential need of the respondent nos.1 to 5 herein and especially for the family of the son of the respondent no.1 namely Sh. Rishibijli, and the ownership of the respondent nos.1 to 5 herein is co-ownership and the tenancy of the respondent no.6 herein is one conjoint tenancy, in law such a tenancy cannot be broken up for the convenience of

the tenant(s) for the tenant(s) to argue that even if there is a residential need for a substantial part of the premises, the eviction petition for *bonafide* necessity should not be decreed. Ordinarily and generally, subject of course to facts of a particular case, once there is established a *bonafide* need for a reasonable or substantial part of a tenanted premises, an eviction petition will have to be decreed. In my opinion, once there is found a *bonafide* need for a substantial part of the tenanted premises, merely because even for the sake of arguments, some other portion of the tenanted premises may assumedly remain vacant or unused, cannot mean that the *bonafide* necessity eviction petition cannot succeed. Therefore, once there is found to exist the residential requirement of at least 10 bedrooms alongwith requirement of drawing room, dining room, kitchen etc etc for the families of the respondents no. 1 to 5 herein to be satisfied from the tenanted premises, eviction has to follow with respect to the whole tenanted premises. In sum and substance there cannot be division of the tenanted premises once the landlord shows need with respect to the substantial part of the tenancy and considering the area available in the entire suit premises taken with the established residential needs of the respondent nos.1 to 5 herein, in my

opinion, this aspect itself is enough without anything further for dismissing of the leave to defend application.

19. In view of the above, there is no merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs.

RC. REV. No.342/2014 and C.M. Nos.17403-06/2014
RC. REV. No.344/2014 and C.M. Nos.17468-71/2014

20. Both the petitions will stand dismissed in view of the detailed reasoning given while dismissing RC. REV. No.347/2014.

VALMIKI J. MEHTA, J

OCTOBER 30, 2014
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