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

% Date of decision: 13.01.2017

\+ RC.REV. 525/2016
SUSHIL KUMAR ..... Petitioner
versus
RANJIT SINGH AHLUWALIA ..... Respondent

\+ RC.REV. 526/2016
SURINDER KUMAR JAIN ..... Petitioner
versus
RANJIT SINGH AHLUWALIA ..... Respondent

\+ RC.REV. 497/2016
SUNIL KUMAR & ANR ..... Petitioners
versus
RANJIT SINGH AHLUWALIA ..... Respondent

\+ RC.REV. 502/2016
AJAY KUMAR ..... Petitioner
versus
RANJIT SINGH AHLUWALIA ..... Respondent

\+ RC.REV. 503/2016
DWARKA NATH KOCHAR ..... Petitioner
versus
RANJIT SINGH AHLUWALIA ..... Respondent

\+ RC.REV. 505/2016
SUNIL KUMAR ..... Petitioner
versus
RANJIT SINGH AHLUWALIA ..... Respondent

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By:AMULYA

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\+ RC.REV. 506/2016
AMAR NATH & ANR ..... Petitioner
versus
RANJIT SINGH AHLUWALIA ..... Respondent

\+ RC.REV. 591/2016
NARESH GOSWAMI ..... Petitioner
versus
RANJIT SINGH AHLUWALIA ..... Respondent

Present: Mr.Saurabh Sharma, Advocate for the petitioner in RC.REV. 525/2016 and RC.REV. 526/2016.
Mr.RajeevVerma, Advocate for the petitioner in RC.REV. Nos.497/2016, 502/2016, 503/2016, 505/2016, 506/2016 and 591/2016.
Mr.Prateek Jain, Advocate for the respondent in all cases.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present petitions are filed by the petitioner/Tenant under Section 25(8) of the Delhi Rent Control Act (hereinafter referred to as the 'DRC Act') seeking to impugn the order of eviction passed by the Additional Rent Controller (hereinafter referred to as the 'ARC') dated 19.7.2016 under Section 14(1)(e) of the DRC Act.

2. The respondent/landlord has filed eight different eviction petitions for eviction of 13 shops excluding tenants of two shops who have given undertaking to vacate the premises. Shop No. 12 has been vacated by the tenant and is said to be under the possession of the respondent. The facts in issue raised are identical in all the eight appeals. Hence the present appeals are disposed of by a common order. For the sake of convenience, the facts in

the RC Rev.525/2016 titled *Sushil Kumar v. Ranjit Singh Ahluwalia* have been narrated in the present order.

3. The respondent/landlord filed an eviction petition for shop No.16 measuring 6'13" x 11' situated on the ground floor, property No. IX/1232, Subhash Nagar Road (Multani Mohalla), Gandhi Nagar, Delhi-31.

4. It was averred by the respondent in the petition that he is a 68 year old and staying in the same premises on the second floor. He is a retired government servant and is a Hypertensive and is a patient of tensorial Meningioma (Brain Tumor). It was further urged that his wife is of 58 years and suffering from acute Asthma and is regularly under medical treatment. Hence, it is urged that the respondent and his wife are not in a position to climb the stairs because of their old age and so they need the premises for their residence. Reference is also made to their unmarried daughter Ms. Bhawna who is said to be permanently physically handicapped who is a patient of "SpA" which is said to be a painful progressive disease. It is further stated that the petitioner is a tenant of three shops of the adjacent premises which are owned by another landlord. It is urged that the present tenanted premises is lying locked since inception of the tenancy and there is no electricity as well. It is pointed out that the respondent/landlord has 16 shops on the ground floor and has filed eight different eviction petitions for eviction of 13 shops excluding the tenants of two shops who have given an undertaking to vacate the premises. Shop No.12 has been vacated by the tenant and is said to be under the possession of the respondent.

5. The petitioner has filed his application seeking leave to defend and raise various pleas. Some of the salient pleas taken before the ARC by the petitioner are as follows:-

(i) The respondent and his family members are of normal health taking walk for about 1 or 2 hours daily. He can easily climb the stairs. It is further stated that his daughter is an advocate by profession and is doing her professional work regularly and that the only object of filing the petition is to pressurise the petitioner to pay higher rent.

(ii) The projected requirement for use of the daughter is said to be false as the daughter is said to be well settled and independent.

(iii) The respondents have other properties in their names as well as the benami properties in the name of their dear and near ones.

(iv) There are 16 shops also on the first floor of the premises. The respondent has made no attempt to have these 16 shops vacated.

6. The ARC by the impugned order noted the submissions of the petitioner that the area is a commercial area and the respondent cannot stay in the said area as it takes 30 minutes to even park a vehicle in the suit property. The plea was obviously rejected as the respondent-landlord is presently residing on the second floor of the same building and there is no reason why he cannot reside on the ground floor. The order further noted that it is not for the tenant to dictate the terms to the landlord as to how and in what manner he has to adjust himself.

The ARC also noted the contention of the petitioner that eviction is not being sought from any of the tenants on the first floor because he is said to be earning good rent from there. The ARC held that the reason why the respondent filed the eviction petition is that the respondent wants to shift on the ground floor on account of his old age and other ailments. Hence, no

purpose is served by seeking eviction of the shops on the first floor. It also noted the contention of the petitioner that the respondent has not filed any sanction plan or design of architect as to how 16 shops on the ground floor are to be converted into a residential property. This contention of the petitioner was categorically rejected inasmuch at the stage of filing of the eviction petition, the landlord does not know as to whether the building would be available to him for construction/renovation and that it was highly pre-mature for the landlord to get a plan prepared. The plea about the daughter not being ill was also rejected keeping in view the medical certificates attached. The impugned order accordingly rejected the contentions of the petitioner and dismissed the application for leave to defend and passed an eviction order against the petitioner.

7. I have heard the learned counsel for the parities. Learned counsel appearing for the petitioner has raised the following pleas to substantiate his contention that the ARC has wrongly dismissed his application for grant of leave to defend the petition and that the application should have been allowed.

(i) It was urged that the respondent has an alternate accommodation at 11/96, Geeta Colony on the first floor and second floor. The Title papers to this property have been filed by the respondent. The colony has a better location and is appropriately suited for residential purposes whereas the tenanted premises are in a clustered commercial area and are not suited for residential purposes.

(ii) The respondent in 2005 bought a property at A-6, New Gobindpura, Delhi. The property was sold in 2010 and the present eviction petition has been filed in 2014. Hence, it is clear that there is

no bonafide requirement on medical grounds as the respondent could have shifted into this property in case he has genuine reasons to do so.

(iii) Report has been filed by the engineer/architect that without demolition of the entire property the same cannot be converted into residence. It was urged that the ARC has not dealt with this submission

(iv) The entire property is commercial and is most unsuitable for residential purpose. There is no bona fide in the plea of the respondent.

(v) The daughter of the respondent was married on 16.9.2016 hence there is no requirement existing on her behalf presently.

8. I may first see the scope of the present petition. The Supreme Court in ***Shiv Sarup Gupta vs. Dr.Mahesh Chand Gupta, (1999) 6 SCC 222/(MANU/SC/0132/1999)*** described the revisional powers of this court as follows:-

> "11..... The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the CPC. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to Sub-section (8) of Section 25B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is according to

law'. The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law'. For that limited purpose it may enter into re-appraisal 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..."

9. Hence, this court is to test the order of the ARC to see whether it is according to law, and whether the conclusions are not wholly unreasonable.

10. Section 14(1)(e) of the DRC Act reads as follows:

"**14.Protection of tenant against eviction.-** (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

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(e) that the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he

> is the owner thereof, or for any person for whose benefit the premises are held and the landlord or such person has no other reasonably suitable residential accommodation."

The above provisions would in view of the judgment of the Supreme Court in ***Satyawati Sharma(dead) by LRs vs. Union of India & Anr., AIR 2008 SC 3148*** apply to commercial premises also.

11. The essential ingredients which a landlord/respondent is required to show for the purpose of getting an eviction order for bona fide needs are (i) the respondent is the owner/landlord of the suit premises (ii) the suit premises are required bona fide by the landlord for himself and any of his family members dependent upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

12. In the present case the trial court declined to grant leave to defend to the petitioner. The parameters for granting leave to defend are well known.

13. The Supreme Court in ***Precision Steel & Engineering Works and Another vs. Prem Deva Niranjan Deva Tayal, AIR 1982 SC 1518*** in para 22 held as follows:-

> 22. What then follows. The Controller has to confine himself indisputably to the condition prescribed for exercise of jurisdiction in Sub-section (5) of Section 25B. In other words, he must confine himself to the affidavit filed by the tenant. If the affidavit discloses such facts-no proof is needed at the stage, which would disentitle the plaintiff from seeking possession, the mere disclosure of such facts must be held sufficient to grant 'leave because the statute says on disclosure of such facts the Controller shall grant leave'. It is difficult to be exhaustive as to what such facts could be but ordinarily when an action is brought under

Section 14(1) proviso (e) of the Act whereby the landlord seeks to recover possession on the ground of bona fide personal requirement if the tenant alleges such facts as that the landlord has other accommodation in his possession; that the landlord has in his possession accommodation which is sufficient for him; that the conduct of the landlord discloses avarice for increasing rent by threatening eviction; that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself; that the dependents of the landlord for whose benefit also possession is sought are not persons to whom in eye of law the landlord was bound to provide accommodation; that the past conduct of the landlord is such as would disentitle him to the relief of possession; that the landlord who claims possession for his personal requirement has not cared to approach the Court in person though he could have without the slightest inconvenience approached in person and with a view to shielding himself from cross-examination prosecutes litigation through an agent called a constituted attorney. These and several other relevant but inexhaustible facts when disclosed should ordinarily be deemed to be sufficient to grant leave."

14. This court in the case of ***Sarwan Dass Bange vs. Ram Prakash, MANU/DE/0204/2010*** noted as follows:-

"7. The Controller has not discussed as to how the pleas raised by the respondent/tenant in the application for leave to defend are such which if established by adducing evidence would disentitle the petitioner/landlord of an order of eviction under Section 14(1)(e) of the Act. Ordinarily, when a tenant approaches an advocate for drafting a leave to defend application, the advocate, using his legal acumen would dispute each and every plea of the landlord in the eviction petition.

> However, merely because the tenant so disputes and controverts the pleas of the landlord does not imply that the provision of summary procedure introduced in the Act with respect to ground of eviction on the ground of requirement is to be set at naught. The Controller is required to sift/comb through the application for leave to defend and the affidavit filed therewith and to see whether the tenant has given any facts/particulars which require to be established by evidence and which if established would disentitle the landlord from an order of eviction. The test is not of the tenant having controverted/denied the claim of the landlord and thus disputed questions of fact arising; the test is to examine the pleas of facts and then to determine the impact thereof."

15. I will now deal with the contention of the learned counsel for the petitioner. As far as the contention of the respondent having a property at Geeta Colony is concerned it is clear that no such plea has been raised in the application for leave to defend. Be that as it may, it is clear that the property admittedly comprises the first and second floor. What the respondent has projected is that on account of his old age and medical requirements he wishes to shift to the ground floor. Hence, the property at Geeta Colony cannot be said to be suitable alternative accommodation. Even otherwise, the respondent is residing in the same building on the second floor and would obviously be comfortable and well-adjusted to the environment and the surroundings of the area and would not like to shift to a new area in his old age. The plea that the existence of this property is an alternative accommodation available is completely without merit.

16. The next plea which is raised by the petitioner pertains to the property at New Gobindpura which was allegedly bought in 2005 and sold in 2010 by

the respondent. The eviction petition was filed four years later in 2014. As to how this sale transaction has a co-relation with the present petition is not clear. The property was not sold contemporaneously with filing of the eviction petition. It cannot be pleaded that there was any attempt to create an artificial demand for the need of the tenanted premises as the property was sold four years ago. The plea is without any basis and has no merit.

17. The next plea that is raised is about the report of the engineer/architect. It is an admitted fact that no such plea has been raised by the petitioner in his application for leave to defend. The respondent has explained in their pleadings that the property is built on pillars and demolition would not be required. The plea is even otherwise mis-conceived as the respondent is already residing on the second floor of the property. There is no reason as to why he would not be able to make himself comfortable on the ground floor taking into account the nature of the building.

18. The next plea of the petitioner that the daughter of the respondent has got married in 2016 is of no consequence. The property was required bona fide for the residence of the respondent, his wife and his daughter. Even if his daughter has got married, then, the requirement of the respondent and his wife will continue to exist. It does not affect the pleas of the respondent regarding bona fide requirement.

19. The other contentions of the petitioner are absolutely without merit.

20. In ***Prativa Devi (Smt.) v. T.V. Krishnan, (1996) 5 SCC 353,*** it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate the landlord as to how and in what manner he should live or to prescribe for him a residential standard of their own. The bona fide

personal need is a question of fact and should not be normally interfered with. The court held as follows:

> "2. ..... The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court is rather solicitous about the age of the appellant and thinks that because of her age she needs to be looked after. Now, that is a lookout of the appellant and not of the High Court. We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property. We accordingly reverse the finding reached by the High Court and restore that of the Rent Controller that the appellant had established her bona fide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances."

21. In ***G.C. Kapoor Vs. Nand Kumar Bhasin, AIR 2002 SC 200,*** the Supreme Court noted as follows:

> "It is settled position of law that bonafide requirement means that requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In Dattatraya Laxman Kamble v. Abdul Rasul Moulali Kotkunde and Anr.: [1999] 2 SCR 912, this Court while considering the bonafide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not bonafide'. It was also held that while deciding this question. Court would look into the broad aspects and if the Courts feels any doubt about bonafide requirement, it is for the landlord to clear such doubt."

22. In my opinion, the ARC has rightly noted that the respondent is already residing in the same building on the second floor since long. There is no reason for him, for the sake of convenience of the petitioner, to shift to another locality, as has been sought to be argued.

23. There are no reasons put across to doubt the bona fide of the respondent. He is 68 years old with various ailments. His wife is 58 years old and also suffering from various ailments. Their need to shift to the ground floor cannot be doubted.

24. The petitioner has failed to disclose the facts or particulars which would require to be established by evidence and which, if established, would disentitle the landlord for an order of eviction.

25. There is no merit in the present petition. There are no reasons to interfere in the impugned order. The same is dismissed.

(JAYANT NATH)
JUDGE

JANUARY 13, 2017/n

Corrected and signed on
June 05, 2017