

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

+ **RC.REV. 217/2014**

%

Reserved on: 22nd April, 2015
Decided on: 30th June, 2015

KRANTI KUMAR PARAKH Petitioner
Through Mr. Tanmay Mehta with Mr. Pulkit
Aggarwal, Advs.
versus

M/S ANNRAJ NARAIN DASS & ORS Respondent
Through Mr. Lalit Gupta with Mr. Ashish
Kumar, Advs.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Aggrieved by the order dated 21st April, 2014 whereby the eviction petition filed by the petitioner under Section 14(1)(e) read with Section 25B of the Delhi Rent Control Act, 1958 (in short the DRC Act) was dismissed, the petitioner prefers the present petition.

2. Petitioner Kranti Kumar Parakh filed an eviction petition against the tenants M/s. Annraj Narain Dass & Ors. and Sukhraj Kumar Kochar through their legal heirs Kirti Kochar and Kishore Kochar being owner and landlord of the property on the ground of bonafide requirement of his own. In the eviction petition it was stated that the suit property i.e H.No. 944, Ward No.V, Maliwara, Delhi-06 was partitioned among the two owners i.e. Kundan Lal and Kunju Mal sons of Shadi Lal in the year 1946. Kundan Lal

was survived by the eviction petitioner Kranti Kumar Parakh and Kunju Mal by his daughter Smt. Indira Rani Bhandari. Thus after the death of their respective fathers Kranti Kumar Parakh and Indira Rani Bhandari became the sole successors and owners of the suit property which was with Kundan Lal and Kunju Mal respectively. The suit property had been let out to the respondent/tenants for the residence of their visiting outstation customers as the respondents were cloth merchant (Aadti) and their outstation customers used to stay in the tenanted premises at night. The first and second floor of the suit premises were in occupation of Kranti Kumar. As the property had weakened due to old structure, temporary supports were provided. Since it was unsafe to live in the said premises, Kranti Kumar shifted to the present address at Hauz Khas. The tenanted premises comprised of a hall with pillars in middle, rooms, store together with common use toilet on the ground floor in the suit property. Kranti Kumar having no other suitable residential accommodation in the Maliwara vicinity where he has lived for years wanted the property for himself. Kranti Kumar has been running the business of trading in stones and jewellery on the first floor of the suit property but because of his age he cannot climb stairs. He has two sons Lalit Parakh and Sunit Parakh, both of whom have been living separately in their properties and Kranti Kumar has no share in the said properties. Further the relationship between Kranti Kumar's wife and daughter-in-laws were not cordial and Kranti Kumar and his wife were desirous to live in their own house particularly on the ground floor after proper renovation/repair.

3. After leave to defend was granted written statement was filed by the respondents. In the written statement the landlord-tenant relationship was denied on the ground that the respondents were tenants of M/s. Shadi Ram

Kundan Lal and the receipt of payment of rent was also issued in the name of M/s. Shadi Ram Kundan Lal. Kranti Kumar Parakh has nowhere disclosed how he was connected with M/s. Shadi Ram Kundan Lal. The premises was let out for commercial purpose and had been used for commercial purpose since its inception. It was denied that the premises was lying locked. The site plan was also denied. The factum of suit property being partitioned between the two co-owners i.e. Kundan Lal and Kunju Mal was also denied. Kranti Kumar having inherited the property from Kundan Lal was also denied. It is stated that the entire property bearing No. 944, Maliwara was let out to M/s. Annraj Narain Dass more than 70 years ago for commercial purpose. In or about 1946 there was a partition of the property with the result a portion of the property fell to the share of father of Smt. Indira Rani Bhandari and another portion of property fell to the share of M/s. Shadi Ram Kundan Lal. At the request of M/s. Shadi Ram Kundan Lal the respondents surrendered the tenancy right in respect of first floor and second floor in their favour. Similarly at the request of father of Smt. Indira Rani Bhandari the respondents surrendered a portion on first floor and entire floor. The respondents thus continued to be the tenants of M/s. Shadi Ram Kundan Lal in respect of the ground floor portion only and of Smt. Indira Rani Bhandari in respect of portion of ground floor and a portion of the first floor of the suit property. The entire building was being used entirely for commercial purpose and even after surrender of the premises the purpose of letting remained commercial. Shri Annraj was a permanent resident of 1374, Gali Lehswa, Chandni Chowk, Delhi even prior to the letting out of building and he continued to reside at the said address till his death. The respondent No.2 always resided at the said house at Gali Lehswa up to 1995 where after

they shifted to C-3/73-74, Rajasthali Apartments, Pitampura. Shri Narain Dass was a permanent resident of Jaipur and whenever he used to come to Delhi, he used to stay with respondent No.2 and his father at Gali Lehswa, Chandni Chowk till his death. The premises in dispute were fitted at one time with two electric connections which were non-domestic/commercial, one of which is still working. When the premises which were in the tenancy of the respondents under Smt. Indira Rani Bhandari was vacated, the other connection is thus mainly used for those purposes got disconnected by the respondent. There were changes in the partnership of M/s. Annraj Narain Dass from time to time. Smt. Indira Rani Bhandari filed an eviction petition against respondents under Section 14(d) of the DRC Act wherein she mentioned that the premises was residential-cum-non-residential. Respondents have been carrying on the business as wholesale dealers in cloth and also as commission Agents for which they had obtained a license on 1st September, 1952 which remained in force up to 31st June, 1955. The tenanted premises is purely commercial and is being used as such. It is denied that the property was unsafe or requires re-construction or that the old structure had weakened. It was stated that Kranti Kumar shifted to the present address at Hauz Khas to his son's house and thus he has no requirement to live in the tenanted premises. Kranti Kumar has let out the first floor and second floor to one Sohan Lal who is residing therein along with his family. Wife of Kranti Kumar died during the pendency of the eviction petition. It was denied that Kranti Kumar was aged or could not climb the stairs. Kranti Kumar and his wife had been residing at Hauz Khas with their daughter-in-law right from their shifting to Hauz Khas twelve years ago and the relations between the wife and daughter-in-law of Kranti

Kumar were cordial. Kranti Kumar has a common mess at Hauz Khas along with his two sons. Considering the status of Kranti Kumar he cannot reside in the tenanted premises. Kranti Kumar is only interested in selling the suit property after getting the same vacated. Kranti Kumar was carrying on the business of jewellery from Aurbindo Place Market, Green Park along with his son under the name and style of Kesar Jewellers. On the same lines evidence by way of affidavit of Kranti Kumar, Kirti Kochar and Kishore Kochar were filed and evidence was led by the parties.

4. The learned ARC vide the impugned order held that the landlord tenant relationship was not established because the rent receipts were in the name of M/s. Shadi Ram Kundan Lal and not Kranti Kumar. Further the fact that the first floor and second floor of suit property which were in possession of Kranti Kumar were uninhabitable has not been proved by leading any cogent evidence except a document Ex.AW-1/3 which is a letter dated 30th May, 2002 written to the various Government authorities which in itself cannot give rise to a presumption with respect to the dilapidated condition of the said floor. Kranti Kumar led no evidence to counter the stand of the respondent that the first floor and second floor of the premises had been let out to one Sohan Lal and the simple assertion that Sohan Lal was a caretaker of the petitioner cannot be accepted as Sohan Lal has not been brought in the witness box. Kranti Kumar failed to examine either his sons or his daughter-in-law to show that the relations were not cordial and at this advance age of 76 years when his wife had also expired during the pendency of the petition, he wants to live alone. Hence the eviction petition was dismissed.

5. Learned counsel for the petitioner contends that the findings of the learned ARC are illegal and perverse. It failed to notice the admission of the

respondents qua the landlord-tenant relationship which was the best evidence. Further on the same evidence, eviction of the premises which fell to the share of Indira Rani Bhandari has been directed. In a parallel proceedings of a suit, the respondent admitted the landlord tenant relationship. It is admitted that Kranti Kumar is the grandson of Shadi Lal, thus eviction petitioner was admittedly a co-owner and could have instituted the eviction petition. Further Kranti Kumar led evidence of ownership by filing the sale deed Ex.PW-2/1, relinquishment deeds by his sister and the rent receipts bear the name of Shadi Ram Kundan Lal who are grand-father and father of Kranti Kumar. All receipts were signed by Kranti Kumar. Under Section 106 of the Evidence Act onus was on the respondent to show who was the landlord of the premises. The requirement of the petitioner to go back to the suit property where he lived his life substantially and to his roots at the fag end of life cannot be said to be not bonafide. The property is residential in nature and even if commercial activity is going on in view of the decision in Satyawati Sharma Vs. Union of India AIR 2008 SC 3148, Kranti Kumar can seek the eviction thereof for bonafide residential requirement. The sale deed of the property B-1/44 Hauz Khas was in the name of Lalit Parakh, the son of Kranti Kumar, which has not been controverted and hence Kranti Kumar has no right on the said property. Learned ARC has wrongly raised an adverse inference for non-examining the daughter-in-law. Further the respondents claimed that Sohan Lal was tenant and thus onus to prove the same was on the respondents and not on the petitioner hence the impugned order be set aside. Reliance is placed on Prativa Devi Vs. T.V. Krishnan (1996) 5 SCC 353 to contend that the

landlord is the best Judge of his requirement and the same cannot be dictated by the tenant.

6. Learned counsel for the respondents contends that the tenanted premises is a hall with common toilet on the ground floor of the suit property. It is an 80 year old construction which was let out for commercial purposes. The decision in Satyawati Sharma (supra) was rendered in the year 2008 whereas the eviction petition was filed on 28th August, 2006 and hence the said decision is not applicable to the present eviction petition. It is the case of Kranti Kumar that the first floor and second floor of the premises were unsafe for living and hence only a petition under Section 14(1)(g) of the DRC Act was maintainable and not under Section 14(1)(e) DRC Act as filed. Kranti Kumar claimed himself to be the exclusive owner in the eviction petition filed on 28th August, 2006 whereas the relinquishment deed by the sisters is dated 21st July, 2011 and thus the claim of being sole owner at the time of filing of eviction petition was false. Since 1996 Kranti Kumar along with entire family has shifted to Hauz Khas and is continuously sitting at a shop at Aurobindo Place Market and the eviction petition was filed only in the year 2006. Since the best evidence was withheld by the petitioner by not producing Sohan Lal whom he claimed as caretaker an adverse inference is required to be drawn under Section 114(g) Evidence Act against the petitioner and not respondents. In view of the social status of Kranti Kumar he would not be living in a house in such a narrow lane. The sons of Kranti Kumar have not been examined to show that he was not working at Kesar Jewellers or that he will live alone at the suit property. On the one hand Kranti Kumar claims the relationship to be not cordial and on the other hand he wants to shift so that the entire family including dependents also come

there. Rent receipts were issued in the name of M/s. Shadi Ram Kundan Lal who were the landlords. Kranti Kumar in his cross-examination admitted that he was not carrying out any business from the first floor. Relying upon Sarla Ahuja Vs. United India Insurance Company Ltd. AIR 1999 SC 100 and Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif & Ors. AIR 1968 SC 1418 it is stated that the best evidence having been withheld adverse inference was rightly drawn by the learned ARC. The impugned judgment is neither perverse nor illegal and even if two views are possible on the facts of the case then the Court cannot modify the same in a revision petition.

7. I have heard learned counsel for the parties. Before advertng to the facts of this case it would be relevant to note the legal position with regard to interference by this Court in revisional jurisdiction. The Constitution Bench of the Supreme Court in Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh AIR 2014 SC 3708 held:

“32. Insofar as the three-Judge Bench decision of this Court in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] is concerned, it rightly observes that revisional power is subject to well-known limitations inherent in all the revisional jurisdictions and the matter essentially turns on the language of the statute investing the jurisdiction. We do not think that there can ever be objection to the above statement. The controversy centres round the following observation in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131], “... that jurisdiction enables the court of revision, in appropriate cases, to examine the correctness of the findings of facts also....” It is suggested that by observing so, the three-Judge Bench in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] has enabled the High Court to interfere with the findings of fact by reappreciating the evidence. We do not think that the three-Judge Bench has gone to that extent in Ram Dass [Ram

Dass v. Ishwar Chander, (1988) 3 SCC 131]. The observation in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] that as the expression used conferring revisional jurisdiction is “legality and propriety”, the High Court has wider jurisdiction obviously means that the power of revision vested in the High Court in the statute is wider than the power conferred on it under Section 115 of the Code of Civil Procedure; it is not confined to the jurisdictional error alone. However, in dealing with the findings of fact, the examination of findings of fact by the High Court is limited to satisfy itself that the decision is “according to law”. This is expressly stated in Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131]. Whether or not a finding of fact recorded by the subordinate court/tribunal is according to law, is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice. Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] does not lay down as a proposition of law that the revisional power of the High Court under the Rent Control Act is as wide as that of the appellate court or the appellate authority or such power is coextensive with that of the appellate authority or that the concluded finding of fact recorded by the original authority or the appellate authority can be interfered with by the High Court by reappreciating evidence because Revisional Court/authority is not in agreement with the finding of fact recorded by the court/authority below. Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] does not exposit that the revisional power conferred upon the High Court is as wide as an appellate power to reappraise or reassess the evidence for coming to a different finding contrary to the finding recorded by the court/authority below. Rather, it emphasises that while examining the correctness of findings of fact, the Revisional Court is not

the second court of first appeal. Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] does not cross the limits of Revisional Court as explained in Dattonpant [Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval, (1975) 2 SCC 246] .

33. Rai Chand Jain [Rai Chand Jain v. Chandra Kanta Khosla, (1991) 1 SCC 422] that follows Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] also does not lay down that the High Court in exercise of its power under the Rent Control Act may reverse the findings of fact merely because on reappreciation of the evidence it has a different view on the findings of fact. The observations made by this Court in Rai Chand Jain [Rai Chand Jain v. Chandra Kanta Khosla, (1991) 1 SCC 422] must also be read in the context we have explained Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131].

34. In Shiv Sarup Gupta [Shiv Sarup Gupta v. Mahesh Chand Gupta, (1999) 6 SCC 222] , the observations of this Court with reference to revisional jurisdiction of the High Court under the Delhi Rent Control Act that the High Court, on the touchstone of “whether it is according to law” and for that limited purpose, may enter into reappraisal of evidence must be understood in the context of its observations made preceding such observation that the High Court cannot enter into appreciation or reappreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts and the observations following such observation that the evidence is examined by the High Court to find out whether the court/authority below has ignored the evidence or proceeded on a wrong premise of law or derived such conclusion from the established facts which betray lack of reasons and/or objectivity which renders the finding not according to law. Shiv Sarup Gupta [Shiv Sarup Gupta v. Mahesh Chand Gupta, (1999) 6 SCC 222] also does not lay down the proposition of law that in its revisional jurisdiction under the Rent Control Act, the High

Court can rehear on facts or reappreciate the evidence to come to the conclusion different from that of the trial court or the appellate court because it has a different view on appreciation of evidence. Shiv Sarup Gupta [Shiv Sarup Gupta v. Mahesh Chand Gupta, (1999) 6 SCC 222] must also be understood in the context we have explained Ram Dass [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131].”

8. The eviction petition has been largely dismissed on the ground that the landlord tenant relationship was not established. Learned counsel for the petitioner has placed reliance on the admissions of the respondents in the various proceedings. In suit No. 947/10 filed by the respondents M/s. Annraj Narain Dass through its partners Sukhraj Kumar Kochar, Deepak Raj, Uttam Chand, Kirti Kumar Kochar and Sunita Kochar against Indira Rani Bhandari seeking permanent and mandatory injunction in Para 2 the respondents stated:

“2. That the defendant is the present landlady of half of the premises bearing No. 944, Maliwara, Delhi-110006 comprising of two rooms, three stores, three dalans and one common bath on the ground floor and one room, one store, two dalans with common passage of stairs leading to first floor. The open Court yard at ground floor is for the common use of the plaintiffs and the defendant. The rest of the portion of the ground floor is still with the plaintiffs who are the tenants of Shri Kranti Kumar who is co-owner of the half of the premises bearing No. 944, Maliwara, Delhi.

3. That whole of the aforesaid property was let out for commercial purpose at one time by Shri Kunji Mal and Shri Kundan Lal Ji which was subsequently partitioned and later on premises came to the present defendant and Shri Kranti Kumar. The area is predominantly commercial and the same is being used since 1930 for commercial purposes only. The rent receipts are annexed herewith.”

9. The above noted pleadings in the Suit No. 947/10 were exhibited as Ex-R-2/P-1. Further in the said Suit No. 947/10 statement of Sukhraj partner of the respondent and father of Kirti Kumar Kochar was recorded which was exhibited as Ex.RW-1/P-2. In the said statement on oath Sukhraj Kochar stated:

“The entire property 943-44 was owned by three brothers namely L.Jangli, Shri Kundan Lal, Shri Kunju Mal. The year 1943-44 there was partition of the properties and property No. 943 came to the share of L.Jangli Mal Ji. Property No. 944 came to the share of the other two brothers namely Shri Kundan Lal and Shri Kunju Mal. Property No. 943 is being used for commercial purpose only. The left side portion of property 944 is now in the ownership of Shri Kundan Lal and right side portion of the property is now in the ownership of Shri Kunju Mal. However, the staircase, entry gate, latrine and open courtyard is common. After the said partition, my father surrendered a portion of first floor and second floor to Shri Kundan Lal. We became tenant of ground floor and a portion of first floor which came to the share of Shri Kunju Mal and is started paying rent to him. My father used to pay rent of the left portion to Shri Kundan Lal.”

10. Further in the evidence recorded by the learned ARC in the present eviction petition Kirti Kumar Kochar S/o Sukhraj appearing as RW-1 admitted the recording of his statement as noted above and that Shadi Ram was the owner of the suit property which was later inherited by his two sons and that the portion shown bounded red in Ex.AW-1/1 came to the share of Kundan Lal and yellow portion to the share of Kunju Mal. It was further admitted that Kundan Lal had expired and Kranti Kumar Parakh the petitioner was the only son of Kundan Lal. However, he did not remember the names of the daughters of Kundan Lal. Even Kishore Kocher S/o

Sukhraj appearing as RW-2 in his statement recorded in the present eviction petition before the learned ARC admitted that Shadi Ram was the father of Kunju Mal and Kundan Lal. He also admitted the certified copy of the judgment in the earlier suit No.947/10 against Indira Rani and also his statement Ex.RW-1/P-2 which bore his signatures. The petitioner had also exhibited the sale deed of the suit property in favour of his grand-father vide Ex.RW-1/P-1 which was in Urdu.

11. In Nagindas Ramdas Vs. Dalaptram Ichharam (1974) 1 SCC 242 the Supreme Court held the judicial admissions are the best evidence and stand on a much higher footing than the evidentiary admissions. It was held:

“Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.”

12. It is thus apparent that there is ample admission of the respondents that the tenanted premises fell to the share of Kundan Lal and Kranti Kumar, the eviction petitioner, was the only son of Kundan Lal. Thus the respondents have clearly admitted that the eviction petitioner is the co-owner of the tenanted premises having inherited the same from Kundan Lal. The learned ARC committed gross illegality in ignoring these vital admissions on the part of the respondents which included the suit filed by the respondents,

statement of late Sukhraj Kumar Kochar which was exhibited by both Kirti Kochar and Kishore Kochar and the further admission of Kirti Kochar in the earlier suit proceedings. For returning a finding that the landlord tenant relationship was not proved the learned ARC relied solely on the rent receipts which were in the name of M/s. Shadi Ram Kundan Lal and that there was no explanation or documentary proof that Shri Shadi Ram was the grand-father of Kranti Kumar and that the water bills and electricity bills were in the name of Kundan Lal and Shadi Ram ignoring vital admissions of respondents on record.

13. As regards non-examination of Sohan Lal whom the respondents stated to be the tenant, no material was placed by the respondents for this claim. Section 101 of the Evidence Act provides that onus to prove a fact is on the party who asserts it. The assertion was of the respondents that Sohan Lal is a tenant and except a bald averment no material was placed. As against, the petitioner replied that Sohan Lal was only a caretaker looking after the property and his family did not reside in the suit property. Since the assertion of Sohan Lal being a tenant was of the respondents an adverse inference could not be drawn against the petitioner for non-examining Sohan Lal. Only after the respondents would have led evidence to show that prima facie Sohan Lal was tenant for which they were granted leave to defend, the onus to disapprove the fact that Sohan Lal was not a tenant but a caretaker would have fallen on the petitioner. Thus the adverse inference drawn by the learned ARC on this count is erroneous.

14. Learned counsel for the respondents has strenuously argued that though in the petition Kranti Kumar stated that he was the sole owner of the property and not co-owner i.e. the claim was of exclusive ownership on 28th

August, 2006 however the relinquishment deeds were executed on 21st July, 2011. The fact that the relinquishment deeds were executed subsequent to the filing of the eviction petition would not lead to the inference that the legal heirs of late Kundan Lal did not consider Kranti Parakh as the sole and exclusive owner of the property. Further it is trite law that a co-owner can also maintain an eviction petition. As noted above, the respondents have admitted that the suit property fell to the share of Kundan Lal and Kranti Kumar was his son. Thus it is admitted by respondents that after the death of Kundan Lal, suit property devolved on Kranti Kumar as a co-owner.

15. The contention of learned counsel for the respondents that since the eviction petition was filed on 28th August, 2006 and the decision in Satyawati Sharma (supra) was rendered in the year 2008 the same was not applicable deserves to be rejected. Satyawati Sharma is a judgment declaring the law that the provision of Section 14(1)(e) DRC confining its applicability to residential premises only was null and void. The same would thus apply to even petitions pending for trial. This issue came up for consideration before this Court in Satnam Kaur & Ors. Vs. Ashlar Stores (P) Ltd. 158 (2009) DLT 62 wherein dealing with a similar submission it was held:

“13. In my view, the Hon’ble Supreme Court has nowhere stipulated that its judgment is prospective in nature. In fact, it is settled law that Courts only declare and not make law. Consequently, declaration of law can never be prospective. The only exception is that the Supreme Court in exercise of its powers under Article 142 of Constitution may prospectively either overrule its own judgment or give effect to its own judgment. In the present instance, the Hon’ble Supreme Court has not stated that its interpretation of Section

14(1)(e) will apply prospectively. Consequently, this submission of petitioners is also untenable in law.”

16. The contention of learned counsel for the petitioner that only an eviction petition under Section 14(1)(g) of the DRC Act was maintainable in view of the assertion that the first floor and second floor of the suit property was unsafe and dilapidated for which reason Kranti Kumar had to shift to Hauz Khas cannot be permitted to be taken at this stage as no such plea was taken before the learned ARC in the written statement or evidence by way of affidavit filed by the respondents. It is well settled that in revisional jurisdiction the Court is required to look into the pleas taken before the trial Court and the other party cannot be taken by surprise to deal with an issue which was never raised before the trial Court and thus no factual foundation is laid down.

17. As regards the bonafide requirement even if it is presumed that the petitioner was living with his family and the relations between the parties were cordial the desire of a person to go back to his roots and settle therein cannot be said to be not bonafide or malafide. Supreme Court in Atma S. Berar Vs. Mukhtiar Singh (2003) 2 SCC 3 while dealing with the requirement of a landlord to settle peacefully in the evening of his life at his birth place held:

“7. In the light of the statement of the landlord, as originally recorded and as additionally recorded under the orders of the High Court, indeed a pathetic story of landlord-tenant litigation and law's delays is revealed. A retired government servant, accompanied by his old-aged life companion, is shuttling between India and Canada in search of a shelter and settlement in the evening of life so as to peacefully pass the balance of his life and to breathe his last in his own house which is the only

property which he had built on his own by investing his earnings and his toil. It is true that the appellant has a good number of kith and kin settled in Canada and the thickness of relationship with them tempted him to try a settlement in Canada but his links and moorings in his motherland were not all lost. It is very natural for an ageing Indian to witness his sentiments for the motherland and the birthplace gaining more strength and bondage becoming thicker with the advancement in age. His desire to convert the house, which he has built himself, into a home so as to live peacefully therein with his wife, cannot be said to be unnatural and certainly not wishful merely or whimsical.

8. *One of the grounds for eviction contemplated by all the rent control legislations, which otherwise generally lean heavily in favour of the tenants, is the need of the owner landlord to have his own premises, residential or non-residential, for his own use or his own occupation. The expressions employed by different legislations may vary such as “bona fide requirement”, “genuine need”, “requires reasonably and in good faith”, and so on. Whatever be the expression employed, the underlying legislative intent is one and that has been demonstrated in several judicial pronouncements of which we would like to refer to only three.*

9. *In Ram Dass v. Ishwar Chander [(1988) 3 SCC 131] M.N. Venkatachaliah, J. (as His Lordship then was) speaking for the three-Judge Bench, said: (SCC pp. 134-35, para 11)*

“11. Statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the landlord subject to the satisfaction of certain statutory conditions. One of them is the bona fide requirement of the landlord, variously described in the statutes as ‘bona fide requirement’, ‘reasonable requirement’, ‘bona fide and reasonable requirement’ or, as in the case of the present statute, merely referred to as ‘landlord requires for his own use’. But the essential idea basic to all such cases is that the need of the landlord should be genuine

and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a 'requirement' in law must have the objective element of a 'need'. It must also be such that the court considers it reasonable and, therefore, eligible to be gratified. In doing so, the court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down."

10. In Gulabbai v. Nalin Narsi Vohra [(1991) 3 SCC 483] reiterating the view taken in Bega Begum v. Abdul Ahad Khan [(1979) 1 SCC 273] it was held that the words "reasonable requirement" undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire.

11. Recently, in Shiv Sarup Gupta v. Dr Mahesh Chand Gupta [(1999) 6 SCC 222] this Court in a detailed judgment, dealing with this aspect, analysed the concept of bona fide requirement and said that the requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing himself in the armchair of the landlord and then posing a question to himself — whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. We do not think that we can usefully add anything to the exposition of law of requirement for self-occupation than what has been already stated in the three precedents.

12. *Let us revert back to the facts of the case. Can it be said that the desire of the landlord to be in his own house and live comfortably in his own castle — every home is a castle to the inmate — restricting his movements so as to adjust with an ailing physique and weakening faculties is unnatural, illusory, a pretext or mere pretence for getting rid of the tenant? What is there to demonstrate that the need is divorced of reality, sincerity and honesty? Fed up by the litigation and alarmed by the delays which eviction matters unfortunately take in law courts, having acquired a proverbial notoriety, brought down the landlord on his knees and he offered the tenant to sell his house so that he could settle himself by utilizing the sale proceeds in some other house but in the heart of Moga tehsil which he loves, for, he was born there and remained attached to it in spite of moving to places. There is no evidence adduced nor any material brought on record to hold that the landlord had ever tried to sell the house to anyone other than the tenant himself or at any time before and after the month of January and February 1990. We must give weight to the factor that the landlord has not felt shy of admitting having written the two letters — rather having negotiated the sale with the tenant — but then he assigns a reason which sounds reasonable and probable and explains his conduct. His determination to live in his own house is emboldened by the attitude of the tenant. We find nothing unnatural about it. The learned Appellate Authority took into consideration the entries contained in the passport showing the landlord's frequent movements between India and Canada wherefrom the Appellate Authority inferred that the appellant's links with Moga were still alive. The learned Senior Counsel for the respondent criticized this finding submitting that the passport entries show the landlord's entry into India but not necessarily his stay at Moga. Suffice it to observe, where else and for what the landlord, having reached India, would have gone excepting visiting his own place which is the natural urge of any son of the soil to do while visiting the country or returning to the motherland.”*

18. As regards alternate accommodation, no material has been placed by the respondent to show that Kranti Kumar owns any other property except the suit property. Evidence led by the respondents only show that property No. B-1/44, Hauz Khas belongs to the son of the petitioner Lalit Parakh and not to the petitioner Kranti Kumar himself. Thus property No. B-1/44, Hauz Khas cannot be said to be an alternative accommodation for Kranti Kumar merely because he is presently living at that place with his son.

19. In view of the discussion aforesaid and the fact that the learned ARC failed to note admissions of the respondents in relation to landlord-tenant relationship and returned an erroneous finding on bonafide requirement, the impugned order is set aside. The eviction petition filed by Kranti Kumar is allowed. Respondents are directed to vacate the suit property in six months from the date of this order.

20. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

JUNE 30, 2015
‘ga’