

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

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Reserved on: 1st May, 2015

Decided on: 1st September, 2015

+ **RC.REV. 392/2013**

HARMINDER SINGH KOGHAR Petitioner
Through Mr. Sudhir Nandrajog, Sr. Advocate
Mr. Piyush Sharma, Ms. Sakshi Jain,
Advs.
versus

RAMNATH EXPORTS PRIVATE LTD. Respondent
Through Mr. Rajesh Yadav, Ms. Ruchira
Arora, Advs.

+ **RC.REV. 394/2013**

HARMINDER SINGH KOGHAR Petitioner
Through Mr. Sudhir Nandrajog, Sr. Advocate
Mr. Piyush Sharma, Ms. Sakshi Jain,
Advs.
versus

BIMLA DEVI & ORS. Respondent
Through Mr. Rajesh Yadav, Ms. Ruchira
Arora, Advs.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J.

1. These two petitions are being disposed of by a common judgment as the impugned decision dated 16th September, 2013 passed by the learned ARC is identical except that in RC.REV. 392/2013 'Ramnath Exports Pvt. Ltd.' is the tenant of the petitioner for first and second floor and roof rights

and in RC.REV. 394/2013 'Bimla Devi and Ors.' are the tenants in respect of basement, ground floor and garage of the petitioner in suit property bearing No.A-7, Green Park, New Delhi.

2. A brief exposition of facts is that the Petitioner filed two eviction petitions being Eviction No.11/09 and Eviction No.10/09 under Section 14(1)(e) DRC Act stating that he was the owner/landlord of the suit property which was built by his father Sardar Sarjeet Singh Koghar (since deceased), who had bought the piece of land from Shri Udhe Singh Gahunia vide sale deed dated 6th November, 1963 which was duly registered on 13th November, 1963. The suit property comprises of a building on A-7, Green Park Main, New Delhi which was let out to the respondents by the petitioner's father through his then General Power of Attorney Shri Ram Prakash Lakra (now deceased). The father of the petitioner died leaving behind the petitioner as his son, heir and legal representative and thus after the death of Sardar Sarjeet Singh, the respondents/tenants attorned to the petitioner as their landlord. Though the suit property was let out for commercial purposes, however the same is a residential unit and can be easily and conveniently used for residential purposes. The petitioner is a non-resident Indian and settled in Thailand doing business. The petitioner needed the suit property as the petitioner and his family members have decided to set up their own residence in Delhi, particularly due to the fact that they were setting up business in Delhi. As both the counsels have based their arguments on the requirement under Section 14 (1) (e) on the basis of the pleadings in the eviction petition it would be relevant to note down paragraphs vi, vii & viii of the eviction petition as under:

vi) Recently, the petitioner has acquired specialized knowledge of processing of oil, particularly used turbine oil and that too “online” (i.e. without stopping the turbines generating electrical energy). The petitioner and/or his private limited company have been negotiating with the various Corporations and Companies (both under the Public Sector as well as the private sector) for reprocessing the same (then and there). The negotiations are in progress (at an advanced stage), as this will result in substantial savings for these electricity “generating” companies. Necessarily, the petitioner has been contemplating to set up his residence and his own office at Delhi so as to advance his business prospects in India. To set up the said business successfully here in India, the petitioner has necessarily to reside here till things are set up and the functioning is made smooth.

vii) In furtherance of his plans to settle in India and set up business here, the petitioner has also acquired by allotment from the NOIDA authority a plot and parcel of land ad-measuring 2,100 square meters for setting up an appropriate industry here. The petitioner has been paying the installments of the aforesaid plot regularly and this industrial unit is also likely to be commissioned soon. In this case also, when actually setting up the industrial unit here, the petitioner will necessarily have to stay/ live here (to supervise actual execution of works and also to conserve costs).

viii) It is also of much relevance to add that in order to liaison with the officials concerned (for both the projects) the petitioner has been visiting India from Thailand nearly once a month and due to non-availability of residential accommodation is constrained to stay in a Hotel. The recent happenings in the Hotels at Mumbai has constrained the petitioner to think of alternatives and/or alternate accommodation(s). As such, the petitioner and his family members have decided to set up their own residence in Delhi particularly due their owning a house at Delhi, i.e., the premises in suit. In other words, the petitioner and his family require the premises in suit for their own use and occupation as a residence for themselves. Needless to say that the petitioner and his family members do not own or process

any other residential premises/ property in India and particularly at Delhi/ New Delhi.

3. The petitioner also disclosed in the eviction petitions that the petitioner had earlier filed a civil suit being CS No.11/2001 for ejectment mesne profit, recovery of rent and possession in the year 2000-01 titled as 'Shri Harminder Singh Koghar Vs. Shri Radhey Lall' in respect of eviction of the suit property which was still sub-judice before the learned Civil Judge, Delhi and was at the stage of respondent's/ defendant's evidence. In the suit the defendant Radhey Lall (since deceased) in the written statement stated that since there always were and still are two distinct tenancies qua different but specified portions of the immovable property bearing No. A-7, Green Park Main, one being @ ₹2000/- the other being @ ₹1500/-, civil suit for ejectment was misconceived and untenable and the Civil Court had no jurisdiction to entertain the same. To put an end to any further delay in adjudication of the cause of action, the petitioner filed the eviction petitions, as the respondents are proceeding on the assumption that there were two tenancies with rentals of ₹2000/- and ₹1500/- respectively and the Rent Controller only had the jurisdiction to grant the relief. The petitioner later withdrew the civil suit and pursued his remedy by way of these eviction petitions. The petitioner also placed on record copy of his passport, showing that in the last two calendar years he had visited India particularly Delhi at least on 25 different occasions and due to non-availability of a proper residential accommodation at Delhi/New Delhi, the petitioner has to invariably stay in a hotel paying exorbitant rentals for accommodation. Photocopies of the bills of the hotel were also enclosed. It was stated that

the petitioner does not own or possess any other house or other residential accommodation at Delhi/ New Delhi and A-7, Green Park was the only residential immovable property owned and possessed by the petitioner. It was stated that the requirement of the Petitioner of suit property for residential purposes was honest, immediate and bona fide. It was further stated that Shri Radhey Lall (since deceased) and/or his family members including his business houses own extensive immovable properties (residential as well as otherwise in Delhi as well as New Delhi) and gave the addresses of the accommodation available with the respondents as under:

- “a) (Spacious office accommodation at) Statesman House, Barakhamba Road, New Delhi-110001;
- b) (Residence cum office at) A-25, Hauz Khas Enclave, near Green Park Church, New Delhi-110016;
- c) (Patiala House at) A-13, West End Colony, near Vasant Vihar, New Delhi-110021;
- d) (Residential house at) Usha Niketan, Safdarjung Development Area, New Delhi-110017;
- e) (Showroom cum factory/ godown at) Main Aurbindo Marg (also known as Mehrauli Road), near Qutab Minar, New Delhi – 110030;
- f) (Showroom cum godown at) Gali Guliyan, near Jama Masjid, Delhi-110006;
- h) (Patiala House at) near Aggarwal Dharmshala, Chriwalan, near Chawri Bazar/ jama Masjid), Delhi-110006 (which is now totally commercial on its ground floor and still residential on the first and second floors)”

4. Since leave to defend was granted, the respondents filed the written statement. In the written statement exclusive ownership of the petitioner qua

the suit property was doubted on the ground that in the civil suit in cross-examination the petitioner admitted that his father had left behind a daughter but there was no right of his sister in the property. It was further stated that though reference was made to a Will executed by the father of the petitioner but the copy of the said Will has not been placed on record and thus the petitioner cannot claim himself to be the sole owner/ sole landlord of the premises in question. The eviction petition was bad for non-impleadment of necessary parties. The eviction petition could not proceed till the sister of the petitioner was impleaded and Will of the father was placed on record. It is further stated that though in the eviction petition, the petitioner has stated that he and his family members do not own or possess any other residential premises/ property in India and particularly at Delhi/ New Delhi, however in the cross-examination in the suit, the petitioner admitted that they have other properties in Delhi. Since no details of the other properties owned by the petitioner and his family members have been mentioned thus there was deliberate concealment in the eviction petitions regarding all such properties owned by the petitioner and his family members in Delhi. As per the petitioner himself he has properties in Delhi and therefore he has a reasonably suitable alternate accommodation. The petitioner should disclose all the properties owned by him. It was further stated that the respondents verily believes that the petitioner owns one property in Lajpat Nagar, Delhi and the respondents do not have the details of other properties of petitioner. It was further stated that since as per the own admission of the petitioner the premises was let out for commercial purposes, the eviction petition under Section 14(1)(e) of the DRC Act was not maintainable. The premises in question cannot be used for residential purposes as the same is commercial

in nature as declared by the Master Plan of Delhi 2021. The petitioner is presently settled in Thailand and is a Singapore citizen holding a Singapore passport. Thus, there was not even remotest chance of petitioner and his family coming back and living in Delhi. In the eviction petition, the petitioner has not given any details of his alleged bonafide requirement or how much area or space or rooms he required. Thus, the plea of bonafide requirement of the petitioner was vague and baseless. The petitioner has not stated that he wants to shift permanently in the suit property or wants to use as his residence in future. Thus, the intentions are malafide and purposeless. Though the petitioner has stated that for the purposes of setting up of his business and appropriate industry he had acquired a plot of land measuring 2100 sq. mtrs. from Noida Authority, however no details of the said plot have been given. The petitioner has no intention to shift to Delhi or set up business in or around Delhi. The petitioner has not stated anything about his existing business interest in Thailand or Singapore or elsewhere in the world or that he was winding up those businesses. It is further urged that the petitioner was negotiating for the sale of the suit property with the Director of the respondents which the petitioner wanted to invest in constructing a 1000 rooms hotel in Thailand and expanding his well-established and lucrative business of embroidery. Thus the eviction petitions were liable to be dismissed.

5. In the replication filed the petitioner stated that he had already abandoned his claim before the learned Civil Court in view of the defence of the respondents regarding two different tenancies for two distinct portions of the premises and has approached the learned ARC under Section 14(1)(e) of

the DRC Act. The averments in the written statement were denied and it was stated that if the petitioner/landlord has a proper residence at New Delhi his family which comprises of his wife and three married children and grand-children would also be happy to visit their motherland and would visit here as per their requirement/ convenience. Further the business set up by the petitioner in India was also ultimately for the benefit of his children and grand-children and they would be participating in the same with the petitioner. As such they would also come and reside here to manage the said business. The petitioner's house is a single unit and the same was required for his as well as his family's use as residence. The petitioner reiterated with regard to proposed business of recycling (of used Furnace Oil) that he was presently setting up with other power generating companies in India he had set up an enterprise namely M/s. Uni Oil Co. Pvt. Ltd. and the negotiations were at a highly advanced stage with the proposed business partners and the petitioner's said company proposes to start trials very soon. Further the petitioner was setting up his embroidery business at the newly allotted site by Noida authority at Plot No.7, Sector-140A, Gautam Budh Nagar, Uttar Pradesh and proposes to start the unit i.e. production as soon as possible. To set up and start a venture expeditiously the petitioner/landlord necessarily needs to live here. He and his family have no house to live in at New Delhi/ NCR. It was further stated that son of Radhey Lall namely Shri Vivek Lall was demanding premium for vacating the premises. The petitioner denied that he owns any other residential property in NCR or Delhi and stated that in the written statement no particulars of any alleged (residential) property owned and possessed by the petitioner at Delhi/ New Delhi have been given by the respondents/tenants. It was further stated that the respondents were

merely trying to deliberately distort/mislead what was said by the petitioner in the cross-examination before the learned Civil Judge. It was denied that the petitioner owned one residential property in Lajpat Nagar, New Delhi. It was further stated that the petitioner has specified share in commercial complex known as Hansalaya Building, Barakhamba road, New Delhi. His share therein being 760 sq.ft. on the first floor of the said complex is on tenancy. As regards the Will having not been filed to show the other owners it was stated that in all these years none other than the petitioner came forward to claim any right, title or interest in the suit property and further the “Will” of the original landlord/owner cannot be contested or disputed by the tenant and the petitioner though an absolute owner of the suit property was also entitled to maintain the eviction petition as a co-owner of the property. It was reiterated that the premises was a residential house. It is further stated that though admittedly the petitioner was a non-resident Indian settled in Thailand being a citizen of Singapore, however as soon as the petitioner sets up a residence here, his family members will automatically come with him back to their home. Even otherwise for their own visits to their motherland they are entitled to live in their own house i.e. the suit property and the respondents cannot dictate the terms to the petitioner. Further the respondents jointly and severally have not been able to dispute the fact that the petitioner has been regularly visiting and staying at hotel or that he has set up in India a Private Ltd. Company under the name and style of M/s. Uni Oil Co. Pvt. Ltd. and he also proposes to commence the business of embroidery. The respondents are not entitled to require the petitioner to disclose his internal business affairs to them or via them to his competitors. The name of the company set by the petitioner having been disclosed and the

respondents having verified all the details, same was sufficient to show that the business proposed was honest, genuine and profitable at least in India. The respondent and its directors were trying to fleece the petitioner.

6. Evidence was led by the parties. During the course of trial, the petitioner examined himself as PW-1 and his Chartered Accountant Shri Shailender Kumar Bajaj as PW-2. On behalf of the respondents Shri Vivek Lall appeared as RW-1 and Shri Pratap Singh Saini as RW-2. Initially evidence was directed to be led separately in the two eviction petitions, however later on the evidence led in Eviction petition No.10/90 titled as 'Harmander Singh Koghar Vs. Bimla Devi and Ors.' was also read in Eviction Petition No.11/09 titled as 'Harmander Singh Koghar Vs. Ramnath Exports Private Ltd'. During the course of trial, the petitioner filed two applications under Order VII Rule 14 CPC. By the first application the petitioner wanted to place on record the memorandum of association and articles and certificate of incorporation to show that the companies of the petitioner in India were not paper companies. The said application was dismissed vide order dated 10th May, 2012 on the ground that by the said application the petitioner was filling up the defects and the documents relating to the said company could not be looked into as the name of the second company was not mentioned in the evidence by way of affidavit. The second application under Order VII Rule 14 CPC filed by the petitioner was allowed vide order dated 11th January, 2013 whereby the petitioner placed on record the lease deed, agreement to sell and possession letter in respect of commercial property at Hansalaya and his income tax return for the year 2010-11. However on objections by the respondents the learned

ARC de-exhibited the documents i.e. audited balance sheet, profit & loss A/c, auditor's report and the schedule forming part of financial statement as 31.03.2011 of Mastex Embroideries (India) Ltd. and auditor's pre-operative expenses and significant accounting policies and notes to accounts of Uni Oil Co. Pvt. Ltd. vide its order dated March 26, 2013.

7. The learned ARC upheld the issues of entitlement of the petitioner to file the eviction petition as the owner of the premises and that the bonafide requirement cannot be diluted for mere non-mentioning of the members of the petitioner's family or for not using the word 'bonafide' in the eviction petition. The learned ARC held that having regard to the law cited and the social economic status of the petitioner and his family, if he feels requirement of the entire premises for residential uses, then it shall not be for the Court to prescribe residential standard. Lastly, this was not a case of additional accommodation. The petitioner has maintained that he does not own any other residential premises in Delhi. However, the learned ARC dismissed the eviction petitions vide impugned judgments dated 16th September, 2013 on the grounds which would be discussed later.

8. Learned counsel for the petitioner contends that the learned ARC while rejecting the plea of the petitioner's bonafide requirement failed to consider that the family of the petitioner comprises of his wife, three children and grand-children who should be allowed to visit their mother-land and reside there as per their convenience/requirement and as a NRI the petitioner should be able to set up his own residential house in India for himself and his family so as to own, possess and enjoy the same in his old age and visit his mother country India as and when he desires. The

petitioner led the evidence that he has been paying exorbitant prices/charges for the hotel for his stay and he has no other suitable accommodation to stay in Delhi. The learned ARC failed to notice that to set up/ expand his business enterprise(s) in India the petitioner has been visiting Delhi frequently. The petitioner examined his Chartered accountant as PW2 who had been filing the income tax return of the petitioner. The learned ARC erred in holding that the business should have been initiated/ set up fully before the petitioner resorted to the proceedings to obtain possession of the premises in question which is not the requirement of law. The existence of the two companies i.e. M/s. Uni Oil Co. Pvt. Ltd. and M/s. Mastex Embroideries Pvt. Ltd. are not in dispute. The petitioner can even incorporate any business activity at any subsequent point of time as he may be deemed fit. It is for the petitioner to decide the manner in which he wishes to carry on his business. Though the learned ARC dismissed the application of the petitioner under Order VII Rule 14 CPC with respect to the documents pertaining to the two companies, however he still relied upon the said documents to non-suit the petitioner. The adverse inference drawn due to non-production of the Will of the father of the petitioner is erroneous as the Will was sought by the respondents for the purpose of showing that there are other legal heirs but the learned Trial Court used it to find out whether the father left any other property or not. The petitioner has adequately answered in relation to Lajpat Nagar property and the learned Trial Court wrongly drew adverse inference thereon. No plea was raised with regard to H.No.P-27, Malviya Nagar in the written statement and thus the petitioner had no opportunity to deny the same in replication. The petitioner could not be put the onus in the negative with respect to P-27,

Malviya Nagar property in terms of Section 101-104 of the Evidence Act. The onus was on the respondents to prove that the property was owned by the petitioner. The petitioner proved the income-tax return and thus a presumption was required to be drawn in view of the statutory document. Section 25(B)(7) of the DRC Act contemplates only an enquiry and not a full-fledged trial to prove the case beyond reasonable doubt. Reliance is placed on Kamla Thukral & Ors. Vs. Tarlok Singh RC.REV.281/2012 decided on 24.05.2013; Sarwan Dass Bange Vs. Ram Prakash, 167 (2010) DLT 80; Mohan Lal Vs. Tirath Ram Chopra, AIR 1982 Delhi 405; T.D. Dhingra Vs. Pritam Rai Khanna 48 (1992) DLT 208; Sait Nagjee Purushottam & Co. Ltd. Vs. Vimlabhai Prabhhulal & Ors. (2005) 8 SCC 252; Manika Rani Ghosh & Ors. Vs. Dharwinder Kaur RC.REV.512/2012 decided on 05.12.2012; Baldev Singh Bajwa Vs. Monish Saini (2005) 12 SCC 778; Ram Babu Agarwal Vs. Jai Kishan Das 2009 (2) RCR 55; S.P. Kapoor Vs. Kamal Mahavir Prasad Murarka & Ors. 2002 (97) DLT 997; Srinivas Ramanuj Das Vs. Surjanarayan Dass AIR 1967 SC 256; Union of India Vs. Ibrahim Uddin & Anr. (2012) 8 SCC 148; Satyawati Sharma Vs. Union of India 2008 (5) SCC 587; Anil Bajaj & Ors. Vs. Vinod Ahuja 2014 (210) DLT 58; Naresh Kumar and Suresh Kumar Vs. Mahesh Chand RC.REV.95/2012; Dhannalal Vs. Kalavati (2002) 6 SCC 16; Mattulal Vs. Radhe Lal 1974 AIR SC 1596; Raj Kumar Khaitan & Ors. Vs. Bibi Zubaida Khatun & Anr. AIR 1995 SC 576; Indira Kaur & Ors. Vs. Shri Sheo Lal Kapoor AIR 1988 SC 1074; Paras Nath Vs. Mohani Dasi Air 1959 SC 1204 and Indu Singh Vs. Union of India & Ors. W.P.(C) 7244/2010 decided by this Court on 18.05.2011.

9. Learned counsel for the respondents on the other hand contends that the petitioner failed to prove his bonafide requirement by any cogent and convincing evidence. The evidence led to some extent was beyond pleadings. There were constant improvements in the evidence. Thus, the learned Trial Court rightly rejected the plea of bonafide requirement. Neither the details of the family members of the petitioner were given nor specific requirement pleaded. The dependency of the family members was also not proved and it was baldly claimed that the entire building was needed. There was no advancement in the proposed business from the date of filing of the petition till the decision in the eviction petition. No construction on the Noida plot was raised and only a boundary wall was constructed. The petition was founded on the plea that the negotiations are in progress and are at an advanced stage and that the industrial unit is likely to be commenced soon, however nothing positive was undertaken by the petitioner thus belying his bonafide requirement. The petitioner refused to disclose the details of his business, his qualification or that he had made any special project report and declined to place on record any communication or correspondence with the company for the start of new business. The sale of commercial property in Hansalaya during the pendency of eviction petition created serious doubt on the alleged bonafide requirement of the petitioner. The Will and the Probate order though disclosed were not filed. Having failed to produce the best evidence in the form of documents and oral, the petitioner did not discharge the onus as per Section 106 of the Evidence Act in respect of property No. P-27, Malviya Nagar. The petitioner tried to fill the gaps by filing two applications under Order VII Rule 14 CPC. The respondents' witness Vivek Lall was not cross-examined on vital issues.

Since proceedings before the learned ARC are civil proceedings, scope of enquiry before the learned ARC is not limited or circumscribed and the impugned order is not liable to be interfered merely because a different view was possible. By not filing the Will of his father the petitioner failed to disclose the other properties owned by him in Delhi. The onus to prove that the need for the premises is bonafide and that there was no other reasonably suitable accommodation was on the landlord which he failed to discharge. Reliance is placed on Anoop Singh Vs. K.N. Garg (2006) 13 SCC 291, Sarla Ahuja Vs United India Insurance Company Ltd. (1998) 8 SCC 119, Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta (1999) 6 SCC 222; M.M. Quasim Vs. Manohar Lal Sharma & Ors. (1981) 3 SCC 36; Mussaiddin Ahmed Vs. State of Assam (2009) 14 SCC 541; Pradip Buragohain Vs. Pranati Phukan (2010) 11 SCC 108; Freddy Fernandes Vs. P.L. Mehra 1973 RCR 53; State of W.B. Vs. MIR Mohammadomar & Ors. (2000) 8 SCC 382; Grand Vasant Residents WEL. ASS. Vs. DDA 2014 (4) AD (delhi) 193; State of U.P. Vs. Nahar Singh (Dead) & Ors. (1998) 3 SCC 561; Suresh Chand Mathur Vs. Harish Chand Mathur 2010 (174) DLT 665; Bachhaj Nahar Vs. Nilima Mandal & Anr. (2008) 17 SCC 491 and Kalyan Singh Chouhan Vs. C.P. Josh (2011) 11 SCC 786. Hence, there is no illegality in the impugned judgment.

10. I have heard learned counsel for the parties at length. To succeed in the eviction petition, the petitioner was required to prove the three requirements envisaged in Section 14(1)(e) of the DRC Act i.e. that he was the owner/landlord of the premises, that the premises was required

bonafidely for the residential purposes and that he had no other alternative suitable accommodation.

11. Learned counsel for the respondents to contend that this Court in revisional jurisdiction will not interfere with the order passed by the learned ARC relies upon the decisions in Sarla Ahuja, Shiv Sarup Gupta and Anoop Singh (supra). In Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh AIR 2014 SC 3708 the Constitution Bench after considering the earlier decisions on the scope of interference in a revision petition relating to similar provisions under Section 15 of Haryana Urban (Control of Rent and Eviction) Act, Section 20 of Kerala Buildings (Lease and Rent Control) Act and Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, held :

“25. Before we consider the matter further to find out the scope and extent of revisional jurisdiction under the above three Rent Control Acts, a quick observation about the 'appellate jurisdiction' and 'revisional jurisdiction' is necessary. Conceptually, revisional jurisdiction is a part of appellate jurisdiction but it is not vice-versa. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate court is co-extensive with that of the trial court. Ordinarily, appellate jurisdiction involves re-hearing on facts and law but such jurisdiction may be limited by the statute itself that provides for appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a full-fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the aid of revisional court is invoked on the revisional side, it can interfere within the permissible parameters

provided in the statute. It goes without saying that if a revision is provided against an order passed by the tribunal/appellate authority, the decision of the revisional court is the operative decision in law. In our view, as regards the extent of appellate or revisional jurisdiction, much would, however, depend on the language employed by the statute conferring appellate jurisdiction and revisional jurisdiction.

26. With the above general observations, we shall now endeavour to determine the extent, scope, ambit and meaning of the terms "legality or propriety", "regularity, correctness, legality or propriety" and "legality, regularity or propriety" which are used in three Rent Control Acts under consideration.

27. The ordinary meaning of the word 'legality' is lawfulness. It refers to strict adherence to law, prescription, or doctrine; the quality of being legal.

28. The term 'propriety' means fitness; appropriateness, aptitude; suitability; appropriateness to the circumstances or condition conformity with requirement; rules or principle, rightness, correctness, justness, accuracy.

29. The terms 'correctness' and 'propriety' ordinarily convey the same meaning, that is, something which is legal and proper. In its ordinary meaning and substance, 'correctness' is compounded of 'legality' and 'propriety' and that which is legal and proper is 'correct'.

30. The expression "regularity" with reference to an order ordinarily relates to the procedure being followed in accord with the principles of natural justice and fair play.

31. We have already noted in the earlier part of the judgment that although there is some difference in the language employed by the three Rent Control Acts under consideration which provide for revisional jurisdiction but, in our view, the revisional power of the High Court under these Acts is substantially similar and broadly such power has the same scope save and except the power to invoke revisional jurisdiction suo motu unless so provided expressly. None of these statutes confers on revisional authority the power as wide

as that of appellate court or appellate authority despite such power being wider than that provided in Section 115 of the Code of Civil Procedure. The provision under consideration does not permit the High Court to invoke the revisional jurisdiction as the cloak of an appeal in disguise. Revision does not lie under these provisions to bring the orders of the Trial Court/Rent Controller and Appellate Court/Appellate Authority for re-hearing of the issues raised in the original proceedings.

32. We are in full agreement with the view expressed in M/s. Sri Raja Lakshmi Dyeing Works and Ors. v. Rangaswamy Chettiar [(1980) 4 SCC 259] that where both expressions "appeal" and "revision" are employed in a statute, obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal" and "revision" when used in one statute conferring appellate power and revisional power, we think, is not without purpose and significance. Ordinarily, appellate jurisdiction involves a re-hearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an 'appeal' and so also of a 'revision'. If that were so, the revisional power would become co-extensive with that of the trial Court or the subordinate Tribunal which is never the case. The classic statement in Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval [(1975) 2 SCC 246] that revisional power under the Rent Control Act may not be as narrow as the revisional power Under Section 115 of the Code but, at the same time, it is not wide enough to make the High Court a second Court of first appeal, commends to us and we approve the same. We are of the view that in the garb of revisional jurisdiction under the above three Rent Control Statutes, the High Court is not conferred a status of second Court of first appeal and the High Court should not enlarge the scope of revisional jurisdiction to that extent.

12. As regards landlord tenant relationship and the ownership of the petitioner in the suit property is concerned, the finding of the learned Trial Court is in favour of the petitioner and rightly so. The respondents had

challenged ownership on the ground that the Will of the father of the petitioner had not been produced which would have revealed that he was the owner/ only legal heir of his father. Further relying upon the cross-examination in the civil suit it was also pointed out that the petitioner admitted that he had a surviving sister. The learned Trial Court held that it had no jurisdiction to decide the validity of the Will and it is admitted by the respondents that the petitioner was one of the legal heirs of deceased Shri Sarjeet Singh, thus the petitioner's claim of being an owner of the suit property or in the alternate being co-owner is sustained and the eviction petitions were maintainable. It is well-settled by the decisions of the Supreme Court in India Umbrella Manufacturing Company and Ors. Vs. Bhagabandei Agarwalla (dead) by LRs. Smt. Savitri Agarwalal and Ors. (2004) 3 SCC 178 and Mahinder Prasad Jain Vs. Manohar Lal Jain AIR 2006 SC 1471 that a co-owner is entitled to maintain a petition for eviction against the tenant. Though the petitioner stated to be having a surviving sister, indisputably she has not come forward to dispute the claim of the petitioner.

13. The issue of bonafide requirement was dissected by the learned ARC in three limbs i.e. site plan of the demised premises, bonafide need of the entire suit property in terms of the area and bonafide requirement for residential purpose.

14. The learned ARC held that the veracity of the site plan of the demised premises Ex.PW-1/8 remained under challenge. The respondents in the written statement stated that the site plan does not correctly describe the premises in question. Learned ARC noted that Harminster Singh Koghar in

his cross-examination admitted that he last visited the premises approximately six months before filing the eviction petition and did not go inside the same as he was not allowed. He did not know whether the architect actually visited the premises at the time of preparation of the site plan and the site plan does not bear the signature of Vijay Lakra or his father. He admitted that even today he was not aware of the exact measurement and position of the premises in dispute. The learned ARC held that PW-1 admitted that he was not the person at whose instance the draftsman or the architect prepared the site plan and the person preparing the site plan from R.R. Nagpal and Company has not been examined, thus the site plan remained not proved in accordance with law.

15. However learned ARC failed to notice that the issue of site plan is dispelled by the fact that though the respondents challenged the veracity of the site plan, however they did not show how the site plan filed by Harminder Singh Koghar was not correct and filed no counter site plan. The entire cross-examination of Harminder Singh Koghar by the learned counsel for the respondents was to show that he had no personal knowledge of the exact rooms available in the suit property. Even though Harminder Koghar may not have visited the suit property personally, it is well settled that to challenge the veracity of the site plan filed by the landlord, the tenant must file a counter site plan and the tenant cannot just get away by stating that the site plan filed by the landlord was incorrect. (see V.S. Sachdeva Vs. M.L. Grover 67 (1997) DLT 737 and Krishan Kumar Gupta Vs. Swadesh Bhushan Gupta 2008 (152) DLT 556). Further in Rishal Singh Vs. Bohat Ram 2014 (144) DRJ 633 it was held:

“11. ...Apropos the contention that the site plan filed by the landlord is incorrect as it fails to disclose two shops lying vacant in the same area, it is without merit as the tenant has not filed any site plan to show the inconsistency. It is well settled law that when the tenant contents the accuracy of the site plan filed by the landlord, he is required to file a copy of the site plan he believes to be correct so as to guide the Court in finding the discrepancies of the site plan filed by the landlord. Without such site plan being filed, mere contentions raised to this effect will be considered meritless.”

16. As regards the bonafide need of the entire suit property in terms of the area the learned ARC gives various findings which need to be noted and considered. The learned ARC noted that the first and foremost objection of the defence was that the petitioner did not plead anything on the area required by him for purposes of his bonafide need. However, considering the fact that the petitioner had sons, daughters-in-law and grand-children it was held that the requirement of the petitioner for space for the sons in the demised premises for purpose of assistance to him in furtherance of his business shall still be a need which the petitioner can still project even if he does not prove dependency. The learned ARC held that it is a case where the petitioner first projected setting up an industry in India and for setting it up and supervising its operations when so set up, the petitioner put forth his need of residence which is therefore dependent on his primary wish of opening up an industry. He builds up his case by adding facts to it in his replication and also evidence. The case so put forth was to the effect that the visiting members of his family will also require residence and that they will also assist him in the setting up of an industry. It is in this context as to whether the petitioner should have disclosed the number of rooms

constructed in the demised premises and the number of rooms required at a time for habitation by all members of his family has to be seen. The learned ARC further held that it is not the petitioner's case that either he or members of his family are shifting base from Thailand to Delhi. It being so, it becomes more important in view of the fact that the present petitioner is seeking eviction of the respondents from the entire suit property in Bimla Devi's case and M/s Ram Nath Export's case. Met with several of defences of the respondents including absence of any bonafide of the petitioner, it was of paramount importance that the petitioner justified his dependent need of residence by giving facts to that effect in detail?

17. The learned ARC thereafter held that however what has to be seen is whether the petitioner's failure to give details of accommodation required shall render his case redundant. Referring to various decisions, the learned ARC held that neither the Court nor the tenant can dictate to the landlord the mode and the manner in which he should live or to prescribe him a residential standard of their own. It was held that the status of landlord and his family are decisive factors to arrive at a conclusion about the need of the residential space. Harinder Singh Koghar is not only a NRI but a billionaire by his own admission. He and his family reside at Thailand and are in business of hotel, hospitality and industry. He owns and manages five to eight companies. He is a citizen of Singapore. His children were born at Thailand. None of his family members are Indian citizens. The grandchildren were also born in Thailand. Keeping all these factors into mind the demised premises comprising of a basement hall, complete ground floor, garage, one servant quarter above garage, the entire first floor, the entire second floor and the servant quarter in the annexe cannot be said to be an

unreasonable requirement. Harinder Koghar in his evidence stated that he required the whole building to which there is no cross-examination by the respondents and thus this assertion of the witness has gone unchallenged. Further present is not a case of additional accommodation and the petitioner has maintained that he does not own any other residential premises in Delhi. The learned ARC also noted the admission of RW1 Vivek Lal that the property could be used for residential purpose though the case of respondents was that the suit property was presently being used for commercial purposes.

18. As noted above the testimony of Harinder Singh Koghar qua the entire suit property being required for residential property has gone unchallenged. As relied by learned counsel for the respondents in Suresh Chand Mathur(supra) it was held that when a witness deposes a particular fact and no suggestion to the contrary was given during cross-examination, the person against whom the deposition is made is deemed to have admitted that fact. Thus the learned ARC rightly upheld the requirement of Harinder Singh Koghar for the entire suit property for use as his residence and the residence of his family members.

19. The learned ARC further dissected the issue of bonafide requirement for residential purposes of Harinder Singh Koghar on two counts i.e. firstly regarding progress in the two businesses and secondly that there were negotiations for sale of the suit property between the two parties.

20. Learned ARC in Paras 43.3 and 43.4 of the impugned judgment held that in the eviction petitions, the petitioner stated about his two projects one in the oil and the other for which he had acquired a plot at Noida. In Para (viii) of the eviction petition he clarified that these were two separate

projects. Laying emphasis on the word “recently” used in Para (vi) of the eviction petition and the affidavit, the learned ARC held that the word “recently” will have to be read in connotation with the date of filing of the petition i.e. 13th January, 2009. It was noted that the petitioner was not required to disclose as to what business he intends to start on the vacant plot, however the Court has to see whether the need projected is just, genuine and therefore bonafide and thus the Court can see as to whether any steps have been taken for furtherance of such business. In the light of these observations the learned ARC noted that the petitioner in the witness box mentioned that his technology being secret he should not be made to divulge information, however why the witness did not answer about the course he did for acquiring knowledge of processing of oil was not understandable being not connected to the technology. Likewise as to why the witness could not tell the name of the officials with whom he was liaising for the business was again not understandable being not connected to the technology. Though in the pleadings it was stated that petitioner was negotiating with the various companies, however in cross-examination he restricts the number of companies to just one and qualified the same that “at present” he was negotiating with only one company i.e. NTPC but failed to provide the name of the companies and the fate of such negotiations. He could not even tell the name of the persons or the officials he met in the office of NTPC. The talks of negotiations were at advanced stage at the time of filing of the petition and after more than four years the same are still at the stage of advance negotiations. Obviously no oil business had been started by the petitioner so far, though the company Uni Oil was incorporated on 21st September, 2005. The petitioner declined to show documents pertaining to

Uni Oil company and same was the response with regard to other company M/s. Mastex Embroideries for which allotment of plot at Noida was granted. The company was incorporated on 29th July, 1994 and the plot had been physically acquired on 25th March, 2010. However, till now no embroidery unit had been opened. Though accepting the argument of learned counsel for the petitioner that the petitioner could not have proceeded with the business at the time of recession, in Para 43.7 of the impugned judgment the learned ARC held that the petitioner has remained unable to show any furtherance in his business activities, however it was further held that merely because the petitioner has not been able to name the officials he met, it cannot be said that the burden was not displaced and the onus to prove shifts to the respondents by showing that the petitioner had not taken appropriate steps for starting his business. Referring to the deposition of Vivek Lal RW-1 who deposed that petitioner offered to sell the suit property which did not materialize and since no suggestion was given to RW-1 the assertion has remained unrebutted. Thus the onus re-shifts to the petitioner and having not finally discharged the said burden the Court will draw an inference that the reality is to the contrary as per law laid down in Shiv Swaroop Gupta's (supra). It was thus held that the petitioner could not substantiate his case of requiring residential accommodation for the advancement of his business which actually is yet to see the light of the day.

21. The learned ARC also noted that the copy of the passport and the hotel bills showed that the petitioner visited India every month and stayed at Imperial Hotel, Janpath, New Delhi, however the bills relied were from 1st June 2007 to 17th November, 2008 though the petition was filed on 13th January 2009 and subsequent thereto no hotel bills were filed. The learned

ARC further noted that Court is required to look into whether the need of the petitioner is not only bonafide but also existing on the date.

22. From the findings as noted above it is clear that the learned ARC decided the issue of bonafide requirement for residential purposes against Harminder Singh Koghar primarily on the basis that there were negotiations to sell the suit property and no hotel bills after the filing of the eviction petitions were filed, thus the need was not bonafide.

23. At this stage it is pertinent to note that having dismissed the application of the petitioner under Order VII Rule 14 CPC for placing on record the documents relating to M/s. Mastex Embroideries India Ltd. and M/s. Uni Oil Co. Pvt. Ltd. being beyond pleadings, the Court could not have selectively used the same for drawing adverse inference against the petitioner.

24. Further as per the lease deed Ex.PW1/R1 the plot at Noida was physically acquired on 25th March, 2010 for opening the embroidery unit and thus by 29th August, 2013 when Pratap Singh Saini RW-2 filed his affidavit stating that only boundary wall had been raised, the same cannot lead to the inference that no progress had been made in the business. Further the requirement of Harminder Singh Koghar for the suit property was for residential purposes so that as and when he and his family members visit Delhi to promote their business activities they have their own residence to live in. The present is a case where Harminder Singh Koghar has been able to establish that he was in the process of establishing two business ventures not proving the name of second company. The line of cross-examination by the respondents does not dispute the existence of the two businesses but only

stresses on the fact that there is no progress in the two businesses. Harminder Singh Koghar in his evidence has stated that the process with the departments in India was slow and for the purposes of the eviction petition it was sufficient to show that he intended to start two business ventures.

25. It is well settled that even if the landlord is able to establish a foreseeable need i.e. a need not in immediate but likely to arise in future he is entitled to maintain an eviction petition as held by this Court in P.S.Devgun Vs. S.P. Walia (1975) ILR 2Delhi 393. Further, it is also well settled that to start a business venture presence of Harminder Singh Koghar or his family members was also essential in India and thus there being no progress in business on the basis of evidence of RW-2 that in the plot at Noida only walls have been erected could not be used adversely against the petitioner. Even if it is a case where the two business ventures were getting delayed, the same would not be sufficient to cause a shadow of doubt on the bonafide requirement of the petitioner. In P.S. Devgun (supra) this Court noted that it is not a rule of law that the landlord must find himself on street before he moves the Controller for eviction. The landlord cannot correctly estimate the time during which his petition is likely to be decided and so it is open to the landlord to institute the petition for eviction on the ground that his need is bonafide and is likely to arise in the foreseeable future. Similar view was expressed by the Division bench of Punjab and Haryana High Court in J.C. Kohli Vs. Financial Commissioner, Haryana Chandigarh and Anr. AIR 1976 Punjab & Haryana 107 (DB) holding that it is not the requirement of the law that the landlord's need must be immediate and an

existing one on the very date of the application for ejectment. Indeed he is entitled to anticipate his requirement in a reasonably foreseeable future.

26. The petitioner with the eviction petition had filed documents showing his repeatedly coming to India for the purposes of business. On the one hand the learned ARC did not allow any document to be filed beyond the pleadings in the eviction petitions and on the other drew adverse inference for not filing the hotel bills after the filing of the eviction petitions. Further the petitioner was neither required to disclose his technology nor the officials he met, nor the other facts relating to his business to show what progress he had made in the business. The fact that he intended to set up an Oil Industry for which he had opened a company and that another Embroidery Unit for which the plot at Noida had been taken on lease were sufficient to show the intention of the petitioner to start business in India. The learned ARC was not required to conduct a roving and fishing enquiry to determine the extent of business activities of the petitioner and to find out which particular officers he met for this purpose but was required to find out only whether the eviction petitioner required the suit property bonafidely for his own and his family's residential purposes. PW-2 the Chartered Accountant of PW-1 exhibited the income tax returns of PW-1 to fortify the version of Harminder Singh Koghar that he was an income-tax assessee in India. In his evidence by way of affidavit Harminder Singh Koghar stated that he had been regularly visiting India and was staying in Imperial hotel. He produced the latest up to date photocopies of the passport entries with original as Ex.PW-1/3 and the hotel bills as Ex.PW-1/4 collectively. As a matter of fact PW1 stated that his entire family was in town on the date of filing of the affidavit

and they were all staying in hotel Imperial, Janpath. There is no cross-examination by the respondents on this aspect of the matter. The passport revealed the visits of Harminder Koghar even after the filing of the eviction petition which the learned ARC failed to notice. All this evidence of Harminder Singh Koghar has been brushed aside by the learned ARC on the count that hotel bills only till the filing of the eviction petition have been filed. This Court in catena of decisions i.e. M/s. Mehra & Mehra Vs. Dr.(Mrs.) Sant Kaur Grewal, 21 (1982) DLT 196; Saroj Khemka Vs. Indu Sharma 1999 (49) DRJ 719 and Jain (Dr.) Clinic Pvt. Ltd. Vs. Sudesh Kumar Jassal 2013 (137) DRJ 638 has held that even if the landlord was settled outside Delhi or India and was frequently visiting, his need for temporary stay has to be judged as bonafide need.

27. Dispelling the argument that temporary stay in Delhi for a person settled abroad would not constitute bonafide requirement this Court in Saroj Khemka Vs. Indu Sharma (1999) 49 DRJ 717 held:

“Let us examine the plea of petitioner in the application for leave to defend. A statement made in the counter affidavit that the owner while staying in U.S.A. and the income of the husband of the owner-landlady was enormous and they are accustomed to the lifestyle of U.S.A. and respondent was only coming in a year for couple of days to meet its relatives and, therefore, the requirement of the petitioner for their stay in Delhi does not amount to bona fide requirement. It is not denied that the owner had not any other place to stay in Delhi or anywhere else except the house of the relatives/parents. Along with the petition, present respondent/owner landlady had filed on record before the Trial court bills from Hotel Vasant Continental showing that they had to stay in a Hotel. Respondent-landlady has also filed the letter from Centre for Policy Research dated 4.6.1995, inter alia, granting internship

to the daughter of the respondent to start her assignment in or around September' 1994 wherein it was specifically mentioned that the daughter of the respondent would have to provide her own housing and transportation arrangements and as no accommodation was available to the daughter, Charunidhi Sharma, she could not join Centre for Policy Research. I do not see any force in the arguments of the learned counsel for the petitioner that even if the petitioner visits India, she cannot have her own house for her casual stay as her residence and she has to go to the house of the relatives or has to stay in a hotel in spite of the fact she has a flat of her own in Delhi. No Court can compel a person to stay in a house of a relative or a hotel and because the said person is staying abroad, he/she has no right to stay in his/her own premises. That will be totally negating the provisions of Section 14(1)(e) of the Act. If a person is residing abroad, he/she owns a flat or a house in Delhi, he/she wants to spend a few weeks or a few months then he/she must be allowed to stay in his/her own house. I do not find any infirmity with the finding recorded by learned Additional Rent Controller on this score also."

28. Thus this Court is now required to look into the finding with regard to negotiations for sale of the suit property. In the written statement the version of Vivek Lall was "That when the Petitioner was negotiating for sale of the tenanted premises with the Director of the Respondent, it was revealed by the Petitioner himself that he is constructing a 1000 rooms hotel in Thailand. The Petitioner conveyed to the Director of the Respondent that he has entered into collaboration with Ramada Inn, a world renowned chain of hotels. The Petitioner also revealed that he and his sons have a well-established and lucrative business of embroidery. It was also revealed by the Petitioner that the business in Thailand is being expanded by the Petitioner and his sons. In the face of such vast business which the Petitioner is having abroad, he cannot have and show any bonafide to shift to Delhi in the garb of

setting up a small business plant in Noida, which otherwise is disputed by the Respondent in the manner stated hereabove.”

29. PW-1 Harminster Singh Koghar in his replication to Written Statement clarifying that he never intended to sell the suit property stated:

“Notwithstanding the fact that they are already in actual possession of their own properties (more than one) which are lying vacant and unoccupied, the son of Shri Radhey Lal, namely, Shri Vivek Lall, has been demanding ‘Premium’ for doing so and it is this figure (of Premium/ Pagree) that could not be finalized, in as much as the petitioner-landlord was unable to pay [or to be more precise not willing to pay the (exorbitant) premium demanded by Shri Vivek Lall, more so as Shri Radhey Lal had not paid any premium or pagree in any form whatsoever at the time of the premises in suit were let out through Shri Ram Parkash Lakra to Shri Radhey Lal and/or his said company, in the connected cause] way back in 1971 or at point of time, even thereafter.”

30. During cross-examination Harminster Koghar PW-1 stated that:

“It is wrong to suggest that I had a meeting with Mr.Vivek Lall wherein I had disclosed that I have a property at Lajpat Nagar. It is wrong to suggest that I had a meeting with Mr.Vivek Lall for the sale of premises in dispute. I never had any negotiations with Mr.Vivek Lall for sale of premises in dispute. It is wrong to suggest that there were negotiations for the sale of property but the same failed as the prices were not settled. I have met Mr.Vivek Lall 2-3 times approximately during the last 5-7 years. I do not remember the place where these meetings were held.”

31. In cross-examination of Vivek Lall RW-1 recorded on 31st July, 2013 it was stated:

“ ...I had about 15 meetings with the petitioner wherein very clearly he told me that he is well established in Thailand in his embroidery business and also is in the process of opening a thousand room hotel in collaboration with Ramada and he wanted to sell the property in question for which we even negotiated for which he accepted the down payment which he returned to me subsequent therefore the petitioner does not want the premises in question for his bonafide requirement. For the down payment and refund the said fact has never been taken by me in my pleadings before this Court. (vol. I have two witnesses who can substantiate my stand.”

32. The main reason why the learned ARC dismissed the eviction petitions was that there were negotiations for sale of the suit property on the basis of evidence as noted above and thus there was no bonafide requirement of Harminder Singh Koghar for the suit property. It may be noted that this was an assertion of fact by the respondents who were required to prove the same. RW-1 Vivek Lall in his cross-examination stated that he accepted the down payment which he returned, however he admitted that this fact was beyond the pleadings and he had led no evidence to prove the same to show that down payment had been made. As a matter of fact the two witnesses he stated about were also not produced in the witness box. These suggestions were denied by Harminder Singh Koghar. Further no material particulars as to when and where the meetings took place have been stated by RW-1 to show that the petitioner did not intend to set up the business in Delhi rather wanted to sell the property. The assertion of RW1 in his evidence by way of affidavit that “the family of the petitioner is so well established in Thailand/Singapore/abroad, that there is not even a remotest chance of the petitioner and his family coming back and living in India, neither the petitioner nor his family members will shift to India and will never set up

their residence in India” is only a belief/opinion and not an assertion of fact and thus not relevant. Moreover it is not even the case of petitioner that he and his family are permanently shifting to Delhi. They want to set up a residence in the suit property to be available as and when they come.

33. From the facts noted above it is evident that the respondents have not been able to prove the fact asserted by them that there were negotiations for sale between the parties and thus it could not have been inferred that Harminder Koghar did not require the suit property bonafidely since he was negotiating sale of the property. Supreme Court in R.Puthunainar Alhithan & Ors. Vs. P.H. Pandian & Ors. (1996) 3 SCC 624 laid down the distinction between a fact said to be proved, disproved and not proved as under:

“8. An inference from the proved facts must be so probable that if the court believes, from the proved facts, that the facts do exist, it must be held that the fact has been proved. The inference of proof of that fact could be drawn from the given objective facts, direct or circumstantial.”

34. The learned ARC also failed to notice Section 19 of the DRC Act which provides that after getting the property evicted under Section 14(1)(e) DRC Act, no landlord can sell the premises till three years of the eviction without the permission of the Court. Thus the apprehension that suit property is not required as the petitioner wants to sell the same is unfounded and cannot be a ground to reject the eviction petition. Supreme Court while dealing with a provision similar to Section 19 DRC Act under the E.P. Urban Rent Restriction Act, 1949 in a batch of appeals titled as Baldev Singh Bajwa Vs. Monish Soni (2005) 12 SCC 778 held:-

“19. The legislative intent of expeditious disposal of the application for ejectment of the tenant filed by the NRI landlord is reflected from the summary procedure prescribed under Section 18-A of the Act of 1949 which requires the Controller to take up the matter on a day-to-day basis till the conclusion of the hearing of an application. The legislature wants the decision of the Controller to be final and does not provide any appeal or second appeal against the order of eviction; it is only the High Court which can exercise the power of consideration of the case, whether the decision of the Controller is in accordance with law. Section 13-B gives right of ejectment to a special category of landlord who is NRI (non-resident Indian); and owner of the premises for five years before action is commenced. Such a landlord is permitted to file an application for ejectment only once during his lifetime. Sub-section (3) of Section 13-B imposes a restriction that he shall not transfer through sale or any other means or lease out the ejected premises before the expiry of the period of five years from the date of taking possession of the said building. Not only that, if there is a breach of any of the conditions of sub-section (3) of Section 13-B, the tenant is given a right of restoration of possession of the said building. Under sub-section (2-B) of Section 19 the landlord has to take possession and keep it for a continuous period of three months and he is prohibited from letting out the whole or any part of such building to any other person except the evicted tenant and on any contravention thereof, he shall be liable for punishment of imprisonment for a term which can be extended up to six months. These restrictions and conditions inculcate inbuilt strong presumption that the need of the landlord is genuine. The landlord, after the decree for possession, is bound to possess the accommodation. The landlord is prohibited from transferring it or letting it out for a period of five years. The conditions and restrictions imposed on the NRI landlord make it virtually improbable for any NRI landlord to approach the court for ejectment of a tenant unless his need is bona fide. No unscrupulous landlord probably, under this section, would approach the court for ejectment of the tenant considering the onerous conditions imposed on him by which he is practically deprived of his right in the property not only as a lessor but also as the owner of the property. There is a restriction imposed even on the transfer of the property by sale or any other manner. The

restriction imposed on the landlord in all probability points to the genuine requirement of the landlord. In our view there are inbuilt protections in the relevant provisions for the tenants that whenever the landlord would approach the court he would approach when his need is genuine and bona fide. It is, of course, subject to the tenant's right to rebut it but with strong and cogent evidence. In our view, in the proceeding taken up under Section 13-B by the NRI landlords for the ejectment of the tenant, the court shall presume that the landlord's need pleaded in the petition is genuine and bona fide. But this would not disentitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine.”

35. As regards the issue of suitable alternate accommodation, the findings of the learned ARC are contradictory. Learned ARC in para 41 notes that the petitioner has maintained that he does not have other alternative accommodation in Delhi and on the other hand holds this issue against the petitioner. The learned ARC in para 46 of the impugned judgment noted that the petitioner pleads that he has no residential accommodation in Delhi and in the cross-examination recorded in the civil suit Ex.PW1/R2 the petitioner stated:

*“we have other properties in Delhi. All property are on rent. The other property were also looked after by Ram Prakash Lakra during the lifetime of my father. I am not aware whether the rent of other properties are collected by way of cheque.
xxxxx The rent for the property in Hansalia Building is deposited*

in Bank of America. I have joint account with my father therefore there was no need of certificate of succession and that was in Bank of America. I cannot tell the year in which the account was opened. I cannot tell the year in which the property was let out to the Bank of America as affairs were handled by my father. Me and my father had only one joint account in India. We are not taking rent except bank of America.”

36. From the said deposition the learned ARC came to the conclusion that the petitioner has other properties which were on rent and the petitioner has at least one more property apart from the suit property and the premises in Hansalaya Building. The learned ARC further noted that in the written statement the respondents stated about the property in Lajpat Nagar but did not categorize the same as residential or commercial, however in replication the petitioner denies owning any property at Lajpat Nagar but qualifies the same as residential. Further no explanation was given as to how premises No. P-27, Malviya Nagar, New Delhi-17 was mentioned as the residence of the petitioner in lease deed Ex.PW-1/R1 which was an admission of his residence. Thus adverse inference was drawn coupled with the fact the petitioner failed to produce the Will of his father which would have shown what properties had been left by his father. It was held::

“Having regard to the facts that the petitioner did not disclose possession of Hansalaya Property (which, it has been now proved to have been sold by virtue of agreement to sell Ex.PW-2/4); the deposition regarding owning other properties as recorded in Ex.PW-1/R2; non-explanation regarding the address i.e. P-27, Malviya Nagar, New Delhi-110017 and the consequent non-production of Will of petitioner’s father; and non-explanation regarding referral to the Lajpat Nagar property as residential and also having regard to the fact that there is absence of any counter suggestion to the RW-1

regarding a property of Karol Bagh, an adverse inference is required to be drawn against the petitioner of withholding best evidence in the form of the Will of his father and residential address of Malviya Nagar.”

37. While dealing with these aspects the learned ARC clearly went beyond the pleadings. A perusal of the written statement filed by the respondents would show that the respondents had sought drawing of an adverse inference for non production of the Will having been executed by the father of Harminder Koghar on the ground that the same would have disclosed the other legal heirs and not the other properties. The respondents stated in the written statement that the petitioner should file the said Will of his father on record which would reveal the ownership in respect of the suit property. In the pleadings thus the Will was sought not to prove other properties which were bequeathed on the petitioner but to draw an adverse inference against his sole ownership. However the learned ARC drew an adverse inference against the petitioner under Section 114 Illustration ‘g’ for non-production of the Will to determine the issue of alternative accommodation which was thus contrary to the record.

38. As noted above, learned ARC relied upon the cross-examination of Harminder Koghar recorded in the civil suit Ex.PW1/R2 extensively as noted in para 35 above. However learned ARC failed to notice that the statement made by Harminder Koghar in the civil suit was a previous statement and to be read in evidence it was required to be confronted to Harminder Koghar and cross-examination in-extenso could not be read as it is. A perusal of the cross-examination of Harminder Koghar would reveal that the witness was confronted with the statement made in civil suit

No.11/2001 only to the extent “we have other properties in Delhi”. The witness denied that he had not deliberately disclosed the two properties mentioned in his statement Ex.PW1/R1 in his eviction petition wherein the “two” was rectified by the respondents as “other” as noted vide order dated 24th February, 2011 passed by learned ARC. Learned ARC has used portions of the statement made in the civil suit which is not even confronted. It would be appropriate to remind the rule of evidence in this regard as laid down by the Supreme Court in State of U.P. Vs. Nahar Singh (Dead) & Ors. (1998) 3 SCC 561 wherein following the observations of Lord Herschell, L.C. in *Browne Vs. Dunn* were noted:-

"I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses."

39. In the written statement except a bald assertion that Harminder Koghar owns a property in Lajpat Nagar, no material has been placed. Further even in the evidence by way of affidavit of RW-1 a bald assertion is made that

Harminder Singh Koghar owns properties in Lajpat Nagar and Karol Bagh. A perusal of the evidence would show that neither the details of Lajpat Nagar property nor Karol Bagh property were given. This averment having not been proved was not required to be disproved by the petitioner. The petitioner was not required to disprove each and every general statement made by the respondents. While dealing with this issue the learned ARC failed to notice that the averment of the respondents in regard to Lajpat Nagar or Karol Bagh property was vague without any details. This Court in Ramesh Chand Vs. Uganti Devi 157 (2009) DLT 450 and Rajender Kumar Sharma Vs. Leela Wati (2008) 155 DLT 383 held that a mere assertion that a landlord has various properties without placing on record documents or material to substantiate their ownership with the landlord or landlady cannot non-suit him and the tenant must prove by cogent evidence what he asserts.

40. As regards P-27, Malviya Nagar is concerned, the same was reflected as residence in the lease deed executed in respect of Noida plot which document was asked by the respondents in cross-examination which Harminder Singh Koghar produced. On being pointed out he categorically denied P-27, Malviya Nagar to be his residential property or that he owned it. No evidence was led by the defendant to show that this property was owned by Harminder Singh Koghar as residence or that the same was even on rent. Having asserted that P-27, Malviya Nagar was not his residential house Harminder Singh Koghar could not have proved this fact in the negative and could have only explained the circumstances in which P-27 Malviya Nagar was mentioned as residence. Having not clarified the same can at best be admission of a relevant fact. While dealing with the aspect of

mentioning of address P-27, Malviya Nagar as residence in the lease deed Ex.PW-1/R1 the learned ARC failed to notice the distinction between a relevant fact being proved and a fact in issue being proved. The fact in issue in the present case is whether Harinder Singh Koghar owns an alternative residential accommodation. Merely by mentioning P-27, Malviya Nagar as residence in the lease deed Ex.PW-1/R1 only a relevant fact that an alternative address has been mentioned as residence in a document executed by Harinder Koghar had been proved. However, the admission and non-explanation of this relevant fact is not sufficient to reach the incline required to prove the fact in issue i.e. Harinder Koghar owns an alternative suitable residential accommodation.

41. In Meenal Eknath Ksgursagr (Mrs.) Vs. Traders & Agencies and Anr. (1996) 5 SCC 344 the Supreme Court held:

“18. In view of the rival submissions, what we have to consider is whether the appellate bench and the High Court applied the correct test while determining the question whether the appellant requires the suit premises bona fide and reasonably for her occupation. The fact that the appellant is the owner of the suit premises and that she does not own any other premises in the city of Bombay is not in dispute. She does not possess, even as a tenant, any premises in Bombay. No doubt, she would be entitled to stay in the premises of which her husband is a tenant but if for any reason her husband had parted with possession of such premises and the same were occupied by her husband's brother, it cannot be said that the said premises were available to her and by not referring to those facts she had come to the Court with unclean hands and that by itself was sufficient to disentitle her from getting a decree of eviction. If the appellant believed that the ‘Olympus’ flat of which her husband was a tenant was not available for occupation as the same was vacated by her husband many

years back and was occupied by Sridhar and his family and that it was not possible or convenient for her and her family to go and stay there, it was not absolutely necessary for her to refer to those facts in her plaint. It would have been better if she had referred to those facts but mere omission to state them in the plaint cannot be regarded as sufficient for disentitling her from claiming a decree for eviction, if otherwise she is able to prove that she requires reasonably the suit premises for her occupation. We are, therefore, of the opinion that the appellate bench and the High Court clearly went wrong in holding that the said omission was sufficient to disentitle her from getting a decree of eviction and it also disclosed that her claim was mala fide and not bona fide as required by law.”

42. In view of the discussion aforesaid, the finding of the learned ARC as noted in para 36 above that the petitioner did not disclose possession of Hansalaya Property; the deposition regarding owning other properties as recorded in Ex.PW-1/R2; non-explanation regarding the address i.e. P-27, Malviya Nagar, New Delhi-110017 and consequent non-production of Will of petitioner's father; non-explanation regarding referral to the Lajpat Nagar Property as residential and no counter suggestion to RW-1 regarding Karol Bagh property, an adverse inference was required to be drawn against the petitioner of withholding best evidence in the form of the Will of his father for the reasons aforementioned is totally perverse and ignored the material on record. Learned ARC failed to notice the record of income tax of the petitioner exhibited by PW-2 clearly showing that petitioner owned two properties i.e. the suit property and the property at Hansalaya building and thus there was no concealment of facts. Further the finding of the learned ARC on the issue of alternate accommodation is contradictory. In Para 41 the learned ARC gives a finding in favour of the petitioner on the count that the petitioner has maintained that he does not own any other residential

premises in Delhi, however in Para 52 he draws an adverse inference on this count.

43. The learned ARC also failed to notice that in a proceeding before the Rent Controller the standard of proof required is only preponderance of probability and not on the touchstone of proof beyond reasonable doubt. While dealing with the evidence on record the learned ARC though tried to pick holes in the language used by the petitioner but failed to note a very strong piece of evidence placed on record by the petitioner in the form of his income-tax return which clearly showed that the petitioner owned two properties in India one being the suit property and the other a commercial space in Hansalaya Building which was sold and the agreement to sell thereof was also exhibited. Having ignored vital pieces of evidence and considering evidence which was not admissible in evidence, erroneously drawing adverse inferences and taking vague pleas of the respondents as facts proved, the learned ARC grossly misconducted himself in arriving at the conclusions noted above.

44. In Union of India Vs. Ibrahim Uddin & Anr. (2012) 8 SCC 148 the Supreme Court held that the issue of drawing adverse inference is required to be decided by the Court taking into consideration the pleadings of the parties and or deciding whether any document/evidence withheld has any relevance at all or omission of its production would directly establish the case of the other side.

“24. Thus, in view of the above, the law on the issue can be summarised to the effect that the issue of drawing adverse inference is required to be decided by the court taking into consideration the pleadings of the parties and by deciding

whether any document/evidence, withheld, has any relevance at all or omission of its production would directly establish the case of the other side. The court cannot lose sight of the fact that burden of proof is on the party which makes a factual averment. The court has to consider further as to whether the other side could file interrogatories or apply for inspection and production of the documents, etc. as is required under Order 11 CPC. Conduct and diligence of the other party is also of paramount importance. Presumption of adverse inference for non-production of evidence is always optional and a relevant factor to be considered in the background of facts involved in the case. Existence of some other circumstances may justify non-production of such documents on some reasonable grounds. In case one party has asked the court to direct the other side to produce the document and the other side failed to comply with the court's order, the court may be justified in drawing the adverse inference. All the pros and cons must be examined before the adverse inference is drawn. Such presumption is permissible, if other larger evidence is shown to the contrary.”

Regarding admissions the Supreme Court further held:

“29. Admission is the best piece of substantive evidence that an opposite party can rely upon, though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. Admission may in certain circumstances, operate as an estoppel. The question which is needed to be considered is what weight is to be attached to an admission and for that purpose it is necessary to find out as to whether it is clear, unambiguous and a relevant piece of evidence, and further it is proved in accordance with the provisions of the Evidence Act. It would be appropriate that an opportunity is given to the person under cross-examination to tender his explanation and clear the point on the question of admission. (Vide Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi [AIR 1960 SC 100] , Basant Singh v. Janki Singh [AIR 1967 SC 341] ,Sita Ram Bhau Patil v. Ramchandra Nago Patil [(1977) 2 SCC 49 : AIR 1977 SC 1712] , Sushil Kumar v. Rakesh

Kumar [(2003) 8 SCC 673 : AIR 2004 SC 230] , United India Insurance Co. Ltd. v. Samir Chandra Chaudhary [(2005) 5 SCC 784] , Charanjit Lal Mehra v. Kamal Saroj Mahajan [(2005) 11 SCC 279 : AIR 2005 SC 2765] and Udham Singh v. Ram Singh [(2007) 15 SCC 529] .)”

45. Before drawing the curtain it is important to note that Harminder Singh Koghar stated in the petition that Radhey Lall (since deceased) and/or his family members including his business houses own extensive immovable properties residential and otherwise in Delhi as well as New Delhi, the addresses whereof are noted in paragraph 3 above. In his examination Vivek Lall RW1 admitted that Ramnath Exports has given 2-3 properties on rent which are situated at Delhi and Agra. He further stated that the HUF owns 4 properties which are on rent and that these properties are located in Connaught Place and South Delhi and are commercial in nature. It is the case of Vivek Lall that the suit property though residential in nature was being used for commercial purposes and further the family HUF and the business concern own number of properties. Thus there is no paucity of accommodation for the respondents, rather they have surplus properties which are thus rented out. Whether the benefit of Section 14 should be extended to such tenants was considered by this Court in Ranjit Kumar Chopra Vs. Virinder Kohsla 155 (2008) DLT 658 wherein this Court held:

“6. This case is a glaring example as to how the tenant, who is an industrialist, though does not need the premises and was living with his family in a farm house kept the possession of tenanted premises by keeping it locked just to deprive the landlord/owner of the use of the premises. He kept the premises under his lock and key because he has only to pay Rs. 500/- per month as rental, which is no amount for an industrialist like him and by paying Rs. 500 per month he can keep the

landlord/owner deprived of the premises. The Rent Control Act was enacted by the Legislature as a social piece of legislation in order to protect the interests of the tenants. This enactment was considered necessary in view of the paucity of accommodation in a city like Delhi. The purpose of the Act was not to give a tool in the hands of tenants to cause sufferance to the landlords. The Supreme Court in Malpe Vishwanath Acharya v. State of Maharashtra 1998 (2) SCC (1) observed that law ought not to be unjust to one and give a disproportionate benefit of protection to another section of the society. When there is shortage of accommodation, it is desirable and necessary that some protection should be given to the tenant in order to ensure that they are not exploited but at the same time such a law has to be reviewed periodically so as to ensure that disproportionate larger benefits than the one which were intended, is not given to the tenants.

7. *The intent and purpose of Rent Control Legislation was to see that because of shortage of accommodation in a city like Delhi, the tenants are not made to shuttle from one house to other. The purpose was not to give a tool in the hands of tenants to exploit the landlords. That is why, the legislation categorically provided under section 14(1) (h) that if the tenant acquires the residential accommodation, the landlord has a ground for his eviction. It is settled law that merely non mentioning of the provisions of law, is not a fatal defect and the Court can take note of correct provision of law and give relief. Despite the fact that the landlord had not mentioned provisions of Section 14(1) (h), I consider that it was a fit case where learned ARC should have given benefit of Section 14(1) (h) to the landlord and should have ordered eviction because the tenant had acquired a farm house in Ludhiana for his own and his family's requirements and had been keeping the premises in question under his lock and key just for his visits to Delhi. He being an industrialist could always stay in a hotel."*

46. Considering the fact that contrary findings have been given by the learned ARC in relation to alternate accommodation available with

Harminder Singh Koghar; that negotiations of sale of the suit property have not been fully proved by Vivek Lall as no witness has been produced to support the contention nor the down payment made which facts are denied by Harminder Singh Koghar and Harminder Koghar and his family being NRI are entitled to have a residential accommodation in Delhi to advance the projects started by them and merely because the learned ARC feels that there is no advancement in the projects or that there were negotiations for sale, the requirement of residential accommodation cannot be denied. Consequently the impugned judgments are set aside. Petitions are disposed of directing the respondents to vacate the suit property on or before six months from the date of this order.

(MUKTA GUPTA)
JUDGE

September 01, 2015
‘ga’