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

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Date of decision: 01.12.2016

+ RC.REV. 250/2015

SAROJ AGGARWAL

..... Petitioner

Through Mr. Amit Sibal, Sr.Adv. with
Mr.Sudhir Nagar and Mr.Ayush Aggarwal,
Advocates

versus

NIMISH SINGHANIA HUF

..... Respondent

Through Dr.N.Pradeep Sharma, Mr.Ashuthosh
Lohia, Mr.Pawan Kumar and Ms.Pragya
Srivastava, Advocates.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present Revision Petition is filed under section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'The DRC Act') seeking to impugn the Eviction Order dated 26.11.2014 passed by the Additional Rent Controller (hereinafter referred to as 'The ARC') under section 14(1)(e) of The DRC Act.

2. The petitioner is the tenant of the property being ground floor A-14/3, Jamna Bhawan, Asaf Ali Road, New Delhi. The premises was let out to the petitioner on 1.1.1974 at the rent of Rs.400/- per month. The respondent has filed the Eviction Petition stating that the premises are required bona fide by the respondent for running business and that the respondent does not have any other reasonable suitable accommodation in Delhi for the said purpose. The petition is filed on behalf of Nimish Singhania HUF stating that the

Karta of the said HUF is running a Business of Human Resource Services with his wife at 516, Udyog Vihar Industrial Area, Phase-III, Gurgaon. The said petitioner is paying rent of Rs.1,00,000/- per month for the property in Gurgaon which is an area of 2000 sq.ft. Twelve employees are working for the respondent over there. The respondent also states that he is residing at Ali Pur Road, Civil Lines, Delhi which is more than 40 kms away from the property in Gurgaon and it takes almost two hours for the respondent and his wife to reach their business premises. Hence, he desires to shift the business from Gurgaon to the suit premises at Asaf Ali Road. It is pointed out that the respondent is owner of two other portions of the property No.A-14/3, Jamna Bhawan, Asaf Ali Road, New Delhi which are in occupation of two other tenants. The petitioner is also contemplating to file eviction petitions against the said tenants.

3. The ARC by the impugned order noted that there is no serious dispute about the landlord-tenant relationship between the parties. The submissions of the petitioner that other members of the HUF have not been impleaded was rejected, inasmuch as none of the members of the HUF have filed any objection to the present petition. The ARC also noted the various properties allegedly owned by the respondent which had been claimed by the petitioner to be alternative suitable accommodation available to the respondent and held that the property in Faridabad and Noida were not suitable to the needs of the respondent. Regarding the property at Alipur Road, Civil Lines, Delhi, admittedly it was a residential property of the respondent and other family members. Similarly, the ARC noted that the other properties in Sector 51, Gurgaon, Greater Noida, Karol Bagh, Dwarka do not belong to the respondent.

4. The submission of the petitioner that there has been an alleged partition in the family of Shri Nimish Singhania, his father and his brother just to create a ground for eviction was also rejected in view of the fact that the respondent had placed on record a partition deed dated 16.4.2003 according to which the tenanted property had fallen to the share of the respondent. ARC also held that the partition took place in 2003. The provision for eviction of a commercial property was allowed only after 2008 when the judgment of the Supreme Court in *Satyawati Sharma (dead) by LRs vs. Union of India & Anr., 2008 (5) SCC 287* was pronounced. Hence, it cannot be said that the partition was not bona fide.

5. Based on the above, the ARC passed the eviction order.

6. I have heard learned senior counsel for the parties. Learned senior counsel appearing for the petitioner has vehemently argued as follows:-

(i) That there is no business being carried out by the respondent in Gurgaon. Business in Gurgaon is being carried out by a company M/s.Maxonic Consulting Private Limited. To support this contention, the service agreement was relied upon which shows that the said agreement is signed by Shri Nimish Singhania as a Director for the Gurgaon property. Hence, it is urged that there are no pleadings in the eviction petition to claim any connection of the respondent with the said M/s.Maxonic Consulting Private Limited. It is not the respondent, namely, Nimish Singhania, HUF which is doing any business. He submits that though the said submission was not mentioned by the petitioner in the affidavit seeking leave to defend, however, it has been specifically argued, noted and also stated in the written submissions filed by the petitioner yet the ARC has completely ignored this submission. Learned

senior counsel relied upon judgment of a Division Bench of the Kerala High Court in the case of ***K.M.Basheer vs. Lona Chackola, 2002(3) KLT 155*** to contend that unlike a partnership firm a company is a different entity. In that case the company wanted to have the office of which the Director was the landlord. The court had held that this cannot be termed to be a need or requirement of “own occupation”. He also relies upon the judgment of the Supreme Court in ***D.N.Sanghavi & Sons vs. Ambalal Tribhuwan Das, (1974) 1 SCC 708*** to contend that it was necessary for the respondent that the accommodation is needed directly and substantially for his own occupation for the purpose of continuing or starting his business. Reference is also made to the judgment of a Single Bench of this court in ***Ram Saroop Gupta vs. Major S.P.Marwah, 2012 SCC Online Del 2584*** where a co-ordinate Bench of this court had rejected the contention of the tenant that a company is a distinct legal entity and the need of the landlord who is a natural person cannot be equated with the need of the company. In that case the court had held that the doctrine of the lifting of corporate veil in relation to this company would be fully applicable to reveal the true identity of the company as a family proprietorship firm had been converted to a private limited company. The learned senior counsel submitted that this judgment is *per incuriam* and contrary to the judgments of the Supreme Court and would not be a binding precedent for this court. He relied upon ***Delhi Development Authority vs. Skipper Construction Co.(P) Ltd. (1996) 4 SCC 622*** to contend that the corporate veil is to be lifted only when the device of incorporation is used for some illegal or improper purpose. He submits that it cannot be lifted in the facts as done by the co-ordinate

Bench of this court in the said judgment of ***Ram Saroop Gupta vs. Major S.P.Marwah (supra)***.

(ii) Learned senior counsel has also relied upon a legal notice sent on 10.6.2011 by the respondents for enhancement of rent whereby the respondent had sought increase of rent to Rs.80,000/- per month. In the said legal notice there was no mention of any bona fide requirements. It is submitted that it is evident from this notice that the respondent was only interested in increase of rent. There was no bona fide requirement when the notice was sent as no such averment has been made in the notice. Being an arm twisting mechanism the petitioner was entitled to leave to defend. He submits that though this plea was specifically taken the impugned order has ignored the same. Reliance is placed on ***Precision Steel and Engineering Works vs. Prem Deva Niranjana Deva Tayal, AIR 1982 SC 1518*** to contend that such tactics have been held to be a ground for grant of leave to defend.

(iii) Learned senior counsel further admits that in the application for leave to defend the plea that the property is required for M/s. Maxonic Consulting Private Limited and not for the respondent, namely, Nimish Singhania HUF has not been raised. He, however, submits that in the eviction petition the respondent did not file a complete set of documents. These documents he submits were given later on and hence the plea was raised in the application for leave to defend.

7. Learned senior counsel appearing for the respondent has refuted the submissions of the petitioner. He submits that the petitioner not having raised these issues in the pleadings cannot now be permitted to argue the said

contentions about the requirement being of M/s. Maxonic Consulting Private Limited. He further submits that full set of documents had been supplied to the petitioner and only original had been filed later on. He further submits that as per the Eviction Petition the respondent has sought the premises for the bona fide requirements of the respondent as he would like to shift his business from Gurgaon to the present premises as it is more suitable to the respondent for running his business. It is not necessary that the respondent has to shift the company M/s. Maxonic Consulting Private Limited. Further even if premises is required by a company it would not in any manner effect the bona fide need of the respondent. Reliance is also placed on the judgment of the learned Single Judge of this Court in ***Ram Saroop Gupta vs. S.P. Marwah, (supra)*** to contend that the findings recorded by a co-ordinate Bench of this Court would be binding on this court. It is further stated that the respondent has acted bona fide.

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

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

Section 25B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is according to law'. The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law'. For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available..."

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

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

“14. Protection of tenant against eviction.- (1)

Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenant:

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

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

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

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

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

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

“7. The Controller has not discussed as to how the pleas raised by the respondent/tenant in the application for leave to defend are such which if established by adducing evidence would disentitle the petitioner/landlord of an order of eviction under Section 14(1)(e) of the Act. Ordinarily, when a tenant approaches an advocate for drafting a leave to defend application, the advocate, using his legal acumen would dispute each and every plea of the landlord in the eviction petition. However, merely because the tenant so disputes and controverts the pleas of the landlord does not imply that the provision of summary procedure introduced in the Act with respect to ground of eviction on the ground of requirement is to be set at naught. The Controller is required to sift/comb through the application for leave to defend and the affidavit filed therewith and to see whether the tenant has given any facts/particulars

which require to be established by evidence and which if established would disentitle the landlord from an order of eviction. The test is not of the tenant having controverted/denied the claim of the landlord and thus disputed questions of fact arising; the test is to examine the pleas of facts and then to determine the impact thereof.”

13. Similarly, this court in *Deepak Gupta vs. Sushma Aggarwal, 2013 202 DLT 121* held as follows:-

“24.From the mere reading of the afore mentioned illuminating observations of the Supreme Court in the case of Precision Steels (supra), it is apparent that the Controller has a statutory duty to grant the leave to defend if the affidavit discloses the facts which could raise suspicion on the genuineness of the need of the landlord which can in effect disentitle the landlord from recovering the possession on the ground of bonafide requirement. The likelihood of success or the failure of the defence is not really determinative of the question as to grant or not grant of the leave to defend but the real question is tenability of the plea which may raise a suspicion on the need of the landlord which may if proved can also lead to disentitlement to the recovery of the possession. Thus, the plea raising a doubt in the mind of the Controller is sufficient to grant the leave. The Controller can also not record the findings on disputed question of the facts by preferring the one set of facts over and above the other. The merits of the pleas raised are not to be gone into at the time of the grant of the leave to defend by going into the complicated questions of fact. For making the enquiry, the affidavit filed by the tenant is helpful.

25. The views expressed by the Supreme Court in the case of Charan Dass (supra) and Precision Steel (supra) are holding the field and have been consistently followed by the Supreme Court till recently and also by this court from time to time. (kindly see the case of Inderjit Kaur vs. Nirpal Singh: 2001 (1) R.C.R. 33 and Tarun Pahwa vs. Pradeep Makin,: 2013 (1) CLJ 801 Del.)”

14. I may now deal with the contentions of the learned senior counsel for the petitioner. The basic contention is that the premises are required for shifting the business of the Company M/s. Maxonic Consulting Pvt. Ltd. and not for the respondent-Nimish Singhania, HUF. It is pleaded that the business in Gurgaon is of the corporate entity and hence, the premises are not sought bona fide for the requirement of the respondent. The respondent and the company Ms/ Maxonic Consulting Pvt. Ltd. being two distinct legal entity, the respondent cannot seek eviction of the petitioner on the ground of bona fide requirement of the company.

15. The admitted fact is that the plea which is now being raised before this court was never raised by the petitioner, namely, that the business in Gurgaon is being carried out in the name of the Company Maxonic Consulting Pvt. Ltd. and not in the name of the respondent in the application seeking leave to defend. It appears to have been raised by the petitioner at the time of final arguments but the same was ignored by the ARC.

The Supreme Court in the case of *Prithipal Singh vs. Satpal Singh, (2009) 2 SCC 15* has held as follows:-

“14. From a careful perusal of Sub-section (4) of Section 25B of the Rent Act, it would be clearly evident that the tenant shall not be permitted to contest the prayer for eviction unless he files an affidavit before the Controller stating the ground on which he seeks to contest the application for eviction and obtains leave from the Controller. This Section also clearly indicates that in default of his appearance in compliance with the summons or his obtaining such leave, the statement made by the landlord in the eviction proceeding shall be deemed to be admitted by the tenant

and the landlord shall be entitled to an order for eviction on the ground mentioned in the eviction petition.

15. At this stage, we may also note that in Sub-section (4) of Section 25B of the Rent Act read with Third Schedule, it has been made clear by the Legislature that if the summons of the proceeding is received by the tenant, he has to appear and ask for leave to contest the eviction proceeding within 15 days from the date of service of notice upon the tenant and if he fails to do so, automatically, an order of eviction in favour of the landlord on the ground of bona fide requirement shall be made.

16. Hence, as per the Section 25 B DRC Act, the tenant is not permitted to contest the eviction petition unless he files an affidavit stating the grounds on which he seeks to contest the petition. Further in case he fails to file this application within 15 days from the date of service of notice, automatically an order of eviction in favour of the landlord is to be made. The ARC has no power to condone the delay, if any, in filing of the application for leave to defend as was held by the Surpeme Court in the case of ***Om Prakash vs. Ashwani Kumar Bassi, (2010) 9 SCC 183.***

In the present case, the petitioner having not taken this plea in the application for leave to defend cannot not now turn around and seek to argue the same at the stage of final arguments before the ARC and thereafter before this court.

17. The plea taken by the learned senior counsel for the petitioner that this is a purely legal plea is misplaced. It is the case of the respondent that they are carrying on business in Gurgaon in the name of the Company and in the name of the respondent also. Hence, as already held above, the petitioner

cannot be permitted to raise this plea about the business being done by the company in Gurgaon.

18. However, I have considered the submission made by the petitioner on merits also but do not find any merit in the contentions. I may look at the judgment relied upon by the learned senior counsel for the petitioner to support his contention. The petitioner has relied upon the judgment of the Kerala High Court in the case of ***K.M. Basheer vs. Lona Chackola (supra)***. In that case the issue was as to whether the need for occupation of a registered private company in which the landlord is a director is a bona fide need of the landlord for his occupation. The interpretation was being made to Section 11(3) of the Kerala Buildings (Lease and Rent Control) Act. The court held that as the need of the landlord under Section 11(3) has to be for his 'own' occupation, the occupation of the building for functioning of the company would not suffice.

19. Reference may also be had to the judgment of the Supreme Court in ***D.N.Sanghavi & Sons vs. Ambalal Tribhuvan Das (supra)*** relied upon by the petitioner. In that case the landlord filed a suit for ejectment stating that he needed the accommodation for his business within the meaning of Section 12(1)(f) of the Madhya Pradesh Accommodation Control Act, 1961. At the evidence stage, he gave evidence that he needed the accommodation for the partnership business. The Supreme Court held as follows:-

“9. On this construction of Clause (f) of Section 12(1), it is necessary for the respondent to prove that the accommodation it needed directly and substantially for his occupation for the purpose of continuing or starting his business.

10. The respondent has stated in his evidence that he and his two brothers are carrying on a partnership business in a rented shop in

Siyaganj. He has further said that he needs the suit accommodation for that purpose. The appeal court has believed this evidence and has recorded the finding that the respondent bona fide requires the accommodation for his partnership business. But this finding does not fulfil the conditions of Clause (f) of Section 12(1) as construed by us. Unfortunately for him, the respondent did not lead any evidence to show that the accommodation was needed directly and substantially for his occupation by way of business. He filed the registration certificate showing that the partnership was registered with the Registrar of Firms. The certificate will only prove as to who are the partners of the firm, nothing more. The respondent did not file the deed of partnership. It would have disclosed whether the respondent is a mere sleeping partner or a partner who is entitled to manage the business either solely or with other partners, or that they are the sole managing partners. In his examination he has said that he was a partner in the firm.

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In neither of these two passages nor anywhere else in the evidence he has stated that on the terms of partnership he is entitled to manage the partnership business or even that he would also occupy the suit accommodation along with his partners on obtaining possession from the appellants. He has also not said that the other partners have agreed to shift the business.”

20. Hence, reliance of the learned senior counsel for the petitioner on the above judgment is misplaced. The judgment is based on the interpretation of Section 12(1) of the M.P. Accommodation Control Act. The plea of the landlord in that case were rejected on facts as the landlord was unable to prove that he is entitled to manage the partnership business or that he would occupy the suit accommodation along with his partners on obtaining possession from the tenants.

21. I may look at the judgment relied upon by the respondent. A coordinate Bench of this court in the case of ***Ram Saroop Gupta vs. Major S.P. Marwah, 2012 SCC OnLine Del.2584*** was dealing with a case where the wife and the landlord were running a shop regarding jewellery. Over time the landlord got the company incorporated. In this company the landlord, his wife and son are the directors. The bona fide need was of the said business being run in the said company. This court held as follows:-

“5. That apart the legal submission that an eviction petition u/s 14 (1)(e) of the DRCA is not maintainable by a company is no longer resintegra and a bench of this Court in 158 (2009) DLT 62 Satnam Kaur & Others Vs. Ashlar Stores P. Ltd. has held that a private limited company can also filed an eviction petition u/s 14 (1)(e) of the DRCA. Grounds pleaded in the eviction petition even otherwise show the bonafide need is the need of the petitioner who had initially started this business of jewellery with his wife Smt. Afsana Marwah which was on a small scale from their residence; this was about ten years ago i.e. ten years prior to the incorporation of their company which was incorporated only on 13.08.2007 and this has specifically been pleaded in the eviction petition to which there has been no dispute. It is not the case of the tenant that no such business was being run by the husband and wife from their residence; the company incorporated was a company of the husband, wife and their son. Memorandum of Articles of Association of the company filed by the landlord in the trial Court show that the shareholding of the company is of 10,000 shares which is distributed inter-se between the husband-wife and son and the son has 1,900 shares; balance 8100 shares are of the husband and wife. Eviction petition clearly discloses that the need of these premises is for the business of the petitioner and his family members who have no other alternate suitable accommodation; it is an admitted fact that this duo i.e. husband and wife had up to ten years carried out the business in their individuals names incorporating the company only on 13.08.2007 in which they had inducted their son also. This company is a private limited company; it is the family concern of

the petitioner. The submission of the tenant that a company is a distinct legal entity and the need of the landlord who is a natural person cannot be equated with the need of the company is again a mis-conceived submission. Although there is no dispute to the legal proposition that a company is a distinct legal entity separate from its shareholders; however the principle of piercing the veil of the corporate personality in order to reveal the 'true identity of the company' is also recognized doctrine. The Apex Court in *Kapila Hingorani Vs. State of Bihar III* (2003) SLT 673 had noted that the principle behind the doctrine is a changing concept and it is expanding its horizon. In 128 (2006) DLT 24 *Prem Lata Bhatia Vs. Union of India*, a Division Bench of this Court while dealing with the rights of the parties where a partnership had converted itself into a private limited company had inter-alia noted as under:-

“In such cases, the doctrine of piercing the veil of corporate personality should be utilized. For instance, when a partnership firm converts itself into a private limited company with the partners in the firm becoming the shareholders and directors in the company it will not be a case of transfer of the property of the firm to the company, otherwise a huge amount of stamp paper and registration charges for the transfer of the property of the firm to that of the company will have to be paid, capital gains tax will have to be paid,, etc. In fact, it is well settled there is no transfer in such cases because in substance the owner remains the same though technically it becomes a different legal entity. In such cases, the principle of piercing the veil of corporate personality should be utilized not to prevent somebody from doing any wrong, but merely in order to recognize the reality of the situation.”

22. Reference may also be had to the judgment of the Division Bench of Madhya Pradesh High Court in the case of *Smt.*

Satyabhamadevi Choubey vs. Ramkishore Pandey, AIR 1975 MP

115 where the court explained the position of possession as follows:-

“Before us the finding of the learned Single Judge that the defendant had parted with the possession of the premises in suit in favour of his brother was challenged as incorrect. Shri R. P. Tiwari for the respondent, contended that the strictly legal concept of possession was not kept in view while arriving at the said finding and, therefore, he urged us to reconsider the matter in the light of the evidence on record.

The concept of possession in law is not a simple one and anyone interested in an academic discussion of the question may refer to the analysis of possession at pages 523 to 529 of Jurisprudence by Paton. Third Edition. Ordinarily, possession implies the co-existence of two important factors : (1) animus, that is an intention to hold and enjoy property; and (2) corpus, that is, physical control over the property.

23. A Division Bench of this Court in the case of ***Inder Mohan Kahanna & Ors. Vs. Jai Prakash & Anr., 1978 RLR 367*** was dealing with a case where the tenant was carrying on business along with the brothers being a hindu undivided family. Subsequently all the brothers constituted a joint stock company and the business continued in the name of the company and the shares in the company were held by the brothers and other members of the family. All the brothers became directors of the company. The landlord filed an eviction petition on the ground that the property had been sub-let, assigned or otherwise parted with possession in favour of the company. The Division Bench held as follows:-

“6. In considering the question if the corporate veil is to be ignore in a particular case a distinction must however, be made between

cases where the tearing of the corporate veil is being resisted by a Company and cases in which the privilege of the corporate veil is sought to be waived by the Company and those who constitute it. In the former class of cases the question has to be examined in the context of an attempt to deprive the corporation of its statutory privilege while in the other the corporation is laying itself bare for others to see. The present is a case which falls in the latter category. It is the landlords who are anxious to preserve the corporate veil of the Company, which was constituted by the tenant along with his brothers to continue a joint business. It is the case of the landlord's that it was the Company that operates the business being an entity distinct from those who constitute it. Look at the Company, contend the landlords, but ignore those who are behind it and hold that there has been parting with possession in favor of a new legal entity. It is the promoters of the Company themselves, the tenant and his brothers, as indeed the Company, which offer to raise the corporate curtain to show the persons who are behind the corporate facade. They claim the protection of the Act on the ground that the formation of the Company merely changed the form of business which continued in substance to be the same. It is, Therefore, waiving of a privilege conferred by the statute and would stand on a different footing. If that be the true legal position, the doctrine of tearing of the corporate veil and the limitations in the application of the doctrine would not be involved in the present case, being the voluntary exposure by the Company or those that constitute it. In that situation the position that would emerge is that the tenant, who was carrying on the business along with his brothers as a Hindu undivided family or on his own but otherwise in association with his brothers, continued to carry on the business in association with the brothers and the other members of the family though in a corporate form and without introducing any new element in the business or in the demised premises. The question, Therefore, of the tenant having parted with possession, in fact or in law, did not and could not arise. Such a conclusion would accordingly be determinative of the question as to the tenant's liability to ejectment.

7. It has already been pointed out that mere introduction in the premises of another legal entity does not by itself constitute a parting with possession within the meaning of the Act because a parting with possession is not only a physical act but is a legal concept and it must, Therefore, be a parting with legal possession of the premises i.e. the right to occupy as distinct from the actual occupation. The material brought on the record by the parties does not justify the conclusion that there has been any transfer of legal possession or Transfer of any right or interest in the tenancy in favor of the company. That the tenant and his brothers continued to be on the premises as part of the business of the Company was not disputed. That the rent was throughout being paid to the landlords by the tenant and the receipt was being executed by the landlords in favor of the tenant was also not in dispute. There is nothing either in the Memorandum of Association of the Company or in any instrument between the tenant and the Company, which may be construed as conferring any right or interest in the tenancy in favor of the Company or which may form a valid basis for a claim by the Company that it was entitled to occupy the premises independently of the tenant, there is nothing on the record which may indicate any act of the tenant by which he divested himself in relation to tenancy or that there has been any corresponding vesting in the Company of any rights or interest in the tenancy. The continuance of the business in the form of the Company did not have the effect of diminishing the legal possession of the premises by the tenant or the effacement of the tenant in relation to the premises.”

24. Hence, in the present case, there is no allegation that the company is not a company owned and controlled by the family. The only argument is that it is the company which requires the tenanted premises. Even assuming this plea was the actual factual situation though this has been denied by the respondent, the company using the tenanted premises would not mean or imply that the respondent/its members would not be in occupation or possession of the tenanted

premises. There is no such averment or allegation or submission by the petitioner. Hence, even legally there is no merit in the plea of the petitioner.

25. I may however note that the case of the respondent in the eviction petition was that they needed the tenant premises for running their business which is being run in Gurgaon. They never said that they are shifting the company from Gurgaon to Delhi. Along with the eviction petition the respondent had filed an agreement dated 01.02.2009. The said agreement has mentioned that the premises is let out to Maxonic Consulting Pvt. Ltd. and is executed by Nimish Singhania as the director. Based on this solitary document filed by the respondent, the petitioner has sought to make a hue and cry to claim that the entire business is being run in Gurgaon under the name of this company and it is for the need of the company that the respondent are seeking eviction of the tenanted premises. Based on this single document filed by the respondent, the petitioner has made its claim as above without an iota of any evidence or material. There is clearly no merit whatsoever legally and factually on the plea raised by the petitioner.

26. The other contention of the petitioner is regarding the legal notice sent on 10.06.2011 by the respondent whereby the respondent had demanded the monthly rent of Rs. 80,000/-. The demand of increase of rent has been made based on the misrepresentation of the judgment of the Supreme Court in SLP No. 6319 of 2007. It is clear that the said legal notice does not in any manner effect the bona fide requirement of the respondent.

27. There is no merit in the pleas of the petitioner. There are no reasons to interfere with the impugned order passed by the ARC. The petition is accordingly dismissed.

(JAYANT NATH)
JUDGE

DECEMBER 01, 2016/n

Corrected and signed on 14.06.2017.

