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

Reserved on: 28.07.2016

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Pronounced on: 01.09.2016

+ RC.REV. 315/2012

SATISH KUMAR KHURANA

..... Petitioner

Through Mr.Kirti Uppal, Sr.Advocate with  
Mr.Prem Kumar, Mr.R.P.Sharma and  
Ms.Sahiba Pantel, Advocates

versus

HS BAJAJ

..... Respondent

Through Mr.Rajat Aneja, Ms.Rashmi Verma &  
Ms.Shifa Nagar, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J.**

1. By the present Revision Petition the petitioner seeks to impugn the order/judgment dated 2.3.2012 passed by the Additional Rent Controller whereby the leave to defend application of the petitioner was dismissed and an eviction order was passed under Section 14(1)(e) of the Delhi Rent Control Act.

2. The petitioner filed an Eviction Petition under section 14(1)(e) read with section 25-B of the Delhi Rent Control Act for eviction of the premises being one shop on the ground floor of property bearing No.4/55, double storey, Tilak Nagar, New Delhi-110018. The premises is said to have been let out on 10.3.1982. It was the contention of the respondent/landlord that the respondent is the owner/landlord in respect of the said shop which has

been let out for commercial purpose at a monthly rent of Rs.300/- vide lease deed dated 10.3.1982.

3. The respondent in the eviction petition contended that he is a practicing advocate practicing in the field of income tax/sales tax. It is stated that he is having his office on the first floor of the property. He is an old man of 80 years suffering from hypertension and pain in gouts and hence there is difficulty in climbing the staircase on account of his old age. His clients are also old and they find it difficult to come to the first floor. Hence, it was urged that the respondent seeks to setup his own office on the ground floor so that he can pass rest of his life peacefully. Hence, he requires the premises bona fide for himself and his family members dependent upon him.

4. The petitioners filed their affidavit under Section 25-B of the DRC Act seeking leave to defend. Various submissions were raised including (i) that the respondent does not require the shop on account of his age as he has given up his practice as a lawyer. Earlier also the respondent was running his office from the ground floor of the said property and closed the same as per his own volition. Reliance was placed on a Will dated 15.4.1987 executed by the father of the respondent wherein it was stated that respondent is in possession of one of the shops and the same will belong to him. (ii) It is further stated that as the practice of the respondent was diminishing he downsized the area of his office to almost half and in the other half he alongwith his son started a venture of sale of wedding sarees, suit, dupattas, lehanga etc.

5. The trial court after considering the above affidavit filed on record by the petitioner noted that there is no dispute as far as the ownership, rate of rent and the purpose of letting are concerned. Noting that the respondent is

an old man of 80 years suffering from various ailments, the trial court concluded that the requirements of the respondent for the shop in question is bona fide which is required for setting up his own business on the ground floor. Accordingly, the application of the petitioner for leave to defend was dismissed and an eviction order was passed.

6. I have heard learned senior counsel for the petitioner and learned counsel for the respondent. Learned senior counsel for the petitioner has stressed the following to submit that the impugned order is erroneous:-

(i) That the respondent has stopped his legal practice. He was earlier having his office on the ground floor. This is clear from the Will dated 15.4.1987 of the father of the respondent which states that one shop is occupied by his son/the respondent where he is practicing as an advocate for the last few years. On account of diminishing practice of the respondent, the respondent stopped his operations and divided the shop into two halves; one half was given to his son for running a saree shop and the other half was lying vacant. He has also relied upon a communication from the Taxation Bar Association dated 10.1.2011 which states that there are certain dues payable to the Bar by the respondent. Hence, it is stated that the respondent has not even paid his dues of the Bar Association.

(ii) The respondent is an active participant in the business of the son in the saree shop. He has relied upon photographs to show the respondent sitting in the shop of his son. This he says proves the contention that now the respondent is only engaged in running the shop.

(iii) The first floor is also lying vacant.

(iv) Alternate accommodation is available to the respondent as another shop was got vacated by an order under Section 14(1)(b) of the DRC Act in

2014. This is a subsequent development and now the respondent does not require the premises bona fide.

(v) The respondent has failed to disclose about his residential accommodation at M-64, Vikas Puri where he can run his office.

(vi) He has relied upon *Precision Steel & Engineering Works and Anr vs. Prem Deva Niranjana Deva Tayal*, (1982) 3 SCC 270; *Mukesh Sharma vs. Harmesh Singhal*, MANU/DE/4949/2013; *Shanti Devi vs. Rajesh Kumar Jain and another*, (2015) 2 SCC 158; *Deepak Gupta vs. Sushma Aggarwal*, 202 (2013) DLT 121 and *Khem Chand & Ors. vs. Arjun Jain & Ors.*, 202 (2013) DLT 613 to support his submission.

7. Learned counsel appearing for the respondent has denied the submissions of the petitioner. At the outset, he submits that the two grounds which are raised by the learned senior counsel i.e. about alternate accommodation being available on account of an eviction order and also at the residence of the respondent at M-64, Vikas Puri, Delhi were never raised before the ARC and is not stated in the affidavit filed under section 25-B by the petitioner. Hence, he submits that these pleas cannot be taken into account. He further submits that as far as the accommodation at M-64, Vikas Puri is concerned, i.e. the residential accommodation of the respondent same is evident from the Memo of Parties which was filed. This residential house is not suitable for the respondent to commence his legal practice. Regarding the additional accommodation being available to the respondent on account of an eviction order, the accommodation relates to shop No.5. It is submitted that on account of default in payment of rent by the tenant, the petition under section 14(1)(b) of Delhi Rent Control Act was filed. An eviction order was passed on 2.6.2010 against which an appeal was

filed by the tenant. The appeal was dismissed on 1.9.2014. Execution is pending but presently possession has not been received. It is further urged that the shop in question in the present petition is open on two sides and is more suitable to the needs of the respondent. Shop No.5 will not be suitable for the respondent. He relies upon *Prithipal Singh vs. Satpal Singh, (2010) 2 SCC 15* and *Anil Bajaj and Another vs. Vinod Ahuja, (2014) 15 SCC 610* to contend that it is the decision of the landlord as to which shop would be more suitable. The shop No.5 has not been ordered to be vacated for bona fide needs of the respondent but on account of default being committed by the tenant in payment of rent.

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* 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. 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 dependant upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

10. As rightly noted by the ARC in the present case there is no controversy about ownership, rate of rent and the purpose of letting.

11. Coming to the bonafide requirement the argument of the petitioner was that the respondent was earlier running his office from the ground floor which on account of his diminishing legal practice, he shut down. Presently the respondent is no more a practicing advocate and is in fact working with his son running the business of a silk saree store.

12. The ARC noted that the respondent is an old man of 80 years suffering from Hyper-tension, pain in gouts and difficulty in climbing. The order further states that it has been clearly averred by the respondent in his affidavit that his son is running a separate business and he has no connection or concern with the business of his son. The ARC concluded that the need of the respondent is genuine as he himself was entitled to pursue his own profession. The contention of the petitioner that the respondent is not a

practicing lawyer was negated by documents on record including the ID card of the respondent.

13. In my opinion, there are no reasons to differ with the finding recorded by the ARC. The respondent has filed his own Income Tax Returns and he has also filed Returns of his various clients prepared by him. He has also placed on record the proceedings dated 15.9.2010 and 29.11.2010 before the Department of Trade and Taxes and an Assessment Order dated 30.9.2009 of the Income Tax Department, to show that he continues to be a practicing advocate. These proceedings show the presence of the respondent as an advocate appearing for his clients. The argument of the petitioner that the respondent has ceased to be a practicing advocate is misplaced. It is possible that the respondent/landlord may on account of his old age have a dwindling practice. That does not however, mean that he should not be entitled to continue to remain professionally active in spite of his age. Merely because occasionally he may be helping his son in the business of a silk saree store, cannot be a ground to deny him the independence of carrying on his own professional work.

14. I may now deal with the contention of the petitioner regarding alternative accommodation being available to the respondent. So far as the first leg of this contention namely the residential property in which the respondent/landlord is staying, namely M-64, Vikas Puri, New Delhi is concerned, the contention that the respondent/landlord can run an office from the said residential premises has not been raised by the petitioner in the affidavit/application for seeking permission for leave to defend filed under Section 25-B of the DRC Act. In view of the settled legal position as laid

down by the Supreme Court in the case of *Prithipal Singh v. Satpal Singh*, (2010) 2 SCC 15, the petitioner cannot now raise the present contention.

15. Even otherwise the availability of the said premises was never disputed by the landlord. This is apparent from the memo of parties where the respondent/landlord has given his address as Vikas Puri, New Delhi. Merely, because the availability of this accommodation was not mentioned has no meaning. A Bench of this Court in *R.D. Aggarwal v. Smt. Arjan Kaur*, 1988 (2) RCJ 179 in this context has held as under:-

“In an eviction petition on the ground of bona fide requirement it is only where a particular landlord intentionally conceals the residential accommodation available to him from the court that he/she can be non-suited on this ground. Concealment of innocuous accommodation which cannot be used as a regular room should not result in dismissal of her/his claim for more accommodation.”

16. Coming to the second leg of the argument of the petitioner of alternative accommodation which as per the petitioner is available to the petitioner, i.e. shop No.5 for which an eviction order has been passed. This is a subsequent development and can be raised and brought on record by the petitioner. However, the respondent has explained the position regarding the shop stating that a) physical possession has not yet been received by the respondent of the said shop; b) shop which is a subject matter of the present petition is two side open and the petitioner preferred to use the present shop. The landlord is the best judge of his requirement and it is not open to the tenant to dictate terms to the landlord for his requirement either for his residential or commercial purpose.

17. In *Ragavendra Kumar v. Firm Prem Machinery and Co.*, [2000] 1 SCR 77, it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter. In *Prativa Devi (Smt.) v. T.V. Krishnan*, (1996) 5 SCC 353, it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate the landlord as to how and in what manner he should live. The bona fide personal need is a question of fact and should not be normally interfered with.

18. Hence, the said contention is of no help to the petitioner.

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

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

20. It is clear that the shop in question is required bona fide by the respondent for his own personal use and he has no other reasonably suitable accommodation.

21. In the light of the above, the requirements of the respondent/landlord are bona fide. The defence raised by the tenant/petitioner is moonshine, and no triable issue is raised. The application for leave to defend was rightly

dismissed. There are no reasons to differ with the view of the ARC. Petition is without any merit and is dismissed.

**(JAYANT NATH)**  
**JUDGE**

**SEPTEMBER 01, 2016/n/v**