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

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Date of decision: October 19, 2016

+ RC REV. 282/2016

NAND KISHORE SONKARPetitioner

Through Mr.Kamal Sharma, Adv.

Versus

RAM CHAMELI ANAND AND ANR.Respondent

Through Mr.Abdesh Choudhary and
Mr.S.Majumdar, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This 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 24.2.2016 whereby the Additional Rent Controller (hereinafter referred to as The ARC) dismissed the application of the petitioner/tenant seeking leave to defend and passed an eviction order.
2. The respondent/landlord filed the Eviction Petition for a shop bearing No.2678/12, Basti Punjabiyan, Purani Sabzi Mandi, Delhi. It was claimed that the petitioner had inducted a sub-tenant and had parted with possession of the premises. It was further stated that late Shri Nanak Chand Anand husband of respondent No.1 and father of respondent No.2 was the absolute owner of the property. The same was purchased from Custodian of Evacuee

Property under the sales certificate dated 13.6.1969. After the death of Shri Nanak Chand, respondent No.1 got the property mutated in her name and has deposited necessary mutation charges/property tax. Late Shri Tannu Ram was inducted as a tenant in 1969 at a rent of Rs.5/- per month. He expired in 2001. The petitioner is the son of Shri Tannu Ram and has paid rent thereafter. It is urged that the property is required bona fide for the use of Shri Punit Sahni the grandson of the respondent No.1 and son of respondent No.2. Shri Punit Sahni is a qualified Engineer who is said to have considerable experience in marketing, production, service and business strategies. He is planning to get into the business of Hybrid seeds and other agricultural inputs and requires the premises bona fide for starting his business. He has already said to have entered into an MOU with Shri Rajender Suri/Chambal Hybrid Seeds Private Limited.

3. The ARC by the impugned order on the issue of landlord-tenant relationship noted that the respondents have filed a Special power of attorney executed in favour of Shri Punit Sahni which is duly registered and signed by the respondents. The respondents have also placed on record a certificate of sale by virtue of which Shri Nanak Chand was held to be owner of the property having purchased the same by public auction by the Ministry of Rehabilitation. The impugned order also notes that the petitioner himself admitted in his leave to defend application that the father of the petitioner had taken the shop in question on rent from the husband of respondent No.1 admitting the relationship of landlord tenant between husband of respondent No.1 and the father of the petitioner. In the light of this fact the impugned order concludes that in terms of Section 116 of the Indian Evidence Act the petitioner is estopped from disputing the title of the respondent.

On the bona fide requirement, the impugned order notes about the requirement of Shri Punit Sahni son of respondent No.2 and grandson of respondent No.1. It notes that Shri Punit Sahni is a qualified Engineer who is planning to go into the business of hybrid seeds etc. It notes the MOU entered into by the said Shri Punit Sahni. As nothing substantial was pleaded to the contrary the impugned order concludes that the facts on record show that there exists a bona fide requirement for Shri Punit Sahni who is dependent upon respondents for accommodation.

On availability of alternative suitable accommodation the impugned order notes the submission of the petitioners that the respondents have lots of other properties. However, no details have been mentioned. The impugned order hence concludes that the petitioner has made bald allegations without any substance. The application for leave to defend of the applicant was dismissed and eviction order was passed in favour of the respondents.

4. I have heard learned counsel for the parties. Learned counsel for the petitioner has vehemently submitted as follows:-

- (i) That there is no power of attorney in favour of Shri Punit Sahni. The Power of Attorney relied upon is bogus and not signed by respondents.
- (ii) The facts as placed on record do not show any bona fide requirements on the part of the respondents.
- (iii) The said Shri Punit Sahni is gainfully employed in Gwalior and has no requirement for the shop in question.

The scope of the present revision petition is extremely limited. This court is obliged to test the impugned order to see whether it is in accordance with law and for that limited purpose reappraise the evidence on refund and

to further see that the conclusion arrived at by the ARC are not wholly unreasonable.”

5. 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 any 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.”

6. 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.

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

8. 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.”

9. I may deal with the submission of learned counsel for the petitioner. The impugned order has recorded a finding that the Power of Attorney on record is a registered Power of Attorney. Merely a bald averment claiming that the same is a forged power of attorney has no meaning. The averment is bereft of any details or particulars. The same has no consequence and does not help the case of the petitioner. Regarding the submissions of bona fide requirement, it is manifest from a reading of the impugned order and the

eviction petition that the premises are required bona fide for the use of Shri Punit Sahni. It is also on record that there is no other suitable alternative accommodation available with the respondents. The petitioner has not been able to plead or demonstrate anything to the contrary.

10. 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.

11. 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.”

12. The learned counsel for the petitioner has averred that there is no bona fide need as the said Shri Punit Sahni is employed in Gwalior. I may point out that in the application for leave to defend no such plea has been raised.

Now, a bald plea has been raised in the present revision petition claiming that Shri Punit Sahni is employed in Gwalior working in Kurlon.

13. The Supreme court in the case of *Prithipal Singh v. Satpal Singh, (2010) 2 SCC 15* has held that the tenant has only 15 days' time for filing the application for leave to defend. Further, no additional grounds can be taken after lapse of the said period unless subject to certain exceptions including exceptions about the subsequent developments. The Supreme Court held as follows:-

“16. 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. 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.”

11. Hence, the present plea now taken for the first time in this petition cannot be permitted to be taken. The respondent has not had an opportunity

to rebut this contention and it would be highly improper to permit the petitioner to plead the same.

12. Even otherwise, other than a bald averment claiming that the said Shri Punit Sahni is working in Gwalior there is nothing on record to support the said contention. In my opinion, this is only a desperate plea to try and derail the proceedings. Even assuming that the said Shri Punit Sahni is working in Gwalior there could be no reason to presume that he would not be interested to start his own business in Delhi.

13. There is no merit in the present Revision Petition. Same is dismissed. All pending applications, if any, also stand disposed of.

**(JAYANT NATH)
JUDGE**

OCTOBER 19, 2016

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corrected and signed on as 3.7.2017

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