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

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Date of decision: 28.09.2016

+ RC.REV. 422/2016

ANIL JAGGI & ORS

..... Petitioners

Through: Mr. Anil Sapra, Senior Advocate with
Mr. Deepak Khadaria, Mr. Siddharth
Handa and Ms. Varuna Thakur, Advs.

versus

USHA DIWAN

..... Respondent

Through: Mr. P.D. Gupta, Senior Advocate with
Mr. Amit Vohra, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present Revision Petition is filed under section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) seeking to impugn the order dated 2.7.2016 by which the Additional Rent Controller (hereinafter referred to as the ARC) passed an eviction order dismissing the application of the petitioners for leave to defend under section 14(1)(e) of the DRC Act. The respondent/landlady filed the eviction petition under section 14(1)(e) of the DRC Act for shop on ground floor measuring 1' x 22'.6", 15-A/65, WEA, Ajmal Khan Road, Karol Bagh, New Delhi.

2. It was the contention of the respondent in the said petition that she is the absolute owner and landlady of the property. She owns the larger property and the present tenanted premises is only measuring 1' x 22'. 6". It is stated that the respondent is the daughter in law of the Diwan family and is running the famous brand under the name and style of M/s. Diwan Saheb

Fashions (Pvt.) Limited. The family is in the business of Men's Fashion since 1957 when the business was started by late Shri M.L.Diwan, the father-in-law of the respondent. The family of the respondent comprises of herself, her husband, three children i.e. two sons and a daughter. It is averred that the premises in question is required bona fide for the requirement of the elder son Shri Amit Diwan who is a qualified Clothing Design Technologist having diploma from Manchester Metropolitan University, U.K. It was stated that the said Shri Amit Diwan wants to open a retail showroom with elegant style and infrastructure to meet the global demands in fashion by selling variety range of designer suits, designer sherwanis etc. The said son it is averred is dependent on the respondent for his livelihood as well as survival. It is also stated that he wants to create his own niche in the designer wear/clothes and to come out of the umbrella of the family being Diwan Saheb Fashions Pvt.Ltd. It is pointed out that earlier the said Shri Amit Diwan started the business of dry-cleaning by the name of Garment Care. The business, however, failed and has been shut down and presently Shri Amit Diwan is unable to do separate independent business. Hence, the present Eviction Petition. It was also stated that the larger property where the tenanted premises exists comprises of four floors including ground floor. Apart from the possession of the side Almirah with the petitioner, major portion of the front side is under tenancy of another tenant for which a separate eviction petition is being filed. The entry to the first floor it is stated is only through a narrow passage from the Ajmal Khan Road. For the purpose of setting up of showroom for display of designerwear and other requirements the tenanted property is required.

3. The petitioners filed their application for leave to defend. In the said application they have made following averments to submit that the petition lacks bona fide:-

(i) The respondents are running retail showrooms and factory outlets in Delhi, NCR and abroad. Both the sons of the respondent are involved in the said business. The head office is stated to be in Naraina Industrial Area. A list of 13 showrooms are mentioned which according to the petitioner are operating under the brand name Diwan Saheb including in New York, London, California and Mauritius.

(ii) It is further stated that the son Shri Amit Diwan is stated to be one of the owners of the said Diwan Saheb, He is the Director in the company and is engaged in managing the entire affairs of the said company.

(iii) Even if the petitioners were to open another retail showroom in the building where the tenanted property is situated, the site which is occupied by the petitioner which measures only 1' x 22'.6" would not come in the way of opening of the said retail showroom.

4. The ARC by the impugned order noted the reply of the respondent to the application for leave to defend pointing out that of the 13 premises pointed out by the petitioner, only three are owned by the company Diwan Saheb Fashions (Pvt.) Limited. Four are tenanted premises, two are dealer premises and there exists no other showrooms. The ARC held that the petitioners have not placed on record any document to show that the 13 showrooms belong to the respondent. The ARC further held that the requirement of the respondent is bona fide and no specific material has been

brought on record to the contrary. The ARC dismissed the application for leave to defend and passed an Eviction order.

5. I have heard learned counsel for the parties. Learned senior counsel appearing for the petitioner has strenuously submitted that

(i) Shri Amit Diwan is the controlling authority of Diwan Saheb Fashions (Pvt.) Ltd. He has 97% stake in the fabrication unit, is gainfully employed and he is also fully in control of the family business. Hence he is neither dependent on the petitioners in any manner whatsoever nor is there any bonafide requirement. The respondent has a flourishing business with a large turn over. He has to lead evidence to prove his case.

(ii) It is further pointed out that in the Eviction Petition the respondent projected a requirement for Shri Amit Diwan claiming that he is dependent on the respondent for his livelihood as well as survival of his family including his wife and children. However, in the reply to the application for leave to defend it is pointed out that the respondents have admitted that the said Shri Amit Diwan is a Director in two companies which are into fabrication of readymade garments. It is urged that vital facts have been suppressed by the respondents in the Eviction Petition.

(iii) The small area occupied by the petitioners is no impediment to the respondent opening a showroom.

6. Learned counsel appearing for the respondent has stressed that Shri Amit Diwan has no concern with M/s.Diwan Saheb Fashions (Pvt.) Ltd and he is not a Director in the said company. It is further urged that he is only

running the fabrication unit but has no retail outlet and hence the present eviction petition has been filed as Mr.Amit Dewan requires a retail showroom.

7. 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...”

8. 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.

9. 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.

10. 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.

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

12. The Supreme Court in *Precision Steel & Engineering Works and another vs. Prem Deva Niranjana Deva Tayal*, AIR 1982 SC 1518 in para 22 held as follows:-

22. What then follows. The Controller has to confine himself indisputably to the condition prescribed for exercise of jurisdiction in Sub-section (5) of Section 25B. In other words, he must confine himself to the affidavit filed by the tenant. If the affidavit discloses such facts-no proof is needed at the stage, which would disentitle the plaintiff from seeking possession, the mere disclosure of such facts must be held sufficient to grant 'leave because the statute says on disclosure of such facts the Controller shall grant leave'. It is difficult to be exhaustive as to what such facts could be but ordinarily when an action is brought under Section 14(1) proviso (e) of the Act whereby the landlord seeks to recover possession on the ground of bona fide personal requirement if the tenant alleges such facts as that the landlord has other accommodation in his possession; that the landlord has in his possession accommodation which is sufficient for him; that the conduct of the landlord discloses avarice for increasing rent by threatening eviction; that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself; that the dependents of the landlord for whose benefit also possession is sought are not persons to whom in eye of law the landlord was bound to provide accommodation; that the past conduct of the landlord is such as would disentitle him to the relief of possession; that the

landlord who claims possession for his personal requirement has not cared to approach the Court in person though he could have without the slightest inconvenience approached in person and with a view to shielding himself from cross-examination prosecutes litigation through an agent called a constituted attorney. These and several other relevant but inexhaustible facts when disclosed should ordinarily be deemed to be sufficient to grant leave.”

13. Similarly, the Supreme Court in *Charan Dass Duggal vs. Brahma Nand*, (1983) 1 SCC 301 held as follows:-

“5. What should be the approach when leave to defend is sought? There appears to be a mistaken belief that unless the tenant at that stage makes out such a strong case as would non-suit the landlord leave to defend cannot be granted. This approach is wholly improper. When leave to defend is sought, the tenant must make out such a prima facie case raising such pleas that a triable issue would emerge and that in our opinion should be sufficient to grant leave. The test is the test of a triable issue and not the final success in the action. At the stage of granting the leave parties rely in support of their rival contentions on affidavits and assertions and counter-assertions on affidavits may not afford such incontrovertible evidence to lead to an affirmative conclusion one way or the other. Conceding that when possession is sought on the ground of personal requirement, an absolute need is not to be satisfied but a mere desire equally is not sufficient. It has to be something more than a mere desire. And being an enabling provision, the burden is on the landlord to establish his case affirmatively. If as it appears in this case, the landlord is staying at Pathankot, that a house is purchased may be in the name of his sons and daughters, but there may not be an apparent need to return to Delhi in his old age, a triable issue would come into existence and that was sufficient in our opinion to grant leave to defend in this case.”

14. 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.”

15. Similarly, this court in *Deepak Gupta vs. Sushma Aggarwal*, **2013 102 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.)”

16. I may now deal with the submissions of the petitioners regarding the claim for bona fide requirement for the premises for Shri Amit Diwan son of the respondent. It is a matter of fact that in the Eviction Petition it has been averred by the respondent that Shri Amit Diwan is dependent on the respondent for his livelihood as well as survival of his family. The portions of the Eviction Petition are relevant and read as follows:-

“xiii. That prevailing circumstances has made the unpleasant situation for the son Amit Diwan and he has become dependent on the petitioner for his livelihood as well as survival of his family including of his wife and children.

xiv That to earn his livelihood, the son of the petitioner wants to create his own niche in the designer wear/clothes and come out of the umbrella of the Diwan Saheb Fashions Pvt.Ltd. Amit

Diwan has the relevant qualification as well as experience for the establishment for starting designer wear clothes and only needs a suitable place for retail showroom with elegant, style and infrastructure to meet the global demands in fashion by selling variety of range of designer Suits, Sherwanis, Saafa, Kurta, Payjamas, Shirts, jackets, and other designer clothes for wedding ceremonies and for wide circulation.

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xvi That the family also tried to set up another business by opening a dry cleaning business of Garments for the elder son Amit Diwan by the name Garment Care to settle him but the unfortunately for her son business has failed and has been shut down and presently Amit Diwan is unable to do separate independent business. It is further stated that the said premises at which the earlier venture was running was a rented premises.”

17. However, in their reply to the application for leave to defend the respondent states that Shri Amit Diwan is working as a Director in M/s.S.D.Heritage Impex Pvt. Limited and M/s. S.D. Apparels Private Limited which are fabrication units of readymade garments situated at Naraina Industrial Area, Phase-II. It is claimed that he does not have any retail outlet/showroom of readymade garments. The averment in the reply is materially different from what is stated in the eviction petition. Initially in the Eviction Petition what was projected was that the said son Shri Amit Diwan is dependent upon the respondent for his livelihood as well as survival of his family. The averments further are that to help the said Shri Amit Diwan settle down, the drycleaning business was sought to be opened but the said business failed and has been shut down and that the said Shri Amit Diwan is unable to do separate independent business. However, in the

reply to the application for leave to defend a materially different stand is taken i.e. that the said Shri Amit Diwan is working as a Director of M/s.S.D.Heritage Impex Pvt. Limited and M/s. S.D. Apparels Private Limited which are fabrication units of readymade garments being operational from Naraina Industrial Area, Phase-II. However, he requires the space to start an independent retail outlet/showroom of readymade garments. Hence, from the initial requirement of need to earn livelihood, the requirement has been changed to a need for space to start independent retail outlet.

18. It is also noteworthy that a categorical averment has been made by the petitioner/tenant in his application for leave to defend that the said Shri Amit Diwan is the owner of M/s Diwan Saheb Fashions (Pvt.) Ltd. as per material posted on the website of Diwan Saheb. It is averred that the said Shri Amit Diwan is managing the entire affairs of M/s.Diwan Saheb Fashions (Pvt.) Ltd. at national and international level. Admittedly, as per the respondents three showrooms are owned by the company M/s.Diwan Saheb Fashions (Pvt.) Ltd., four showrooms are tenanted premises and two are dealer premises. The company is a reputed company with a large turnover. Though the respondents have denied that Shri Amit Diwan is a Director of the company and have placed on record Memorandum and Articles and Association as well as Form 32, but the averment of the petitioner remains that Shri Amit Diwan is the controlling person behind the company M/s.Diwan Saheb Fashions (Pvt.) Ltd. This averment is supported by a print out taken from the website. There is further no reference to the shareholding patterns of the said Shri Amit Diwan in the company M/s.Diwan Saheb Fashions (P) Ltd.

19. In the light of the above averments made by the petitioners in their leave to defend application, it is manifest that the petitioners have made out prima facie pleas on account of which triable issues emerge. There are issues raised in the leave to defend application for which the petitioners ought to have been allowed an opportunity to lead evidence as the issues have a strong bearing on the merits of the petition. Given the scale of operations of the company M/s.Diwan Saheb Fashions (Pvt.) Ltd. and keeping into account the fact that almost the entire adult family members are on the Board of Directors, the contentions put forward by the petitioner cannot be said to be frivolous or bald allegations which would disentitle the petitioner to lead evidence. One also cannot ignore the change of averments as made in the eviction petition in contrast to the reply filed by the respondents to the application for leave to defend. A requirement for livelihood/survival has been changed to a requirement for a running of a retail showroom.

20. It is true that normally this court in exercise of its power of revision under section 25B(8) DRC Act would not interfere in the findings recorded by the ARC. However, in the present case it is manifest that the ARC has failed to take into account the material submissions placed on record by the petitioner in the leave to defend application which if allowed to be proved may lead to the conclusion that the desire of the respondents is not bona fide. A prima facie case raising triable issues has been made out. The impugned order suffers from material illegality and is contrary to law. The said order is accordingly set aside.

21. Accordingly, the matter is remanded back to the ARC for adjudication as per law. Parties to appear before the ARC on 24.2.2017.

22. Petition stands disposed of. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J.

SEPTEMBER 28, 2016

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signed on 30.01.2017