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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. 477/2016 & CM Nos.35939/2016 & 35940/2016

JAMAN LAL KANHAYA LAL Petitioner
Through Mr.R.L.Bhatia, Advocate

Versus

RAM MOORTI DEVI Respondent
Through None.

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 to impugn the order dated 1.7.2016 passed by the Additional Rent Controller (ARC) in a petition filed under Section 14(1)(e) read with section 25-B of the Delhi Rent Control Act, 1958 whereby an eviction order has been passed against the petitioner for premises i.e. one godown bearing private No.5 on the ground floor of property bearing No.2646, Gali Raghunandan, Naya Bazar, Delhi.

2. The respondent herein filed the present Eviction Petition on the grounds of bona fide requirement of the respondent. It was averred that the respondent is the landlady of half portion of the premises. It was stated that her family consists of herself, her three sons including Shri Yogendra Pal Sharma a practicing advocate and one daughter. Shri Yogendra Pal Sharma has three children i.e. two married daughters and one son who is a graduate. It was stated that Shri Yogendra Pal Sharma and the other son Shri Sanjay Sharma are dependent upon the respondent for residential/commercial purpose. Respondent and her family members are in possession of five

rooms out of which two are on the first floor and three on the second floor and the barsati on the third floor of the property in which the tenanted premises are situated. It was further stated that the tenanted premises is required by her son Shri Yogendra Pal Sharma who is a practicing Advocate for his office purpose and that he has no accommodation for office purpose anywhere in Delhi. It was stated that the said accommodation is also required by her grandson Shri Varun Sharma to start his business.

3. The petitioners entered appearance and filed an application seeking leave to contest under section 25(B)(5) of the DRC Act. It was pointed out that the petitioner is involved in wholesale Dry Fruit business having their shop at Katra Ishwar Bhawan but the tenanted premises is a godown and that the petitioners do not have any other godown in their possession. It was further stated that the son of the respondent Shri Yogendra Pal Sharma is a practicing Advocate since 1980 and is having a roaring practice since last 35 years. Hence, it was urged that the need of the respondent is neither real nor genuine and a mere pretext to evict the petitioner.

4. The ARC by the impugned order noted that the relationship of landlord tenant has not been disputed. On the issue of bona fide requirement the submission of the petitioner that the said Shri Yogendra Pal Sharma has a roaring practice for the last 35 years was noted. It was also noted that merely because he has a strong practice would not mean that he would not need a proper office for expansion of his professional practice. Appropriate space for meeting the clients, keeping law books, computer etc. would be necessary. There was nothing on record placed by the petitioner to show that any other alternative accommodation/commercial accommodation was available to Shri Yogendra Pal Sharma for using as an office. Hence, the ARC concluded that the respondents have made out a case of bona fide requirement.

5. On the availability of alternative suitable accommodation the ARC noted that as per the petitioner the respondent has several godowns/shops under their ownership which has been concealed. The ARC noted that the respondent has placed on record counterfoil of the rent receipts to show that all the godowns and shops in her premises are let out to different tenants and none of them are lying vacant. It was also noted that the petitioner has not been able to show which shop/godown on the ground floor of the premises is lying vacant and can be used by the son of the respondent. Hence, the ARC dismissed the application of the petitioner for grant of leave to defend and passed the necessary eviction order.

6. Learned counsel appearing for the petitioner has strongly submitted that the son of the respondent Shri Yogendra Pal Sharma is an Advocate for the last 35 years. He has a seat in District Court Tis Hazari Delhi and does not require any space for office accommodation. The alleged requirement of said son is neither real nor genuine and is a mere pretext. Secondly, it was submitted that a godown has recently got vacated by the respondent and that godown is available to the respondents. It was lastly stressed that the need projected by the respondents is not bona fide and no grounds were made out to pass an order of eviction against the petitioner. Reliance was placed on the judgment of the Supreme Court in ***Dinesh Kumar vs. Yusuf Ali*, AIR 2010 SC 2679 AND *John Impex (P) Ltd. vs. Surinder Singh and Others*, (2003) 9 SCC 176.**

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** 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. Similarly, the Supreme Court in the case of *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta*, (1999) 6 SCC 222 held that the scope of Revision Petition is limited and the Court would interfere only when the order of the Controller is found not in accordance with law or when the same is perverse or based on a conclusion which no reasonable person could have reached.

9. In the present case the application of the petitioner seeking leave to defend under section 25(B)(5) was dismissed. The principles for considering a leave to defend application has been stated by this court in the case of *Sarwan Dass Bange vs. Ram Prakash*, MANU/DE/0204/2010 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.”

10. Hence, the test is to see as to whether the tenant has given facts/particulars which require to be established by evidence and which if established would disentitle the landlord from the order of eviction.

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. As far as the issue of landlord/tenant is concerned, there is no dispute raised regarding the same.

13. On the issue of bona fide requirement the only contention raised by the petitioner is that the son of the respondent has been practicing since last 35 years and has a seat in Tis Hazari Courts, Delhi and hence the need is not bonafide. What would the term ‘seat’ imply has not been elaboratd. Normally it means “a table and a chair” which are allotted to a lawyer in the court premises. In my opinion, the mere availability of a seat cannot serve as

a substitute for a proper office of the Advocate. Today, for a successful legal practice the availability of a good office is a necessity. An Advocate would need a proper office for purposes of carrying on his professional work. The office would have a chamber for consultation with his clients, storage of office books, computers, sitting space for staff etc. Admittedly, the son of the respondent does not have an office. He is merely using a table and chair allotted to him in the court premises for carrying on his professional work. It cannot be denied that the requirement of the respondent is bona fide. Hence, the finding of the ARC that the requirement for the accommodation by the respondent is bona fide cannot be faulted with.

14. Regarding availability of alternative accommodation, it has been argued that a godown has recently been got vacated and is available with the respondents. It was posed to the learned counsel for the petitioner as to whether this contention was raised in the application for leave to defend. The answer was that this is a fact which has come to the knowledge of the petitioner only recently. It was stated that this fact came to the knowledge of the petitioner as alongwith the reply to the leave to defend application the respondents have filed some rent receipts. For a particular godown only rent receipts of 2007 have been filed which implies that the godown is vacant. In my opinion, the contentions which are sought to be raised by the petitioners are misplaced. Merely because a latest rent receipt for the godown was not filed cannot be a ground to conclude that the godown is vacant and available with the respondent. Even otherwise, this plea has not been raised by the petitioner admittedly before the trial court. No opportunity has been granted to the respondent to explain this contention, for whatever it is worth. I may note that in the Eviction Petition the respondent on affidavit has stated that the respondent has no other reasonable and suitable commercial accommodation for use of office by her son Yogendra Pal Sharma,

Advocate. This averment is supported by an affidavit. In reply to the application filed by the petitioner under Section 25(B)(5) of the DRC Act for leave to contest the respondent has again made a categorical averment that the respondent is not in occupation of any portion of the ground floor of the property and the premises is required for the office of her son who is a practicing advocate. It is added that her grandson Shri Varun Sharma would also require the premises as he would start his own business. In the light of these categorical averments, an argument based on non-filing of the latest rent receipt is a baseless contention sought to be raised only for the sake of raising an argument. The said contention does not in any manner alter the position that there is no alternative accommodation available with the respondents for carrying on the professional work of Shri Yogendra Pal Sharma.

15. 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.”

16. Learned counsel appearing for the petitioner relied upon the judgment of the Supreme Court in *Dinesh Kumar vs. Yusuf Ali*. (*supra*) to support his case. As to how this judgment helps the petitioner is not known. The court in the said judgment relying upon earlier judgments of the Supreme Court held as follows:-

“8. In *Prativa Devi v. T.V.Krishnan* (1996) 5 SCC 353, this Court 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.

9. However, in *Ram Dass v. Ishwar Chander & Ors.*, AIR 1988 SC 1422, this Court held that ‘bona fide need’ should be genuine, honest and conceived in good faith. Landlord’s desire for possession, however honest it might otherwise be, has, inevitably, a subjective element in it. The “desire” to become “requirement” must have the objective element of a “need” which can be decided only by taking all relevant circumstances into consideration so that the protection afforded to tenant is not rendered illusory or whittled down. The tenant cannot be evicted on a false plea of requirement or “feigned requirement”. (See also *Rahabhar Productions Pvt.Ltd. v. Rajendra K.Tandon*, AIR 1998 SC 1639: (1998 AIR SCW 1387); and *Shiv Sarup Gupta v. Dr.Mahesh Chand Gupta* (AIR 1999 SC 2507) : (1999 AIR SCW 2666).”

17. 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.

18. 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 28, 2016/n