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

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Date of decision: 07.12.2016

+ RC.REV. 290/2015 and CM No. 10735/2015

VIMAL CHANDOK

..... Petitioner

Through

Ms.Shalini Kapoor, Ms.Ruhini Dey
and Mr.Dikshant Khanna, Advocates

Versus

SHIV SHARAN DASS & ANR

..... Respondents

Through

Mr. Vinay Gupta, 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 16.3.2015 of the Additional Rent Controller (hereinafter referred to as the ARC) by which order the application for leave to defend of the respondent/tenant was granted and the respondent was allowed to file a written statement.
2. The petitioner/landlord had filed the Eviction Petition under section 14(1)(e) of the DRC Act seeking Eviction of half second floor (rear portion) of H.No.G-5, Jawahar Nagar, Kamla Nagar, Delhi. The respondents were inducted as tenants on 1.10.1971 and are stated to be paying a rent of Rs.150/- per month. The petitioner is stated to have inherited the property vide registered partition deed dated 10.4.1985 executed between Shri Arvind

Chandok and the petitioner. Family of the petitioner consists himself, his wife, a divorced daughter and a son. It is stated that the petitioner does not have any other property except the property in question in Delhi. The property is required bona fide by the daughter to help rehabilitate her. Front portion of second floor is stated to be in possession of the daughter of the petitioner from where she is running an Institute of training. It is stated that she bonafidely requires the property for expanding the business and also for her residence. In the eviction petition it is stated that the daughter is a young lady aged 39 years and a divorcee. She has to commute a long distance from Gurgaon to reach her office which is located in the front portion of the premises. This often results in her reaching the house in Gurgaon in the late hours. Hence, she would also like to shift her place of residence from Gurgaon and move into the tenanted premises so that her time is saved in commuting.

3. The respondents filed their application seeking leave to defend the case. The respondents raised the following pleas:-

(i) The tenancy was given originally in perpetuity by the owner/landlord Smt.Kailashwati who has since expired. Her children include the petitioner, his brother Shri Arvind Chandok and two daughters. There are inter se disputes between the brothers and the property is yet to be partitioned. It is admitted that rent has been paid to the petitioner though it is stated that this without prejudice to the rights and contentions of the petitioner.

(ii) The petitioner had entered into an agreement to sell for sale of the tenanted premises and had also taken some advance which he has

forefeited. Hence, it is urged that the demand of the petitioner lacks bona fide as he seeks to sell the property.

(iii) The tenanted premises comprises of three rooms, covered verandah,, kitchen, bath room, toilet, balcony and roof terrace. However the petitioner have not mentioned about the terrace rights, three balconies with each room and also about the main gate in frontway passage.

(iv) There is no averment in the entire eviction petition that the daughter of the petitioner has no other alternate accommodation available with her. No detail about the property she owns is placed on record.

(v) The daughter of the petitioner is said to have been commuting for the last seven years for her business purpose. It is improbable that all of a sudden a need has been felt by her for suddenly shifting to Delhi and also for expansion of her business. The requirement is not bonafide.

(vi) The petitioner have sufficient accommodation in possession on the second floor and also partly on the ground floor of the property.

4. The ARC by the impugned order noted that there are two triable issues which have arisen in the facts and circumstances of the case. The first triable issue is in respect of terrace as well as three balconies which are said to be under tenancy which the petitioner has denied. The second triable issue that is noted is that the need of the daughter is for expansion of business and it is settled that in case of expansion of business leave to defend should ordinarily be granted. Conjointly, with this issue it is stated that the desire of the petitioner's daughter to shift her residence to Delhi from Gurgaon where she is presently residing with her entire family would also be a triable issue. Further, the desire of the daughter to reside all alone in Delhi away from her entire family whether the same is genuine or just a front to get the eviction

order would also be a triable issue. Based on these averments, the ARC has allowed the application of the respondents granting leave to defend.

5. I have heard learned counsel for the parties.

6. Learned counsel for the petitioner has pointed out that the daughter of the petitioner has been carrying on business for the last several years from the front portion of the second floor of the same premises. She is a trained HR Consultant and is running a business in HR consultancy which is also in collaboration with a US firm. It is stated that the bona fide need of the daughter of the petitioner is clearly stated and implicit in the averment of the petitioner that there is no other accommodation with her to start her own business. It is also pleaded that merely because the balcony being part of the tenanted premises have not been stated in the eviction petition is irrelevant. Reliance is placed on judgment of this court in ***Parvati Devi vs. Mahindra Singh, 1996 (1)AD (Delhi) 819***. It has also been denied that the petitioner owns any part of the ground floor. Whatever portion was owned in the ground floor is said to have been sold by registered sale deed on 3.5.2000. The only place available is a small garage under the staircase which measures only 20sq.ft. It is submitted that this place is neither suitable for expansion of business nor for residence of the daughter of the petitioner. Regarding the Agreement to Sell, it is urged that an Agreement to Sell was entered into for sale of the property in 1999 but as the proposed purchaser failed to adhere to the terms and conditions of the Agreement, the Agreement stands terminated though a suit for specific performance is pending.

7. Learned counsel appearing for the respondents has made the following submissions:-

- (i) The daughter of the petitioner has been doing her business for the last eight years from the premises in Delhi. The alleged need said to have now arisen is not bona fide and cannot be explained.
- (ii) The petitioners have enough space on the ground floor and second floor of the said premises itself. The tenanted premises is roughly 700sq.ft. The petitioner is also having an area of around 700 sq.ft. Enough space is available with the petitioners for their need and need of the daughter. It is stated that space is available on the ground floor and on the first floor.
- (iii) There is no averment in the Eviction Petition that the daughter of the petitioner does not own any residential house in Delhi.
- (iv) The contentions regarding the bona fide need are not existing in view of the agreement to sell as stated in the application for leave to defend are reiterated.

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 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:-

XXXXX

(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. In the present case the trial court granted leave to defend to the petitioner. The parameters for granting leave to defend are well known.

13. 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.”

14. 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.)”

15. I may hence test the findings recorded by the ARC on the touchstone of the requirement/parameters stated above for determining as to whether the trial court rightly granted the leave to defend to the respondents.

16. As far as relationship of landlord-tenant is concerned, though the respondent has denied that the petitioner is the owner of the tenanted property, he admits in his application of having paid rent to the petitioner. He also admits that the original owner/landlord was Smt.Kailashwati and that the petitioner is the son of Smt.Kailashwati. In the light of these facts, it is not for the respondent to dispute the title of the petitioner in view of section 116 of the Evidence Act. The respondent having paid rent to the petitioner the relationship of landlord-tenant would clearly stand established.

17. On bona fide needs I may note that the Eviction Petition seeks to project two separate requirements for the petitioner, namely, for the expansion of the business of the daughter and (ii) for the residence of the daughter. The daughter is already carrying on her professional work from front half portion of the second floor of the premises. Merely because two separate purposes have been stated for requirement of the tenanted premises does not in any manner prejudice or dilute the bona fide requirement. This proposition has been upheld by this court in *Jitendra Mohan Gulati [DR.] vs. Hira Lal Singh, 219 (2015) DLT 489/(MANU/DE/1031/2015)* in somewhat similar facts where the landlord had stated two different requirements as follows:-

“12. As regards bonafide requirement, the learned ARC noted the two contentions of Dr. Gulati that Hira Lal has at one place stated that he required the premises for himself and on the other place the same was required for the expansion of the business of his son. It was further stated that the proposed use of property for starting auto-parts or auto-workshop was not permissible and the area was restricted for use as residential as per the Master Plan of Delhi 2021. The contention of Dr. Gulati deserves to be rejected. At no point of time Hira Lal sought eviction of the tenanted premises for opening an auto-workshop. He stated that his son was selling tyres and had a wheel balancing machine and he wants to open a shop for sale of motor-parts and accessories. Hira Lal has placed on record a Trade License issued by the MCD in the name of his son. The fact that Hira Lal has mentioned two bonafide requirements i.e. to start the business for himself and the other for expansion of business of his son would not nullify his bonafide requirement. There is no requirement in the law that while filing an eviction petition under 14(1) (e) DRC Act the landlord must restrict himself to only one bona-fide requirement. The fact that Hira Lal has no experience to start the business is immaterial.”

18. Similarly, this court in RC Rev.445/2016 titled *Naresh Kumar vs. Surender Kumar Gulati* vide judgment dated 6.10.2016 also followed the aforesaid judgment.

19. This Court while issuing notice in the present Revision Petition on 29.5.2015 had noted that the requirements of expansion of business was a triable issue. However, the fact that the daughter has to travel everyday from Gurgaon to Delhi and the fact that it was not controverted would not necessarily be a triable issue.

20. The admitted position as submitted by the learned counsel appearing for the respondents is that the daughter of the petitioner has been carrying on

her business/professional work from front half of the premises since the last 8 years. It is not disputed that she is residing with her family, namely, her parents, and brother in Gurgaon. She has to commute a long distance of about 80 km everyday up and down for reaching her place of work and for returning to her residence. It is common knowledge that on account of extremely heavy traffic conditions commuting time to and fro Gurgaon takes considerable time i.e. more than an hour each way. Hence, the fact that the daughter of the petitioner would like to shift to the tenanted premises so as to be living in the vicinity of her office cannot be said to be a mere fancy desire. By such a movement she would save time everyday. Further the long commuting time would result in the daughter reaching home late in the evening, which could also be a safety issue.

21. The daughter is a professionally qualified person running her professional training institute. Having encountered matrimonial problems in her marriage, there can be no reason to doubt her desire to shift to Delhi and to live in the proximity of her office and save commuting time of 2-3 hours a day.

22. There is no merit in the contention of the learned counsel for the respondent that the petitioner has been commuting from Gurgaon to Delhi for her work for the last eight years and this sudden need to shift is not bonafide. It is common knowledge that traffic conditions to commute from Gurgaon to Delhi have been deteriorating over time. Even otherwise there could be various reasons which would have persuaded to the daughter of the petitioner to shift to Delhi. The bonafide of the decision is self evident.

23. 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.”

24. 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 to the landlord as to how and in what manner he should live.

25. Hence, the impugned order suffers from manifest errors on the face of it when it concludes that the desire of the petitioner's daughter to shift her residence from Gurgaon to Delhi would be a triable issue as she is presently residing with her entire family and further finding of the ARC that desire of the daughter of the petitioner to reside in Delhi alone and whether the same is a genuine desire or not would also be a triable issue. The daughter of the petitioner is entitled to live separately if so desires. Merely because she has been living with her parents and brother for several years, does not mean that she cannot live independently. There can be no occasion or need to doubt the said desire keeping in view the fact that the daughter is staying 40 kms. away and has to commute to Delhi and back daily to her work place.

26. The other issue which has persuaded the ARC to come to a conclusion that triable issues have been raised is the fact that the petitioner is claiming that the terrace as well as three balconies are under his tenancy which fact has been denied by the respondent. This court in the case of *Parvati Devi vs. Mahindra Singh (supra)* held as follow:-

“I fail to appreciate how non-mention of an open terrace will make any difference to the eviction petition. The cases of eviction petitions being for partial eviction are really those where some substantial portions of the tenancy premises i.e. a room or a bath room forming part of exclusive tenancy to the tenant concerned, are excluded from the eviction petition. A terrace in the property is not a place which can be used for substantial residential purposes. Merely because the petitioner has not included the terrace of the first floor in the eviction petition is not sufficient to disentitle the petitioner to seek eviction of the respondent. The respondent cannot use the terrace alone if he is evicted from rest of the tenancy premises. In such cases, the court has to look to the substance rather than to form.”

27. It is hence clear from the above that the two grounds on which the ARC concluded that triable issues exist, namely, about the respondent claiming terrace and three balconies under the tenancy and the fact that whether the need of the daughter of the respondent to live separately from her family is genuine or not cannot be said to be triable issues. The conclusions are entirely erroneous. The impugned order suffers from manifest and material irregularity and has to be quashed.

28. I may also deal with the other miscellaneous submissions of the learned counsel appearing for the respondents. The petitioner has urged that an Agreement to Sell was entered into with a prospective purchaser in 1999 by the respondent to sell the area in question. Hence, there is no bona fide.

This is an event that took place nearly 17 years ago. A civil suit is pending against the respondent for specific performance. But it cannot be a ground to deny existence of a bona fide need for an Eviction Petition which is filed in 2014. Much time has passed since the execution of the Agreement to Sell.

29. Regarding the contention of the learned counsel for the respondent about the availability of the space on the ground floor and the first floor, the same is misplaced. The only area available on the ground floor is a garage measuring 20 sq.ft. under staircase and the same cannot certainly be used as a residence. Similarly, the area on the ground floor which was occupied by the petitioner has been sold by a registered sale deed dated 3.5.2000. Copy of the sale deed is on record. This sale took place 16 years ago. This argument of the respondents about availability of space on the ground floor is also entirely misplaced. There is no merit in the contention of the respondent. There are no grounds to show that the respondent has suitable alternative accommodation available.

30. Hence, the desire of the petitioner to establish her residence in the tenanted premises is bona fide. The impugned order suffers from material irregularity and the same is quashed. Accordingly, an eviction order is passed in favour of the the petitioner and against the respondents for the tenanted premises. In terms of section 14(7) of the DRC Act the respondents are granted six months' time to vacate the tenanted premises.

31. Petition stands disposed of. All pending applications if any also stand disposed of.

DECEMBER 07, 2016/n

**(JAYANT NATH)
JUDGE**