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

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Date of Decision: 03.11.2016

+ RC.REV. 511/2016

RAVINDER KUMAR VERMA

..... Petitioner

Through

Mr.C.Mukund, Mr.Gaurav Kr.Singh &
Mr.Nagender Yadav, Advocates.

versus

LAXMI NARAYAN MANDIR NIRMAN

SABHA & ANR

..... Respondents

Through

None

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

CM No. 39287/2016 (exemption)

Exemption is allowed subject to all just exceptions.

RC.REV. No. 511/2016 and CM Nos. 39286/2016 (stay) & 39288/2016 (delay)

1. The present revision petition is filed under Section 25 (B) (8) of the Delhi Rent Control Act (hereinafter referred to as DRC Act) seeking to impugn the order dated 23.04.2016 passed by the Additional Rent Controller (ARC) dismissing the application of the petitioner for grant of leave to defend and consequently, passing an order of eviction against the petitioner.
2. The respondents have filed the present eviction petition against the petitioner under Section 14(1)(e) read with Section 25(B) of the DRC Act.

As per the eviction petition, one shop measuring about 9 x 5 ft. at the ground floor of Laxmi Narayan Mandir, D-Block, Jafrabad Road, New Seelampur, Delhi-110053 was let out to the petitioner. It is stated that at the time of the inception of the tenancy, the rent was Rs.600/- per month but presently the monthly rent is Rs.3,100/- per month. The tenancy was said to have started from 2012. It was further stated that the respondents are the owners of the entire property and the total area of the property is about 175 sq. yards and on the ground floor of the property there are 8 shops, the petitioner being the tenant of one shop i.e. No. D-1/4(B) at the ground floor of Laxmi Narayan Mandir Nirman Sabha. It is the contention of the respondents in the eviction petition that the population of the area and devotees are increasing day by day. Heavy crowd is experienced on each and every occasion on performance of religious functions organised by the devotees and other persons. On various festivals, heavy crowd of devotees collects at the Mandir premises but the space of the Mandir premises is limited and the road in front of the Mandir becomes congested. Further requirement of space is explained stating that a small statue of Shiv Parivar is situated at a very small place and persons cannot do worship. A statue of Lord Shani Dev is a must in the Mandir premises and there is a heavy demand for the same by the devotees but due to non-availability of space, the statue cannot be put. Despite there being huge crowd who daily attend the Mandir, there is no place to install drinking water cooler, wash rooms for gents and ladies. There is no space to install security system like CCTV Cameras which is necessary for a crime-prone area like Seelampur. Hence, it is urged that there is an urgent need for additional space by the respondents and hence, the eviction petitions have been filed against all the eight shops including the shop occupied by the

petitioner which are required to be vacated because more space is required by the Mandir.

3. The petitioner filed his application under Section 25(B) (4) of the DRC Act for grant of leave to defend and contest the eviction petition. It was urged in the application that the present respondent is not the Secretary of the Mandir Nirman Sabha and that the real officials of the Mandir Nirman Sabha have lodged a complaint against the respondent and hence, a triable issue has arisen. It is stated that Shri. Rajesh Sharma, the alleged Secretary is not even the member of the Mandir Sabha.

4. The trial court on the issue of landlord and tenant relationship noted that it was not for the petitioner to challenge the ownership of the respondents. The petition is, in fact, not filed by Sh. Rajesh Sharma in his personal capacity but is filed by him in his official capacity on behalf of the Sabha/Society. Hence, if there is any dispute as to whether Sh. Rajesh Sharma is the Secretary of the respondent Society or not, the fact remains that the petition is filed by the Sabha/Society. The trial court further noted that there is no dispute raised by the petitioner about the increased foot fall of devotees, the requirement of room for security guards and systems, requirement of washrooms for general public and fixation of various statutes of Deities and likewise and hence, as the petitioner has not challenged the bona fide need of the respondents, the trial court decided the petition in favour of the respondents and dismissed the application of the petitioner for leave to defend.

5. I have heard the learned counsel for the petitioner. He has raised the following contentions to challenge the impugned order:-

(i) That the present petition filed under Section 14(1)(e) of the DRC

Act is misplaced as the respondents being a public institution can file an eviction petition only under Section 22 of the DRC Act. Reliance is place on the judgment of this court in the case of ***Gurudwara Siri Guru Singh Sabha (Regd). Through Shri Amarjeet Singh vs. S.Dalvinder Singh & Dr. A.K.Gupta, RC.Rev. No. 490 & 529/2011*** dated 10.09.2012.

(ii) It is urged that there are total six cases. The trial court has taken the facts of only one case and based on those facts, disposed of all the petitions showing complete non-application of mind.

(iii) Reliance is place on the eviction petition filed by the respondent to state that the tenancy in the present case is said to have started in the year 2012 and the rent was fixed at Rs.600/- per month. The present eviction petition filed in 2014 now claims that the rent has been enhanced to Rs.3,100/- per month. It is urged that this is obviously a false plea raised by the respondents and shows no bona fide in favour of the respondents as they are giving false facts before the court.

(iv) It is further stated that the eviction petition has been filed as the petitioner is paying rent @ Rs.600/- per month whereas the respondents are demanding Rs.3,100/- per month. It is further urged that the tenancy as per the respondents commenced in 2012 and in two years down the line, the respondents are seeking eviction of the petitioner. It is urged that the petition lacks complete bona fide.

6. 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...”

7. 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.
8. 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.

9. We may now see as to what are the parameters which are to be considered by the court while dealing with an application for leave to defend filed by a tenant.

10. In a somewhat similar case, this court in the case of ***Sarwan Dass Bange vs. Ram Prakash***, ***MANU/DE/0204/2010*** noted the impugned orders 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.”

11. 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.)”

12. As noted above, in the present case in the application for leave to defend filed by the petitioner under Section 25 (B) (4) of the DRC Act, the only plea taken was that the respondent is not the Secretary of the Mandir Nirman Sabha and that the said Sh. Rajesh Sharma is not even a member of the Sabha. The trial court has rightly concluded that the petitioner has not denied that they are the tenants of the Laxmi Narayan Mandir Nirman Sabha. It also rightly observed that the eviction petition is filed by the Society and

that Sh. Rajesh Sharma has not filed the same in his individual capacity. Hence, merely because if there is some dispute as to whether Sh. Rajesh Sharma is the Secretary of the Society or not, that would not be a ground to grant leave to defend to the petitioner. The relationship of landlord and tenant being implicit in the admissions of the petitioner, there was no occasion to grant leave to defend to the petitioner on this ground.

13. I may note that in the reply filed to the leave to defend application, the respondents have pointed out that Sh. Rajesh Sharma is a duly elected Secretary of the respondents in the elections of the General Body held on 08.09.2013. It is further pointed out that four office bearers were elected, namely, Sh. Praveen Kumar (President), Sh. Ajay Kumar (Vice President), Sh. Rajesh Kumar Sharma (Secretary) and Sh. Vijender Kumar, (Treasurer). It is further stated that the Committee has also filed their annual list before the Registrar of Societies as per law on 15.01.2014/30.06.2014. In the light of the said position, there is no error in the judgment of the trial court in rejecting the said plea raised by the petitioner.

14. The other plea now raised before this court is about the applicability of Section 14(1)(e) of the DRC Act to the facts of the present case. Section 14(1)(e) and Section 22 of the DRC Act read 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:-

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.”

“22. Special provision for recovery of possession in certain cases.- Where the landlord in respect of any premises is any company or other body corporate or any local authority or any public institution and the premises are required for the use of employees of such landlord or in the case of a public institution, for the furtherance activities, then, notwithstanding anything contained in section 14 or any other law, the Controller may, on an application made to him in his behalf by such landlord, place the landlord in vacant possession of such premises by evicting the tenant and every other person who may be in occupation thereof, if the Controller is satisfied-

(a) that the tenant to whom such premises were let for use as a residence at a time when he was in the service or employment of the landlord, has ceased to be in such service or employment; or

(b) that the tenant has acted in contravention of the terms, express or implied, under which he was authorised to occupy such premises; or

(c) that any other person is in unauthorised occupation of such premises; or

(d) that the premises are required bona fide by the public institution for the furtherance of its activities.”

15. A conjoint reading of two Sections i.e. Section 14(1)(e) and Section 22

of the DRC Act does not show that a society registered under the Societies Registration Act or a public institution cannot apply for eviction under Section 14(1)(e) of the DRC Act. Reference may be had to the judgment of this court in the case of *Bhim Sen Batra vs. Shreyans Buildwell Pvt. Ltd.*, **MANU/DE/2205/2015**. That was a case in which a petition was filed under Section 14(1)(e) of the DRC Act by the landlord stating that the landlord Company was incurring losses and is seeking to revamp its business and requires the place occupied by the tenant for building proper infrastructure and office to be used by its employees. An objection was raised that if a company or body corporate requires the premises for the use of its employees, Section 22 of the DRC Act would apply and not Section 14(1) (e) of the DRC Act. This court rejected the contention. The court was of the view that the earlier judgments rendered prior to the judgment of the Supreme Court in the case of *Satyawati Sharma (dead) by LRs vs. Union of India & Anr.*, **2008 (5) SCC 287** which made Section 14(1)(e) of the DRC Act applicable to commercial tenancies also would not help the tenant presently.

16. Similarly, in the case of *Satnam Kaur & Ors. vs. Ashlar Stores P. Ltd.*, **MANU/DE/0258/2009**, this court held as follows:-

“9. This Court in the case of *Chunni Lal v. University of Delhi* reported in 1970 RCR 742 drew a distinction between Sections 14 and 22 of DRC Act in the following terms:

...The relationship of Sections 14 and 22, therefore, is that all landlords are able to apply under Section 14 but only the landlords who are corporate bodies or public Institution are entitled to apply under Section 22. This necessarily means that such corporate and public institution landlords have been given the ordinary grounds under Section 14 and additional grounds under Section 22. This accords

with their position of being primarily similar to natural persons and sometimes being different from them. I therefore, find that the corporate and public institution landlords are entitled to the ordinary grounds of eviction under Section 14 like other landlords and also to the special grounds of eviction under Section 22 which are peculiar to the corporate and public institution landlords and that Section 22 does not deprive the corporate and the public institution landlords from the benefit of Section 14.

10. Consequently, in my view, an eviction petition can be filed by a Private Limited Company under Section 14(1)(e) of DRC Act for residence of its Chairman and Directors.”

17. The above view was reiterated by this court in the case of ***Canara Bank vs. T.T. Ltd. (2014) 214 DLT 526.***

18. In the light of the above legal position, the contention of the petitioner that the respondents were obliged to file a petition only under Section 22 of the DRC Act and that the present petition filed under Section 14(1)(e) of the Act was not maintainable has no basis and is without any merit. I may note that the above plea was not raised by the petitioner before the ARC. However, as it is a pure question of law, I have gone into the question and concluded that the submissions of the petitioner are without merits.

19. I may however add that the reliance of the petitioner on the judgment of this court in the case of ***Gurudwara Siri Guru Singh Sabha (Regd). Through Shri Amarjeet Singh vs. S.Dalvinder Singh & Dr. A.K.Gupta (supra)*** is misplaced. The said judgment is not a speaking order. It merely notes that Section 14(1)(e) would not be attracted in the facts of that case.

20. As noted above, in my opinion, the respondents have made out a case

of bona fide requirement. The respondents have given details of why additional accommodation is required. The petitioners in their leave to defend application did not at all dispute the said averments of the respondents indicating that they do not dispute the facts that the respondents require additional space for carrying on their activities.

21. In the light of these pleadings, the present arguments of the learned counsel for the petitioner to claim that the stand of the respondents is not bona fide are misplaced. Merely because the tenancy was started in 2012 or the rent was enhanced to Rs. 3,100/- within a period of two years does not affect the facts stated by the respondents and which facts are admitted by the petitioner about their additional need for accommodation on account of additional foot fall in the premises as elaborated in the eviction petition. The said submission of the petitioner has no effect on the merits of the matters.

22. I may also note that we are concerned in these petitions with the facts as pleaded by the respondents to prove their bona fide requirement. Merely because there was some discrepancy in the narration of facts as narrated by the trial court in view of the fact that six petitions were being heard and disposed of together cannot lead to a conclusion that there was non-application of mind by the trial court.

23. In my opinion, there is no reason to differ with the view expressed by the trial court. The petitioner has not been able to show any material error in the judgment of the trial court to warrant interference by this court. The present petition is without any merit and is dismissed.

JAYANT NATH, J

NOVEMBER 03, 2016/rb