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

% *Date of decision: 02.12.2016*

+ RC.REV. 567/2016

JAI GOPAL & ORS Petitioners

Through Mr. G.P.Thareja, Advocate.

Versus

VIKAS BANSAL Respondent

Through Mr. Ajay Kumar Gupta and Ms.Surbhi
Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CAV 1010/2016

Since the counsel for the respondent has entered appearance, the caveat stands discharged.

CM No. 44308/2016 (exemption)

Exemption is allowed subject to all just exceptions.

RC.REV. 567/2016 and CM No. 44307/20016 (u/O 41 R 5 CPC)

1. The present revision petition is filed under Section 25 B(8) of the Delhi Rent Control Act (hereinafter referred to as the "DRC Act") to impugn the eviction order dated 10.06.2016 under Section 14(1)(e) of the DRC Act passed by the Additional Rent Controller (ARC).
2. The petitioners are the tenants of a shop comprising of ground floor and mezzanine floor in property No. 367/III, Katra Hussian Bux, Khari

Baoli, Delhi-110006 at a rent of Rs. 427/- per month. It is the contention of the respondent in the eviction petition that he does not have any other property in his name for running a business. The respondent is said to be in private employment and wants to start his own independent business from the tenanted premises. The said premises is the most suitable accommodation as it is on the ground floor and the respondent can call and attract his customers and passersby. The premises is situated in the heart of the city which is the biggest wholesale market of Asia known as Khari Baoli. It is urged that because of inflation, it is not possible for the respondent to provide better nourishment to his family members in his meager income. It is further urged that the petitioners are having various accommodations from where they are running their business activities and the tenanted premises is a luxury for the petitioners. He has also submitted that he has one shop which was earlier under the tenancy of Ms. Anchal Mittal who has recently vacated the same. It is submitted that the said shop is being used by the wife of the respondent for her own business. It is further stated that the tenanted premises is much bigger than the shop occupied by Ms. Anchal Mittal and hence, more suitable for the business of the respondent.

3. The petitioners filed their application under Section 25(B)(4) & (5) of the DRC Act seeking leave to contest the eviction petition. Various pleas were raised in the said application by the petitioner including as follows:-

- (i) That the respondent does not require the tenanted shop for carrying on any business for himself or for his wife. The family of the respondent consists of only himself, his wife and his minor daughter.
- (ii) The wife of the respondent has never carried on any business and neither the respondent nor his wife has any experience to carry on any

commercial work or business. Even the nature of the business or commercial work which the respondent seeks to start is not mentioned. Hence, it is wrongly stated that the respondent requires the tenanted premises for carrying on commercial work/business.

(iii) The respondent is already in the business of real estate. He has been working as a middle man in selling-cum-purchasing and letting immovable properties and is earning handsomely and hence, the respondent does not require the shop.

(iv) The respondent has already sold one shop which is situated adjoining to the tenanted premises to Ms.Veena Jain. Another big hall situated on the on the first floor of the property has also been sold.

(v) The only object of the respondent is to rent out the tenanted shop and the big commercial hall situated on the mezzanine floor at a higher rate of rent or to sell the same.

4. The ARC by the impugned order noted that there is no substantial dispute raised by the petitioners on the issue of landlord and tenant relationship between the parties. The submission of the petitioner about the inexperience in carrying on business by the respondent or his wife or that they have not disclosed the nature of business or work which they seek to start was rejected relying upon various judgments including the judgment of the Supreme Court in the case of ***Ram Babu Aggarwal vs. Jay Kishan, 2009 (2) RCR 455***. The plea of the petitioner regarding the availability of the shop vacated by the erstwhile tenant Ms.Anchal Mittal was rejected in view of the fact that the wife of the respondent is carrying on her independent business from there. It also rejected the contention of the petitioner regarding the sale of the shop in view of the explanation of the respondent that the premises in

question was sold on 21.10.2009 due to paucity of funds and personal problems. The ARC held that the sale of the shop five years ago would not impinge upon the bona fide requirement of the respondent in the changed circumstances including rise in prices and inflation justifying the need to run an independent business. The ARC has hence concluded that the petitioners have failed to disclose any other commercial premises available to the respondent other than the tenanted shop and the shop vacated by the erstwhile tenant Ms.Anchal Mittal. The ARC concluded that the respondent's requirement for the tenanted premises comprising the ground floor shop and the mezzanine floor for starting his independent business and storing his goods cannot be termed to be false and frivolous. The application of the petitioner for leave to defend was dismissed and an eviction order was passed.

5. I have heard the learned counsel for the parties.

6. Learned counsel for the petitioners has made the following submission to support the petition:-

(i) The respondent is doing the business of a property dealer and does not need the tenanted property.

(ii) The present eviction petition has been signed and verified in January 2015 though filed subsequently in March 2015. The other shop occupied by Ms.Anchal Mittal was also vacated in January 2015. Hence, the shop was available for use at that time for the respondent. Merely to overcome the said problem, the respondent has claimed that the shop is being used by his wife.

(iii) Reliance is placed on para 16 of the affidavit of the petitioner in support of the application seeking leave to defend where an averment is made that the shop which was previously occupied by Ms.Anchal Mittal and

which is adjacent to the tenanted shop was lying vacant. It is submitted that in reply to para 16, the respondent has not denied the said averment of the petitioners that the shop was vacant when the eviction petition was filed. Hence, the respondent had an alternative accommodation available to start his own work as claimed.

(iv) The entire area is commercial. The respondent has the entire second floor lying vacant which can be utilized by him for his business.

(v) The respondent is already carrying on the business of a property broker. The requirement as stated for the tenanted shop is a need for additional accommodation which as per the settled law would need evidence to prove and hence, leave to defend ought to have been granted by the ARC.

(vi) Section 25 B, it is urged, which provides for summary procedure for adjudication upon the application for eviction filed by the landlord is violative of Article 21 of the Constitution as it deprives a tenant of his livelihood. Hence the mere act of dismissal of the application for leave to defend of the petitioner is illegal.

(vii) At the end, learned counsel for the petitioner offered that as a means of settlement, the petitioners are ready to vacate the mezzanine floor which is part of the tenanted shop and handover the same to the respondent to settle the matter.

7. Learned counsel appearing for the respondent has denied the submissions of the petitioners. He has pointed to various paras of his reply to the affidavit filed by the petitioners where it has been clarified that the wife of the respondent is doing grocery business from the portion which was vacated by the erstwhile tenant Ms. Anchal Mittal. He has also pointed out that it has been clarified by the respondent that the income of his family is

insufficient and given the nature of competition in the market, the respondent needs both the respondent and his wife earning together to make their end meet.

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 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.”

11. In view of the judgment of the Supreme Court in the case of *Satyawati Sharma (dead) by LRs vs. Union of India & Anr., AIR 2008 SC 3148* the aforesaid provision is also now made applicable to commercial properties.

12. 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.

13. 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.

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 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.)”

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

16. The essential defence of the petitioner centers around the claim of the petitioners that a particular shop from the building got vacated in 2015 from the erstwhile tenant Ms. Anchal Mittal who voluntarily vacated the tenanted premises and the said shop is available to the respondent for his alleged bona fide requirement.

17. The alleged vacant shop is being used by the wife of the respondent for her grocery business. The wife of the respondent cannot be denied a right to carry on her independent businesses from the shop in question. Merely because the shop got vacated contemporaneously when the present eviction petition was filed does alter the position. The reply of the respondent to the application of the petitioner for leave to defend does not show that the shop vacated by Ms. Anchal Mittal is vacant.

18. Further the submission of the petitioner that the respondent or his wife has no experience of running a business is also misplaced and misconceived.

19. This court in *Puran Chand Aggarwal v. Lekh Raj*, 210 (2014) DLT 131 held as follows:

“26. As far as business is concerned, it is not necessary that the landlord must show some evidence that he has experience of said business. That is not the requirement of law in order to file the eviction petition on the grounds of bonafide requirement.

27. The following judgments do help the case of the respondent:

Start new business/no experience required

(i) In Ram Babu Agarwal vs. Jay Kishan Das, MANU/SC/1719/2009MANU/SC/1719/2009: (2010) 1 SCC 164, it was observed that "A person can start a new business even if he has no experience in the new business that does not mean that his claim for starting new business must be rejected

on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business and sometimes they are successful in the new business also."

(ii) In *Tarsem Singh vs. Gurvinder Singh*, MANU/DE/2640/2010: 173 (2010) DLT 379, it was observed that "If the landlord wants to start his own business in the premises owned by him then by no stretch of imagination, it can be said that the requirement of the landlord for the premises is neither bonafide nor genuine."

(iii) In *Balwant Singh Chowdhary & Anr. vs. Hindustan Petroleum Corporation Ltd.*, 2004 (1) RCR 487, it was held that "It is not necessary for the landlord to plead and prove the specific business he wants to set up, if the landlord wanted the premises for business purposes."

(iv) In *Gurcharan Lal Kumar vs. Srimati Satyawati & Ors.*, MANU/DE/1078/2013: 2013 (2) RCR (Rent) 120 it was observed that "Merely because the exact nature of business has not been described would not take away their bonafide need to carry out a business (when admittedly both the sons are dependent upon petitioner for this need). It was observed that if the business need is not disclosed this would not wipe away the bonafide need of the landlord as has been pressed under Section 14(1)(e) of the DRCA, 1958."

(v) In *Raj Kumar Khaitan & Ors. vs. Bibi Zubaida Khatun & Anr.*, MANU/SC/0411/1995: AIR 1995 SC 576, it was observed that "It was not necessary for the appellants-landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody would bind the landlords to start the same business in the premises after it was vacated."

Hence, the legal position is quite clear. The landlord need not show evidence that he has experience of running the said business. It is also not necessary for landlord to indicate the precise nature of business which he intends to start in the premises.

20. The learned counsel for the petitioner has argued that the respondent is doing the business of a property dealer and does not need the tenanted property. The respondent has denied that he is doing the business of a property dealer. The allegation made by the petitioner is nothing but a bald allegation. Even assuming that the respondent is doing the business of property dealer, it is not the case of the petitioner that he has an office running at same location. Even a property dealer would need a decent place to run his business which can be a contact point for his customers. The contention of the petitioner on this account has no merit.

21. Regarding the contentions of the petitioner about the availability of the second floor and his offer to vacate the mezzanine floor, the respondent has not denied that the second floor is available. The stand of the respondent is that the respondent/landlord cannot be dictated terms of which area would be more convenient. The shop on the ground floor which is in a premises located at Khari Bowli, which is a big market in India, would definitely be more suitable to the respondent to carry out his business. The accommodation on the second floor and mezzanine floor cannot be said to be a convenient alternative accommodation. In this context, a reference may be had to the judgment of the Supreme Court in *Anil Bajaj & Anr. vs. Vinod Ahuja*, AIR 2014 SC 2294. That was a case where the landlord owned several properties in the vicinity of the tenanted premises. However, the said

landlord was running his shop from a shop which is 15 feet in width. The tenanted premises was facing the main road. The landlord offered to exchange the shops which offer was declined by the tenant. In those facts the Supreme Court accepted the plea of the landlord and held as follows:-

6. In the present case it is clear that while the landlord (Appellant No. 1) is carrying on his business from a shop premise located in a narrow lane, the tenant is in occupation of the premises located on the main road which the landlord considers to be more suitable for his own business. The materials on record, in fact, disclose that the landlord had offered to the tenant the premises located in the narrow lane in exchange for the tenanted premises which offer was declined by the tenant. It is not the tenant's case that the landlord-Appellant No. 1 does not propose to utilize the tenanted premises from which eviction is sought for the purposes of his business. It is also not the tenant's case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the same in any way inconsistent with the need of the landlord. What the tenant contends is that the landlord has several other shop houses from which he is carrying on different business and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business. The grounds on which leave to defend was sought by the tenant and has been granted by the High Court runs counter to the fundamental principles governing the right of a tenant to contest the claim of bonafide requirement of the suit premises by the landlord under the Delhi Rent Control Act, 1958. Even assuming the assertions made by the tenant to be correct, the

same do not disclose any triable issue so as to entitle the tenant to grant of leave to defend.”

22. 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 to 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.

23. In *G.C. Kapoor Vs. Nand Kumar Bhasin*, AIR 2002 SC 200, the Supreme Court noted as follows:

“9. 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. Regarding the submission of the learned counsel for the respondent that procedure provided under Section 25-B of the DRC Act is violative of Article 21 of the Constitution of India, the said contention cannot be adjudicated upon in the present revision petition.

25. In the light of the above, the requirements of the respondent/landlord are bona fide. The defence raised by the tenant/petitioners 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

DECEMBER 02, 2016
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