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

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Date of Decision: 05.12.2016

+ RC.REV. 575/2016

GAURI NATH MEHROTRA AND ANR.Petitioners.

Through: Mr.Sunil Dutt Dixit, Advocate.

Versus

MANISH MEHRARespondent

Through: Mr.Jos Chiramel, 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 (*hereinafter referred to as the 'DRC Act'*) seeking to impugn the order of the Additional Rent Controller (*in short the 'ARC'*) by which the application for leave to defend filed by the petitioner was dismissed and an eviction order under Section 14(1)(e) of the DRC Act was passed.

2. The petitioner is the tenant of two rooms, two store rooms, one verandah and open terrace on the second floor of the property bearing No.4596/VI, First and Second Floor, Charkhewalan, Chawri Bazar, Delhi-110 006.

3. The respondent (the landlord) filed the present eviction petition under Section 14(1)(e) of the DRC Act for personal bonafide requirement. It is

also the allegation of the respondent in the eviction petition that the petitioner has sub-let portions of the premises to various business concerns, i.e. M/s A.R. Advertisers, M/s Classic Courier Services, M/s Graphic Touch Publishing Aids, M/s Classic Business Gallery and M/s Classic Trading Links Limited. The petitioner himself is said to have moved out and is residing in an accommodation owned by his wife and is living there with his family. The case of the respondent was that the property bearing Nos.4595/VI to 4602/VI, Charkhewalan, Chawri Bazar, Delhi was owned by late Sh.Har Prasad Mehra, grandfather of the respondent. It is averred that four rooms of property No.4595/VI on the first floor were let out to various tenants along with common use of the court yard for residential purposes. Similarly, the property Nos.3070/VI and 3072/VI are entirely commercial properties and the respondent does not have possession of the same. Property Nos.3059/VI and 3060/VI are shops on the ground floor and are under occupation of various tenants. First floor of the said properties consists of 1 drawing room, 1 bedroom, 1 study room, bath room, kitchen and 3 small stores and second floor consists 2 bedroom, 2 small stores, beside open terrace and a tin shed. The respondent along with his brother Sh.Pankaj Mehra was earlier living on the first and second floor of the said properties, i.e. property Nos.3059/VI and 3060/VI. However, given the fact that the children were growing and keeping in view the frequent fights over trivial issues, to maintain peace in the family and to avoid any deterioration of the situation, the respondent with his family shifted to a rented accommodation in a Flat No.4, Plot No.41, Prashant Apartment, Patpar Ganj, Delhi in July, 2010 at a monthly rent of Rs.13,500/-. Presently he is paying Rs.16,000/- per month. The respondent has two daughters aged 13 years and 8 years and they require separate

rooms. The respondent requires one bedroom. The respondent has a married sister who often visits the house of the respondent and hence, at least one guest room is required. The respondent also requires one pooja room. Respondent requires in all one drawing-cum-dining room, four bed rooms and one pooja room, besides kitchen and bathroom for living in a reasonably comfortable manner. A portion of the property no. 4597/VI is said to be under occupation of Sh. Jagdish Seth, who is otherwise residing at his own residential house, namely Flat No.A-41/GF, Allahabad Bank Staff CGHS, Mayur Kunj, Mayur Vihar Phase-III, Delhi and the said premises are lying locked for many years. An eviction petition for the said premises is also said to have been filed.

4. The ARC by the impugned order noted that the petitioner has not disputed the relationship of the landlord and tenant. On availability of alternative accommodation, it noted that the respondent has categorically stated that he is not in possession of any of the property Nos.4595/VI, 4597/VI, 3070/VI, 3072/VI, 3059/VI and 3060/VI. It noted the submission of the petitioner that one hall and one room was let out by the respondent in property No.4595/VI few months back. However, the respondent has denied this fact and has categorically stated that the tenants are in occupation of the same for the last many years. The petitioners having failed to place anything on record to substantiate their said arguments, the same was rejected being a bald averment. The ARC also noted the submission of the petitioner that the respondent has sold the property No.3073/VI (ground floor, first floor and second floor) to one Sh.R.N.Bhargava. The ARC also noted the submission of the respondent in this regard that ground floor, first floor and second floor are under the occupation of Sh.R.N.Bhargava since 1932 and litigation was going on. A settlement was arrived at the Mediation Centre and the

property was sold to the said tenant. It was further noted that the said property was not suitable for the residence of the respondent and his family members. In the light of the above, the ARC passed an eviction order and dismissed the application of the petitioner for leave to defend.

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

6. Learned counsel for the petitioners has raised the following submissions:

- i) The respondent has received possession of more than 10 rooms. Reliance is placed on an additional affidavit where details of the ten rooms have been listed out and the same was taken on record. Hence, the respondent has sufficient alternative accommodation.
- ii) The respondent claims to have moved out giving everything to his brother. Admittedly, there is no family settlement on record. The Act of the respondents appears to be motivated to create artificial scarcity.
- iii) In March, 2011 the respondent has sold various properties. The present petition has been filed in 2012, hence no eviction order can be granted as there is no bona fides.
- iv) The respondent has recently rented out huge portions of the property of which details are on record and have been stated in para 'D' of the affidavit filed by the petitioner.

7. The learned counsel appearing for the respondent has strongly refuted the submissions of the petitioner. It is pointed out that properties in question as stated in the eviction petition all are occupied by old tenants. The tenants have also converted residential areas to commercial use. It is stated that the petitioner has made bald averments and failed to place on record any fact to show that any property was recently let out. Further the petitioner himself has shifted out from the tenanted premises long back and is staying in a flat

which is in the name of his wife. Further it is the admitted position that the petitioner has sub-let the property in question and is merely enjoying the rents.

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. There is no dispute about the relationship of the landlord and the tenant.

17. Coming to the next issue regarding availability of alternative accommodation to the landlord/respondent and bona fides of the respondent. What has strongly been urged before this court is that during the pendency of the proceedings, the respondent has received possession of various properties from tenants details of which have been placed on an affidavit

filed by the petitioner on 19.09.2016 before the ARC. It is urged that in the light of these properties which are now available to the respondent, alternative accommodation is clearly available to the respondent.

18. The respondent has clarified the position. As per the affidavit of the petitioner, the respondent is said to have received possession of premises from the tenant i.e. Sh. Amar Nath, Sh.Hariya and Sh.Jagdish Seth which are part of property No. 4595. The respondent admits that the said tenants, namely, Sh.Amar Nath, Sh. Haria and Sh.Jagdish Seth have vacated the property pursuant to the orders passed in the eviction petitions filed against them. It is pointed out that these are all small tenanted premises and that the respondent has filed seven eviction petitions out of which three of the petitions are listed in court today and in balance four, the tenants have already vacated the premises. In all, it is pointed out that the respondent is seeking possession of a total area of 1220sq. ft. Sh. Jagdish Seth had in his occupation an area of 559 sq. ft., Sh.Amar Nath had in his occupation an area of 164 sq. ft. whereas Sh.Haria had in his occupation an area of 42 sq. ft. Apart from the above, it is pointed out that the two other tenants against whom an eviction order has been passed have also filed a revision petition along with the present petition, namely, Smt. Shashi Bala and Smt.Vimla Devi. The areas in their occupation are only 64 sq.ft and 56 ft. respectively. The area in occupation of the petitioner is only 207sq.ft. As it has been explained in the eviction petition, the respondent has two daughters and he requires one bed room each for the daughters and one for himself and his wife. He also needs one bed room for his married sister who along with her husband and children frequently visits the house of the respondent. He also requires one pooja room and a drawing-cum-dining room. Hence, the total area required is one drawing-cum-dining room, four bed rooms, one pooja

room, one kitchen, one bathroom and toilet. Hence, it is clear that merely because the respondent/landlord has received the possession of some part of the area which is required for his bona fide requirement/residential purpose does not in any manner change the scenario about the bona fide requirement of the respondent for the eviction of the tenanted premises.

19. The other submission raised by the learned counsel for the petitioner to challenge the order was about the fact that there is no family settlement on record which would have warranted the respondent having moved out of the premises and having taken on rent a flat in another locality. This contention in my opinion has no merit. The respondent and his brother, namely, Pankaj Mehra are admittedly co-owners. The understanding between them as to who will occupy which area cannot lead to a conclusion that the petition does not show bona fide requirement especially as there is no family settlement in place. The argument has to be rejected outright.

20. The other argument raised by the learned counsel for the petitioner was that the respondent have sold various properties in 2011 and the present petition has been filed in 2012 showing that respondent has sought to create an artificial scarcity of accommodation.

21. It has been pointed out in the reply filed by the respondent that one shop measuring 160 sq. ft. on ground floor of 3070/VI and 3073/VI (first and second floor) were under occupation of a tenant, namely, Sh.R.N.Bhargava since the 1932 on a rent of Rs. 30. Litigation was going on regarding non-payment of rent for several years. The dispute was settled through mediation in March 2011 and the properties were sold to the tenant only. It is clearly not a case where it can be said that a property in the possession of the respondent and suitable for his own residence has been sold to create an artificial scarcity. The respondent never had possession of

the said property. It has been sold to the tenant who has been in occupation since 1932 so as to settle the litigation that was going on. Sale of the said shops in 2011 does not create any artificial scarcity or in any manner affect the bona fide requirement of the respondent as is sought to be argued. The present submission is entirely without merit.

22. The other submission raised by the learned counsel for the petitioner is that the respondent has rented out a large number of portions of the property details of which are already on record and stated in paragraph D of his affidavit filed.

23. Para D of the affidavit in support of the application for leave to defend application filed by the petitioners gives a list of seven properties which as per the said para, the respondent has concealed to be in his possession. There is no claim in the said application about any recent renting out of these properties. The respondent in his reply to para D has denied possession of all the seven properties. Only regarding property at serial No.V i.e. property No. 3059/VI, it has been stated, which is also stated in the eviction petition, that the shops on the ground floor are in occupation of various tenants and the first and second floors of the said property are in occupation of the brother of the respondent, namely, Sh.Pankaj Mahra. The same is the position regarding property No. 3060/VI which is stated at serial No.VI in para D of the application for leave to defend. Regarding property stated at serial No. VII i.e. Flat No. 4, Plot No.1, Prashant Apartment, Patpar Ganj Delhi, it is stated that the respondent was occupying the property in the capacity of a tenant and paying a rent of Rs.16,000/- per month. He has, however, shifted to another tenanted premises in Ganga Block, Agra Sen Awas at a monthly rent of Rs.16,500/- since August 2012. It is manifest that wild and bald allegations have been made without any

substance to try and raise triable issues without any basis whatsoever. It is manifest that these properties are not vacant as claimed.

24. Clearly, the contentions raised by the petitioners appear to be an allegation without any basis whatsoever. The respondent on affidavit has denied the contentions. Mere raising of baseless contentions against the landlord cannot be a ground for being granted leave to defend to the petitioners. It cannot be said that the petitioners have given facts or particulars which require to be established by way of evidence. The petitioners have merely made allegations for the sake of making allegation. There is no merit in the said plea of the petitioner.

25. The trial court has rightly concluded that the petitioners have failed to place on record any material or any relevant points in affidavit to raise a suspicion that the eviction petition filed by the respondent is actuated by mala-fide and has not been made with bonafide intention.

26. So far as the question of bona fide is concerned, the ARC has rightly held that the landlord is the best judge of his necessity and tenant cannot dictate terms to the landlord. It may be noted that the Supreme Court in the case of *Pratibha Devi v. T.V. Krishnan*, (1996) 5 SCC 353 held that the landlord is the best judge of his residential requirement and courts have no concern to dictate the landlord as to how and in what manner he should live or to prescribe for him a residential standard of their own. The court held as follows:

“2. The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court is rather solicitous about the age of the appellant and thinks that because of her age she needs to

be looked after. Now, that is a lookout of the appellant and not of the High Court. We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property. We accordingly reverse the finding reached by the High Court and restore that of the Rent Controller that the appellant had established her bona fide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances.”

27. 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.”

In view of the above, there are no reasons to interfere with the conclusion of the ARC about the premises being required bona fide by the respondent. In fact, the case of the petitioner lacks bona fide as admittedly the petitioner is not residing or using the tenanted property.

28. Accordingly, there are no errors or infirmities in the order of the ARC which warrant any interference of this court. There is no merit in the present revision petition and the same is dismissed.

JAYANT NATH, J.

DECEMBER 05, 2016
v/rb