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HIGH COURT OF DELHI AT NEW DELHI

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RC REV. 336/2015 & CM APPL.12284/2015, 19906/2015

Pronounced on: 29th April, 2016

PANNA LAL

.....Petitioner

Through: Mr. Rakesh Tikku, Senior Advocate with
Mr. Aman Nandrajog, Adv., Mr. Prakash
Gautam, Adv. & Mr. Sandeep Kumar,
Adv.

Versus

NEELAM CHOPRA

.....Respondent

Through: Mr. Sanjeev Sindhvani, Senior Advocate
with Mr. Sanjay Dua, Adv. & Mr. Uday
Joshi, Adv.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a revision petition filed by the petitioner/tenant against the order dated 25.02.2015 passed by the learned Senior Civil Judge-cum-Rent Controller, New Delhi District, Patiala House Courts, New Delhi rejecting the leave to defend application of the petitioner/tenant.
2. Briefly stated the facts leading to the filing of the present revision petition are that the respondent/landlady has claimed herself to be

the owner of the tenanted premises bearing Shop No.58-B, Khan Market, New Delhi more particularly shown as red in the site plan attached to the petition. She has stated that she had purchased the shop in question vide registered Sale Deed on 19.11.1969. She has stated that she requires the said premises for business purposes and which she intends to run along with her husband Ramesh Chopra and that neither she nor her husband had any other commercial accommodation available to them much less any reasonable suitable alternative accommodation where they can do business.

3. It has also been stated by her that she was earlier carrying on her business from the tenanted premises under the name and style of Allied Fruit Mart and she had got a health licence issued from NDMC in her favour which is mandatory, for running the business. She also got the registration of her shop in her name under the Delhi Shops and Establishment Act, 1954. It is stated that father of the respondent/landlady used to sit at the shop and she used to assist her father who had a substantial experience of selling fruits, vegetables, groceries and other similar items on retail basis. She was also registered with the Khan Market Trade Association and is

stated to be regularly paying her monthly subscription of Rs.1800/- to the association.

4. It is alleged by her that the petitioner/tenant was engaged as a Manager by her father. However, subsequently he (the petitioner) began to assert himself as a tenant in the shop and took over the possession of the entire shop in question.
5. The petitioner filed a suit for permanent injunction against the respondent/landlady bearing CS(OS) No.574/2007 for restraining her from forcibly dispossessing him from the shop in question. It was stated by the petitioner in the said plaint that he was in occupation of the premises for last more than 30 years. It was also stated by the petitioner that initially he was running the shop in the premises as a proprietor and thereafter he started doing the business in the name of Allied Fruit and Florist and eventually in 1999 the petitioner constituted a private limited company consisting of himself as a Director and other family members and the sons as other Directors and the name was allegedly changed as Allied Fruit and Florist Pvt. Ltd.

6. The respondent/landlady filed the written statement to the said suit and a counter claim seeking a declaration that the petitioner and his sons are in unauthorized occupation of the shop in question and sought a mandatory injunction against them and that they must vacate and remove themselves from the premises in question. The counter claim was registered as Suit No.17/2008.
7. It is stated that during the pendency of the said suit the respondent/landlady made a statement that she will not dispossess the petitioner/tenant except in accordance with due process of law. The said suit of the petitioner/tenant was accordingly disposed of by the Hon'ble High Court vide order dated 27.05.2008, however, the counter claim of the respondent/landlady bearing No.17/2008 continued to remain on Board. It is further stated that thereafter the respondent filed an application being IA No.7953/2014 in the said counter claim accepting the version of the petitioner being a tenant in the premises and withdrew the counter claim. It stated that no objection was raised by the petitioner in this regard and she was permitted to withdraw the counter claim vide order dated 29.04.2014 which read as under:-

“ I.A. No.7953/2014

1. This application has been filed by the defendant/counter-claimant under Order 23 Rule 1 of CPC seeking withdrawal of the counter-claim.

2. In response to the advance copy of the application having been served, the learned counsel for the plaintiff, who is the defendant in counter-claim, has appeared. He does not have any objection to the withdrawal of the counter-claim.

3. In view of the averments made in the application as well as after hearing the learned counsel for the counter-claimant, I am satisfied that there is no impediment in permitting him to withdraw the counter-claim without any reservation.

4. Ordered accordingly. Counter-claim is dismissed as withdrawn.

*Sd/-
Judge
April 29, 2014”*

8. After the respondent/landlady has stated that she along with her husband, a businessman wants to run her own business of selling vegetables, fruits and other allied items. She claimed that she is not having any independent commercial space available to her for the purpose of doing the business and therefore she is totally dependent on the income accruing from the tenanted premises. She has stated that she along with her husband does not intend to sit idle and she has two married daughters and nobody else to support

them and therefore, she wants to start the independent business of selling fruits, vegetables, dairy products and other eatables from the tenanted shop along with her husband. She has stated that she is aged about 65 years and her husband is 70 years and they have not been able to do any business due to non-availability of a commercial accommodation.

9. It has also been stated by her that they have their residence in Karol Bagh which is a fully residential property and it belongs to her husband and they are residing on the ground floor. The first floor is kept for being used by their married daughters and their family who lives in Gurgaon and the second floor is occupied partly by an unauthorized occupant against whom civil suit has been filed by her husband which is still pending.
10. It was also stated by the respondent/landlady that the present petitioner/tenant has admitted in the previous petition the ownership of the respondent and claimed himself to be paying a rent of Rs.2,000/- which contention is accepted by her. She has also stated that certain criminal cases initiated by both the parties are also pending between the parties against each other. Vide order

dated 03.06.2011 by way of an ad interim arrangement the petitioner is paying a sum of Rs.2 lacs per month towards payment of restoration of electricity connection. It is stated that the same has not been paid upto date.

11. The present petitioner filed his leave to defend application on being served with the notice of the petition dated 18.7.2014. It has been alleged by him that the respondent/landlady has concealed material facts regarding various litigations pending between the parties. It has been stated that since 2003 when the dispute started between the parties till the filing of the present eviction petition by the respondent-landlady the respondent has never pleaded in any proceedings the bona fide requirement of carrying on business in the tenanted premises. It has been stated that it has not been disclosed by the respondent/landlady as to what kind of commercial activity she wishes to run from the tenanted premises inasmuch as she has no experience of carrying on any trade and business and she is at the fag-end of her life so-called retirement and therefore this is only a bogus and a false claim to oust the petitioner from the possession of the tenanted premises.

12. It has been also stated by the petitioner/tenant that the petition is not maintainable as the petitioner alone is not in possession of the tenanted premises. It is stated that a private limited company i.e. M/s. Allied Fruits and Florist Pvt. Ltd. is in possession and is the tenant of the shop. The petitioner is one of the Directors of the said company and since the company has not been arrayed as a party by the respondent/landlady, therefore, the petition is liable to be dismissed. It has also been stated that at the time when the erstwhile owner Dr. S.D. Verma transferred the suit property to Neelam Chopra in the year 1969 at that time also the petitioner was already in occupation of the premises in question by way of oral tenancy and she was aged 25 years at that time and was a housewife. She used to take vegetables and other grocery items from the shop of the petitioner free of cost. The petitioner has taken the plea that the respondent/landlady has been taking a contradictory stand. On the one hand, she has embroiled the present petitioner in number of litigations where at no point of time the factum of bona fide requirement of the respondent was ever disclosed. The consistent stand of the respondent in these cases

has been that the present petitioner has been originally an employee of her father and thereafter her sons who had also joined him for the purpose of helping him in his business and he had formed a partnership firm initially and then a private limited company which has never been accepted as a tenant. While as the respondent is taking the plea now is that the present petitioner is the tenant of the suit premises on a monthly rent of Rs.2,000/-.

13. With regard to the bona fide requirement the petitioner has contended that the complete accommodation available with the respondent/landlady has not been disclosed. It has been stated that the respondent has a house in Karol Bagh and although they are living on the ground floor but the upper floors are lying vacant wherefrom the business can be conducted. It has also been stated that the respondent has no skill or knowledge of the business which she intend to conduct from the suit premises, namely, procuring of groceries, vegetables, fruits, etc. and then selling the same at the shop in question. It has been stated that both the respondent and her husband are according to their own admission aged around 65

and 70 years and thus are not in a condition to conduct the business.

14. On the basis of these facts, the present petitioner had sought leave to defend which was rejected by the learned Rent Controller by a detailed order dealing with each and every objection raised by the present petitioner.
15. I have heard Mr. Rakesh Tikku, the learned senior counsel for the petitioner and Mr. Sanjeev Sindhvani, the learned senior counsel for the respondent.
16. The learned senior counsel appearing for the petitioner has raised two preliminary submissions. The first submission which has been raised by the petitioner is that the present eviction petition is barred under Order 2 Rule 2 CPC for the reason that the Order 2 Rule 2 CPC lays down that the suit of the petitioner must contain the whole of the claim and if any claim is left out the same cannot be agitated by a party by filing a fresh petition. It is in this context, the learned senior counsel contends that when the petitioner had filed a suit for injunction bearing CS(OS) No.574/2007 in the High Court of Delhi wherein it was prayed that the respondent be

permanently restrained from dispossessing the petitioner from the suit premises. In that suit by way of counter claim No.17/2007 the respondent had set up a counter claim, stating that the present petitioner/tenant is a trespasser as he was occupying the suit premises in the capacity of an employee whose services were dispensed with and therefore, a mandatory injunction was issued against him requiring him to vacate the premises in question. It is the case of the petitioner that in the said counter claim at no point of time, the respondent had claimed the petitioner is a tenant but she had stated him to be a trespasser being an employee whose services were terminated and since this counter claim has been withdrawn, the present respondent is now estopped from raising a fresh claim seeking eviction of the petitioner by changing the stand that the petitioner is a tenant in the suit premises on a monthly rent of Rs.2,000/- and therefore he be evicted.

17. The second submission which has been raised is that the present eviction petition which was filed by the respondent/landlady on the ground of bona fide requirement was also barred by Order 23 Rule 1(4) CPC in as much as the respondent/landlady after having

chosen to file the counter claim for mandatory injunction and thereafter withdrawing the same without reserving any liberty to file a fresh suit or petition, is deemed to have abandoned her suit or counter claim to seek eviction of the present petitioner and, therefore, the present eviction petition was not maintainable.

18. The third submission of the learned senior counsel for the petitioner is that the requirement of the present respondent is not at all bona fide in as much as not only both the respondent and her husband are aged around 65 and 70 years and do not have any experience of running a fruits and vegetable mart or a grocery store but even they do not have the technical knowhow as to how the said store is to be run.
19. It was also contended that even if the aforesaid facts are ignored still the leave to defend ought to have been allowed because the respondent had sufficient accommodation available to her and her husband for the purpose of doing business on the upper floors of the property in which they were residing at Karol Bagh. It was contended that because of these reasons the respondent was not entitled to leave to defend. In support of his contention, the learned

senior counsel for the petitioner has relied on number of judgments which are *Shanti Devi v. Rajesh Kumar Jain & Anr.*, Civil Appeal No.9378/2014, decided on 09.10.2014, *Rampat vs. Ganga Devi*, RCR No.271/2013, decided on 30.01.2015, *Tarun Pahwa vs. Pradeep Makin*, RCR No.75/2012, decided on 21.12.2012, *Bharat Glass & Plywood Company vs. Sushan Pal Soni*, RCR 46/2013, decided on 21.03.2014, *Sudershan Kumar vs. Harish Chand Garg*, RCR No.109/2013, decided on 13.06.2014, *Deepak Gupta vs. Sushma Aggarwal*, RCR No.180/2013, decided on 24.07.2013, *Mehtab Singh vs. Tilak Raj Arora & Ors.*, AIR 198 P&H (12); *N.R. Narayan Swamy vs. B. Francis Jaga*, (2001) 6 SCC 473, *Vallabh Das vs. Dr. Madan Lal & Ors.*, 1970 (1) SCC 761, *National Insurance Company Limited vs. Mastan & Anr.* (2006) 2 SCC 641 and *Nagindas Ramdas vs. Dalpatram Iccharam Alia Brijram & Ors.*, AIR 1974 (SC) 471.

20. Mr. Sanjeev Sindhvani, the learned senior counsel for the respondent has refuted these three broad submissions and contended that both Order 2 Rule 2 and Order 23 Rule 1 (4) CPC

do not stop much less preclude the respondent from seeking eviction of the petitioner from the suit premises. It was contended that Order 2 Rule 2 CPC is not at all applicable nor is the respondent precluded from filing an eviction petition. It was contended that Order 2 Rule 2 CPC precludes a party from bringing a second suit in respect of a part of the claim which ought to have been included in the first suit while as it was stated that the provisions of CPC are not applicable to the rent control proceedings but even if the principle of the said Rule is made applicable to the facts of the present case, still the respondent is not precluded from filing an eviction petition. This is because of the fact that the petitioner claimed himself to be a tenant on monthly rent of Rs.2,000/- and further alleged that he may not be dispossessed. The respondent filed the reply to the said proceedings and made a statement that she will not dispossess the petitioner except in accordance with due process of law and since a counter claim had also been filed by the respondent/landlady seeking a mandate to the petitioner from removing himself from the suit premises, the said suit was including the counter claim

having been withdrawn and the respondent accepting the claim of the present petitioner who had claimed himself to be a tenant on a monthly rent of Rs.2,000/-. Thereafter, the respondent chose to file an eviction petition before the Rent Controller and therefore, the cause of action accruing to file a civil suit and the eviction petition is totally different. Moreover, the Court of the Rent Controller is not a civil court which is governed by the provisions of CPC.

21. So far as Order 23 Rule 1 (4) CPC is concerned, Mr. Sindhwani on the aforesaid analogy contended that the aforesaid provision is not at all applicable. The reason for this is at no point of time the respondent had abandoned her claim to seek retrieval of possession. The actual difference is that the case of the respondent earlier was that the present petitioner is a trespasser and since the present petitioner had taken a definite stand that he is a tenant on a monthly rent of Rs.2,000/- the respondent accepted the present petitioner to be his tenant and preferred to file an eviction petition on the ground of bona fide requirement rather than pursuing her existing remedy initiated by filing a civil suit. It is contended that once on the basis of admission of the petitioner himself a petition is

withdrawn, it cannot be said to be barred by Order 23 Rule 1(4) CPC.

22. So far as the last argument of the learned senior counsel for the petitioner that the respondent does not have any expertise or knowledge about running of a store for vegetables, fruits mart and general merchandise is concerned, it is contended that it is not open to the petitioner to raise a plea of competence with regard to nature of business which has to be conducted or which is to be run from the suit premises. It has been contended that the only requirement is that the premises in question can be gainfully utilised by the respondent. Mr. Sindhvani, the learned senior counsel for the respondent has also placed reliance on the *Vallabh Das vs. Dr. Madan Lal & Ors.*, AIR 1970 SC 987, *Rathnavathi vs. Kavita Ganasham Das*, (2015) 5 SCC 223, *B. Chenchuram Naidu vs. Muhamed Bahavuddin Sahib*, AIR 1933 Mad. and *Ms. Neera Raina Bhagat vs. Dr. D. P. Singh & Anr.*, 113 (2004) DLT 57.
23. Before referring to the submissions of the respective sides, it will be pertinent her to reproduce Order 2 Rule 2 CPC and Order 23

Rule 1 (4) CPC for the sake of convenience. Both these provisions read as under:-

“Order 2 Rule 2 Suit to include the whole claim.-

(1)

(2) Relinquishment of part of claim—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) ”

“Order 23 Rule 1 Withdrawal of suit or abandonment of part of claim.-

(4) Where the plaintiff,—

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim. ”

24. I have considered the respective submission of Mr. Tiku and Mr. Sindhvani carefully. I have also gone through the record.
25. So far as the legal objections on behalf of the petitioner with regard to the maintainability of the petition on the basis of Order 2 Rule 2

and Order 23 Rule 1 sub-rule (4) are concerned not only they are overlapping each other but they are also not at all applicable to the facts of the present case. The reason for saying so that Order 2 Rule 2 clearly lays down that the suit must include whole of the claim and if whole of the claim is not included in the suit then no subsequent suit can be brought about for the remaining part of the claim which has been left out unless and until the permission has been obtained from the Court. Firstly, the provisions of CPC are not applicable to the rent proceedings. The Rent Controller has to follow the proceedings as laid down, Rules made under the Act and to adopt practice and procedure of small causes court. It is nowhere provided that the Controller is to follow the provisions of the CPC. Further, any plea which is urged must have factual foundation in the pleadings. It ought to have been urged before the learned ARC. There is no *prima facie* evidence in this regard on record.

26. Even on the basis of the principle urged, it cannot be assumed that because of withdrawal of the counter claim by the respondent/landlady which was filed in response to the suit for

injunction filed by the present petitioner, she is precluded from filing the present claim. The reason for this is that the cause of action of both these proceedings is totally different and so are the stand of the petitioner/tenant. The case of the respondent/landlady is that the petitioner/tenant was actually the employee of her father but he had illegally usurped the shop in question and ousted the respondent's father as well as the respondent/landlady from the business.

27. The petitioner/tenant with a view to perpetuate his possession filed a suit for injunction where his own case was that he is a tenant. It is in this context that the counter claim was filed by the respondent/landlady. In the written statement the case was resisted by the respondent/landlady and so far as the counter claim is concerned it had set up a definite case that he is a trespasser then, I fail to understand what is the part of the claim which was left out by the respondent/landlady which is being claimed by her now to which objection under Order 2 Rule 2 CPC is sought to be raised by the present petitioner. As a matter of fact Order 2 Rule 2 CPC is not at all applicable to the facts of the present case.

28. So far as Order 23 Rule 1 (4) is concerned, it no doubt lays down that where a plaintiff abandons any suit or a part of the claim or withdrew from a suit or a part of the claim without permission referred to under sub-rule (3) then he shall be liable to pay costs as the Court may award and such person shall be precluded from instituting any fresh suit. In the instant case the respondent/landlady neither abandoned the earlier suit which was a counter claim nor has she withdrawn from the suit *per se* and consequently, there was no question of obtaining the permission of the Court where the matter was pending. What the respondent/landlady did was that it accepted the petitioner to be the tenant who was claiming himself to be the tenant in respect of the suit premises on a monthly rent of Rs.2,000/-. Though her case was that of a trespasser. Now if a party has set up a case that the opposite party is a trespasser but that party pleads that he is a tenant and the respondent/landlady accepts his contention that he is a tenant, that does not preclude the first party from taking such action against his tenant as may be permissible in law which would include even seeking his eviction if he is a protected tenant or

seeking his ejectment by filing a suit for possession. Further, the reasoning which is given for rejecting the plea of Order II Rule 2 CPC is equally applicable to Order 23 Rule 1 (4) CPC also. I feel that both these objections which have been raised by the petitioner/tenant are totally not applicable to the facts of the present case.

29. The cause of action of filing of earlier counter claim seeking possession was based on a different cause of action where the respondent/landlady had pleaded the present petitioner to be the trespasser in respect of the suit property while as in the present eviction petition she has accepted him to be the tenant but has sought his eviction on the ground of bona fide requirement under Section 14 (1) (e) of the DRC Act. Therefore, the cause of action is totally different, the factual matrix is totally different and now it is not open to the petitioner/tenant to retrace his stand and contend that after having accepted his stand, the respondent/landlady is even prohibited from filing a suit for eviction under Section 14 (1) (e) of the DRC Act. If such a plea of the petitioner/tenant is accepted then practically for all times to come the doors of the

remedies to the respondent/landlady are deemed to have been closed and she will not be able to seek retrieval of the possession of her premises for her bona fide need at all. That is not the intention of law or the purpose of law. Moreover, bona fide requirements is a cause of action.

30. For the aforesaid reasons, I feel both these submissions which have been raised by the petitioner with regard to Order 2 Rule 2 and Order 23 Rule 1 (4) CPC are totally meritless and the same deserves to be rejected.

31. Coming back to the bona fide requirement of the respondent/landlady, it is stated that before the respondent/landlady succeeds in her case on the ground of bona fide requirement, she has to establish four things, namely-

- (i) That the petitioner is the tenant under respondent/landlady.
- (ii) That the premises have been let out to the petitioner/tenant by the respondent/landlady and that she is the owner of the premises.

- (iii) That the premises in question are required bona fide by the respondent/landlady for her own benefit and for the benefit of her dependent persons; and
- (iv) That the respondent/landlady does not have any other alternative suitable accommodation available to her for the purpose of activity for which the retrieval of the possession is sought.

32. As regard relationship of landlady and tenant between the parties is concerned the petitioner/tenant himself has admitted that he is a tenant under the respondent/landlady on a monthly rent of Rs.2,000/- which plea has been accepted by the respondent/landlady. Once that has been accepted by her in the pleadings by way of filing an application in the counter claim, the relationship between the parties cannot be raked up afresh. It is also not in dispute that the respondent is the owner of the suit premises. As a matter of fact, the petitioner/tenant himself has admitted that the respondent/landlady is purported to have purchased the suit property for a sum of Rs.30,000/- way back in

the year 1969 on which date itself he was claiming himself to be in possession of the suit property.

33. As regards the purpose of letting out, it is not in dispute that the premises in question was being used for commercial activity by the petitioner/tenant and the retrieval of possession is sought by the respondent/landlady for the purpose of commercial activity to be done by her and her husband.
34. The next question which arises for consideration is the bona fide requirement of the respondent/landlady for the premises in question and the availability of an alternative accommodation. The respondent/landlady has stated that she is living in the property belonging to her husband in Karol Bagh on the ground floor and the first floor is vacant and is residential in nature and the second floor is occupied by an unauthorized occupant against whom her husband has filed civil suit and litigation is pending. The first floor of the property has been kept vacant for the benefit of her two daughters one of whom is living in Gurgaon, who frequently visits them.

35. It has been contended by Mr. Tiku, the learned senior counsel that the respondent/landlady has availability of accommodation on the first floor of premises in Karol Bagh where she is living that can be used for the purpose of business and this can be considered to be an alternative accommodation available to her.
36. I do not agree with this contention of the learned senior counsel that it is within the domain of the petitioner/tenant to tell the respondent/landlady as to how and from where she is to conduct her business. The Supreme Court has also in a catena of cases observed that the landlord is the best judge to manage his own affairs and it is for him to decide as to how he is going to live to conduct his business. Reliance in this regard is placed on *John Impex (Pvt.) Ltd. vs. Dr. Surinder Singh & Ors.*, 135 (2006) DLT 265.
37. The respondent/landlady has given an explanation as to why she has kept first floor vacant which explanation is found by the court to be quite plausible and acceptable. Moreover, the property which is owned by the husband of the respondent/landlady is a residential property and business cannot be conducted from the first floor of a

residential property notwithstanding the fact that it is located in Karol Bagh. But that does not mean that it is open to the Court to suggest to the respondent/landlady that she must convert whole of the building or a part thereof into commercial activity and satisfy her requirement from the said building that would be beyond the scope of the domain of the Court. All that the Court is required to do is to find out as to whether the requirement as set up by the respondent/landlady in the petition is bona fide or actuated by mala fides. This contention, therefore, in my respectful submission is unacceptable and has not merit.

38. The other submission which is connected with the first one only is with regard to the bona fide requirement is that it has been contended by Mr. Tiku that the respondent/landlady and her husband are both aged about 65/70 years, meaning thereby they are in the evening of their life and they cannot be considered to be fit enough to running around for the purpose of running vegetables and fruit mart.
39. I do not agree with this submission that the age can be a factor which would deprive a person from retrieving the possession of his

property if he has expressed his sincere desire to conduct his own business of the same type. The sure protection to ensure that they use the premises for the purpose for which retrieval is sought is provided under Section 19 of the Act which is itself a bar that immediately after the premises are vacated the respondent/landlady or the landlord as the case may be is supposed to occupy the premises within a period of two months and further an embargo has been placed that the suit property cannot be let out to any third person for a period of three years. Therefore, this protection is sufficient enough to sanction an assurance to the petitioner/tenant that in the event of the shop being vacated by the petitioner/tenant it will not be misused as is apprehended by the learned counsel for the petitioner/tenant.

40. One of the arguments which was advanced on behalf of the petitioner/tenant was that neither the respondent/landlady nor her husband has any technical knowhow as to how the business of procuring vegetables and fruits is to be conducted and therefore, they are ill-trained for the purpose of running the business as is sought to be contemplated by them. The trial Court has referred to

the judgments of *Ram Babu Aggarwal vs. Jay Kishan Dass, 2009*

(2) *RCR*, wherein it was observed:-

“We are of the opinion 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 the 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 some times they are successful in the new business also.”

41. This argument is also without any merit. Everybody who starts a new business or seeks to start a new business then he would be precluded from seeking retrieval of the possession because it will be contended that he does not have the experience. Everybody has to start from a scratch at some point of time. It is only with the passage of time that a person gains experience but certainly merely because a person has not done a trade or business prior in which he has interest does not mean that he should not be given an opportunity of blossom and conduct his business in the manner in which he would like to do. Along with submission it was also urged that Khan Market is a high end market and it requires lot of money which the respondent/landlady do not have because they have not shown their financial capability. In my view this

submission is also without any merit because it does not fall within the domain of the court to see whether it has the requisite finance or not. It is obvious that any person who wants to start his business will have the capacity to generate funds and in case do not do so, Section 19 of the Delhi Rent Control Act can be pressed into service against them.

42. For the above mentioned reasons, I feel that so far as pleas which have been raised by the learned counsel for the petitioner/tenant in assailing the order of eviction is totally without any merit.
43. Mr. Tikku, the learned senior counsel for the appellant has also raised some other submissions which are not at all relevant so far as deciding of the leave to defend application in the instant case is concerned. These objections were that the respondent/landlady has got number of cases registered against the appellant either by way of FIR or by way of filing a criminal complaint in the Court of *illaqa* Magistrate where in all such cases allegations against the appellant are that he is a trespasser and not a tenant and therefore the respondent/landlady cannot be permitted to raise the plea of the appellant being a tenant in the suit premises.

44. I feel that this is an argument of desperation. No doubt the respondent/landlady had all long taken the plea that the appellant is a trespasser as petitioner has usurped the entire shop after having come as an employee which resulted in number of litigations between the parties. It is the petitioner/tenant himself who had filed a suit for injunction to which a counter claim had been filed. In the suit for injunction the petitioner/tenant had purposely claimed himself to be the tenant and alleging that he is paying monthly rent of Rs.2,000/- because he wanted to have the protection of the Rent Act and ensure that the respondent/landlady is not able to evict the petitioner/tenant from the shop in question knowing fully well that the shops in Khan Market area are such a premium shop which commands lacs of rupees as rent. If the respondent/landlady has accepted the petitioner/tenant as the tenant as alleged by him then it is not open now to the petitioner/tenant to contend that the stand which has been taken by the respondent/landlady in the eviction petition claiming the petitioner/tenant to be the tenant is at variance with her stand

before the criminal court. That is not an issue here. It is for the criminal court to decide that aspect of the matter.

45. So far as the present eviction petition is concerned, the petitioner/tenant himself having alleged to be the tenant is now estopped from retracing his steps because on the basis of the said representation the respondent/landlady has changed her position in as much as she has withdrawn the counter claim and preferred to file an eviction petition. Therefore, this argument is of no consequence.
46. Before I close the case, I am constrained to observe that there is a tendency on the part of the litigants which includes the tenant also that wherever the tenants are well off they engage the poor landlord uncalled for litigation and compete the matter. They try to weave the web of facts that it becomes very difficult both for the respondent/landlord as well as the Court to come out of the same and because of the share this ingenuity they are able to perpetuate their possession.
47. This is one such case where the petitioner/tenant is very clever and rather dishonest person that he has tried to create every hurdle in

the way irrespective of the fact that as to whether it is relevant for deciding the leave to defend or not. It was with this view that the petitioner/tenant kept on changing his stand even during the subsistence of the eviction petition that he took the plea that firstly, that he converted the proprietary concern into a partnership and partnership into a private limited company and then take the plea that since the private limited company is not impleaded as a party, therefore, no eviction order can be passed. In my considered view this was totally a mala fide plea. The petitioner/tenant continues to be Panna Lal, the person by whom the property was allegedly trespassed, who had claimed himself to be the tenant and which was accepted by the respondent/landlady. It does not lie in the mouth of the petitioner/tenant that he converted the proprietary concern into a private company.

48. I have gone through all the judgments handed over by the learned counsel for the petitioner/tenant to the Court Master. Most of them are the judgments of the High Courts. I do not consider it to be necessary to deal with each of the judgments. The reason for this is that in some of the judgments, no doubt the leave to defend has

been granted but that does not mean that merely because in reported judgments the leave to defend has been granted *ipso facto* that the petitioner/tenant is entitled to leave to defend. The parameters for grant of leave to defend are very well settled by now in the catena of judgments and it is this that the leave to defend is to be granted in a case when the appellant/tenant is able to make out a triable issue. An issue is said to be triable which if permitted to be proved would disentitle the respondent/landlady from claiming the possession of the suit premises. It is also laid down in *Charan Das Duggal vs. Brahma Nand (1983) 1 SCC 301* while considering the triable issue what the court is expected to see is not the strong case of the appellant which may ultimately culminate into its success but only a probability of his succeeding in the matter.

49. I do not find that any fact has been urged in the instant case which has in least probability of succeeding in disallowing the petition for eviction of the respondent/landlady. The reason for this is being summed up as under:-

- (i) There is no doubt that the petitioner is the tenant under the respondent. The respondent/landlady is admittedly the owner of the suit property as the petitioner/tenant himself has admitted that she has purchased it in the year 1969 for a sum of Rs.30,000/-.
- (ii) The purpose of letting is not in dispute. The shop in question is being used for commercial purpose and it was being claimed by the petitioner/tenant to have been let out to him for running of fruits and vegetables mart in the injunction suit which has been accepted by the respondent/landlady. Thus, satisfied the two ingredients for passing a decree of eviction on the ground of bona fide requirement.
- (iii) The third and the fourth ground that the suit premises are required bona fide by the respondent/landlady for herself or for the benefit of her dependants family members and that she has no other suitable alternative accommodation available to her is also satisfied in the instant case. In this

regard, the respondent/landlady has stated that they are not having any independent business at the moment and therefore, they would like to start the shop of selling fruits and vegetables at the shop in question. Merely because they are aged 65 and 70 years is no ground to deny them to start that venture at fresh which of course will be done by them with the help of some man force.

50. It is not open to the court to comment as to whether they will be able to start the business of selling the vegetables and fruits or not. The reason for this is that the Supreme Court in catena of judgments has laid down that the landlord is the best judge to decide his requirement and merely because they have no experience of doing a particular kind of business does not disentitle them to retrieve the possession of the suit premises on that score. The age of the respondent/landlady or the knowledge is of no concern to the petitioner/tenant so far as user of the property is concerned.

51. So far as the grievance of the petitioner/tenant that the respondent/landlady may not conduct the business is concerned that is taken care of by Section 19 of the Rent Act.
52. As regards alternative suitable accommodation the case of the petitioner/tenant has been that the respondent/landlady have the accommodation in Karol Bagh on the first floor where they are living which could be utilized. Karol Bagh and Khan Market are the areas catering to different segment of society. In Khan Market, which is considered to be the posh area, running of a vegetable and fruits shop commands bounds to generate more income in comparison to area of Karol Bagh. In any case, the respondent/landlady has stated that she does not intend to use the first floor as it is residential in nature and moreover the business cannot be transacted from the first floor.
53. So far as the rentals in Khan Market are concerned they are to the extent of lacs of rupees and during the course of arguments, the learned counsel for the respondent/landlady has brought to the notice of the Court certain agreements in respect of the adjoining similar properties which are earning rent of almost Rs.7 lacs per

month. The petitioner/tenant of his own saying that he is agreed to pay rent @ Rs.2 lacs before the Division Bench. Even that mount has not been paid upto date.

54. I have also gone through the order of eviction passed and I do not find that there is any illegality, impropriety or jurisdictional error in the order of eviction passed after rejecting the leave to defend because the petitioner/tenant has not been able to make out any triable issue from the pleas which have been raised by him. On the contrary, I must admit that the petitioner/tenant is a person who is trying to prolong his occupation of the premises in question despite the fact that the property is situated in prime area and earns a huge rentals yet he is not paying rentals to the respondent/landlady at the rate at which he had agreed to pay and on the basis of this statement the first Appellate Court had directed him to pay the damages @ Rs.2 lacs per month.
55. In view of the fact that the petition is being dismissed, the petitioner/tenant shall be granted a month's time to vacate the shop in question and handover the possession to the respondent/landlady, subject to his clearing the arrears of damages

@ Rs.2 lacs per month, which was an order passed by the Division Bench of this Court starting from July, 2015 upto 31st March, 2016 within a period of two weeks, failing which the order of eviction shall be executable forthwith.

56. It is also expected that since the petition is pending in the District Court for quite some time, the learned Rent Controller while entertaining the application seeking execution of the order of eviction shall at the threshold itself provide necessary police aid to the respondent/landlady for retrieval of the possession of the suit premises to the respondent/landlady.
57. Pending applications also stand disposed of.

APRIL 29, 2016
vk

V.K. SHALI, J.