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

% ***Date of decision:*** 14.03.2017

+ RC.REV. 65/2017 & CM No.5592/2017

GURDEEP SINGH Petitioner
Through Mr.Prabhat Ranjan, Advocate

versus

GURMAIL SINGH AND ORS. Respondents
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present revision petition filed under section 25-B (8) of the Delhi Rent Control, Act, 1958(*hereinafter referred to as the 'DRC Act'*) the petitioner seeks to impugn the order dated 05.10.2016 by which the Additional Rent Controller (*in short the 'ARC'*) dismissed the application of the petitioner seeking leave to defend and passed an eviction order against the petitioner.

2. The respondents filed the present eviction petition under section 14(1)(e) of the DRC Act regarding the property being No.2348-B1, Raja Park, Shakur Basti, Delhi- 110 034. It was urged in the petition that the petitioner is a tenant of the ground floor @ Rs.320/- per month. The respondents No.1 to 4 are joint owners of the property in question, which is a built up house on half portion of the plot No.36 measuring 72 ½ sq.yds. The property was purchased by Smt.Preetam Kaur by registered sale deed in 1971. She died intestate on 09.09.1982 and is survived by the four respondents who are now the joint owners of the property. Late Smt.Preetam

Kaur had inducted the petitioner as a tenant. It is urged that respondent No.1 is without any work and needs to start his own business of a computer training centre. The requirement is of space of one room/hall which is to be used as reception and one big room/hall which is required to be used as class room for computer training centre. There is also a requirement of respondent No.2 who wants to settle his wife. Respondent No.2 has a growing family which includes his wife and two daughters of marriageable age. It is urged that the rest of the space of the suit premises is required by respondent No.2 to open a boutique for his wife. It is urged that besides the said premises, the respondents have no alternative commercial property to carry on their own work.

3. The ARC by the impugned order noted that there is no dispute between the parties about the existence of relationship of landlord and tenant.

On the issue of bonafide requirement, the ARC noted the requirement of the respondents. It also noted the stand of the petitioner that the premises is a residential premises and the same is also being used by the respondents as their residence. The ARC noted the stand of the petitioner in the rejoinder that the tenanted premises is a residential-cum-commercial property. It also noted that the electricity bill annexed alongwith the reply reflects the tariff category to be Non-Domestic Low Tension (*hereinafter referred to as the 'NDLT'*) which shows that the electricity is being used for commercial purposes. Hence, the area can be used by the respondents for commercial purposes. The court concluded that there is nothing on record to show that the requirement of the respondents is not bonafide.

On the issue of availability of suitable alternative accommodation, it noted the stand of the respondents that they do not have any other suitable commercial space available. It noted the availability of other accommodation with the respondents which was actually a residence. The contention of the petitioner was rejected. Accordingly, the ARC dismissed the application seeking leave to defend and passed an eviction order.

4. I have heard the learned counsel for the petitioner.

5. The learned counsel for the petitioner has made the following submissions:

(i) Respondent No.1 is 66 years old whereas respondent No.2 is 68 years old. The children are well settled. It is submitted that at this age in life, the respondents cannot claim bonafide requirement for starting their own business of computer training centre or for running a boutique. The claim, it is stated is not bonafide.

(ii) It is further stated that the respondents owns various alternative properties which are in their possession and from where they can start their own business, namely, respondent No.1 owns a property being No.WZ-2259, Raja Park, Shakur Basti, Delhi, measuring 125 sq.yds.; respondent No.2 owns a property being No. WZ-2294, Raja Park, Shakur Basti, Delhi, measuring 150 sq.yds.; and respondent No.3 also owns a property being No. WZ-2345, Raja Park, Shakur Basti, Delhi, measuring 240 sq.yds.

(iii) It is further urged that after passing of the eviction order respondent No.1 has expired and hence bona fide requirement for passing of the eviction order has come to an end.

6. I may first see the scope of the present petition. The Supreme Court in *Shiv Sarup Gupta vs. Dr.Mahesh Chand Gupta, (1999) 6 SCC*

222/(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...”

7. Hence, this court is to test the order of the ARC to see whether it is according to law, and whether the conclusions are not wholly unreasonable.

8. 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:-

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(e) that the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and the landlord or such person has no other reasonably suitable residential accommodation.”

The above provisions would in view of the judgment of the Supreme Court in *Satyawati Sharma(dead) by LRs vs. Union of India & Anr., AIR 2008 SC 3148* apply to commercial premises also.

9. 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.

10. 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.

11. The Supreme Court in *Precision Steel & Engineering Works and another vs. Prem Deva Niranjana Deva Tayal, AIR 1982 SC 1518* in para 22 held as follows:-

22. What then follows. The Controller has to confine himself indisputably to the condition prescribed for exercise of jurisdiction in Sub-section (5) of Section 25B. In other

words, he must confine himself to the affidavit filed by the tenant. If the affidavit discloses such facts-no proof is needed at the stage, which would disentitle the plaintiff from seeking possession, the mere disclosure of such facts must be held sufficient to grant 'leave because the statute says on disclosure of such facts the Controller shall grant leave'. It is difficult to be exhaustive as to what such facts could be but ordinarily when an action is brought under Section 14(1) proviso (e) of the Act whereby the landlord seeks to recover possession on the ground of bona fide personal requirement if the tenant alleges such facts as that the landlord has other accommodation in his possession; that the landlord has in his possession accommodation which is sufficient for him; that the conduct of the landlord discloses avarice for increasing rent by threatening eviction; that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself; that the dependents of the landlord for whose benefit also possession is sought are not persons to whom in eye of law the landlord was bound to provide accommodation; that the past conduct of the landlord is such as would disentitle him to the relief of possession; that the landlord who claims possession for his personal requirement has not cared to approach the Court in person though he could have without the slightest inconvenience approached in person and with a view to shielding himself from cross-examination prosecutes litigation through an agent called a constituted attorney. These and several other relevant but inexhaustible facts when disclosed should ordinarily be deemed to be sufficient to grant leave.”

12. The respondents have in the eviction petition stated that respondent No.1 is unemployed and seeks to start his own business of computer training centre. Similarly, the case of respondent No.2 is that he wishes to settle his wife who would open a boutique. Merely, because respondent No.1 is 66 years old can old hardly be a ground to contend that at this age the said

respondent cannot be expected to commence his own business. It is the desires of most individuals to remain gainfully employed in their life time. Age cannot be a factor to oust the said desire to be gainfully employed so as to able to make a living and to also remain occupied in a vocation or work. In any case, the age of 66 in today's age cannot said to imply an age at which an individual cannot work. As far as respondent No.2 is concerned, his age is not material as he is seeking possession for the requirement of his wife.

13. The next submission of the learned counsel for the petitioner which has been made today in court is that respondent No.1 has expired after passing of the eviction order. No details are given, namely the date of death. In fact, said respondent No.1 has also been impleaded as a party to the present petition. His LRs had not been brought on record.

14. The Supreme Court in ***Shakuntala Bai & Ors. v. Narayan Das & Ors.***, (2004) 5 SCC 772 held as follows:

“11. In *Shantilal Thakordas v. Chimanlal Maganlal Telwala*: [1977]1SCR341, a larger Bench overruled the decision rendered in *Phool Rani v. Naubat Rai Ahluwalia* (supra) in so far it held that the requirement of the occupation of the members of the family of the original landlord was his personal requirement and ceased to be the requirement of the members of his family on his death. The court took the view that after the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and occupation of the other members of the family. Thus, this decision held that the substituted heirs of the deceased landlord were entitled to maintain the suit for eviction of the tenant. The ratio of this decision by larger Bench does not in any manner affect the view expressed in *Phool Rani* (supra) that where the death of the landlord occurs after a decree for possession has been

passed in his favour, his legal representatives are entitled to defend further proceedings like an appeal and the benefit accrued to them under the decree. In fact, the ratio of Shantilal Thakordas (supra) would reinforce the aforesaid view. There are several decisions of this Court on the same line. In Kamleshwar Prasad v. Pradumanju Agarwal: [1997]3SCR508 it was held that the need of the landlord for premises in question must exist on the date of application for eviction, which is the crucial date and it is on the said date the tenant incurred the liability of being evicted therefrom. Even if the landlord died during the pendency of the writ petition in the High Court, the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son. In Gaya Prasad v. Pradeep Srivastava, it was held that the crucial date for deciding as to the bonafides of requirement of landlord is the date of his application for eviction. Here the landlord had instituted eviction proceedings for the bona fide requirement of his son who wanted to start a clinic. The litigation continued for a long period and during this period the son joined Provincial Medical Service and was posted at different places. The subsequent event i.e. the joining of the service by the son was not taken into consideration on the ground that the crucial date was the date of filing of the eviction petition. Similar view has been taken in G.C. Kapoor v. Nand Kumar Bhasin: AIR2002SC200. Therefore, the legal position is well settled that the bona fide need of the landlord has to be examined as on the date of institution of proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate.”

15. Hence, in view of the above legal position, the fact that the landlord died after passing of the eviction order will not in any manner help the petitioner. In any case the requirement was not solely for the said respondent No.1. The premises are also required by respondent No.2 to settle his wife.

Hence, even otherwise the death of respondent No.1 after passing of the eviction order does not change the bonafide need of the respondent.

16. The other argument raised by the petitioner was availability of alternative suitable accommodation. Respondent No. 1 in his reply to the leave to defend application has in response to the list of three properties stated by the petitioner pointed out that these are residential accommodations where the respondents are residing with their family members. Clearly, the stated houses noted by the petitioner cannot be said to be alternative accommodation for the respondents to carry on business. It was not for the tenant to ask the landlord to use his residential accommodation for business purpose so as to accommodate the tenant.

17. 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.”

18. In *Dinesh Kumar vs. Yusuf Ali*, (2010) 12 SCC 740. the Supreme Court held as follows:-

“8. In *Prativa Devi v. T.V.Krishnan* (1996) 5 SCC 353, this Court held that the landlord is the best judge of his requirement and courts have no concern to dictate the landlord as to how and

in what manner he should live.

9. However, in *Ram Dass v. Ishwar Chander & Ors.*, AIR 1988 SC 1422, this Court held that ‘bona fide need’ should be genuine, honest and conceived in good faith. Landlord’s desire for possession, however honest it might otherwise be, has, inevitably, a subjective element in it. The “desire” to become “requirement” must have the objective element of a “need” which can be decided only by taking all relevant circumstances into consideration so that the protection afforded to tenant is not rendered illusory or whittled down. The tenant cannot be evicted on a false plea of requirement or “feigned requirement”. (See also *Rahabhar Productions Pvt.Ltd. v. Rajendra K.Tandon*, AIR 1998 SC 1639: (1998 AIR SCW 1387); and *Shiv Sarup Gupta v. Dr.Mahesh Chand Gupta* (AIR 1999 SC 2507): (1999 AIR SCW 2666).”

19. There is no merit in the present petition and the same is dismissed. All the pending applications are also dismissed.

JAYANT NATH, J.

MARCH 14, 2017/v