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

% *Date of decision:* February 06, 2017

+ RC.REV. 51/2016

URMILA ARORA

..... Petitioner

Through

Mr. Rajesh Yadav, Mr. Gaurav Kakar,
Mrs. Bhawna Chopra Rustagi and
Mr.Dhananjay Mehlawat, Advocates.

versus

OM PRAKASH

..... Respondent

Through

Mr. B.K.Mishra, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present revision petition filed under Section 25 B of the Delhi Rent Control Act, 1958 (hereinafter referred to as DRC Act), the petitioner/landlord seeks to impugn the order dated 30.11.2015 by which order the Additional Rent Controller (hereinafter referred to as ARC) granted leave to defend to the respondent in the petition filed by the petitioner under Section 14(1)(e) of the DRC Act for eviction of the respondent/tenant.
2. The petitioner filed the eviction petition for shop No. 2, Ground Floor of property bearing No. A-115, Ashok Nagar, Shukar Bazar Chowk, Mandoli Road, Shahdara, Delhi-110093. It was contended that the petitioner is the owner of the entire property which was purchased on 22.05.1982 and that the petitioner is residing there along with her family at the back portion

of the ground floor and first floor of the property. The ground floor has five shops. Shop No. 1 is said to be under the tenancy of Sh.Sati Ram who is running his business under the name and style of 'Sunil Chat Bhandar'. Shop No. 2 is the tenanted shop in issue. Shop No. 3 was under the occupation of Dr.B.K.Verma. He has however vacated the shop on 24.11.2014 and the same is now in possession of the petitioner. Shop No. 4 was sold by the petitioner in 2002-2003. Shop No. 5 is in possession of Smt. Deepika Arora, the younger daughter-in-law of the petitioner who has been running her business from the said premises under the name and style of 'Ishika Beauty Parlour & Bangle Store' for the last many years. It is further contended that the petitioner has three children. The shop is required for her elder son-Sh.Pramod Kumar Arora who is dependent upon the petitioner. He was said to be earlier carrying on the business of selling Bangles from Shop No. 4. However, due to financial constraints, the said shop was sold in 2002-03 and thereafter, Sh.Pramod Kumar Arora has been forced to take up part time jobs of assistant or salesman as he is not educationally well qualified. The said Pramod Kumar Arora has no permanent job. He is now willing to start his own business. Hence, it was decided to give shops No. 2 and 3 to Sh.Pramod Kumar Arora after getting the same vacated from the tenants and to merge them into a single shop to enable him to set up his own business of eatery (small restaurant) to earn his livelihood. The shops on their own are said to be very small and unless the two shops are merged, it would not be possible to start the restaurant business. The petitioner's son would require a separate place for kitchen and sitting arrangement for the restaurant. The property is said to be situated in a busy market place and it is urged that there is very likelihood that the business of the son of the petitioner would flourish. It is

also stated that the petitioner or any of the family member do not own or possess any other commercial or suitable premises.

3. The respondent filed his application for leave to defend. In the application it has been strongly urged that the petitioner already has shop No. 3 in her possession. Similarly, it is denied that shop No. 1 is under the tenancy of 'Sunil Chat Bhandar'. It is stated that the said shop is in possession of the petitioner and that the elder son of the petitioner, namely, Sh.Pramod Kumar Arora is from the shop running a business of Tour and Travels under the name and style of Jai Ambe Tour & Travels and the mobile number of Sh.Pramod Kumar Arora is mentioned on the sign board. The photograph of the sign board has also been filed. Hence, it is urged that the petitioner has possession of Shop No. 1 and Shop No. 3 and hence, the petitioner has adequate space for carrying on the business. It is reiterated regarding 'Sunil Chat Bhandar' who is claimed by the petitioner to be a tenant of Shop No. 1, that there is no such tenant there and that 'Sunil Chat Bhandar' is being run on the foot path in front of shop No. 1. Some irrelevant defences are also raised by the respondent, namely, that the children of Sh. Pramod Kumar Arora are studying in Siddharth International Public School and both the sons are maintaining air conditioners in their rooms.

4. The petitioner in her reply has denied the contention of the respondent. She has stated that the travel agency i.e. Jai Ambe Tour & Travels was actually started by Sh. Vipin Kumar Arora, the younger son of the petitioner. However, as the same could not run, sometimes in 2007-08 the said business was closed. However, it is stated that the sign board continues to be hung. It

is stated that the two phone numbers mentioned on the sign board belong to the wives of Vipin Kumar Arora and Sh. Pramod Kumar Arora.

5. The ARC by the impugned order held that from the photograph it is clear that the sign board with the name of Jai Ambe Tour & Travels was in existence on the date of the filing of the application seeking leave to defend on shop No.1. Hence, it would be a matter of evidence and trial whether the sign board was per chance a pre-existing sign board and not connected with the business of the petitioner or whether Sunil Chat Bhandar is running a shop in the said premises. It also noted that the admitted position is that Shop No. 3 which was in possession of Dr. B.K.Verma stands vacated and is in possession of the petitioner. The petitioner claims that her son wants to start a restaurant business by merging shops No. 2 and 3. Hence, the ARC concluded that this was a case of additional requirement since the petitioner is already having possession of Shop No. 3 and hence, held that it was a fit case for grant of leave to defend to the respondent. Accordingly, the ARC allowed the application of the respondent seeking leave to defend. It also relied upon the judgment of the Supreme Court in the case of ***Charan Dass Duggal vs. Brahma Nand, (1983) 1 SCC 301.***

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:-

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.”

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 petitioners. 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. 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.”

13. 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 disentanglement 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.)”

14. I may now see whether in the light of the above legal position regarding grant of leave to defend to the tenant, the ARC rightly allowed the application for leave to defend to the respondent. The ARC has granted leave to defend to the respondent primarily on two facts, i.e. the stand of the respondent that shop No.1 is in possession of the petitioner as is clear from the Sign Board in front of the shop displaying the name of Sai Ambe Tour & Travels and secondly that the requirement of the petitioner is a case of additional accommodation.

15. Coming to the first contention of the respondent i.e. shop No.1 is in possession of the petitioner as is evident from the photograph showing the sign board of Jai Ambe Tour & Travels which is shown as hung in front of shop No. 1. The petitioner has denied that the said shop No. 1 is in possession of the petitioner or that any such travel agency is being run from the said shop. On the contrary, it is stated that the said shop is rented out to a chat seller, namely, Sunil Chat Bhandar. The respondent admits the

existence of Sunil Chat Bhandar but claims that the said chat bhandar is functioning from the pavement. The petitioner has also stated that the younger son had started the said travel agency but it is stated that the same was stopped long back and the phone numbers mentioned on the sign board belong to the wife of the younger son and not to elder son Sh.Pramod Kumar Arora for whom the shop is required.

16. In my opinion, the ARC fell into error in concluding that a triable issue is established by only a photograph placed on record by the respondent showing the Sign Board of Jai Ambe Tour & Travesl. A functioning travel agency is bound to leave a trail behind. It can function only with customers and by advertisements. There is bound to be a website on the internet about the travel agency. Details of some of the customers would be available as the respondent is allegedly the immediate neighbour of the said travel agency. No details are also forthcoming from the respondent as to how many employees are employed in the said travel agency or the volume of work being done by the travel agency. Any invoices issued by the travel agency would also be easily available to the respondent. A travel agency would have to advertise itself in various ways. Such activities are bound to leave a trail which would easily come to the notice of the respondent who is allegedly the immediate neighbour of the said travel agency.

17. Another important fact is that the respondent admits existence of the said Chat Bhandar but claims that it is functioning from the foot path in front of shop No.1. Functioning of a Chat Bhandar from a foot path is a vague averment. In the absence of any license given by the authorities to a person, it would be difficult to have a continuous operation of the Chat Bhandar shop from the foot path for a long duration as is claimed by the respondent.

Further, as the respondent is also doing his own business from shop No.2, he would have undoubtedly objected to a chat bhandar carrying on its business on the foot path almost in front of his shop which would effect egress and ingress to the shop of the respondent. It is clear that the claim made by the respondent is nothing but a bald averment.

18. Reference may be had to the judgment of this court in the case of ***Mukesh Kumar v. Rishi Prakash (2010) 174 DLT 74***, where this court held as follows:

“15. On the face of it, the approach of the learned ARC appears to be rather simplistic. However when one marshals all the facts and circumstances which have come on record, and considers the fact that the primary defence of the respondent has not been corroborated by any material on the record, on the application of the case law cited by the petitioner, it cannot be said that the approach of the learned ARC was correct, legal or according to law. As held by this Court in K.K. Sarin (supra), while deciding the application seeking leave to defend, what is required of the Rent Controller is to observe the rules of natural Justice and to give opportunity to both the parties to produce the facts and the material on which they rely. When the leave to defend is sought by the tenant he must make out a prima facie case raising such pleas from which a triable issue would emerge. A bald plea, without anything more, particularly when the nature of the plea in defence is such that, if true, it would leave a trail of evidence to establish its existence, and which would be easily available for everyone to see and pick up, cannot be accepted as prima facie disclosing a triable issue.

16. In the present case, apart from contending that the son of the petitioner Sh. Pankaj Gupta, Advocate is already running his professional office from the first floor of property bearing No. 3649 the respondent has failed to produce any material whatsoever in support of this submission. Had there been any truth in the submission worth consideration, the respondent

would have produced at least some evidence to, prima facie, raise a triable issue. An office of an advocate would have a name plate, he would be listed in the bar telephone directory with complete details of his office address and telephone numbers. He would undertake postal correspondence at and from his official address. He would print his office address on his visiting card, and even put it on his vakalatnama and filings in Court. He may even have an electricity connection in his name to run his office. He would be seen in his office premises on a daily basis with and without his clients. It was, therefore, not difficult for the respondent, who is himself a practicing advocate, to produce photographs or other documents along with his application to seek leave to defend to substantiate his plea that Sh. Pankaj Gupta, Advocate is, in fact, running his office from the first floor of property bearing No. 3649 where he too is located. Pertinently, no such material has been placed on record. A bald assertion has been made by the respondent that Sh. Pankaj Gupta is running his office from the first floor of premises bearing No. 3649.”

Respondent in the present case has other than filing a photograph of the Sign Board, has failed to place on record any material that would be easily and readily available. The ARC wrongly contrary to the legal position concluded that this contention raises a triable issue.

19. The further conclusion of the ARC, namely, that it was a case of additional accommodation is also a misplaced conclusion. As per the site plan, shop No. 3 in possession of the petitioner measures 7'.2" x 9'.7". Shop No. 2, the tenanted shop is also of the same dimensions. A restaurant cannot be run in the property which measures roughly around 65 sq. feet. Hence, the contention of the petitioner that it seeks to merge the two shops, namely, shop No. 2 and 3 to make a space around 130 sq. ft. to run an eatery is a

bona fide contention and cannot be brushed aside as a need for an additional accommodation.

20. The ARC had relied upon the judgment of the Supreme Court in the case of *Charan Dass Duggal vs. Brahma Nand(supra)* to support the above conclusion. That was a case in which the landlord had a big house in Pathankot and he was seeking to shift to Delhi. Hence, the contention of the tenant that the landlord was not in need of premises in Delhi was held to be a serious contention. It was in those facts that the Supreme Court held that if he has any premises in his possession, he must allege and prove that why it is not sufficient for its present use. In the facts of the present case, the insufficiency of the accommodation which is in possession of the petitioner is manifest on the face of the record.

21. In view of the above, the ARC fell into an error to conclude on the basis of these facts that a plausible triable issue has been raised by the respondent in his leave to defend application. The arguments raised by the respondent are bald averments bereft of material factual details. I am of the view that the respondent did not raise any triable issue which require a trial and for which the respondent was granted leave to defend. The impugned order suffers from material illegality and has been passed contrary to the settled legal position.

22. In view of the above, the impugned order granting leave to defend to the respondent is quashed. An order of eviction is passed in favour of the petitioner and against the respondent. However, in terms of Section 14 (7) of the DRC Act, the respondent shall have six months time to vacate the tenanted premises.

23. The petition stands disposed of.

(JAYANT NATH)
JUDGE

FEBRUARY 06, 2017/rb