

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

% **Date of decision: 15th November, 2017.**

+ **RC.REV.68/2015 & CM No.2539/2015 (for stay)**

RAVINDER JEET SINGH (DECEASED)
THROUGH LR**Petitioner**

Through: Mr. Padamkant Saxena, Adv.

Versus

KANTA VADHERA & ANR **Respondents**
Through: Mr. A.K. Singla, Sr. Adv. with Mr.
Rahul Shukla, Adv.

AND

+ **RC.REV.69/2015 & CM No.2541/2015 (for stay)**

RAVINDER JEET SINGH (DECEASED)
THROUGH LR**Petitioner**

Through: Mr. Padamkant Saxena, Adv.

Versus

KANTA VADHERA & ANR **Respondents**
Through: Mr. A.K. Singla, Sr. Adv. with Mr.
Rahul Shukla, Adv.

AND

+ **RC.REV.362/2016 & CM No.26116/2016 (for stay)**

AMIT KUMAR **Petitioner**

Through: Mr. Mukesh Anand, Adv.

Versus

KANTA VADHERA & ANR

..... Respondents

Through: Mr. A.K. Singla, Sr. Adv. with Mr.
Rahul Shukla, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. These Rent Control Revision Petitions, all under Section 25B(8) of the Delhi Rent Control Act, 1958, by three tenants of the respondents/landlords, impugn the orders of dismissal of the applications filed by the petitioners/tenants for leave to defend the petitions for eviction filed by the respondents/landlords under Section 14(1)(e) of the Act for eviction of the petitioners from the shops in their tenancy under the respondents/landlords.
2. RC.REV. No.68/2015 and RC.REV. No.69/2015 impugn the orders both dated 14th October, 2014 in E-485/14/13 and E-485/14/13, both of the Court of Additional Rent Controller (ARC) (Central), Tis Hazari Courts, Delhi and the consequent order of eviction of the petitioner therein from shop No.2296-B and shop No.2296-C respectively, at Chatta Punjabiyan, Bahadurgarh Road, Delhi-110006.
3. RC.REV. No.362/2016 impugns the order, also dated 14th October, 2014 in E-489/14/13, also of the Court of ARC (Central), Tis Hazari Courts, Delhi and the consequent order of eviction of the petitioner therein from shop No.2298-B, Chatta Punjabiyan, Bahadurgarh Road, Delhi-110006.
4. The petitions were entertained and notice thereof ordered to be issued and subject to the petitioners in RC.REV. Nos.68/2015 & 69/2015 paying user charges to the respondents/landlords @ Rs.9,000/- per month and Rs.7,000/- per month respectively, from the date of the eviction order, the

eviction of the petitioners/tenants therein stayed during the pendency of those petitions. However, in RC.REV. No.362/2016, the execution of the order of eviction of the petitioner/tenant therein was stayed without providing for payment of any user charges.

5. While RC.REV. Nos.68/2015 & 69/2015 have always been taken up together, on RC.REV. No.362/2016 being filed, though belatedly, all the three petitions are being listed together.

6. The counsel for the petitioner/tenant in RC.REV. Nos.68/2015 & 69/2015 and the counsel for the petitioner/tenant in RC.REV.No.362/2016 and the senior counsel for the respondents/landlords in all the three petitions have been heard.

7. The respondents/landlords filed petitions for eviction with respect to all the three shops subject matter of the three petitions on the same facts and which are as under:

(i) that the tenant in Shops No.2296-B and 2296-C (subject matter of RCR No.68/2015 and RCR No.69/2015) as well as the tenant in Shop No.2298-B (subject matter of RCR No.362/2016) are old tenants, with the rent of the shop subject matter of RC.REV. No.68/2015 being Rs.20/- per month, rent of shop subject matter of RC.REV. No.69/2015 being Rs.30/- per month and the rent of shop subject matter of RC.REV. No.362/2016 also being Rs.20/- per month;

(ii) that the shops subject matter of RC.REV. Nos.68/2015 & 69/2015 are without any electricity connection and are used by the petitioner/tenant for dumping waste and useless articles; the

petitioner/tenant therein is otherwise carrying on his business from shop No.2308-09, 2217-B, Teliwara, Sadar Bazar, Delhi-06 and has employed more than 20 employees in the said premises; that though shop subject matter of RC.REV. No.362/2016 has an electricity connection but with a huge outstanding and the petitioner/tenant therein is also using the premises as a godown for rejected and other waste materials/articles;

(iii) that the two respondents/landlords namely Kanta Vadehra and Naivedya Sharma are owners landlords of the three shops having purchased the same vide Sale deed dated 2nd May, 2005; vide the said sale deed, nine shops as mentioned therein were acquired by the respondents/landlords in terms of family settlement with other siblings with respect to parental properties; as per the said family settlement, the value of the share of two sisters of the respondent No.1/landlady in the parental properties was to be paid by the two respondents/landlords and which the respondents/landlords paid by disposing of six out of nine shops subject matter of the said sale deed, leaving only three shops subject matter of the three petitions in the ownership and landlordship of the respondents/landlords;

(iv) that the respondent No.1/landlady, since August, 2012 has been running a ladies beauty parlour, earlier from rented shop No.4169/2 and now from shop No.4169/3, both in property No.4169, Gali Bahuji, Pahari Dhiraj, Sadar Bazar, Delhi-06 and for which the respondent No.1/landlady is paying rent of Rs.7,000/- per month; a copy of the registered rent agreement was filed with the petitions for eviction;

(v) that the respondent No.1/landlady is educated and possesses good knowledge in skin and hair care products/business and intends to have her own business in cosmetics and related items from the three shops which are more suitable for the said business, being situated in a market which is thriving in trading of cosmetics, local as well as imported.

8. The petitioner/tenant in RC.REV. Nos.68/2015 & 69/2015 applied for leave to defend stating (a) that the respondent No.1/landlady, prior to filing of the subject petitions for eviction under Section 14(1)(e) of the Act also, filed petitions for eviction under Section 14(1)(a) of the Act i.e. on the ground of non-payment of rent and had not disclosed the said fact and the petition under Section 14(1)(e) of the Act was not maintainable for this reason; (b) that the respondent No.1/landlady does not require the premises; (c) that the respondent No.1/landlady was also having other commercial properties at Bahadurgarh Road, Sadar Bazar, Delhi and other properties in Delhi; (d) that the respondent No.1/landlady was having 52 shops in property No.2318, Punjabi Chhatta Bahadurgarh Road, Sadar Bazar, Delhi-06 which were given on rent to other tenants; (e) that the respondents/landlords were owners of property No.2299, Chhatta, Punjabi, B.G. Road, Sadar Bazar, Delhi-06; (f) that the respondents/landlords could not seek eviction of the petitioner/tenant from both the shops in his tenancy and could at best seek eviction with respect to only one of the shops; (g) that the respondents/landlords had also filed petition for eviction against tenant in another shop i.e. subject matter of RC.REV.No.362/2016; (h) that the petitioner/tenant had been a tenant in the shops for more than 30 years; (i) that the respondent No.2/landlord is running a business of metal and the

respondent No.1/landlady has no requirement; (j) that the respondent No.1/landlady has a MIG Flat in Sarita Vihar, Delhi and is having a luxury car and has retired from British Council and is getting handsome pension and does not need to carry on any business as of a beauty parlour; (k) that the beauty parlour mentioned by the respondent No.1/landlady is in fact being run by the sister-in-law (*bhabhi*) of the respondent No.1/landlady; (l) that the respondent No.1/landlady was working at a high post as Regional Manager, Asia, Global School, in partnership with British Council; (m) that the respondent No.1/landlady is also running business with her brother Raj Kumar Vadehra of sale purchase of property; and, (n) that the respondent No.1/landlady is an unmarried lady with no dependants and does not need any income from beauty parlour or from trading in cosmetics.

9. The petitioner/tenant in RC.REV. No.362/2016 sought leave to defend pleading (I) that the respondents/landlords had admittedly sold six shops and the petition for eviction was thus not maintainable; (II) that in the sale deed dated 2nd May, 2005, copy whereof was filed by the respondents/landlords along with petition for eviction, there was no reference of any family settlement; (III) that the wife of the respondent No.2/landlord is the sister of the respondent No.1/landlady and the respondents/landlords sold shop No.2298A to Mohini Dhamija, another sister of respondent No.1/landlady vide sale deed dated 22nd August, 2005; (IV) the plea, that the respondents/landlords, under the family settlement were required to pay any amount to the other sisters, is false; (V) that the sale deed dated 2nd May, 2005 records that the respondent No.1/landlady and the wife of the respondent No.2/landlord had relinquished their shares in favour of their brothers Jiwan Kumar Vadehra and Raj Kumar Vadehra and there was thus

no occasion for the respondent No.1/landlady to pay any amount to her sisters, as the other sisters had also relinquished their shares in favour of the brothers; (VI) that the respondent No.1/landlady is having vacant possession of shops No.2299A and 2299B, Chatta Punjabi, Bahadurgarh Road, Delhi electricity bills whereof were in the name of the respondent No.1/landlady; (VII) that the respondent No.1/landlady was also having vacant shop No.2321B; (VIII) that the respondents/landlords are carrying on business in partnership and have alternate suitable commercial premises i.e. metal factory in Uttar Pradesh with office at 284, East Loni Road, New Delhi; (IX) that the petitioner is a tenant since the year 1964; (X) that the respondents/landlords have sold shops No.2294, 2297 and 2298A which were lying vacant; (XI) that the subject shop is located in a highly congested dingy and polluted locality and no business of beauty parlour can be run therein and all the premises therein are being used for storage purposes; (XII) that the respondent No.1/landlady is not running any ladies beauty parlour in property No.4169/3, Gali Bahuji, Pahari Dheeraj, Sadar Bazar, Delhi and in fact Rama Vadehra, wife of Raj Kumar Vadehra, brother of the respondent No.1/landlady is running the beauty parlour under the name and style of "Blessings Beauty Parlour" therefrom.

10. The respondents/landlords, in reply to the applications for leave to defend of the petitioner/tenant in RC.REV. Nos.68/2015 & 69/2015 pleaded, (A) that the respondents/landlords have no other commercial properties in Bahadurgarh Road, Delhi-06; (B) that the other properties in Delhi, merit no cognizance; (C) that the respondents/landlords do not own any 52 shops in property No.2318, Punjabi Chatta, Bahadurgarh Road, Delhi; (D) that the respondents/landlords do not have any right to property No.2299, Chatta

Punjabian, Bahadurgarh Road, Delhi; (E) that the only property which had come to the share to the respondents/landlords in the family settlement were the nine shops and of which six shops have been sold for fulfillment of obligations qua other family members; (F) that the flat in Sarita Vihar is the residence of the respondent No.1/landlady and cannot fulfill the requirement for which eviction is sought; (G) that the respondent No.1/landlady is no longer in employment of British Council and wants to establish her business, after retirement from British Council and is engaged only in the business of running a beauty parlour.

11. The ARC, vide identical orders impugned in RC.REV. Nos.68/2015 & 69/2015, has dismissed the applications of the petitioner/tenant therein for leave to defend and passed order of eviction, finding / observing / reasoning / holding (i) that the six shops were sold in the years 2005, 2009, 2010, 2011 & 2012; (ii) that it was not in dispute that now the respondents/landlords were owning only three shops qua which petitions for eviction were filed; (iii) that the petitioner/tenant had not denied the title of the respondents as owners and relationship of landlord and tenant with the respondents; (iv) that as per the pleas of the petitioner/tenant himself, the respondent No.1/landlady was not in any financial constraint and had retired from British Council; (v) that the respondent No.1/landlady was only 58 years old and cannot be expected to sit idle for the rest of her life; (vi) that the plea of the petitioner/tenant, that the business of beauty parlour was being run by the respondent No.1/landlady as a camouflage, only to obtain order of eviction, had no merit as the protection of Section 19 of the Act is always available, if the respondent No.1/landlady, after eviction of the petitioner/tenant and receiving possession of the premises, does not use the same for own

purposes; (vii) the plea, that the respondent No.1/landlady being unmarried, was not required to carry on any business, was not acceptable; (viii) that the petitioner/tenant had failed to show that the respondent No.1/landlady owns any alternate suitable accommodation; (ix) that though the petitioner/tenant had not shown any document to show ownership of the respondents/landlords of 52 shops in property No. 2318, Punjabi Chhatta Bahadurgarh Road, Sadar Bazar, Delhi but according to the petitioner/tenant also, none of the said shops were vacant but in occupation of various tenants; (x) that the respondent No.1/landlady could not be compelled to carry on her business from her residence at Sarita Vihar, Delhi; and, (xi) that the petitioner/tenant could not dictate terms to the respondent No.1/landlady.

12. The order impugned in RC.REV. No.362/2016 is the same as in RC.REV. Nos.68/2015 & 69/2015.

13. The counsel for the petitioner/tenant in RC.REV. Nos.68/2015 & 69/2015 has contended that the petitioner/tenant was entitled to leave to defend merely on the ground of the admitted sale by the respondents/landlords between the years 2005 to 2012 of six of the shops. It is further argued that the reason given for such sale, of the respondents/landlords being required under the family settlement to make any payment to other sisters, is without any basis and requires trial. Reliance is placed on ***Inderjeet Kaur Vs. Nirpal Singh*** 89 (2001) DLT 27 (SC) to contend that on such plea, triable issues arise.

14. Per contra, the senior counsel for the respondents/landlords contends that neither the petitioner/tenant in RC.REV. Nos.68/2015 & 69/2015 nor the petitioner/tenant in RC.REV. No.362/2016 has denied the family settlement

or the fact that the respondent No.1/landlady is retired; since the respondent No.1/landlady is retired, she is well entitled to set up business of cosmetics from the premises in the tenancy of the petitioners/tenants, as she is already carrying on the business of a beauty parlour.

15. The counsel for the petitioner/tenant in RC.REV. No.362/2016 has argued, (a) that the ARC, in the impugned order, has not discussed the pleas taken in the application for leave to defend and has merely followed the impugned order subject matter of RC.REV. Nos.68/2015 & 69/2015; (b) that though the petitioner/tenant sought review on the said ground but the said review application was also dismissed, without stating any reasons; (c) reliance is placed on *Harcharan Singh Vs. Neeraj Sahu* 190 (2012) DLT 625, *Kusum Tyagi Vs. Satish Gupta* 2014 SCC OnLine Del 4660 and *Vijay Nayyar Vs. Om Prakash Malik* 2011 SCC OnLine Del 2821.

16. I have considered the rival contentions and the judgments cited and am unable to hold that the orders of eviction impugned in these petitions are contrary to law, within the meaning of Section 25B(8) of the Act or require any interference, parameters whereof have been laid down in *Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta* (1999) 6 SCC 222 and *Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh* (2014) 9 SCC 78. The Legislature having deemed appropriate to bar any appeal against the order of eviction of the ARC and having only permitted this Court to revise the same, if finds it to be contrary to law, the revisional jurisdiction cannot be as wide as the appeal, which has been barred and does not allow the High Court to re-appreciate facts and only entitles the High Court to satisfy itself that the order of Rent Controller is in accordance with law. A mere difference of

opinion with the ARC, when two views are possible, does not entitle this Court to interfere.

17. It cannot be lost sight of that each of the petitioner is a tenant for over half a century and at rents which do not even cover the cost of collection thereof. Each of the petitioner/tenant is a trade person, carrying on business, and earning handsomely and does not require the protection from eviction under the Delhi Rent Control Act. Supreme Court in *Malpe Vishwanath Acharya Vs. State of Maharashtra* (1998) 2 SCC 1 and the Division Bench of this Court in *Raghuvandan Saran Ashok Saran (HUF) Vs. Union of India* (2002) 95 DLT (DB) has held that with the passage of time, the rent legislations which were enacted in an era where the landlord was strong and powerful and tenant weak, have lost their efficacy and that the tables have now turned, with the tenants taking advantage of the protection, having become big and powerful and the landlord having become weak.

18. Be that as it may, what is not in dispute is that (I) that the respondents/landlords are the owners and landlords of the shop in the tenancy of each of the tenant; (II) that the respondent No.1/landlady for whose requirement the petition for eviction is filed, though earlier employed with the British Council, has retired; (III) that the respondent No.1/landlady requires all the three shops, subject matter in these petitions for setting up business of trading in cosmetics.

19. I will now take up the pleas, which according to the petitioners/tenants raise triable issue.

20. One such plea is that the requirement of the respondent No.1/landlady cannot be for all the three shops subject matter of these petitions.

21. A perusal of the site plan filed with the petitions for eviction gives an inkling of the size of the shops. The two shops in the tenancy of petitioner in RC.REV. Nos.68/2015 & 69/2015 admeasures 8' X 11'.9" and 9'6"X11'9" and the shop in the tenancy of petitioner in RC.REV. No.362/2016 admeasures 16'X8'6". It is thus quite obvious that any one of the shop alone is not of such a size which can be said to be enough for the respondent No.1/landlady to set up her business and the petitioners/tenants cannot be heard to contend that the respondents/landlords should squeeze themselves in a small portion, inspite of being able to be comfortable. Supreme Court in *Shiv Sarup Gupta* supra and *Siddalingamma Vs. Mamta Shenoy* (2001) 8 SCC 561 has held that the concept of *bona fide* need or genuine requirement needs a practical approach instructed by realities of life; an approach, either too liberal or pedantic must be guarded against; if the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself and dwell in lesser premises so as to protect the tenant's continued occupation in tenancy premises.

22. As far as the plea of the petitioners/tenants, of the business of beauty parlour being of the sister-in-law of the respondent No.1/landlady and not of the respondent No.1/landlady is concerned, the respondents/landlords have filed before the Court the registered rent agreement to show the respondent No.1/landlady to be the tenant in the premises from which the business of beauty parlour is admittedly being run. Though the petitioner/tenant in RC.REV. No.362/2016 has filed photographs to contend that the sister-in-law of the respondent No.1/landlady was found in the beauty parlour but mere presence of the sister-in-law of the respondent No.1/landlady in the beauty parlour being run by the respondent No.1/landlady does not indicate

that the business is of the sister-in-law of the respondent No.1/landlady. Moreover, the requirement pleaded is not for running the beauty parlour but for setting up business of trading in cosmetics. Even if it were to be said that the business of beauty parlour is of the sister-in-law of the respondent No.1/landlady, the respondent No.1/landlady would in any case be entitled to have her tenants evicted to set up the business of trading in cosmetics.

23. In fact, I have wondered, what purpose grant of leave to defend, would serve in such circumstances. The respondent No.1/landlady in her affidavit by way of examination-in-chief also would only depose about her intent and which she has already done in the affidavit accompanying petitions for eviction and in opposition to the applications for leave to defend. The petitioners/tenants in their applications for leave to defend have not taken any ground as of, the respondent No.1/landlady working elsewhere, on proof whereof, it can be said that there is no possibility of the respondent No.1/landlady setting up business in cosmetics. The said plea thus does not raise any triable issue.

24. That brings me to the plea of sale of six shops which is again not in dispute. The only question is, whether such sales disentitle the respondent No.1/landlady from seeking eviction of tenants in the other three shops.

25. It is not the plea of the petitioners/tenants that vacant possession of any of the said six shops was available to the respondents/landlords; unless it was so available, sale of occupied premises, cannot be a ground for refusing eviction of tenants from other premises. The registered sale deed in favour of the respondents/landlords also records each of the said six shops to be in possession of the old tenants and also names the said tenants. The said sale

deed is of the year 2005 i.e. more than eight years prior to the filing of the petitions for eviction and it is not even urged that the recital in the said sale deed of the said six shops being in occupation of different tenants was not true. Once, it is held that the shops which were sold were also in occupation of tenants, the said sale would not come in the way of the respondents/landlords seeking eviction of the petitioners/tenants.

26. Though, in view of the aforesaid, the plea challenging the family settlement is of no avail but I may record that the same is quite evident from a perusal of the recital of the sale deed in favour of respondents / landlords and it is not in dispute that the respondent No.1/landlady has other sisters who also have relinquished their share in favour of the brothers and it is not the case of the tenants that the said sisters got any other property. In the absence of any such plea, the plea of the respondent No.1/landlady, of the respondents / landlords, in accordance with the family settlement, being required to settle with other sisters, is not such which can be said to be untenable or the view taken with respect thereto by the ARC can be said to be such which no reasonable person could have taken.

27. As far as the plea, of the other properties owned by the respondents/landlords are concerned, the learned ARC has rightly held that the same are vague and bald pleas and in any case vacant possession of the other properties also is not pleaded to be available. I have, in ***Ram Saroop Vs. Viney Kumar Mahajan*** MANU/DE/3530/2017, held as under on the said aspect:-

“18. If leave to defend were to be granted on such vague pleas, the same would defeat the legislative intent of inserting Section 25B in the Rent Act as summary procedure for dealing

with petitions for eviction on the ground of requirement of the premises by the landlord for his own use. A tenant, to be entitled to leave to defend has to disclose facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act. It is only such facts which when proved would so disentitle the landlord which can entitle the tenant to leave to defend. Evidence in proof of such facts has to be confined to the pleas and cannot be beyond the pleas. If the tenant is unable to make specific pleas, the Court cannot grant leave to defend on the premise that he will improve his case during trial. Leave to defend is not to be granted to allow to the tenant time to improve his case.

19. Supreme Court in **Baldev Singh Bajwa Vs. Monish Saini** (2005) 12 SCC 778, in the context of summary procedure under the East Punjab Urban Rent Restriction Act, 1949 held that a heavy burden lies on the tenant and the tenant is called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant was held to be not sufficient. Similarly, in **Rajender Kumar Sharma Vs. Leela Wati** (2008) 155 DLT 383 it was held that Section 25B was inserted as a special provision for eviction of the tenants in respect of specified category of cases as provided therein; where a landlord seeks eviction on the basis of bona fide necessity, a summary procedure is provided and the tenant has to seek leave to defend disclosing such facts which disentitle the landlord from seeking eviction; where a tenant, in leave to defend, pleads preposterous propositions and makes such averments which are palpably false and the landlord in his reply to leave to defend is able to show the said falsity, the Controller is not precluded from considering the falsity of such facts on the basis of material placed by the landlord before it. Again, in **Ramesh Chand Vs. Uganti Devi** (2009) 157 DLT 450, it was held that mere assertions do not raise any triable issue and if these bald assertions were entertained, then every tenant would get away with leave to

defend, defeating the intent of legislature. It was further held that only in those cases leave to defend can be granted where Controller finds some substance in the issues raised by the tenant. I have also taken the same view in **Sarwan Das Bange Vs. Ram Prakash** (2010) 167 DLT 80.

20. Supreme Court in **Busching Schmitz Private Limited Vs. P.T. Menghani** (1977) 2 SCC 835 held that Controller's power to give leave to contest is cribbed by the condition that the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground specified in Section 14(1)(e) of the Act; disclosure of facts is a sine qua non for grant of leave. It was further held in **Kewal Singh Vs. Lajwanti** (1980) 1 SCC 290 that it is a salutary provision in order to prevent frivolous pleas taken by the tenants to avoid eviction. In **Precision Steel & Engineering Works Vs. Prem Deva Niranjana Deva Tayal** (1982) 3 SCC 270 it was further expanded that while browsing through the affidavit, if there emerges averment of facts which on a trial, if believed, would non-suit the landlord, leave ought to be granted; however leave to contest should not be granted unless the affidavit discloses such facts. Ultimately in **Prithipal Singh Vs. Satpal Singh** (2010) 2 SCC 15 it was held that the dominant object of insertion of Section 25B is to provide a speedy, expeditious and effective remedy for a class of landlords contemplated inter alia by Section 14(1)(e) and for avoiding unusual dilatory process provided otherwise by the Rent Act and the application of Order XXXVII Rule 4 of the Code of Civil Procedure, 1908 (CPC) to Section 25B in force till prior thereto, was held to be bad.

21. I am afraid making of vague pleas in the application for leave to defend and affidavit accompanying the same, without giving any particulars, cannot be said to be disclosing facts which would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act."

and in judgment dated 2nd August, 2017 in RCR No.352/2017 titled ***Lalta Prasad Gupta Vs. Sita Ram*** held as under:

“17. The word “discloses” in Section 25 B (5) of the Rent Act has to be understood as disclosing facts which if proved would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e). Unless the words “discloses such facts” in Section 25B(5) are understood and interpreted as placing before the Rent Controller facts which when proved will result in dismissal of petition for eviction, the Rent Controller will be unable to apply summary procedure prescribed in Section 25B for such petitions for eviction. If it were to be held that every plea in the application for leave to defend, howsoever vague and without particulars and without anything in support thereof, should be permitted to be proved, the advocates for tenants, with their astute drafting skills, will not allow the summary procedure, prescribed by legislature to be followed for petitions for eviction of tenants on the ground of requirement of the landlord of the tenancy premises for self use, to be followed in any case and leave to defend will have to be granted and each case put to trial.

18. Thus, if the tenant seeks leave to defend controverting the requirement pleaded by landlord on the ground of the landlord, though at the time of requirement having alternate premises, having not used the same and instead having commercially exploited the same, the tenant must plead (a) the particulars of such premises; (b) the right / title of the landlord to the same; (c) that the said premises were vacant and available for use at the time of the pleaded requirement of landlord; (d) how the said premises were suitable for the pleaded requirement; and, (e) how the landlord has deprived himself thereof i.e. by sale or letting and support the said pleas with material on the basis whereof such pleas will be proved. I say that it is essential to place such material before the Rent Controller because the purpose of trial, resulting from grant of leave to defend, is to prove the said pleas and if the tenant has nothing from which he can possibly prove the said pleas, the trial also will not result in the landlord being “disentitled from obtaining an order for recovery of possession of premises on the ground specified in Clause (e) of proviso to

sub Section (1) of Section 14” of the Act, within the meaning of Section 25B(5) supra. This is not to say that the tenant should file fool proof documentary evidence at the stage of leave to defend. However there must be placed on record all the requisite particulars. The onus on the tenant, at the stage of seeking leave to defend, is thus somewhere in between fool proof documentary evidence and a totally vague, bereft of any particulars plea. Where, in between the said onus lies, depends on facts of each case.”

28. It is not open to a tenant to contend that though the premises in his tenancy are suitable for his use but not suitable for use of the landlord. The petitioners/tenants have admitted that business of beauty parlour is being run in congested area and have also not disputed that the market in which the premises are situated is of cosmetics and the plea, of there being no likelihood of the respondent No.1/landlady setting up business of cosmetics therein, is not material for a leave to defend to be granted thereon.

29. As far as the plea of the respondents / landlords having earlier filed petition for eviction under Section 14(1)(a) is concerned, it is settled law that each ground of eviction under the Rent Act constitutes a separate cause of action. Reference can be made to (i) **S. Rajdev Singh Vs. M/s. Royal Studios** AIR 1972 Del 150; (ii) **Jai Kishan Balkishan Vs. Dr. M.B. Kagal** (1972) 8 DLT 422; (iii) **Abnash Kaur Vs. Dr. Avinash Nayyar** ILR (1974) II Del 133 (FB); and, (iv) **Vijay Kumar Sharma Vs. Manoj Kumar Garg** 2016 SCC OnLine Del 4030. Order II Rule 2 of the CPC does not bar the filing of a petition for eviction on other grounds after the filing of the petition on one of the grounds stipulated in proviso to sub Section (1) of Section 14 of the Act. Moreover, the procedure prescribed for dealing with the petition for eviction under Section 14(1)(e) is special under Section 25B and not applicable to

other grounds of eviction and if the petition for eviction under Section 14(1)(e) of the Act is clubbed with any other ground, the summary procedure under Section 25B would not be available. Thus no adverse inference can be drawn against the respondent/landlord for not invoking ground under Section 14(1)(e) while filing the earlier petition for eviction under Section 14(1)(a) of the Act.

30. Though, there is some merit in the contention of the counsel for the petitioner/tenant in RC.REV. No.362/2016 of the learned ARC having adopted the same order as impugned in RC.REV. Nos.68/2015 & 69/2015 vis.-a-vis. the petitioner/tenant in RC.REV. No.362/2016 also, though the leave to defend application filed by him was different but having considered the pleas in the leave to defend application of the petitioner therein, no other view can be taken with respect thereto.

31. There is thus no merit in any of the petitions. Dismissed.

No costs.

NOVEMBER 15, 2017

‘bs’..

(Corrected & released on 30th January, 2018)

RAJIV SAHAI ENDLAW, J.