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

% *Date of decision: 23.02.2017*

+ **RC.REV. 51/2017**

GEETA MALHOTRA

..... Petitioner

Through

Mr.Sudhir Nandrajog, Sr. Adv.
with Mr.Siddharth Agarwal and
Mr.Kalam Singh, Advocates

versus

RAVNEET KAUR CHOWDHARY

..... Respondent

Through

Mr.Jasmeet Singh, Mr.Saurabh
Tiwari and Ms.Gayatri Aryan,
Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No.4604/2017 &4605/2017 (*exemption*)

Exemption allowed, subject to all just exceptions.

RC.REV. 51/2017 & CM Nos.4603/2017 (*stay*) **& 4606/2017**

1. By the present petition the petitioner seeks to impugn the eviction order dated 20.08.2016 by which the Additional Rent Controller (hereinafter referred to as the ARC) dismissed the application filed by the petitioner/tenant seeking leave to defend and passed an eviction order under section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) in favour of the respondent/landlord.

2. The respondent has filed the present Eviction Petition for premises No.M-69, F-2, Ground Floor, M Block market, Greater Kailash Part-I, New Delhi. It is contended that the respondent is the owner/landlady of the property in question. It is further stated that the tenant/petitioner had joined the tenanted premises with Premises No.M-69, F-1 which is another property making both the properties equivalent to 170 sq.feet. It is also pointed out that the respondent is also filing a separate eviction petition for the other property M-69, F-1, M Block Market GK-1, New Delhi. The respondent claims to be a qualified fashion designer who has completed her diploma in Fashion Designing. She got married in 1992. She has been running her business in the name of Sonia Fabrikarts under which brand name she does designing of ethnic wear for ladies. Initially as the children were young the job was primarily done from home. However, she now wishes to start her work on a full fledged commercial scale and requires the tenanted premises for her own use. The said premises was bought by the respondent by a registered sale deed dated 3.1.2008. At that stage, the petitioners were already there as tenants.

3. It is further pointed out in the eviction petition that certain portions of the property are in the occupation/ownership of other family members of the respondent. The mezzanine floor of the said property M 69 is said to belong to the father-in-law of the respondent Shri Gurbachan Singh which he received via a decree of partition amongst the family in 1983. A portion of the mezzanine floor is also said to belong to the mother-in-law of the respondent Smt.Gursharan Kaur who purchased it vide a sale deed.

4. It is further urged that the respondent has no other commercial premises available for her business needs. She would convert the tenanted premises into a showroom-cum-stitching studio catering to the needs of her clients. The market where the tenanted shop is located is said to be a busy market with many clothing showrooms and boutiques. It is situated on the back side of the atrium of the market but it is urged that there are many such shops on the back lane. It is also pointed out that the father-in-law of the respondent has also filed an eviction petition for the bona fide requirements of the respondent's husband for premises No.M-69A, Greater Kailash-1, New Delhi which is pending.

5. The petitioners entered appearance and filed an application for leave to defend raising the following salient grounds to seek leave to defend (i) the husband of the respondent is in possession of vacant shop No.C measuring 330 sq.feet on the ground floor of the premises in question M-69 and the said shop is available to the respondent for her alleged business needs. (ii) The respondent's husband is also in occupation of shop No.E on the ground floor of the said premises M 69 which has been let out to a restaurant in the name and style of Hunger's strike prior to filing of the eviction petition. (iii) The respondent has concealed that the respondent is in possession of the entire mezzanine floor measuring 755 sq. feet and portion of the first floor from where she is doing the business in the name of Beyond Windows. The area of the first floor is 1600 sq. feet and that of the mezzanine floor is 755 sq. feet and has come to the share of the father-in-law of the respondent in the partition. The family is living together with joint mess and residence. (iv)

the respondent has concealed that the respondent is doing business in the name and style of M/s Beyond Windows. (v) the respondent is also carrying on business in the name and style of Sonia Fabrikarts. She has filed her detailed IT Returns and other account books giving the detailed income and expenditure of the said concern.

6. The ARC by the impugned order on the issue of landlord-tenant relationship noted that the petitioner admits that she is paying rent to the respondent and hence concluded that there can be no dispute about the relationship.

Coming to the issue of suitable alternative accommodation, the ARC noted the submissions of the petitioner about shop No.M-69-C, GK-1 Measuring 330 sq. feet situated on the ground floor being vacant. It also noted the contention of the respondent in this regard that the said property does not belong to the respondent. It belongs to the mother-in-law of the respondent and has been kept vacant for the husband of the respondent Shri Parmjit Singh Chaudhary who requires the same for his growing business needs. On the contention of the petitioner that the respondent is in occupation of the mezzanine floor and first floor of the said property it noted that the said property does not belong to the respondent but belongs to the father-in-law Gurbachan Singh. The mezzanine Floor has a height less than 8 feet and as per the eviction petition is being used by the son of the respondent for display area for his curtain business. (The ARC noted that this was a typing error as the averments show that the business of Beyond Windows actually belongs to the husband of the respondent). Hence, the business Beyond Windows was stated to be run from the said

mezzanine floor and some portion of the first floor. It also noted that the respondents have placed on record Form DP-1 dated 16.12.2014 with regard to the business of Beyond Windows which shows that it is run by the husband of the respondent. It noted that no document has been placed on record by the petitioner to dispute the aforesaid. Only a bald plea has been made that the said business of Beyond Windows is being run by the family including the respondent and that the mezzanine floor and first floor are available with the respondent. It concluded that the tenant/petitioner is making preposterous claims about accommodation available with the respondent including areas which admittedly are not owned by the respondent and not a single document has been placed on record by the respondent to support the aforesaid contentions. Various other miscellaneous contentions raised by the petitioner, namely, a portion of the property was rented out by the husband of the petitioner were rejected. As the tenanted shops are the only shops owned by the respondent, the ARC accepted her plea and dismissed the application of the petitioner seeking leave to defend.

7. I have heard learned counsel for the parties. Learned senior counsel appearing for the petitioner has vehemently raised the following submissions:-

(i) It is the stand of the respondent that she is running the business in the name of Sonia Fabrikarts. On the contrary, it is submitted that the business of Sonia Fabrikarts and Beyond Windows are family business in which the respondent also has a share/say. Reliance is placed on Income Tax Return filed by the respondent for the year 2014-15 where it is

pointed out that the income is shown as Rs.2,64,360/- from the business of Beyond Windows. On the other hand, it is stated that no income is shown from Sonia Fabrikarts. Hence, it is urged that there is no separate business being run by the respondent by the name of Sonia Fabrikarts as falsely claimed and hence the projected requirement for the tenanted premises is not bona fide. Reliance is also placed on form DP 1 dated 16.12.2014 issued by the government of NCT of Delhi which is for the business of Beyond Windows where Shri Paramjeet Singh Chaudhary i.e. the husband of the respondent has signed as Authorised Signatory and not as a proprietor. It is urged that this also shows that the said two businesses, namely, Beyond Windows and Sonia Fabrikarts are family businesses.

(ii) It is further urged that as the businesses are being run jointly by the family the respondent has the option of starting her new business from any of the available premises. An area of 350 sq. feet is admittedly lying vacant on the ground floor which it is stated is required for the business of the husband of the respondent. It is also claimed that portions of the first floor have been let out by the father-in-law of the respondent. A portion of the ground floor has also been let out by the father-in-law of the respondent. It is also urged that the respondent is using mezzanine floor for her business purposes. Hence, it is urged that suitable alternative accommodation is available with the respondent and there is no requirement for the filing of the present eviction petition. Reliance is further placed on ITR Returns filed by the respondent for the year 2012-

13 where the address of the respondent is shown as M-69, Mezzanine Floor.

(iii) It is further submitted by the learned senior counsel for the petitioner that the father-in-law of the respondent has admittedly filed an Eviction Petition for the bona fide requirements of the husband of the respondent for premises No.M-69A, Greater Kailash-I Delhi which is currently pending before the ARC. It is urged that in the said petition leave to defend has been granted to the tenants therein. On the same analogy, it is urged that the petitioner should have been granted leave to defend by the ARC.

(iv) Learned senior counsel appearing for the petitioner has relied upon *Davinder Pal Singh & ors. vs. M/s.Pritam Prakash Dawar & Sons (HUF)*, 2013 SCC Online Del 4425; *Sandeep Kumar vs. Nihal Chand*, (2014) SCC Online Del 15; *K.N.Anantharaja Gupta vs. D.V.Usha Vijaykumar*, AIR 2008 SC 539 to support his contention.

8. Learned counsel appearing for the respondent has submitted that the only properties owned by the respondent are two tenanted shops F-1 and F-2. The two shops, if merged together would measure only 170 square feet. Other than these two shops the respondent does not own any portion of the property M-69, GK-1 New Delhi. The first floor it is pointed out is let out by the father-in-law. He is a senior citizen and in need of a regular income which he gets from the rented property. Similarly, a small portion of the ground floor is let out by the husband for his own income needs.

9. Learned counsel for the respondent has further submitted that regarding property No.M-69A, GK-1, New Delhi, the facts of that case are entirely different. He submits that the plea which is now being raised before this court about alleged parity with the order of the ARC granting leave to defend was never pleaded by the petitioner before the ARC or even raised in the application for leave to defend. He relies upon judgment of the Supreme Court in *Prithipal Singh v. Satpal Singh*, (2010) 2 SCC 15, to contend that as per the said judgment of the Supreme Court where the tenant does not raise a plea in the leave to defend application, no such ground could be urged before the ARC. In any case he submits *de hors* this submission, the factual background of the said case and the present petition are entirely different.

10. 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...”

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.”

16. Similarly, this court in *Deepak Gupta vs. Sushma Aggarwal, 2013 202 DLT 121* held as follows:-

“24.From the mere reading of the afore mentioned illuminating observations of the Supreme Court in the case of Precision Steels (supra), it is apparent that the Controller has a statutory duty to grant the leave to defend if the affidavit discloses the facts which could raise suspicion on the genuineness of the need of the landlord which can in effect disentitle the landlord from recovering the possession on the ground of bonafide requirement. The likelihood of success or the failure of the defence is not really determinative of the

question as to grant or not grant of the leave to defend but the real question is tenability of the plea which may raise a suspicion on the need of the landlord which may if proved can also lead to disentitlement to the recovery of the possession. Thus, the plea raising a doubt in the mind of the Controller is sufficient to grant the leave. The Controller can also not record the findings on disputed question of the facts by preferring the one set of facts over and above the other. The merits of the pleas raised are not to be gone into at the time of the grant of the leave to defend by going into the complicated questions of fact. For making the enquiry, the affidavit filed by the tenant is helpful.

25. The views expressed by the Supreme Court in the case of Charan Dass (supra) and Precision Steel (supra) are holding the field and have been consistently followed by the Supreme Court till recently and also by this court from time to time. (kindly see the case of Inderjit Kaur vs. Nirpal Singh: 2001 (1) R.C.R. 33 and Tarun Pahwa vs. Pradeep Makin,: 2013 (1) CLJ 801 Del.)”

17. I may deal with the first submission of learned senior counsel for the petitioner, namely, the contention that the business of Sonia Fabrikarts and Beyond Windows are family businesses and the respondent has wrongly claimed that she is exclusively running the business of Sonia Fabrikarts. The submission is that the family of the respondent is living as a joint family, joint in business and joint in mess. It is urged that it is a clear case for additional accommodation inasmuch as certain properties are available with the respondent and her family, namely, the portions of the mezzanine floor and portions of the ground floor which are lying vacant.

18. The averment of the petitioner that the two businesses, namely, Sonia Fabrikarts and Beyond Windows are family businesses is a bald

avermment without any basis whatsoever. The petitioners are trying to clutch to straws from the evidence filed by the respondents to claim that the two businesses are family businesses. Reliance on the IT Returns of the respondent and the form DP-1 are nothing but desperate pleas which do not in any manner do away with the stand of the respondent that she wishes to start her own business from her own property.

19. In fact a perusal of ITR of the respondent for the year 2012-13 shows that she has a gross annual income of Rs.1,60,000/-. For 2013-14 she has a gross annual income for Rs.2,00,000/- and for 2014-15 gross annual income of Rs.2,64,360/-. This income shows that the contentions of the petitioner that the respondent is involved in the family business earning rich income are based on no material. It is manifest from these IT returns that she has no material income from the so called family business. Hence, her desire to start her own independent business from the property which she owns cannot be brushed aside as lacking in bona fide. There is nothing to show that the business Sonia Fabrikart is a family business or more important that the respondent is part of the family business.

20. Coming to the second contention of the learned senior counsel appearing for the petitioner, namely, availability of alternative suitable accommodation. Other than the two shops being Shop No.F-1 and F-2 the respondent does not own any other property. It is futile to try and claim that the property admittedly owned by her husband or by her father-in-law or mother-in-law can be utilized by her when she has a property in her own name.

21. The portion which is lying vacant on the ground floor belongs to her mother-in-law which has been kept vacant for the business of the husband of the respondent. The first floor belongs to the father-in-law which has been let out by the father-in-law. He is a senior citizen who needs income at this age of life. The mezzanine floor also does not belong to the respondent but belongs to the father-in-law and mother-in-law and is being used by the husband for the family business of Beyond Windows.

22. I may deal with the last contention raised by the learned senior counsel for the petitioner, namely, about an eviction petition filed by the father-in-law of the respondent for the property which faces the main atrium M-69A, GK-1 Store. The plea was never raised by the petitioner before the ARC. Merely because the Eviction Petition was filed by the father-in-law for the bona fide requirement of the husband of the respondent cannot mean that factually there is a parity of facts in the two eviction petitions and that the order of the ARC granting leave to defend in that petition would ipso facto also apply to the case of the petitioner. In fact before the ARC no such averment was made as has stated by the respondent. Before this court the petitioner did not file a copy of the said eviction petition. There was no attempt to show any commonalities/parities in the two petitions. There is no merit in the said contention of the petitioners.

23. Reference may be had to the said judgment of the Supreme Court in *Anil Bajaj & Anr. vs. Vinod Ahuja, AIR 2014 SC 2294*. That was a case where the landlord owned several properties in the vicinity of the tenanted

premises. However, the said landlord was running his shop from a shop which is 15 feet in width. The tenanted premises was facing the main road. In those facts the Supreme Court accepted the plea of the landlord and held as follows:-

6. In the present case it is clear that while the landlord (Appellant No. 1) is carrying on his business from a shop premise located in a narrow lane, the tenant is in occupation of the premises located on the main road which the landlord considers to be more suitable for his own business. The materials on record, in fact, disclose that the landlord had offered to the tenant the premises located in the narrow lane in exchange for the tenanted premises which offer was declined by the tenant. It is not the tenant's case that the landlord-Appellant No. 1 does not propose to utilize the tenanted premises from which eviction is sought for the purposes of his business. It is also not the tenant's case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the same in any way inconsistent with the need of the landlord. What the tenant contends is that the landlord has several other shop houses from which he is carrying on different business and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business. The grounds on which leave to defend was sought by the tenant and has been granted by the High Court runs counter to the fundamental principles governing the right of a tenant to contest the claim of bonafide requirement of the suit premises by the landlord under the Delhi Rent Control Act, 1958. Even assuming the assertions made by the tenant to be correct, the same do not disclose any

triable issue so as to entitle the tenant to grant of leave to defend.”

24. 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 feel any doubt about bonafide requirement, it is for the landlord to clear such doubt.”

25. The Supreme Court in *Dinesh Kumar vs. Yusuf Ali*. (2010) 12 SCC 740/(MANU/SC/0407/2010) 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*). ”

26. The respondent herein seeks possession of the two shop measuring 170 sq. ft. on the ground floor to start her business. The shops are located in a busy market. These are the only shops/area owned by the respondent. Here IT returns show a meager annual income of Rs.1,60,000/- to Rs.2,60,000/- per year. There are no reasons to doubt that the need of the respondent is not genuine or honest. There is no merit in the petition. No grounds are made out to interfere in the order of the ARC. The petition is dismissed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J.

FEBRUARY 17, 2017/n