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

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Date of decision: 07.02.2017

+ RC.REV. 44/2017

SHAKEEL AND ORS

..... Petitioner

Through

Mr.Prag Chawla and Mr.Animesh,
Advocates

Versus

SHARIF AHMED

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No.4085/2017

Exemption allowed, subject to all just exceptions.

RC.REV. 44/2017 & CM Nos.4083-4084/2017

1. The present revision petition is filed under section 25B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) seeking to impugn the eviction order dated 08.11.2016 passed by the Additional Rent Controller (hereinafter referred to as the ARC) under section 14(1)(e) of the DRC Act dismissing the application for leave to defend filed by the petitioners passing an eviction order.
2. The respondent filed the present Eviction Petition under section 14(1)(e) of the DRC Act regarding property X-2343, Gali Dugudi Shah Kalan, Chitli Kabar, Turkman Gate, Delhi-110006. It is stated that the respondent is stated to have purchased the suit property on 22.01.2003 by

registered Sale-Deed. There was a litigation pending between the original owner Smt.Ameena Begum the petitioner and other occupants. The suit that was filed by Smt.Ameena Begum was dismissed in default after the respondent purchased the suit property. Thereafter respondent filed a Civil suit for possession, declaration, mandatory and permanent injunction stating that the petitioners are unauthorized occupants. The suit was dismissed holding that the petitioners are tenants and have validly proved their rent receipts. The appellate court also upheld the said judgment. The respondent in the petition claimed that he was residing in the suit property since his childhood till the year 2002. Thereafter he has shifted to a tenanted accommodation being B-35, Ground Floor, Minto Road, New Delhi with his family at a monthly rent of Rs.6,000/- per month. In 2012 he has shifted to property bearing No.2235, Dakotan Street, Turkman Gate, Delhi at a monthly rent of Rs.9,000/- per month.

3. The ARC by the impugned order rejected the claim of the petitioners about absence of landlord tenant relationship in view of the orders passed by various courts in the litigation started by the respondent against the petitioners. On bona fide requirement it noted that the respondent is well within his right to shift to his own property. It also noted that the petitioners have not been able to show availability of any alternative accommodation. It dismissed the application for leave to defend and passed an eviction order in favour of the respondent.

4. I have heard learned counsel for the petitioner. He has vehemently argued that the rent documents relied upon by the respondent to show that he is a tenant in a property at Minto Road is a sham document. He submits that the said rent document placed on record is dated 5.6.2015 whereas the

Eviction Petition is filed on 6.6.2015. It was also stated that the rent deed is with Smt.Haseena Begum the real bhabhi of the respondent i.e. the widow of the deceased brother of the respondent. It is stated that the house in question for which the rent deed is executed is owned by the father of the respondent and other legal heirs of the father of the respondent. On the issue of landlord tenant relationship, he, however, submitted that he does not dispute the same in view of the judgment of the trial court, the appellate court, and this court in the suit filed by the respondent against the petitioners where a finding was recorded that the petitioners are the tenants.

5. 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..."

6. 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.
7. 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 any 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.

8. 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.

9. 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.

10. 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.”

11. 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.”

12. I may now see whether in view of the above legal position the ARC rightly declined to grant leave to defend to the petitioner/tenant. The only argument which has been pressed before this court by the petitioners is that the rent agreement produced by the respondent dated 5.6.2015 is a sham document as it has been executed only one day before the filing of the Eviction Petition. It was put to the learned counsel for the petitioners that if this was a sham document then in which premises the respondent is residing. He has submitted that the respondent is residing in the same premises where the tenanted premises exist.

13. However, a perusal of the application for leave to defend filed by the petitioners would show a different argument raised i.e. that the said document is a sham document as it is executed with the real bhabhi of the respondent. There is no averment in the leave to defend application that the respondent is residing in the same building where the tenanted premises exist. It is impossible to believe that if the respondent was residing in the same building where the tenanted premises exist the petitioners would be unable to mention the same in the leave to defend application and place on record the details of the accommodation which is occupied by the respondent. In fact no site plan showing that the respondent is occupying specified areas of the premises in question has also been placed on record. It is manifest that the averment of the rent agreement being a sham document

is nothing but a bald averment bereft of any details. The respondent is obviously not residing in the building where the tenanted premises exist. No details have been mentioned about any alternative suitable accommodation available with the respondent which is owned by the respondent. Given these details/facts, there are no plausible reasons to doubt that the respondent/landlord is residing in a tenanted accommodation. In the light of the same, the finding recorded by the ARC that the respondent is entitled to live in his own accommodation is a correct conclusion and cannot be faulted with.

14. 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.”

15. The Supreme Court in *Dinesh Kumar vs. Yusuf Ali*, (2010) 12 SCC 740/(MANU/SC/0407/2010), held as follows:-

“9. 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.

10. 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).”

16. Keeping in view the above legal position and the facts of the present case, there are no reasons to interfere with the reasons or conclusions recorded by the ARC. The present petition is without merits and is dismissed. All pending applications, if any, also stand disposed of.

(JAYANT NATH)
JUDGE

FEBRUARY 07, 2017

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