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

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Date of Decision: 14.03.2017

+ RC.REV. 121/2017

AVINASH SHARMA Petitioner
Through Mr.Deepak Bashta, Adv.

versus

V K KATHURIA Respondent
Through Mr.Satya Priya Kamrah and
Mr.Sachin Mittal, Advs.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

Caveat 236/2017

Since the learned counsel for the respondent has entered appearance, the caveat stands discharged.

CM No.10071/2017 (*exemption*)

Allowed subject to all just exceptions.

RC.REV. 121/2017 & CM No.10070/2017(*stay*)

1. By the present Revision Petition filed under section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) the petitioner seeks to impugn order dated 28.7.2016 by which order the application filed by the petitioner seeking leave to defend was dismissed and an eviction order was passed. The respondent/landlord has filed the present eviction petition for eviction of property No. A-11/85, Sector-18, Second

Floor, MIG Flat, Rohini, Delhi-110085 for the bona fide requirement of himself and his family. It is alleged that earlier the family of the respondent was residing in their own house at Noida and the family was joint family. On account of temperamental differences it was not possible for the whole family to stay together. The house at Noida was sold off by the wife of the respondent who was the owner. The family shifted to a flat in Vikas Puri. The elder son and his family are staying in a rented accommodation in Lajpat Nagar paying a monthly rent of Rs.4,000/- per month. The wife of the respondent had applied the entire consideration received from the sale of the house at Noida to purchase flat No.108A, DDA Flats, GG-I Block, Vikas Puri, New Delhi which is a flat having two bedroom, one drawing cum dining room, kitchen, toilet etc. The respondent and his wife need one bed room. The petitioner has a younger son who needs another bed room though he is presently studying and staying in the hostel but often visits and stays in the flat of the family. Sometime guests also visit the house of the respondent and the accommodation is insufficient. Hence, the elder son Shri Yogesh and his family cannot reside in the premises. It was further stated that the respondent was working in a PSU and was to retire on 30.4.2014. The respondent had earlier also filed an eviction petition. However, the same was withdrawn on 25.01.2012 with liberty to file the present petition.

2. The ARC by the impugned order on the issue of landlord-tenant relationship noted that the same is not disputed by the petitioner. It also noted that the petitioner challenges the bona fide need of the respondent pleading that the respondent has accommodation of a 150 sq.yards plot having 14 rooms in Noida and that the present petition is mala fide. It noted the contention of the respondent that the said property has been sold and

entire consideration has been used to purchase the flat at Vikas Puri. Hence, the said plea of the petitioner was rejected by the ARC. The ARC also noted the contention of the petitioner i.e. that the respondent and his elder son are having differences with the family but rejected the same. The order also notes that the petitioner has denied that the son is staying in Lajpat Nagar and has claimed that the rent receipt regarding the Lajpat Nagar house is forged. It noted that the respondent has placed on record the ITR Return of the elder son which is of Lajpat Nagar. Hence, the said contention of the petitioner was rejected. Noting that the accommodation is not sufficient for the family in Vikaspuri the application for leave to defend was dismissed and the eviction petition was allowed.

3. I have heard learned counsel for the parties.

4. Learned counsel for the petitioner has vehemently argued that in the earlier eviction petition, the petitioner was granted leave to defend by the ARC on account of his defence that the respondent's wife owns a property in Noida which is built on 150 sq.yards. He submits that the respondent has only for the purpose of making a ground for bona fide eviction has deliberately now sold off that property. He also submits that the sale of the property is a story and all that has been placed on record is a transfer memorandum issued by New Okhla Industrial Development Authority which cannot be construed to be a sale as no registered document has been placed on record. Hence, he submits that the alleged need of the respondent is not bona fide but is only an attempt to create artificial scarcity which should be rejected by this court.

5. Learned counsel appearing for the respondent has reiterated that the property at Noida was sold. He has today in court filed a copy of the sale

deed allegedly executed by the respondent. The petitioner has strongly objected to the sale deed being filed before this court, when no such copy was placed before the ARC and he did not have the benefit of going through the same before passing the impugned order.

6. I may first see the scope of the present petition. The Supreme Court in *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta*, (1999) 6 SCC 222/(MANU/SC/0132/1999) described the revisional powers of this court as follows:-

“11..... The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the CPC. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to Sub-section (8) of Section 25B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is according to law'. The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law". For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material

available...”

7. Hence, this court is to test the order of the ARC to see whether it is according to law, and whether the conclusions are not wholly unreasonable.
8. Section 14(1)(e) of the DRC Act reads as follows:

“14. Protection of tenant against eviction.- (1)

Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

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

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

9. The essential ingredients which a landlord/respondent is required to show for the purpose of getting an eviction order for bona fide needs are (i) the respondent is the owner/landlord of the suit premises (ii) the suit premises are required bona fide by the landlord for himself and any of his family members dependent upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

10. In the present case the trial court declined to grant leave to defend to the petitioner. The parameters for granting leave to defend are well known.

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

22. What then follows. The Controller has to confine himself indisputably to the condition prescribed for exercise of jurisdiction in Sub-section (5) of Section 25B. In other words, he must confine himself to the affidavit filed by the tenant. If the affidavit discloses such facts-no proof is needed at the stage, which would disentitle the plaintiff from seeking possession, the mere disclosure of such facts must be held sufficient to grant 'leave because the statute says on disclosure of such facts the Controller shall grant leave'. It is difficult to be exhaustive as to what such facts could be but ordinarily when an action is brought under Section 14(1) proviso (e) of the Act whereby the landlord seeks to recover possession on the ground of bona fide personal requirement if the tenant alleges such facts as that the landlord has other accommodation in his possession; that the landlord has in his possession accommodation which is sufficient for him; that the conduct of the landlord discloses avarice for increasing rent by threatening eviction; that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself; that the dependents of the landlord for whose benefit also possession is sought are not persons to whom in eye of law the landlord was bound to provide accommodation; that the past conduct of the landlord is such as would disentitle him to the relief of possession; that the landlord who claims possession for his personal requirement has not cared to approach the Court in person though he could have without the slightest inconvenience approached in person and with a view to shielding himself from cross-examination prosecutes litigation through an agent called a constituted attorney. These and several other relevant but

inexhaustible facts when disclosed should ordinarily be deemed to be sufficient to grant leave.”

12. 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.)”

13. The crux of the argument of the petitioner is his insistence that the property at Noida is available with the respondent and the submission of the respondent that it has been sold in 2010 is a sham. A perusal of the Transfer

Memorandum issued by Noida Authority dated 16.12.2010 which is on record would show that it is a permission granted for transfer by the lessor, namely, NOIDA. It directs the respondent to execute a Transfer Deed and to comply with the condition within 90 days. It has also not been denied that the respondent has from the sale of the said property in Noida bought a flat in Vikas Puri where the respondent is presently staying. Other than claiming that the document filed, namely, the Transfer Memorandum dated 16.12.2010 does not show that a proper sale has been effected the argument of the petitioner is bereft of any details. In my opinion, it is only a desperate plea to try and seek leave to defend from the court.

14. Regarding the copy of the sale deed placed on record in the course of hearing by the respondent, I am inclined to take on record the copy of the said sale deed dated 27.1.2011 executed by the wife of the respondent. This is so as the document is a copy of a registered document. Further it shows a transaction that has already been pleaded by the respondent. The registered document shows transfer of the property being House No.B-56, Sector-20, Noida. Hence, there is no merit in the said plea of the petitioner about availability of this property.

15. This court in various judgments has noted that for the purpose of consideration of availability of alternate accommodation to a landlord only properties situated in Delhi are relevant and material. In RCR 53/2014 titled Smt.Simran vs. Shri Ramanand Gupta dated 23.7.2014 and RCR 187/2013 titled United Metal State vs. Ashok Khanna dated 20.11.2014 this court has already held that property situated outside Delhi, namely, Ghaziabad or Noida is not an alternative accommodation available to a tenant. Hence, even otherwise there is no merit in the contention of the petitioner that an

alternate suitable accommodation is available to the petitioner in Noida.

16. 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.”

17. In *Dinesh Kumar vs. Yusuf Ali*, AIR 2010 SC 2679 the Supreme Court held as follows:-

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

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

18. The petitioner has no accommodation in Delhi other than the two bed room flat. The same is quite inadequate for the family on the face of it. Accordingly, there is no merit in the present petition. There are no grounds to interfere in the order of the ARC.

19. The present petition is dismissed. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

MARCH 14, 2017

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