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

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*Date of decision:* February 16, 2017

+ RC.REV. 197/2016 and CM No. 12682/2016

HUSAN ARA

..... Petitioner

Through Mr.Shaad Anwar & Ms.Shabnam  
Adv.

versus

AKHTAR JAHAN

..... Respondent

Through Mr.Nitin Sharma, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J. (ORAL)**

1. By the present Revision Petition filed under section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) the petitioner seeks to challenge the order dated 17.2.2016 by which the application of the petitioner/tenant seeking leave to defend was dismissed and an eviction order was passed against her under section 14(1)(e) of the DRC Act.

2. The respondent/landlord filed the eviction petition regarding property No.3388, Bagichi Achheji, Bara Hindu Rao, Delhi-110006. It was averred that the suit property is required for the residence of her son Shahrukh who is about 21years old. The family of the respondent is said to consist of 16

members including herself, her husband, five sons out of which two sons are married and are living with their wives and one granddaughter. It is stated that two children of her sister-in-law are also living with her. The mother of the respondent is also living with her. One daughter Mst.Iram is a widow and living with her two children with the respondent. The respondent is said to be residing on the ground floor of the property which comprises of one drawing room, two bedrooms, kitchen, bathroom etc. and one small room vacated by tenant Mezahir. The respondent also occupies one room on the first floor and one room on the second floor. It is averred that the accommodation available is highly insufficient to meet the requirement of the respondent and her family. It is further stated that by a registered sale-deed the ground floor of the property was purchased on 5.9.2000. The first, second, third and fourth floors of the property were purchased in 2007. It is reiterated that the first floor to 4<sup>th</sup> floor is occupied by tenants except one room on 1<sup>st</sup> floor and one on 2<sup>nd</sup> floor. The respondent has also given a list of litigation that she has commenced against some of the tenants who are occupying various portions of the property. The details of the pending litigation is as follows:-

- (a) A suit for mandatory injunction is filed for the roof of the fourth floor against Mahmood Ansari.
- (b) Petition under section 14(1)(b) of the DRC Act is filed against Mohd.Aquil for the room on third floor.
- (c) Petition under section 14(1)(e) is filed against the tenant Mazahir who is occupying a room on the ground floor. Eviction order was passed in favour of the respondent and she has received possession of the said room.

- (d) Petition under section 14(1)(e) was filed against Shri Mahmood Ansari and Mohd. Aquil in respect of two small rooms situated on the third floor.
- (e) Two eviction petitions have been filed against Mst.Mirajunishan and Liyakat Ali in respect of two small rooms on the fourth floor.
- (f) Eviction petition is filed against Mst.Suraiya Begum a tenant on the second floor.
- (g) Two eviction petitions, one u/S 14(1)(e) of the DRC Act and other u/s 14(1)(a)(h)(j) of the DRC Act as instituted against Mst. Suraiya Begum, a tenant on the second floor.
- (h) Eviction petition is filed against a tenant Firoze in respect of one room on the ground floor. The said tenant Firoze is stated to have surrendered possession and the petition was disposed of.
- (i) An Eviction Petition is filed against Mohd.Saleem for one room on the fourth floor, possession of the same has also been obtained pursuant to eviction order.
- (j) An eviction petition against Mohd. Sadiq u/S 14(1)(e) of the DRC Act is pending. He is tenant in respect of one small room situated on the second floor.
- (k) An Eviction petition is also filed against Mohd.Sadiq for small room on the second floor which is pending,

Ground floor of the property is constructed on an area of 133 sq.yards and first to fourth floors are constructed on an area of 45 sq. yards.

3. The ARC by the impugned order noted the grounds raised by the petitioner seeking leave to defend. On the issue of landlord-tenant relationship, it noted that there is no dispute between the parties. It also

noted that the petitioner has not disputed that the respondent has five sons and one daughter. He has not denied that the respondent has two married sons i.e. Shri Faizan and Shri Farman. He has not denied about grandchildren. It also noted the contention of the petitioner about three rooms being occupied by the respondent on the ground floor besides one room on the first floor in addition to one room vacated by the three tenants i.e. Mohd.Saleem, Shri Firoz and Shri Nayab Hussain. Considering the number of family members of the respondent the impugned order concluded that it cannot be reasonably accepted that such a large family would reside in three rooms on the ground floor, two rooms on the first floor and one room on the second floor. One room vacated by the tenant Shri Hasan Abbas @ Mohd.Abbas on the first floor would not affect the bona fide requirements of the respondent. It also noted the plea of the petitioner that the respondent has concealed availability of an alternative suitable accommodation being property No.6424, Gandhi Gali, Gali Ishwari Prasad, Bara Hindu Rao, Delhi. The impugned order noted that a different number of property is stated by the petitioner in the Rejoinder. Hence, the petitioner was raising inconsistent pleas. It further noted that apart from making bald averment no document has been placed on record by the petitioner to support his contentions. Accordingly, the said plea of the petitioner was rejected. In view of the same, the ARC dismissed the application for leave to defend of the petitioner and passed the present eviction order.

4. I have heard learned counsel for the parties. Learned counsel for the respondent has stressed that the family of the respondent comprises of 16 members. He has submitted that the ground floor measures 132 sq.yards while the upper floor is 45 sq. yards. He submits that the respondent is in

occupation of very limited number of rooms and would require separate room for the respondent and her husband, for each of the five sons of the respondent, one room for the widowed daughter and one room for the mother of the respondent plus at least one room for the guests. In addition, one room would be required for drawing room-cum-dining room.

5. Learned counsel appearing for the petitioner has made the following submissions:- (i) number of tenants have left and vacated their rooms. He submits that the respondent has admitted about the same. Hence, he submits the respondent would have sufficient accommodation;

(ii) The respondent is living in a slum area but wants to live a lavish life with number of rooms. He submits that this is not a bona fide requirement.

(iii) It is further submitted that the respondent has alternative suitable accommodation being House No.6425, Gali Ishwari Prasad, Bara Hindu Rao, Delhi which accommodation has been ignored by the ARC.

7. 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..."

8. 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.

9. 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.

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

11. 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.

12. 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.”

14. 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.”

15. I may now see as to whether the ARC has rightly in view of the above legal principles dismissed the application of the petitioner seeking leave to defend.

16. I may deal with the submissions that have been made by learned counsel for the petitioner before this court. I may first take the contention of the petitioner that some of the tenants have left. As per the Eviction Petition the respondent has in her possession only three rooms on the ground floor, one room on the first floor and one room on the second floor. One room has been vacated by Mazahir which is on the ground floor which is being used by the husband of the respondent for his business work. One room has been surrendered by a tenant Firoze which is on the ground floor. One room has been surrendered by Mohd.Saleem which is a small room on the fourth floor. Hence, possession of three rooms has been obtained by the respondent from tenants which is relied upon by the petitioner to claim that the respondent has sufficient alternative accommodation. It is manifest that even assuming these rooms are in addition to the rooms already mentioned in the Eviction

Petition, the accommodation would be inadequate. These three additional rooms would not be enough for the large family of the respondent. As rightly submitted by learned counsel for the respondent, the respondent would require atleast one room for herself/husband, five rooms for her five sons, one for her widowed daughter, one room for her mother, one for drawing room, one for guest room. This requirement is quite reasonable. There is hence no merit in the said contention of the petitioner.

17. It has secondly been submitted by the petitioner that the respondent wishes to live a lavish lifestyle and hence the requirement is not bona fide. The contention needs to be stated to be rejected.

18. In *Prativa Devi (Smt.) v. T.V. Krishnan*, (1996) 5 SCC 353, it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate to the landlord as to how and in what manner he should live. The bona fide personal need is a question of fact and should not be normally interfered with.

19. In *G.C. Kapoor Vs. Nand Kumar Bhasin*, AIR 2002 SC 200, the Supreme Court noted as follows:

“9. 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.”

20. Hence, the submissions of the petitioner regarding sufficient accommodation with the respondent is a misplaced submission contrary to stated legal position. The respondent is entitled to live the way she wishes to live in a comfortable manner and the petitioner cannot object to the same.

21. Coming to the last submission of the petitioner, namely, about alternative accommodation being available to the respondent at 6425, Gali Ishwari Prasad, Bara Hindu Rao, Delhi. The ARC has rejected this contention. A perusal of the reply filed by the respondent to the application for leave to defend of the petitioner would show that this particular accommodation is built on 16 sq.yards and comprises of only one room on the ground floor and one room on the first floor. The property it is stated cannot be used for the residence of the family. The husband of the respondent is running a factory of hairpins from the said property. It is clear that even assuming this property was available to the respondent it is quite insufficient to accommodate the full family comprising of 16 members.

22. Clearly, the petitioner has failed to make out any grounds to interfere in the order passed by the ARC. There is no merit in the petition. Same is dismissed. All pending applications, if any, also stand disposed of.

**(JAYANT NATH)**  
**JUDGE**

**FEBRUARY 18, 2017/n**  
Corrected and signed on 05.06.2017