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

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Date of decision: 13.01.2017

+ RC.REV. 286/2016 and CM Nos. 19344/2016 & 29896/2014

VINOD KUMAR SHARMA

..... Petitioner

Through

Mr. Sudhir Naagar, Mr. Prashant
Khatana and Mr. Vijay Kasana,
Advocates.

versus

MITHLESH RANI

..... Respondent

Through

Mr. Anshuman, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. By the present 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 challenge the order dated 11.01.2016 passed by the Additional Rent Controller (ARC) passing an eviction order under Section 14(1)(e) of the DRC Act dismissing the application for leave to defend of the petitioner.
2. The respondent/landlord filed the present eviction petition under Section 14(1)(e) of the DRC Act for eviction of the tenant from the property D-34 A, Amar Colony, Nangloi, Delhi which was given on tenancy to the petitioner. The property comprises of one shop measuring 9' x 10.5'. The eviction petition states that the premises are required bona fide by the husband of the respondent as the husband of the respondent is running his business from a shop in Amar Colony Nangloi, Delhi which has been taken

on rent from his elder brother, namely, Sh. Rakesh Kumar. It is stated that the said elder brother requires the said tenanted premises for his business and is pressurising the respondent's husband to vacate the said property and has also sent a legal notice.

3. The ARC by the impugned order noted that the petitioner has not pressed the defence of absence of landlord-tenant relationship. On bona fide requirements, it noted the submission of the petitioner that two shops in the premises in question are still lying vacant and that sufficient alternative accommodation is available with the respondent for starting a new business. The ARC noted the reply of the respondent regarding the said shop, namely, that the said shops are not suitable for the business of the husband of the respondent. The ARC noted the submission of the learned counsel for the respondent that the tenanted shop lies between the two shops and therefore, the husband of the respondent cannot put them to use. Hence, the ARC noted that it is entirely the choice of the landlord as to how he wants to use the three shops together and the court ought not to interfere with the said decision. Hence, the ARC dismissed the application seeking leave to defend of the petitioner and passed an eviction order against the petitioner.

4. I have heard the learned counsel for the parties.

5. Learned counsel for the petitioner has pointed out that in the site plan filed by the respondent before the trial court, the two vacant shops on the left and right side of the tenanted shops are roughly of the same size as the tenanted shop. He submits that despite the shops being available and vacant, there is no mention of these shops in the eviction petition. Hence, it is urged that there is a gross suppression of alternative suitable accommodation which is available to the respondent. Hence, the present impugned order is

liable to be set aside.

6. Learned counsel for the respondent has, however, pointed out that the respondent's husband is carrying on the business of dairy products. He needs all the shops as one unit so that he can keep his deep freezer and other equipments in the said premises. Hence, the shops can be used as one unit.

7. It was put to the learned counsel for the respondent as to why these facts have not been stated in the eviction petition. There is no response to the same.

8. 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..."

9. 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.
10. 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.

11. 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 member dependent upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

12. 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.

13. 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.”

14. 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.)”

15. I may note that in the eviction petition there is no whisper about the two shops which are admittedly lying vacant. There is also no averment that the respondent seeks to join these three shops as one unit to carry on his business. The only averment made is that the respondent’s husband is

carrying on his business from a tenanted shop which belongs to his elder brother who is pressurising him to vacate the said tenanted shop. The nature of the business, future plans as to how the tenanted premises to be utilized, nothing is placed on record.

16. A categorical averment is made in the petition by the respondent as follows:

“The petitioner has no other alternative accommodation or shop in order to start the business of her husband Sh.Dinesh Kumar.”

The above is supported by the respondent in affidavit.

17. I may note that the site plan filed by the respondent shows that the two shops of roughly same size are there. Their status is not mentioned.

18. In the application for leave to defend, the petitioner has made a categorical averment about the availability of these two shops which are lying vacant. The respondent had filed a reply to the said application for leave to defend. It is averred as follows in the said reply:-

“... It is vehemently denied that the two shops in the premises are lying vacant. The alleged shops are not suitable and sufficient to the petitioner for the commercial activities of her husband.”

19. The submission of the respondent is vague and unclear. It is true that the landlord is the best judge of his requirement and he has complete freedom in this regard. However, in this case, the eviction petition is silent about the two vacant shops. Later, in the reply to leave to defend application an assertion is made that the two shops are not suitable. That in a nutshell is the explanation given by the respondent about the two shops. It is manifest that the petitioner has been able to place on record facts which would require

evidence to be led. The petitioner has given facts/particulars which require to be established by evidence, which if established would disentitle the landlord from an order of eviction.

20. In the light of the above, it is manifest that the impugned order of the ARC dismissing the application for leave to defend suffers from material irregularity and illegality. The impugned order fails to take into account glaring omissions in the eviction petition and pleadings filed by the respondent and the facts projected by the petitioner in the leave to defend application, the impugned order is quashed and the eviction order is set aside. The parties are remanded back to the ARC for conducting trial as per law uninfluenced by any observations made by this court herein

21. The parties to appear before the concerned ARC on 15.02.2017.

22. With the above observations, the present petition and all pending applications stand disposed.

JAYANT NATH, J

JANUARY 13, 2017

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