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

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Pronounced on: 04.07.2017

+ RC REV.327/2016 & CM Nos.23931/2016

SAROJINI MITTAL & ANR	Petitioner
Through	Mr.Ramit Malhotra, Adv.
versus	
KRISHNA DEVI & ORS.	Respondent
Through	

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (JUDGMENT)

1. The present Revision Petition is filed under section 25-B(8) of the Delhi Rent Control Act, (hereinafter referred to as the DRC Act) seeking to impugn the eviction order dated 11.1.2016 passed by the Additional Rent Controller (hereinafter referred to as the ARC) under section 14(1)(e) of the DRC Act.
2. The respondent/landlord filed the Eviction Petition under section 14(1)(e) of the DRC Act seeking eviction of two rooms, one kitchen, common latrine etc. of property bearing No.313/5A, Inderlok, Delhi-110035. As per the Eviction Petition the respondent is the owner and landlord of the entire property No. 313/5A, Inderlok, Delhi. The petitioners are tenants of two room, kitchen, etc. on the front side of ground floor at a rent of Rs.64/- per month. It is urged that the family of the respondent comprises himself aged 95 years and his wife who is 85 years old. Three grandsons are staying with the respondent, one of whom is married. The respondent also has a daughter. The said family is residing on the first floor where they have

available three rooms, two small stores, kitchen, latrine and bathroom. One room is occupied by the respondent and his wife, one room is occupied by the married grandson along with his wife and daughter and the third room is occupied by two other grandchildren. The respondent has only one child, namely, Smt.Prem Lata Mishra who is staying in a small town in Sitapur, Maholi, U.P. away from her children and grandchildren due to non-availability of residential accommodation in Delhi. The son-in-law of the respondent is a farmer and is not earning much and the respondent wants to settle him in a business in the premises in question and for the said purpose the respondent is said to have filed other eviction petitions. It has been clarified by the respondent that the grandsons have been residing with the respondents since their childhood, having completed their education from Delhi and all are doing jobs in Delhi/NCR and are permanently residing with the respondents having valid voter card, Aadhar Card, Passport etc from the said premises.

3. It has been clarified that there is no other available accommodation available in the building. There are four tenants on the ground floor, namely, Shri Vinay Sood, Shri Shrichand, Shri Vinod Kumar and Shri Om Prakash. The respondent also states that he is in possession of two small rooms on the ground floor which are not in usable condition. There is a mezzanine floor on the roof of the kitchen and bathroom which is not usable as the structure of the same is a kaccha structure and the roof is in a dilapidated condition. Similarly, there exists one room, small kitchen and a store on the rear side of the first floor which is not in a usable condition. One room along with kitchen, latrine, etc. exist on the front side of second floor which is occupied by the domestic help. Rear side of the second floor is said to be in a

dilapidated condition and the roof is in a dilapidated condition and ready to collapse any time. Due to the said dilapidated condition, portions beneath that area on the first floor and ground floor are also rendered unsafe. It is stated that the respondents due to financial constraints and lack of funds are unable to carry out repair of the dilapidated portions.

4. In the Eviction Petition it has been strongly urged that the petitioner have moved out of the tenanted premises and the same is lying locked for the last eight months. It is contended by the respondent that the petitioners have shifted to their own house at Plot No.97-98, Pocket-26, Sector-24, Rohini, Delhi and also at Flat No.99, Defence Housing Society, Inder Enclave, Paschim Vihar, New Delhi.

5. The ARC by the impugned order noted that as far as the issue of landlord-tenant relationship is concerned, there is no dispute raised by the petitioner in that regard about the relationship. On the issue of bona fide requirement, the ARC noted that the respondent is 95 years old and unable to climb the stairs. It noted the contentions of the petitioner, namely, that the grandsons and their parents are residents of Mohali, Sitapur, U.P., there are two vacant rooms on the ground floor which are bigger than the suit properties which were repaired by the respondents a year ago and the rooms are available to the respondent and there is a two room set on the second floor which is in habitable conditions. Further, on the mezzanine floor also there are two rooms which are habitable and hence the respondents have sufficient accommodation. The ARC rejected the said contention noting that it was for the respondent/landlord to decide how to best utilise the accommodation. It noted that the two rooms on the ground floor are presently not habitable and further other rooms on the rear side of the

premises are not habitable and due to financial constraints the respondents are unable to carry out its repairs. It also noted that due to non-availability of residential accommodation in Delhi the only child of the respondent is compelled to stay alongwith her husband in a small town in UP. The respondent wants to settle his daughter and his family in Delhi but is unable to do so as he does not have alternative accommodation.

6. I have heard learned counsel for the petitioner. Learned counsel for the petitioner has stated as follows:-

(i) That the respondent i.e. Sh. Ram Sanehi Shukla has passed away in March 2016 after passing of the eviction order. This event it is urged has assumed importance as the bona fide need for which the premises were required no more exists and the impugned order is liable to be set aside on this ground alone.

(ii) That the landlord/respondent has suitable alternative accommodation and has more than 9 rooms in addition to the three rooms stated as available. Two rooms stated to be available on the ground floor are sufficient for the needs of the wife of the landlord.

(iii) The question of an accommodation being habitable is a question of fact and can only be decided by leading evidence during the trial and hence the ARC could not have accepted the plea of the respondent about the portions of the property not being habitable.

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 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.

11. 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.

12. 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.”

13. 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.)”

14. I may hence test the findings recorded by the ARC on the touchstone of the requirement of the parameters stated above for determining as to whether the trial court rightly refused the leave to defend to the petitioners.

15. I may deal with the submissions made by the learned counsel for the petitioners. Firstly, it has been stated that the respondent i.e. Sh. Ram Sanehi Shukla has passed away in March 2016 after passing of the eviction order and on account of the same the bona fide requirement has ceased to exist. This submission is absolutely without merits.

16. The legal position in this regard is well settled. The bona fide need of the landlord has to be examined on the date of the institution of proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will not make any difference as his heirs are fully entitled to defend the estate.

17. The Supreme Court in *Shakuntala Bai & Ors. v. Narayan Das & Ors.*, (2004) 5 SCC 772 held as follows:

“11. In *Shantilal Thakordas v. Chimanlal Maganlal Telwala*: [1977]1SCR341, a larger Bench overruled the decision rendered in *Phool Rani v. Naubat Rai Ahluwalia* (supra) in so far it held that the requirement of the occupation of the members of the family of the original landlord was his personal requirement and ceased to be the requirement of the members of his family on his death. The court took the view that after the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and occupation of the other members of the family. Thus, this decision held that the substituted heirs of the deceased landlord were entitled to maintain the suit for eviction of the tenant. The ratio of this decision by larger Bench does not in any manner affect the view expressed in *Phool Rani* (supra) that where the death of the landlord occurs after a decree for possession has been passed in his favour, his legal representatives are entitled to defend further proceedings like an appeal and the benefit accrued to them under the decree. In fact, the ratio of *Shantilal Thakordas* (supra) would reinforce the aforesaid view. There are several decisions of this Court on the same line. In *Kamleshwar Prasad v. Pradumanju Agarwal*: [1997]3SCR508 it was held that the need of the landlord for premises in question must exist on the date of application for eviction, which is the crucial date and it is on the said date the tenant incurred the liability of being evicted therefrom. Even if the landlord died during the pendency of the writ petition in the High Court, the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son. In *Gaya Prasad v. Pradeep Srivastava*, it was held that the crucial date for deciding as to the bonafides of requirement of landlord is the date of his application for eviction. Here the

landlord had instituted eviction proceedings for the bona fide requirement of his son who wanted to start a clinic. The litigation continued for a long period and during this period the son joined Provincial Medical Service and was posted at different places. The subsequent event i.e. the joining of the service by the son was not taken into consideration on the ground that the crucial date was the date of filing of the eviction petition. Similar view has been taken in *G.C. Kapoor v. Nand Kumar Bhasin*: AIR2002SC200. Therefore, the legal position is well settled that the bona fide need of the landlord has to be examined as on the date of institution of proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate.”

18. In any case, even otherwise the bona fide requirement of the respondent continues to survive. Admittedly the respondent is survived by his 85 year old wife. There is also the need for the family of the deceased respondent, namely, the three grandchildren staying in Delhi and the daughter and son-in law who are residing in a small town in UP. Hence, the death of the respondent does not do away with the requirements of the family of the respondent. There is no merit in the said plea.

19. Secondly, it was urged that the respondents have alternative suitable accommodation inasmuch as they have in possession nine rooms in addition to the admitted three rooms stated to be available on the first floor. The respondent has explained the condition of the rooms. As per the respondent he has two small rooms on the ground floor which are not in usable condition, one room on the rear side of the first floor which is also not usable and one room on the rear side of the second floor. Another room on the front side of the second floor is occupied by the domestic help. In all, the

respondent has admitted availability of four rooms i.e. two on the ground floor, one on the first floor and one on the second floor which it has been pointed out are in a dilapidated condition. It has been urged that the roof of the room on the rear side of the second floor is at the stage of collapsing which also endangers the rooms on the first floor and ground floor below it. The impugned order accepts the said submission. To that extent, the submissions of learned counsel for the petitioner is correct that the condition of the room and as to whether it is habitable or not is something which can only be established by leading of evidence. However, I may not inclined to set aside the order of eviction passed by the ARC on this account due to other undisputed factors mentioned by the respondent in his eviction petition. The case of the respondent/landlord was that he is 95 years old and his wife is 85 years old. They require proper accommodation on the ground floor as they are unable to climb upto the first floor. Three grandchildren are staying with the respondent all of whom have studied in Delhi and are doing jobs in Delhi/NCR. Their Voter Cards, Aadhar Cards, Passports etc. are all issued from the address in question in Delhi. One grandchild is married. The other two are of marriageable age. The only child of the respondent lives in a small town in UP. The said daughter and son-in-law seek to shift to Delhi and carry on business from Delhi. It is manifest that the requirement is bona fide. Migration from semi urban areas to urban areas is quite common on account of better opportunities for economic growth in such urban areas. Even if it was assumed that the respondent has available additional two rooms on the ground floor and two rooms on the mezzanine and first floor, these would be barely sufficient for the family of the respondent. The widow of the deceased respondent would require one room, one grandson who is

married requires one room for himself and his family, the daughter of the landlord requires one room for herself and her husband, the two other grandsons are working and are likely to get married soon and would require separate room for themselves. Similarly, the family would require other areas for drawing, dining, guest room etc.

20. Accordingly, it is manifest that the accommodation as explained, even assuming to be habitable, as has been claimed by the petitioner would not be sufficient for the respondents.

21. I also cannot help noticing a specific plea raised by the respondent/landlord in his eviction petition that the tenanted premises is lying locked for the last eight months and that the petitioners have shifted to plot No.97-98 pocket 26, Sector 24, Rohini and also at flat No. 99, Defence Housing Society, Paschim Vihar, New Delhi. The petitioners in their reply have denied this contention stating that the electricity bills, water bills, passport show the presence of the petitioners in the tenanted premises. However, there is no specific denial about the petitioners having shifted to the property at Rohini/Paschim Vihar or about the status of the said property.

22. 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.”

23. In *Ragavendra Kumar v. Firm Prem Machinery and Co., [2000] 1 SCR 77*, it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter. 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 the landlord as to how and in what manner he should live.

24. In view of the above, there are no reasons to interfere with the conclusion of the ARC about the premises being required bona fide by the respondent. There is no merit in the present petition. Same is dismissed. Pending Applications also stand dismissed.

(JAYANT NATH)
JUDGE

JULY 04, 2017/n