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

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Date of decision: 03.03.2017

+ CM(M) 289/2015 and CM No. 5881/2015

BATUK PRASAD JAITLEY

..... Petitioner

Through Mr. Rajat Aneja and Mr.Chandrika
Gupta, Advocates.

versus

RAJESH CHUGH & ANR

..... Respondents

Through Mr.Harpreet Singh, Mr.Rajesh Gupta
and Mr.Pranjal Saran, Advocates.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present petition is filed under Article 227 of the Constitution of India seeking to challenge the order dated 20.01.2015 by which an eviction petition filed by the petitioner/landlord was dismissed.
2. The petitioner filed an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) seeking eviction of the tenant/respondent on the ground of bona fide requirement. The eviction was sought regarding property No. V/884, Nai Sarak Road, Main Road, Delhi. It was averred by the petitioner that the petitioner is running a saree business in the name and style of M/s Mallika Collections from the premises No. 874/110, Gali Jutewali, Nai Sarak, Delhi. The business is being run from the first floor and above. The size of the

existing premises is said to be about 28' x 11'. Most of the customers are said to be ladies about 40 years old. The tenanted shop is two buildings away from the premises of the petitioner. Hence, the said tenanted shop is required urgently and bona fide by the petitioner for the purpose of shifting his business to the ground floor. He presently has no other premises on the ground floor. In the event he shifts his business to the ground floor, the petitioner will be able to maintain his office in the property at Gali Jutewali. The tenanted shop is situated on the main Nai Sarak Road whereas the present business property of the petitioner is in a gali inside the street.

3. The petition was filed in 2009. The respondent filed their application seeking leave to defend. The Additional Rent Controller (hereinafter referred to as the ARC) dismissed the said application for leave to defend and passed an eviction order on 30.11.2010. This court by order dated 02.01.2014 in a revision petition filed by the respondent allowed the same and quashed the order of the ARC dated 30.11.2010 and granted leave to defend to the respondent to contest the petition. Parties have led their evidence. The petitioner led the evidence of three witnesses, namely, PW-1-Batuk Prasad Jaitly, PW-2 Hanuman Prasad Bansal and PW-3 Hemant Bhatia from the office of Sub-Registrar. The respondents led his own evidence as RW-1.

4. The ARC by the impugned order on the relationship of landlord and tenant accepted the contention of the petitioner and held that there exists a relationship of landlord and tenant between the parties. On availability of alternative suitable accommodation, it held again in favour of the petitioner i.e. that no other alternative suitable accommodation is available with the petitioner.

5. On bona fide requirement, the ARC however rejected the contention of the petitioner. It noted that the petitioner's present business premises, namely, 874/110, Gali Jutewali, Nai Sarak, Deelhi-110006 which is available with him is a three storey building i.e. first, second and third floor being a total area of 1500 sq. ft. and in contrast the tenanted premises is 33 sq. ft. Hence, though in the eviction petition, it is stated that the petitioner wishes to shift the business to the tenanted premises, the ARC concluded that it is impossible for the petitioner to shift the business which is spread over an area of 1500 sq. ft. into an area of 33 sq. ft. It noted the cross-examination of PW-1 where he has stated that it is not possible to unveil even a single saree in the tenanted premises. The petitioner has also admitted that he has 9 to 10 employees and 10 to 12 customers sit in his shop at a time. The ARC also noted that in the replication, the petitioner has tried to explain that he has also filed an eviction petition against the tenant of the adjoining shop i.e. V/885. He plans to merge the two shops i.e. the present tenanted shop and the tenanted shop being No.V/885 and hence, sufficient area would be available to the petitioner. This plea was also taken during the course of cross-examination of RW-1. The ARC also noted that the petitioner in his evidence has tried to add another plea that he will keep some prominent items in the tenanted premises and thereafter, will supply the same to the customers from the present premises. The order further noted that this fact inserted in the affidavit of the petitioner is beyond pleadings. The ARC concluded that this being altogether a new plea cannot be allowed to be considered. The order also noted the plea of the respondents that the petitioner is running a business of wholesale and in wholesale market customers do not hesitate to go to the upper floors.

6. I have heard learned counsel for the parties.
7. Learned counsel for the petitioner has reiterated that the shop of the petitioner is situated in a gali. He submits that the petitioner would find it more profitable and it would help in boosting the business of the petitioner, if the tenanted shop is made available as it is situated on the main road. He further states that the eviction petition itself has been meandering for 9 years. The children of the petitioner have now grown up. Now, they need to start their own independent business. He relies upon the judgments of the Supreme Court in the case of *Anil Bajaj & Anr. vs. Vinod Ahuja, 2014 (6) Scale 572, Uday Shankar Upadhyaya & Ors. vs. Naveen Maheshwari, (2010) 1 SCC 503* and of this court in the case of *Pawan Kumar vs. Paramjit Singh Gill, 2015 (2) RLR 194* to contend that the shop on the ground floor would be more suitable for the requirement of the petitioner.
8. Learned counsel appearing for the respondents has reiterated that the tenanted shop is only 33 sq. ft. whereas the petitioner is in possession of 1500 sq. ft. area. The business premises of the petitioner are two buildings away. He further submits that in the eviction petition, no plea has been taken by the petitioner that he seeks to merge the present shop and the other adjoining tenanted shop against which an eviction petition is said to be pending.
9. 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..."

10. 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.

11. 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.

12. The essential ingredients which a landlord/petitioner 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.

13. There appear to be some facts which are admitted. The tenanted shop is situated on the main road whereas the shop of the petitioner is off the main road. The two shops are separated by a short distance of two buildings. The petitioner’s present business premises i.e. 874/110 Gali Jutewali, Nai Sarak,

Delhi has an area of 1500 sq. ft. from where he is carrying on his business in sarees. Based on these facts, the ARC has come to the conclusion that there is no bona fide need of the petitioner as the petitioner cannot shift his business from the present business premises spread over an area of 1500 sq. ft. into the tenanted shop which has an area of 33 sq. ft. though on the ground floor. The ARC has refused to look into the explanation given in the evidence or in the replication by the petitioner and has gone by the strict averments in the eviction petition, namely, the petitioner has averred that he wishes to shift his present business premises to the tenanted shop. To that extent the conclusions of the ARC was correct that it is not possible for the petitioner to shift his present business into the tenanted shop given the difference in the dimensions of the two shops.

14. The question that arises here is as to whether a landlord is bound by his averments regarding his business requirements strictly as spelt out in the eviction petition and in the eventuality of his failure to demonstrate that he can fulfill those strict requirements, he is liable to be non-suited.

15. The Supreme Court in the case of ***Raj Kumar Khaitan & Ors. vs. Bib Zubaida Khatun & Anr. (1997) 11 SCC 411*** dealing with an eviction petition where no specific pleadings were made regarding the bona fide requirement of the landlord, held as follows:-

“4. It is clear from the averments made in the above quoted paragraphs that the plaintiffs asserted that there was no other means of livelihood with them and as such they wanted to set up their own business in the premises in dispute. The High Court, however, came to the conclusion that apart from above quoted pleadings it was necessary to plead the nature of the business which the appellants-plaintiffs wanted to start in the premises. We are of the view that the High Court fell into

patent error. It was not necessary for the appellants- landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody could bind the landlords to start the same business in the premises after it was vacated.”

16. Hence, the Supreme Court held that it is not necessary for the landlord to indicate the precise nature of the business which he intends to start from the premises. Even if he has not stated the nature of the business, nobody can bind the landlord to start the same business in the premises after it is vacated.

17. Following the aforesaid judgment of the Supreme Court, the Punjab and Haryana High Court in the case of ***Balwant Singh Chaudhary & Anr. vs. Hindustan Petroleum Corpn. Ltd., (2004) 1 RCR (Rent) 487*** while dealing with a petition where the landlord had not stated or proved that he planned to construct a showroom or he had moved the concerned authority for permission to construct the showroom. held as follows:-

“18. In view of the judgments referred to above, it is held that it is not necessary for the landlord to plead and prove the specific business which he wants to set up in non-residential premises in respect of which eviction is sought.

19. It is also not necessary for the landlord to set up a business before seeking ejection on the grounds of bona fide personal use and occupation. The essential idea basic to the cases of eviction on the ground of bona fide personal use and occupation is that the need of the landlord should be genuine and honest, conceived in good faith and the Court may also consider it reasonable to gratify that need. The requirement in law must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down.”

18. Keeping in view the above legal position, in my opinion, the petitioner cannot be bound strictly to the averments made by him in the eviction

petition regarding the purpose to which he wants to put the tenanted property, provided the need is bona fide for personal use and is made in good faith.

19. I may see the eviction petition. Relevant portion of the eviction petition reads as follows:-

“(v) The suit shop is just two buildings away from the present business premises of the petitioner. The suit shop is required urgently and bona fide by the petitioner for the purpose of shifting his business to the ground floor. The petitioner presently has no office premises. In the event of shifting his business to the ground floor, the petitioner would be able to maintain his office in property bearing No. 374/110, Gali Jutewali, Nai Sarak, Delhi-110006. The petitioner by shifting to the suit shop and by bringing his business on the ground floor would be able to compete in the market.”

20. In his affidavit by way of evidence, PW-1 has explained the proposed business requirement further as follows:-

“.... The prominent items can always be put on display on the ground floor and after getting the sample selected, material can be supplied to the customers from the first floor.”

21. This proposition has also been made in the replication filed by the petitioner where he states that the two shops, namely, the present tenanted shop and the adjoining shop against which an eviction petition has also been filed can be merged into one and prominent items can be put on display on the ground floor and after getting the sample selected, material can be supplied to the customer from the first floor.

22. There is no cross-examination of the witness on this averment in his affidavit by way of evidence.

23. Another aspect which has persuaded the ARC to dismiss the eviction petition is the fact that the measurement of the tenanted premises is only 33 sq. ft. The petitioner has admittedly filed an eviction petition regarding the adjoining shop. This is so as the eviction petition is also listed in this court today being RC.REV. 112/2011 titled as ***Bhushan Lal vs. Batuk Prasad Jaitly***.

24. No doubt this fact that the petitioner seeks to merge the tenanted shop with the other shop is not mentioned in the eviction petition. In the replication filed by the petitioner, it has been stated that an eviction petition has been filed regarding the adjoining shop. This issue of amalgamation was sought to be put to RW-1 in his cross-examination. The question was objected to by the learned counsel for the respondent as being beyond the pleadings. However, RW-1 had replied that even after joining the area of the two shops, the area would not be sufficient as there was no saree shop which was being run from an area measuring 100 sq. ft. within the radius of 100 meters. He had denied the suggestion that there were more than 300 saree shops on the ground floor opened in an area of 100 sq. ft.

25. In my opinion, given the legal position that the petitioner cannot be bound by the business module projected in the eviction petition, the petitioner was fully justified seeking to explain and elaborate the contentions in the eviction petition. In the eviction petition it was clearly stated that he wishes to shift the business to the tenanted premises. In the replication and evidence, it has been explained that the working style would be of having display of selected items in the tenanted premises and once a customer selects the same, the supply thereof would be affected from the present

premises. It is also pointed out that two tenanted shops are sought to be vacated and merged and it would form an area of 100 sq. ft.

26. In my opinion, the additions which are made by the petitioner later on are only explanations which are incidental to the averments already made in the eviction petition. The trial court has with material illegality not taken into consideration these averments of the petitioner on the ground that they have not been pleaded in to the eviction petition.

27. There is another aspect of the matter. The tenanted premises are on the ground floor and on the main road whereas the present premises from where the petitioner is carrying on his business is on a street/gali. The petitioner wishes to shift a part of his business to the main road. In my opinion, this would be as a bona fide and genuine requirement keeping in view the catena of judgments of the Supreme Court.

28. The Supreme Court in the case of *Anil Bajaj & Anr. vs. Vinod Ahuja (supra)* held as follows:-

“ 6. In the present case it is clear that while the landlord (Appellant No. 1) is carrying on his business from a shop premise located in a narrow lane, the tenant is in occupation of the premises located on the main road which the landlord considers to be more suitable for his own business. The materials on record, in fact, disclose that the landlord had offered to the tenant the premises located in the narrow lane in exchange for the tenanted premises which offer was declined by the tenant. It is not the tenant's case that the landlord-Appellant No. 1 does not propose to utilize the tenanted premises from which eviction is sought for the purposes of his business. It is also not the tenant's case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the same in any way inconsistent with the need of the landlord. What the tenant contends is that the landlord has several other shop houses from which he is

carrying on different business and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business. The grounds on which leave to defend was sought by the tenant and has been granted by the High Court runs counter to the fundamental principles governing the right of a tenant to contest the claim of bonafide requirement of the suit premises by the landlord under the Delhi Rent Control Act, 1958. Even assuming the assertions made by the tenant to be correct, the same do not disclose any triable issue so as to entitle the tenant to grant of leave to defend.

7. We are, therefore, of the view that the impugned order dated 20.09.2012 of the High Court of Delhi is not legally sustainable. We, accordingly, set aside the same and allow this appeal and restore the order dated 02.09.2011 passed by the learned Additional Rent Controller, Delhi.”

29. Similarly, in the case of *Uday Shankar Upadhyaya & Ors. vs. Naveen Maheshwari(supra)*, the Supreme Court held as follows:-

“7. In our opinion, once it is not disputed that the landlord is in bona fide need of the premises, it is not for the courts to say that he should shift to the first floor or any higher floor. It is well-known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily. The court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide. Hence, the view of the courts below that the sons of plaintiff No. 1 should do business on the first floor in the hall which is being used for residential purpose was, in our opinion, wholly arbitrary, and hence cannot be

sustained. As regards the finding that the sons of plaintiff No. 1 are getting salary of Rs. 1500/- from the firm, in our opinion, this is wholly irrelevant and was wrongly taken into consideration by the High Court.”

30. There can be no dispute that a tenanted premises situated on the ground floor facing the main road has a strong possibility of generating higher business. The desire of the petitioner to partly shift his business to the tenanted premises which is situated on the main Nai Sarak which is the important commercial market of the city and the bona fide of the same cannot be disputed. There were no valid reasons to doubt the bona fide and honest desire to use the tenanted premises by the landlord for the saree business. In my opinion, by ignoring this facts/legal position, the ARC in the impugned order has committed material irregularity and illegality.

31. There is another argument of the respondent which remains, namely, the contentions that the petitioner is engaged only in the whole sale business and that in wholesale business, it would make no difference, if he carries on business from the first floor.

32. Learned counsel for the petitioner has pointed out that in the written statement itself in para 5, the respondent admits that the petitioner is doing business of retail and wholesale sarees.

33. In any case, in my opinion, whether the petitioner is running a wholesale business or retail business or running a business of both kind really makes no difference to the proposition stated above. There is no merit in the said submission of the respondent.

34. The impugned order suffers from material irregularity and illegality. I quash the said order and allow the eviction petition filed by the petitioner.

An eviction order is passed in favour of the petitioner. However, in terms of Section 14(7) of the DRC Act, the petitioner shall not execute the eviction order before six months from today.

35. In view of the above, the present petition stands disposed of. All pending applications also stand disposed of.

(JAYANT NATH)
JUDGE

MARCH 03, 2017/rb