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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 24.04.2017

+ RC.REV. 326/2016 and CM No. 23852/2016

RAM KUMAR

..... Petitioner

Through: Mr.A.K. Singla, Sr.Advocate with
Mr.Pankaj Gupta & Ms.Rimpy Gupta, Advocates
for the petitioner

versus

MITTER SAIN GUPTA AND ANR

..... Respondents

Through: Mr.Amit Gupta & Mr.Puneet Sharma,
Advocates for the respondent.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present revision petition is filed under Section 25 B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred as the DRC Act) seeking to impugn the order dated 03.03.2016 by which the application filed by the petitioner/tenant seeking leave to defend was dismissed. An eviction order was passed in favour of the respondents/landlords under Section 14(1)(e) of the DRC Act.

2. The respondents/landlords filed the eviction petition under Section 14(1)(e) of the DRC Act stating that the premises comprising one room and bathroom on the first floor and one barsati room on the second floor of the property No. 952-A, Ward No. 7, Khasra No. 1151/3 min. Village Mehrauli, New Delhi was let out to the petitioner at a monthly rent of Rs.66.50 per

month. It is stated that the said property was purchased by the respondents by a registered sale deed dated 25.10.2005 along with other co-owners. The family of respondent No.1 is said to comprise himself, his wife Smt. Madhu Rani Gupta, his married son Sh.Deepak Gupta and married daughter-Swheta Gupta. The premises are stated to be required by the son of respondent No.1 who is a practising advocate and enrolled with the Delhi Bar Council vide enrolment No. D-1206/2006. It is stated that the property in question is more suitable for respondent No.1 as respondent No. 1 is also carrying on the business of jewellery under the name and style of M/s R.S. Jewellers from the shop on the ground floor of the said property which business is being done since the last 40 years. Setting up of an office for the son of respondent No. 1 in the property in question would be extremely convenient as he can also take care of the well being of his father i.e. respondent No. 1 who is 61 years of age. The son of respondent No. 1 is said to be not having any office or chamber and he is constrained to deal with his clients either at home or at some other place. It is stated that the son requires one room to be converted into an office, one room as waiting area for the clients, one room for the staff/junior advocates/associate colleagues, one room for record room of files and for library, etc. Another eviction petition under Section 14(1)(e) of the DRC Act is also said to have been filed against another tenant, namely, Sh. Ishwar Dass who is the brother of the petitioner and is the tenant in respect of two rooms, kitchen, verandah, bathroom and latrine on the first floor of the said property.

3. The ARC by the impugned order noted the defence raised by the petitioner and rejected the said defence. It noted the contention of the petitioner denying the relationship of landlord-tenant. It noted that the

respondents have in support of their contention placed on record a copy of the sale deed dated 25.10.2005 for the tenanted property in question. It also noted that the respondents had filed a copy of the judgment/decreed passed in CS(OS) 339/2008 titled as *Madan Lal Digani & Anr. vs. Ram Kumar & Anr.* where the petitioner has admitted the factum of the respondents being the owners/landlords qua the tenanted suit premises. The suit had been filed by respondent No. 2 for injunction.

The ARC also noted the contention of the petitioner that respondent No. 1 has alternative suitable accommodation for commencing an office for his son-Sh. Deepak Gupta. It was urged by the petitioner that the house where respondent No.1 is residing is a huge house measuring 200 sq. yards abutting a 30 feet road comprising ground floor, first floor and second floor and the same would be more suitable for opening of an office for his son. This contention was rejected noting that it was the prerogative of respondent No.1 being the landlord to commence an office for his son at the place that he finds more suitable or convenient. It also noted the submission of respondent No. 1 that the said property belongs to his wife and is fully occupied. Ground Floor is occupied by respondent No.1 and his wife whereas the first floor is occupied by his married son-Deepak Gupta who is residing there along with his wife and son. The second floor comprises only one room which is used as a guest room for his married daughter and son-in-law whenever they come to visit. The ARC accepted this explanation and rejected the said contention of the petitioner.

The ARC also noted the contention of the petitioner that the premises where the tenanted property exists measures 215 sq. yards and is having five shops in front and a big hall/godown on the back side which can be used by

Sh.Deepak Gupta, the son of respondent No.1 for his office. The ARC did not accept his contention noting the submission of respondent No.1 that he has no concern with the four shops and owns only one room shop where he is carrying on his jewellery business. As far as the hall/godown is concerned, it noted the submission of respondent No.1 that the same is under the tenancy of Sh. Padam Chand, Shri Rakesh Kumar and Sh.Ajay Kumar and it is under joint ownership/landlordship of four owners, namely, respondent No. 1, Sh.Nand Lal Digani, Sh.Madan Lal Digani i.e. respondent No.2 and Sh. Surender Jain and hence, the said hall cannot be used by the son of respondent No.1-Deepak Gupta. Hence, the contention of the petitioner regarding availability of alternative suitable accommodation was rejected.

The ARC also noted that respondent No. 1 has given the enrolment number of his son (D-1206/2006) i.e. Sh. Deepak Gupta to show that he is a practicing advocate enrolled with the Bar Council of Delhi. It noted that except from making bald averments, the petitioner had made no other relevant submissions. It also noted that the requirement spelt out by respondent No. 1 of converting the tenanted area into an office for his son showed that the requirement was bona fide. Accordingly, keeping in view the above conclusions, the ARC dismissed the application for leave to defend filed by the petitioner and passed an eviction order against the petitioner.

4. I have heard the learned counsel for the parties.
5. Learned senior counsel appearing for the petitioner has made the following submissions:-

(i) It is submitted that the alleged requirement of respondent No. 1 to open an office for his son who is allegedly a practicing advocate is only a wish and desire and nothing else and the same is not bona fide. He relies upon the judgment of the Supreme Court in the case of ***Kempaiah vs. Lingaiah & Ors., (2001) 8 SCC 718.***

(ii) He submits that respondent No. 1 is in occupation of alternative suitable accommodation from where he can start his own business. Reliance is placed on the two properties mentioned in the application for leave to defend, namely, “Madhu Sadan” which is a 200 sq. yards property comprising ground floor, first floor and second floor and also the property where the tenanted premises exist where, it is claimed, respondent No. 1 owns five shops in the front and a big hall/godown on the back. The petitioner has placed on record certain photographs from which it is claimed that the entrance to the tenanted premises is through a gali whereas the residential house of respondent No. 1 is located at a wide road which would also provide adequate parking space and would be a better location for an office.

(iii) There is no evidence to show that the son of respondent No. 1 is actually a practicing advocate. It is submitted that the said son is actually a part of the jewellery business and is helping his father in running the said business which is a very prosperous business.

(iv) It is stated that the son of respondent No.1 is not dependent upon respondent No. 1. As per the income tax returns, he is paying rent to his father. The returns also show that he is earning a handsome income and cannot be said to be dependent upon his father.

6. Learned counsel for the respondents rebutted the submission of the

petitioner. He has relied upon his reply to the application for leave to defend to rebut the contention of the petitioner. He has also relied upon the judgment of the Supreme Court in the case of ***Joginder Pal vs. Naval Kishore Behal*, (2002) 5 SCC 397** and the judgment of this court in the case of ***Puran Chand Aggarwal vs. Lekh Raj*, 210 (2014) DLT 131** to contend that it is the settled position of law that the landlord is entitled to seek eviction not only for himself but for other family members dependent upon him and the parents are under moral obligation to help/establish their sons in business and can seek eviction of a tenanted premises for them.

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:-

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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."

10. 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 members 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. 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 *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 now see as to whether the ARC has rightly rejected the application for leave to defend filed by the petitioner. As far as the submission of the petitioner that the desire of respondent No.1 is a mere wish and cannot be said to be bona fide requirement, the contention is entirely misplaced.

16. Learned senior counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of *Kempaiah vs. Lingaiah & Ors.(supra)*.

Reliance is placed on the following observations of the Supreme Court:-

“8. The word "require" used in clause (h) of sub-clause (1) of Section 21 of the Act implies something more than a mere wish or impulse of desire on the part of landlord. Although the element of need is present in both the cases, the real distinction between "desire" and "require" lies in the insistence of the need. There is an element of "must have" in the case of "require" which is not present in the case of mere "desire". The ground mentioned in clause (h) of Sub-section (1) of Section [21](#) of the Act emphasizes to the genuineness of the requirement of the landlord. The term "reasonable and bonafide requirement" are complementary and supplementary to each other in the context. Dealing with a similar provision under the Bombay Rents Hotel and Lodging House Rates Control Act. 1947, this Court in *Dattatraya Laxman Kamble v. Abdul Rasul Moulaji Kotkunde & Anr.* 1999 (4) SCC held that when the Legislature employed the two terms together the message to be gathered is that requirement must be really genuine from any reasonable standard. Where eviction is sought on the aforesaid ground, a duty is cast upon the court to satisfy itself with the alleged requirement of the landlord. Even in a case where the tenant does not contest or dispute the claim of the landlord and the tenancy is governed by the Rent Control legislation, the court is

obliged to look into the claim independently and give a specific finding in that regard.”

17. In the present case, the son of respondent No.1 is a practicing advocate who is registered with the Bar Council of Delhi. Though a vehement attempt has been made to argue that the son of respondent No.1 is not an advocate who is practicing, no attempt was made by the petitioner to support the said contention. It is a mere bald averment bereft of any material details. The IT returns of the son of respondent No.1 for the assessment year 2013-14 shows that the nature of business is described as “Legal Services (Advocate)”. The same is also the position regarding the IT Returns for the assessment year 2014-15 which is filed under the category of legal professionals.

In addition, there is merit in the submission of respondent No.1 that it would be more convenient for the respondents that the son of respondent No.1 may carry on his business in the same building from where respondent No. 1 is carrying on his business as the same would ensure that the son will be able to take care of the needs of the father who is now 61 years old. Hence, there is no merit in the contention of the learned counsel for the petitioner about lack of bona fide on the part of the respondent. The judgment of the Supreme Court relied upon by the learned senior counsel for the petitioner in ***Kempaiah vs. Lingaiah & Ors.(supra)*** has no application to the facts of this case.

18. Regarding the contention of the petitioner that respondent No. 1 has sufficient alternative accommodation, again this is a bald argument. The ARC has rightly pointed out that as far as the residential accommodation is concerned, the same is fully occupied by respondent No. 1. Respondent No.

1 and his wife are staying on the ground floor whereas the son and his wife and child are staying on the first floor. Regarding the shops and godown located at the tenanted premises, this is a bald averment. Respondent No.1 and his wife have no rights on any of the four shops or godown. As far as the godown is concerned, it is already under possession of the tenants who are protected under the DRC Act. In any case, the property is owned by respondent No. 1 and three other co-owners and cannot be termed to be alternative suitable accommodation available to respondent No.1. In any case, it is a question of convenience. Having an office in a residential building has its disadvantages of intrusion into the privacy of the family. As to the choice of respondent No.1/his son as to from where they would prefer to have their office, in this context reference may be had to the judgment of the Supreme Court in the case of ***Ragavendra Kumar v. Firm Prem Machinery and Co., [2000] 1 SCR 77*** where 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 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. As far as the dependency of the son on respondent No. 1 is concerned, reference may be had to the judgment of the Supreme Court in the case of **Joginder Pal vs. Naval Kishore Behal (spra)**. The Supreme Court in para 33 held as follows:-

“33. Our conclusions are crystallised as under:

(i) the words 'for his own use' as occurring in Section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 must receive a wide, liberal and useful meaning rather than a strict or narrow construction.

(ii) The expression -- landlord requires for 'him own use', is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord himself but also of the normal 'emanations' of the landlord is included therein. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be exhaustively enumerated. It will depend on a variety of factors such as inter-relationship and inter-dependence--economic or otherwise, between the landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they belong.

(iii) The tests to be applied are : (i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement? and, (ii) Whether on the facts and in the

circumstances of a given case actual occupation and user by a person other than the landlord would be deemed by the landlord as 'his own' occupation or user? The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as 'his own' and the person who would actually use the premises; (ii) the circumstances in which the claim arises and is put forward, and (iii) the intrinsic tenability of the claim. The Court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.

(iv) While casting its judicial verdict, the Court shall adopt a practical and meaningful approach guided by the realities of life.

(v) In the present case, the requirement of landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord 'for his own use' within the meaning of Section 13(3)(a)(ii).”

This was also a case where an eviction petition has been filed by the landlord for the use of his chartered accountant son.

21. Similarly, this court in the case of *Puran Chand Aggarwal vs. Lekh Raj (supra)* held as follows:-

“36. It is also settled principle of law that the landlord is entitled to seek eviction of tenanted premises not only for himself/herself, but for other dependant family members. There is no dispute that the parents are under moral obligation to help establish their sons in business and can seek eviction of the tenanted premises for them. Reference in this regard can be made to the case of *Joginder Pal v. Naval Kishore Behal*, IV (2002) SLT 27= (2002) 5 SCC 397, where the Supreme Court held that:

The requirement is not the requirement of the landlord alone in the sense that the landlord must

for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use..... Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be the obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord.

Some of the other judgments which deal with the similar issue are:-

- i) Kharati Ram Khanna & Sons. vs. Krishna Luthra, 2010 (172) DLT 551, wherein it was observed that the requirement of the landlord to settle down her two sons separately and independently was found to be genuine and bonafide.
- ii) In Labhu Lal vs. Sandhya Gupta, 2010 (173) DLT 318, it was observed that the landlord's son and daughter in law are dependent for accommodation on respondent the requirement of the landlord's son and daughter in law for expanding clinic being run in premises in question is genuine.
- iii) In Sh. Ravinder Singh v. Sh. Deepesh Khorana (RC. Rev. No. 3/2011, Date of decision: 10th December, 2012), it was observed that the son of the respondent is unemployed and is dependent on respondent for his livelihood. It is nothing but bona fide for the respondent to require the suit shop to set up a computer business for his son and to help him find a source of income and subsequently settle down in life.

iv) In Brij Mohan vs. Shri Pal Jain, 49 (1993) DLT 543, it was observed that it is settled law that grown up children require separate rooms to live in a manner he or she likes.

v) In Ram Babu Aggarwal v. Jay Kishan Das, 2009 (2) RCR 455, the court recognized the right of the landlord for possession of his property for setting up a business for his son.”

22. In view of the above legal position, respondent No.1 is justified in filing the eviction petition for the bona fide requirement of his son to establish him in his legal practice. He is well within his rights under Section 14(1)(e) of the DRC Act. The petitioner has failed to place on record any ground which would warrant this court to interfere in the order passed by the Additional Rent Controller. There is no merit in the present petition and the same is dismissed.

23. All pending applications also stand dismissed.

JAYANT NATH, J

APRIL 24, 2017/rb