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

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Date of decision: 20.01.2017

+ RC.REV. 336/2016 & CM Nos.24233-24235/2016

M/S J P GUPTA & SONS

..... Petitioner

Through Mr.Anil Sapra, Sr. Adv. with
Mr.Gamon Mitra, Mr.Gaurav Mahajan, Ms.Rupali
Koroon, Mr.Adarsh Rai, Ms.Deepali Dwivedi and
Mr.Lokesh Chopra, Advs.

versus

MALTI NARANG & ANR

..... Respondents

Through None

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. By the present revision petition filed under Section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as DRC Act), the petitioner seeks to impugn the order dated 12.02.2016 by which an application filed by the petitioner seeking leave to defend was dismissed and the petition filed by the respondents/landlords under Section 14(1)(e) of the DRC Act was allowed and an eviction order was passed against the petitioner.

2. The Respondents/landlords filed the eviction petition regarding property No. 221, Ground Floor, Ward No. 8, Inside Ajmeri Gate, Delhi under Section 14(1)(e) of the DRC Act. It was stated in the eviction petition that the respondents are the owners of the property which was originally owned by their late mother Smt. Kamla Beri. On her death on 16.12.2006, in

view of Will dated 27.07.1993 executed by her, the respondents have become the co-owners of the property. The petitioner was inducted by late Smt.Kamla Beri as a tenant. The husband of respondent No.1 expired on 27.03.2003. Her family consists of herself and two married daughters. Family of respondent No.2 consists of herself, her husband and three daughters. Her husband is said to have undergone a bypass surgery in 2004 due to which he had to leave his work. After recovery, he looked for a job but could not find a suitable job. The tenanted premises are required to enable the husband of respondent No. 2 to run his own business of a business centre.

3. The ARC by the impugned order noted that there is no dispute regarding the relationship of landlord and tenant.

On the issue of bona fide requirement of the respondents, the ARC noted that it was the stand of the petitioner that the respondents are residing in Noida and Gurgaon and therefore, it would not be possible for the husband of respondent No.2 to commute from Noida and Gurgaon everyday especially keeping in view his heart ailment. It is further stated that the respondents have initiated eviction proceedings for other premises and have obtained possession of the premises No. 223, Ajmeri Gate, Delhi on the pretext that respondent No.2 wants to run a cosmetic shop from the said premises. The ARC however concluded that the husband of respondent No.2 had a heart surgery in 2004. The present eviction petition is filed 11 years thereafter i.e. in 2015 and hence, it cannot be said that the husband of respondent No.2 is not fit to do business. Further, the premises No. 223, Ground Floor, Ajmeri Gate, Delhi was got vacated for the bona fide need of respondent No.2 herself and not for the need of her husband. Respondent

No.2 is entitled to carry on her own independent business to enhance her income. Hence, the ARC concluded that the bona fide requirement of the respondent qua the tenanted premises stands duly proved.

Regarding the availability of alternative suitable accommodation, the ARC noted the submission of the petitioner that the respondents have other property being property No. 3837, Gali Lohal Wali, Chawri Bazar, Delhi which can be used by the husband of respondent No.2. The ARC noted that the stand of the respondents in this regard is that the said property was sold by Smt. Kamla Beri i.e. the mother of the respondents during her lifetime by way of a registered sale deed dated 12.06.1998. The ARC also noted the submission of the petitioner that the respondents have sold property bearing No. 225 and 226 as well as portion of the first floor of property No.224, Ajmeri Gate, Delhi in 2008-09 thus, creating an artificial scarcity. The ARC also noted that the respondents admit the sale but the sale took place almost 6-7 years ago prior to filing of the eviction petition and cannot be said to in any manner affect the bona fide requirement of the respondents. Hence, the ARC rejected the contentions of the petitioner and dismissed the application seeking leave to defend and passed an eviction order against the petitioner.

4. I have heard the learned senior counsel for the petitioner.
5. He has impugned the eviction order on the following salient grounds:-
 - (i) The tenanted premises measure 3 meter x 6.5 meter. It is a small shop in a congested area. The submission of the respondents that they wish to start a business centre for the use of the husband of respondent No.2 is misplaced as no such business centre can be run in this small area and in the said locality.

- (ii) The respondents own several shops. They have got vacated the property No. 223, Ground Floor, Ajmeri Gate, Delhi which is also available to the respondents.
- (iii) The petition filed by the respondents nowhere states that the husband of respondent No.2 is dependent on respondent No.2 for accommodation. It is stated that in the absence of such an averment in the eviction petition, no ground for eviction is made out as defined under Section 14(1)(e) of the DRC Act.
- (iv) The respondents have in 2008-09 sold two shops. This sale of the shops shows that there is no bona fide on the part of the respondents in filing the present eviction petition.
- (v) Learned senior counsel appearing has relied upon judgment of the Supreme Court in the case of ***Precision Steel & Engineering Works & Anr. vs. Prem Deva Niranjana Deva Tayal, AIR 1982 SC 1518*** where the Supreme Court held that the burden is on the landlord to satisfy the Controller that the premises of which possession is sought is let out for residential purpose and possession of the premises is required bona fide and that the landlord is not in possession of any other reasonable suitable residential accommodation. Reliance is also placed on the judgment of the Supreme Court in the case of ***Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta, AIR 1999 SC 2507*** to contend that the requirement of the landlord should not be a mere desire but must be a sincere and honest desire. It cannot be a mere pretext to evict the tenant.

6. I may first see the scope of the present petition. The Supreme Court in *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta*, (*Supra*) 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...”

7. 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.

8. 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 any 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.”

9. In view of the judgment of the Supreme Court in the case of *Satyawati Sharma (Dead) Through LRs. Vs. Union of India, AIR 2008 SC 3148*, the aforesaid provisions have now become applicable to commercial properties.

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 dependant 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 petitioner. 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*, **102 (2013) 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 will deal with the first submission of the learned senior counsel for the petitioner, namely, that the shop is small in dimensions and the locality is

a congested area and that the location or the shop is not suitable for any business centre. The said submission is misplaced. A business centre need not to be a large centre. Even a small centre can provide various facilities pertaining to a business.

16. 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.”

17. 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.

18. Reference may also be had to the judgment of the Division Bench of this Court in *M/s Adarsh Electricals & Ors. v Dinesh Dayal*, 2010 (2) RCR (Rent) 593. This court in that case was dealing with an eviction filed by an advocate for running of his office. He had sought eviction of a tenant on the ground floor of the property at Bhagirath Palace to set up his professional office. The tenant has raised a strong objection that the tenanted premises

was situated in a highly over-crowded and grossly congested area where there are acute restrictions on traffic including parking of vehicles and a professional office cannot be located in such an area. This court had rejected the said contention and dismissed the revision petition filed by the tenant upholding the order of eviction of the ARC.

19. Further this court in *Puran Chand Aggarwal v. Lekh Raj*, 210 (2014) DLT 131 held as follows:

“26. As far as business is concerned, it is not necessary that the landlord must show some evidence that he has experience of said business. That is not the requirement of law in order to file the eviction petition on the grounds of bonafide requirement.

27. The following judgments do help the case of the respondent:

Start new business/no experience required

(i) In *Ram Babu Agarwal vs. Jay Kishan Das*, MANU/SC/1719/2009MANU/SC/1719/2009: (2010) 1 SCC 164, it was observed that "A person can start a new business even if he has no experience in the new business that does not mean that his claim for starting new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business and sometimes they are successful in the new business also."

(ii) In *Tarsem Singh vs. Gurminder Singh*, MANU/DE/2640/2010: 173 (2010) DLT 379, it was observed that "If the landlord wants to start his own business in the premises owned by him then by no stretch of imagination, it can be said that the requirement of the landlord for the premises is neither bonafide nor genuine."

(iii) In *Balwant Singh Chowdhary & Anr. vs. Hindustan Petroleum Corporation Ltd.*, 2004 (1) RCR 487, it was held that

"It is not necessary for the landlord to plead and prove the specific business he wants to set up, if the landlord wanted the premises for business purposes."

(iv) In *Gurcharan Lal Kumar vs. Srimati Satyawati & Ors.*, MANU/DE/1078/2013: 2013 (2) RCR (Rent) 120 it was observed that "Merely because the exact nature of business has not been described would not take away their bonafide need to carry out a business (when admittedly both the sons are dependent upon petitioner for this need). It was observed that if the business need is not disclosed this would not wipe away the bonafide need of the landlord as has been pressed under Section 14(1)(e) of the DRCA, 1958."

(v) In *Raj Kumar Khaitan & Ors. vs. Bibi Zubaida Khatun & Anr.*, MANU/SC/0411/1995: AIR 1995 SC 576, it was observed that "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 would bind the landlords to start the same business in the premises after it was vacated."

Hence, the legal position is quite clear. The landlord need not to show evidence that he has experience of business that is proposed to be run. It is also not necessary for landlord to indicate the precise nature of business which he intends to start in the premises. Merely because the area is crowded or the shop's size is small does not mean that a business centre cannot be run from there. In any case, in case the business centre runs into difficulties surely the respondent can change the business. Such a change does not effect the bonafide need of the respondent.

20. About the two other submissions raised by the petitioner about a shop which fell vacant on account of an eviction order being Shop No. 223, Ground Floor, Ajmeri Gate, Delhi and about the sale of the shops being No.

225, 226 and first floor of 224, Ajmeri Gate, Delhi in 2008-09, the ARC has noted that the respondents have confirmed the sale of the shops in 2008-09. However that event took place 8 years ago and cannot in any manner deter the respondents from filing the present eviction petition. The sale of property is not a permanent bar on a landlord on filing of an eviction petition for his own bona fide requirement. Regarding possession of shop No. 223, the respondents have clarified that the eviction order has been passed which has been upheld by the Supreme Court. The ARC rightly pointed out that the shop was got vacated for the bona fide requirement of respondent No.2 herself. The said respondent No.2 is entitled to start a business of her own independent of any business that her husband may seek to start. There is no merit in the said contentions raised by the petitioner.

21. Coming to the submission of the learned senior counsel for the petitioner that there is no averment in the eviction petition that the husband of respondent No.2 is dependent upon her for his accommodation for carrying out his business. In my opinion, the contention is misplaced. Firstly, the petition for eviction filed by the respondent has narrated in detail that the husband of respondent No.2 had undergone a bypass surgery in 2004 because of which he had to leave his work. After recovery, he tried to look for a job but could not find a suitable job and could not settle in life. Now the husband of respondent No.2 has decided to start his business. Hence, the present eviction petition has been filed to enable him to start a business centre from the said shop. It is implicit in the averments which have been made that the husband is dependent on respondent No.2. Merely because the words specifically used in the statute have not been used herein would not in any manner affect the claim of the respondents on merits.

22. Accordingly, in my opinion, the petitioner has failed to make any bona fide ground which would entitle them to seek leave to defend. The averments are vague and do not raise any issue which would require evidence. The ARC has rightly dismissed the application for leave to defend. There are no cogent reasons to interfere with the orders passed by the ARC. The petition being without merit is dismissed.

23. All pending applications also stand dismissed.

(JAYANT NATH)
JUDGE

JANUARY 20, 2017.
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