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

% Date of decision: 12.1.2017

+ RC.REV. 421/2016

RISHI PRAKASH @ MUNNA PEHLWAN Petitioner
Through Mr.Gaurav Duggal and Mr.Pranav,
Advocates
versus
VIRENDER SINGH Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. By the present Revision Petition the petitioner seeks to impugn the order dated 2.4.2016 by which an eviction order has been passed against the petitioner under section 14(1)(e) read with section 25B of the DRC (Delhi Rent Control Act).
2. The respondent/landlord filed an Eviction Petition against the petitioner for property No.B-1528, Shastri Nagar, Delhi. The premises comprises of one shop. It was averred in the Eviction Petition that late Shri Pribhu Singh the grandfather of the respondent was the owner of the ancestral property B-1528, Shastri Nagar, Delhi. After his death, Shri Nahar Singh father of the respondent and his sister Smt.Vidya Saini became co-owners of the property. Smt.Vidya Saini relinquished her share in favour of her brother Shri Nahar Singh. Hence, Shri Nahar Singh became the absolute owner. During the lifetime of Shri Nahar Singh, a Family Settlement dated 29.8.2001 duly registered took place between Shri Nahar Singh and his legal

heirs. The present property came to the share of the respondent who is the son of Shri Nahar Singh.

3. It is further stated that the respondent was doing his business from property No.D-1525 Shastri Nagar, Delhi but due to paucity of accommodation the business place was converted into a residential premises. The said property is exclusively used for residential purpose hence the tenanted shop in possession of the petitioner is required bona fide by the respondent for himself as well as his son. It is further stated that the respondent does not own any other commercial property in Delhi.

4. The parties have led their evidence. The respondent Virender Singh has given his evidence as PW-1 whereas the petitioner Shri Rishi Prakash has given his evidence as RW-1.

5. On the issue of landlord-tenant relationship the trial court noted that the petitioner claims that he has ceased to be a tenant after execution of an Ikrarnama dated 17.4.1988 and a photocopy of the same has been placed on record which is purportedly executed by late Shri Nahar Singh in his favour. In his cross-examination the said petitioner admitted Shri Virender Singh as son of Late Shri Nahar Singh the respondent and has also admitted rent receipt issued by Late Shri Nahar Singh. The ARC held that the said Ikrarnama refers to alleged reciprocal promise whereby Late Shri Nahar Singh was to hand over a disputed shop to the petitioner in lieu of eviction of property No.B-1528. The ARC held such an agreement to be hit by section 23 of the Indian Contract Act, 1872. Further, the said Ikrarnama is not a registered document and does not create any title in favour of the petitioner. The other submission of the petitioner that he claims title based on adverse possession was also rejected relying upon the judgment of the

Supreme Court in *State of Punjab vs. Brigadier Sukhjit Singh, 1993 SCC (3) 459* inasmuch as the petitioner had entered possession as a tenant and mere permissive possession for a long period does not become hostile possession.

6. The ARC also noted the evidence of the respondent that he was carrying on his business from property No.B-1525, Shastri Nagar, Delhi which commercial space was converted into residential premises and that he is now left with no other accommodation for carrying on his business. Hence, Eviction order was passed against the petitioner.

7. Learned counsel appearing for the petitioner has relied upon the cross-examination of PW-1 Shri Virender Singh where he has made a statement that he is residing at property No.B-1525 and that his son Anuj Kumar is also doing business from this premises. Hence, it is urged that the petitioner does not require the tenanted premises.

8. I may first see the scope of the present petition. The Supreme Court in *Shiv Sarup Gupta vs. Dr.Mahesh Chand Gupta, (1999) 6 SCC 222/(MANU/SC/0132/1999)* described the revisional powers of this court as follows:-

“11..... The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the CPC. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to Sub-section (8) of Section 25B, the expression governing the

exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is according to law'. The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law'. For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available..."

9. Hence, this court is to test the order of the ARC to see whether it is according to law, and whether the conclusions are not wholly unreasonable.
10. Section 14(1)(e) of the DRC Act reads as follows:

“14. Protection of tenant against eviction.- (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

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.”

11. In view of the judgment of the Supreme Court in the case of *Satyawati Sharma (dead) by LRs vs. Union of India & Anr., AIR 2008 SC 3148* the aforesaid provision is also now made applicable to commercial properties.

12. 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.

13. In my opinion, there is no merit in the contentions of the petitioner. Reliance on a stray submission made in the cross-examination by PW-2 is misplaced. Even otherwise, if the son of the respondent is carrying on any business from the premises B-1525, it is admitted position that the same is the residential accommodation of the respondent. The respondent would be entitled to a separate place for carrying on his business/office work away from the residence. Further the said submission ignores that the respondent has sought the tenanted property for doing his own business. There is no proof of the respondent having any other property from where he can do his business.

14. The learned counsel for the petitioner has also argued that the respondent is doing the business of a property dealer and does not need the tenanted property. The respondent has denied that he is doing the business of a property dealer. The allegation made by the petitioner is nothing but a bald allegation. Even assuming that the respondent is doing the business of

property dealer, it is not the case of the petitioner that he has an office running at some location. Even a property dealer would need a decent place to run his business which can be a contact point for his customers. The contention of the petitioner on this account has no merit.

15. 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.”

16. It is manifest that the respondent has a bona fide requirement for the tenanted premises. There are no reasons to interfere in the order of the ARC.

17. Further, it is an admitted position that pursuant to the eviction order the landlord/respondent has already taken possession of the tenanted premises.

18. There is no merit in the present petition. Same is dismissed.

JAYANT NATH, J

JANUARY 12, 2017/n