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

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*Date of decision: 12.01.2017*

+ CM(M) 434/2015

HOOR CHAMAN BEGUM

..... Petitioner

Through

Mr. Diwan Singh Chauhan, Advocate

versus

HURRIYAT KHANAM & ORS

..... Respondent

Through

Mr. Ashok Gurnani and Mr. Syed  
Nazi, 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 to impugn the order dated 10.03.2015 passed by the Additional Rent Controller (hereinafter referred to as ARC) dismissing the eviction petition filed by the petitioner/landlady under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter referred as the DRC Act).
2. The petitioner filed the eviction petition under Section 14(1)(e) of the DRC Act regarding property being First Floor (back portion) of property No.1489, Gali Hakim Ajmal Khan, Qasimjan Street, Ballimaran, Delhi-110006. The petitioner who is said to be aged above 80 years is the owner of the said property which is said to be constructed up to the first floor. The petitioner is in occupation of the ground floor of the property which is said to comprise four rooms, two toilets, two bathrooms and one kitchen, etc. The petitioner has three sons, namely, Sultan Mohd., Kamal Mohd and Iqbal

Mohd. Sultan Mohd., the eldest of the sons has two sons and three daughters of whom two sons are unmarried being 26 and 23 years respectively. All the daughters are married. Iqbal Mohd. has three sons who are unmarried aged 19, 16 and 12 years respectively. The third son of the petitioner, namely, Kamal Mohd. who along with his family is living in UK, is said to be a frequent visitor to India. The entire family is said to be living on the ground floor. It is averred that all the grandsons are either of marriageable age or about to marry and each of them requires a separate room for themselves. Further, the petitioner has daughters who are all married. However, one daughter, namely, Madina Sultan is a divorcee and is living with the petitioner along with her 25 year old son who is also of marriageable age. Hence, the petitioner also requires one room for the said daughter and one for her son. A requirement is also stated for a guest room as number of relatives keep visiting the petitioner. Hence, it is urged that the ground floor portion of the property is not sufficient to live in and the petitioner bona fide requires the tenanted premises for her residence and for her family.

3. The respondents were granted leave to defend and they have filed a written statement. In the written statement, the respondents have claimed that the petitioner has concealed material facts regarding large number of other properties owned by her and her family. A list of 13 properties is given which are alleged to be owned by the petitioner and her family members which according to the respondents are available to the petitioner for her use.

4. The parties led their respective evidence. The petitioner in support of her evidence led the evidence of her son Sultan Mohd. as PW-1. On behalf of the respondents Sh.Ahmed Jaudat Khan was examined as RW-1.

5. The ARC, however, in the impugned order noted that PW1 in his

cross-examination has admitted that his mother owned property No. E-17, Muradi Road, Okhla, Delhi. Further he has admitted that he also owns properties in Delhi and other family members also own properties in Delhi. Having noted this fact, the ARC has stated that this gives doubt about the bona fide of the petitioner as the petitioner has intentionally opted not to disclose these facts in her petition. It further noted that the petitioner has failed to disclose whether these properties are lying vacant or in occupation of the family members or not. Accordingly, it held that the need of the petitioner is not bona fide and dismissed the petition.

6. I have heard the learned counsel for the parties.

7. Learned counsel for the petitioner has reiterated his submissions as made in the eviction petition about the size of the family of the petitioner which has been stated above. He has however pointed out that during the pendency of the eviction petition, the petitioner has constructed two rooms on the first floor and two rooms on the second floor which are also now available to the petitioner. He relies upon the judgment of the Supreme Court in the case of ***Ram Narain Arora vs. Asha Rani & Ors., (1999) 1 SCC 141*** to support his case.

8. Learned counsel appearing for the respondents has, however, relied upon the eviction petition where the petitioner has made a statement that the petitioner does not own any alternative residence/accommodation in her name or in the name of any other family member for fulfilling the requirement of her family which comprises herself, her sons, grandsons, one divorced daughter and her son to contend that having made the statement, the petitioner has deliberately concealed the availability of other accommodation which disentitles the petitioner for any relief. It is pointed

out that in cross-examination PW-1 has clearly spelt out the availability of alternative accommodation with the petitioner which is owned by the petitioner. Reliance is placed on the judgment of this court in the case of ***Prit Pal Singh vs. Ramesh Kumar Dora, 2014 IV AD (Delhi) 83.***

9. It is secondly submitted that the petitioner herself has not appeared in the witness box. Reliance is placed on the judgment of the Supreme court in the case of ***Janaki Vashdeo Bhojwani & Anr. vs. Indusind Bank Ltd. and Ors., (2005) 2 SCC 217*** to support the contention that no one can delegate the power to appear in the witness box on behalf of himself. A general power of attorney holder cannot be allowed to appear as a witness on behalf of the plaintiff in the capacity of the plaintiff.

10. 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..."

11. 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.

12. 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.”

13. 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 petitioner is the owner/landlady of the suit premises (ii) the suit premises are required bona fide by the landlord for himself/herself and any of his/her family members dependent upon him/her. (iii) the landlord/landlady or such other family members has no other reasonable suitable accommodation.

14. I may point out that ARC by the impugned order has accepted the existence of the relationship of landlady and tenant. The petition has been dismissed essentially on the ground of availability of alternative suitable accommodation with the petitioner which has not been mentioned in the eviction petition.

15. I may first look at the relevant part of the cross-examination of PW1-Sh.Sultan Mohd. which cross-examination has persuaded the ARC to come to an adverse conclusion against the petitioner. Relevant portion of the cross-examination of PW-1 reads as follows:-

“It is wrong to suggest that we have a property bearing No.E-17, Muradi Road, Okhla, Delhi, which is measuring about 500 sq. yards and a part of it is under the possession of Sh.Suhail Shamsi and rest of the property is with us.

It is correct that I have a property at Nafis Road i.e. two shops bearing No. Q-4. It is wrong to suggest that we have a property at Johri Farm, Okhla, Delhi.

It is correct that E-17, Muradi Road, Okhla, Delhi is in the name of my mother, measuring about 100/110 sq. yards. It is wrong to suggest that the same is about 500 sq. yards.

My brother Iqbal Mohd. has owned a property at Johri Farm, Okhla, Delhi measuring about 200 sq. yards but I do not know the number of the same. I cannot say that the number of the same is A-31. It is four storey building.

It is correct that one of my brother, namely, Sh.Kamaal Mohd. is residing in London permanently till date but now, he

is planning to shift in Delhi with us.

Neither me or my brother are the owners of the property bearing No. F-65, Muradi Road, Okhla, Delhi. It is wrong to suggest that we also own a property bearing No. F-65, Muradi Road, Okhla Delhi.

My wife has a property at Muradi Road, Okhla, Delhi just adjoining of the property of my younger brother Iqbal Mohd. measuring about 100 sq. yards.”

16. Based on this cross-examination, the ARC concluded as follows:-

“... Further, neither in the petition nor in the affidavit of evidence of PW-1, the factum of owning other properties by the petitioner in her own name and occupation are mentioned except the suit premises, whereas the PW-1 in his cross-examination, admitted the fact of having property other than the property in question bearing property No. E-17, Muradi Road, Okhla Delhi which is in the name of his mother, who is petitioner in the present case and he also admitted that he is also having the property in his name in Delhi and his other family members are also owning properties in their names in Delhi itself, which gives rise to doubt that applicant intentionally not opted to disclose these facts in her claim. Further, it is also observed that the petitioner failed to disclose whether the admitted properties are lying vacant or in occupation of family members or not. Therefore, in view of the abovesaid discussions, it is established that the need of the petitioner landlady of the tenanted premises is not a bona fide one, as admittedly, she is owning other properties in addition to the suit property, through which her requirement, if any, could be met.”

17. In my opinion, the ARC has ignored the number of facts and evidence on record which would show the complete picture to come to a conclusion as to whether any suitable alternative accommodation was available with the petitioner.

18. The respondents in their written statement have given a list of 13 properties which they claim the petitioner owns. In their affidavit by way of evidence this list is further expanded and they have mentioned nearly 25 properties which they claim the petitioner and her family members own. Apart from making bald averments regarding these properties, no evidence of any sort has been produced to show that any of these properties was owned by the petitioner or her family members. It is manifest that merely wild and bald allegations were being hurled on the petitioner in a desperate attempt to somehow show lack of bona fide.

19. It is important to note the testimony of respondent No.2, i.e. DW-1, which evidence was ignored by the ARC. He admits in his cross-examination the details of the children and grand children as given by the petitioner. He admits that except the third son of the petitioner i.e. Kamal Mohd., the two sons of the petitioner along with their family members are residing in the suit property. Sh. Kamal Mohd. is said to be residing in UK. He also admits that the petitioner has six daughters of whom the eldest daughter has expired. The other five daughters are married. He admits that one daughter, namely, Madina Sultan who is a divorcee is residing with the petitioner and she is not in a perfect mental condition. She is also having one son, namely, Sameer whose age is around 25-26 years. He admits that the married daughters of Sultan Mohd. visit the residence of the petitioner and two of the daughters often stay overnight. He also states that the daughters of the petitioner visit the petitioner frequently. He also admits that whenever the third son, Kamal Mohd. comes from UK, he stays with the petitioner, though he clarifies that he comes once in a while in 8 to 10 years but then, he spends 30-35 days. He also admits that the all the children and grand

children of the petitioner comprise of one family, though he submits that their kitchens are separate. He also admits that the suit property is situated nearest from the business place of the sons of the petitioner.

20. It is manifest from the cross-examination of RW1 that he has admitted the fact that the sons, daughter and grand children of the petitioner are living together as a single family. The petitioner, her two married sons, namely, Sultan Mohd. and Iqbal Mohd. and one daughter Madina Sultan are living with her. In addition, there are six grandsons of marriageable age who are also living in the house. Four married daughters with grand children often visit the family and do also spend a night occasionally. The third son, Kamal Mohd. also sometimes visits the family and spends 30 to 35 days at a stretch. It is evident from the size of the family which admittedly is living as one family in the available rooms at present i.e. 8 rooms would be grossly inadequate and a family of this size would certainly require much more accommodation.

21. On the property which persuaded the ARC to dismiss the eviction petition, namely, E-17, Muradi Road, Okhla, DW1 states as follows:-

“.. The some portion of the property No. E-17, Buradi Road, Okhla is in possession of the tenants and rest is with the Sultan Mohd. It is wrong to suggest that the entire property is occupied by the tenants and it is one the land of measuring 100 sq. yards. Again said, I am not sure upon how much area it is being constructed. It is correct that I have not filed any single document to substantiate my defence as well as evidence that the properties which are mentioned by me in my written statement and in my evidence ExRW1/A belongs to the petitioner or her children...”

22. I may note the important admission made by RW-1, namely, that the place of business of the sons of the petitioner is near to the suit property. Judicial notice can be taken of the fact that the property which is owned by the petitioner, namely, E-17, Muradi Road, Okhla, Delhi is at a distance of more than 15 kilometer away from the place of work of the sons of the petitioner and the present residence of the petitioner. That apart, RW-1 admits that a part of the property at Muradi Road is occupied by the tenants. It only measures 100 sq. yards.

23. From the above, it becomes clear that the ARC has completely ignored the evidence/cross-examination of DW1 while recording his conclusions. He has further missed the vital facts/issues which are evident from the pleadings and evidence on record. It is quite clear from the pleadings and evidence on record that the petitioner, her two sons and one daughter with her six grandsons who are married/marriageable age are all living together in one property as a family. There are her married daughters married grand daughters who occasionally visit the house of the petitioner and also occasionally spend a night there. There is one son who is living in UK who also occasionally comes to Delhi and spends 30-35 days with the family. The place of business of the sons is located near the residential property. The family wishes to stay in the locality which is located in the walled city of Delhi with their large family from where the place of the business is close by. The alternative accommodation based on which the ARC dismissed the eviction petition is situated in Okhla Delhi which is at a distance of 15 kilometer away. The said property measures 100 sq. yards and is partly occupied by the tenants. As per the respondent the property where the tenanted premises is situated is built on a plot of 465 sq. yards. Given the

size of the family, the property at Muradi Road, Okhla, Delhi cannot be said to be a suitable alternative accommodation. There is no reason why such a large family should shift 15 kms. away to accommodate the requirements of the respondent.

24. 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.”

25. 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.

26. The Supreme Court in the case of *Ram Narain Arora vs. Asha Rani & Ors.*, (1999) 1 SCC 141 held as follows:-

“10. In making a claim that the suit premises is required bona fide for his own occupation as a residence for himself and other members of his family dependent on him and that he has no other reasonably suitable accommodation is a requirement of law before the Court can state whether the landlord requires the premises bona fide for his use and occupation. In doing so, the

Court must also find out whether the landlord or such other person for whose benefit the premises is required has no other reasonably suitable residential accommodation. It cannot be said that the requirement of the landlord is not intermixed with the question of finding out whether he has any other reasonably suitable accommodation. If he has other reasonably suitable accommodation, then necessarily it would mean that he does not require the suit premises and his requirement may not be bona fide. In such circumstances further inquiry would be whether that premises is more suitable than the suit premises. Therefore, the questions raised before the Court would not necessarily depend upon only the pleadings. It could be a good defence that the landlord has other reasonably suitable residential accommodation and thereby defend the claim of the landlord.

11. There cannot be a pedantic or a dogmatic approach in the matter of analysis of pleadings or of the evidence adduced thereto. It is no doubt true that if the pleadings are clearly set out, it would be easy for the Court to decide the matters. But if the pleadings are lacking or vague and if both parties have understood what was the case pleaded and put forth with reference to requirement of law and placed such material before the court, neither party is prejudiced. If we analyse from this angle, we do not think that the High Court was not justified in interfering with the order made by the Rent Controller.”

27. Similarly, the Supreme Court in the judgment of *Sarla Ahuja vs. United India Insurance Co.Ltd. (1998) 8 SCC 119* held as follows:-

“14. The crux of the ground envisaged in Clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case it is open to the Rent Controller to draw a presumption that the requirement of the landlord in

bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

28. This court in the case of *Viran Wali vs. Kuldeep Rai Kochhar, 2010 (120) DRJ 299* held as follows:-.

“38. The concept of alternate accommodation means that accommodation which is “reasonable suitable” for the landlord. As to alternative accommodation disentitling the landlord to the relief of possession, it has been held time and again that it must be reasonably equivalent as regards suitability in respect to the accommodation he was claiming. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the RCR No.124/2010 Page 20 of 26 landlord to satisfy his such need. In short, the concept of bonafide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. As long as the landlord is able to establish that he in good faith and genuinely wishes to occupy the premises in possession of the tenant and that good faith or genuineness is of a reasonable man, it would not be open to the Controller to weigh the claim of the landlord in a fine scale and that the viability of the other accommodation will have also to be considered from the stand-point of a reasonable landlord. It is further to be observed that the law does not require the landlord to sacrifice his own comforts and requirements merely on the ground that the premises is with a tenant and for deciding whether or not the alternative accommodation available to the landlord is suitable or not, the social customs, conventions and habits, usage and practices of the society

cannot be completely ruled out and termed as irrelevant. The problem had to be approached from the point of view of a reasonable man and not that of a whimsical landlord.”

29. Hence, the need of the petitioner and her family to stay in the walled city where they have stayed for several decades in their house cannot be said to lack bonafide.

30. The next contention of the respondent is that availability of the property at Muradi Road was not mentioned by the petitioner and whether this fact i.e. that the petitioner did not mention about the said property at Muradi Road, Okhla, Delhi in the eviction petition is fatal to the eviction petition filed by the petitioner. The petitioner/landlord is normally obliged only to disclose such properties which can be said to be an alternative suitable accommodation available with the petitioner.

31. This court in the case of *Mukesh Kumar vs. Rishi Prakash*, (2010) **174 DLT 64** held as follows:-

“22. As the portion situated on the ground floor (the two shops) and the first floor, the third floor and the terrace above the third floor in property bearing No. 3649 were being used by the petitioner for stocking his own trading goods, it could not be said that the said portions were "available" with the petitioner, as they were already being utilized by him for his business. He was not obliged, in these circumstances, to specifically make a disclosure with regard to these portions as they were not "vacant" and "available" with him for the purpose for which he required the tenanted premises. A landlord, while seeking the eviction of a tenant on the ground of bona fide requirement for himself or his family members dependant upon him, is not expected to disclose the manner in which he is utilizing the accommodation available with him, if the accommodation with the tenant in respect of which he files the eviction petition is required by him for a purpose different from the purpose he is

occupying and using the accommodation already available with him. For instance, the extent of residential accommodation available with the landlord who seeks the eviction of the tenant from a purely commercial or industrial premises, is wholly irrelevant. Similarly, when in the present case, the requirement of the petitioner was for the purpose of setting up of the professional office of his son on the second floor of property No. 3649, it was not necessary for him to have disclosed in the eviction petition the fact that the ground floor, first floor, third floor and terrace floor portions of property No. 3649 were being utilised by him for the purpose of storing and stocking the goods in which he trades. The failure of the petitioner to disclose in the eviction petition itself, the manner in which the other portions of property No. 3649 were being occupied and used cannot ipso facto lead to the conclusion that the requirement of the landlord is not bona fide or that it raises a triable issue. The Supreme Court, in Sangram Singh V. Election Tribunal Kotah, AIR 1955 SC 425 observed:

“16. Now a code of procedure must be regarded as such. It is 'procedure', something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up....”

23. In Madan Gopal v. Mamraj, AIR 1976 SC 461, the Supreme Court observed:

“26. It is well settled that pleadings are loosely drafted in the Courts and the Courts should not scrutinise the pleading with such meticulous care so as to result in genuine claims being defeated on trivial grounds....”

24. In Union of India v. Jyoti Chit Fund, AIR 1976 SC 1163, the Supreme Court held: ..”

It is the own case of the respondents that the property where the tenanted premises is situated measures 465 sq. yards. This is in contrast to the evidence of the respondent who admits that the property at Muradi Road, Okhla measures only 100 sq. yards and is partly occupied by the tenants. The

property is 15 kms. away from the walled city, where the petitioner presently stay. By no stretch, can it be said that the property at Muradi Road is in any manner comparable to the property where the tenanted premises is situated in which the petitioner alongwith her large family is presently staying. The two properties are not comparable. The Muradi Road property cannot be said to be a suitable alternative accommodation. In my opinion, the non-mentioning of the said property in the eviction petition cannot be fatal to the case of the petitioner in these facts.

There was a submission made by the learned counsel for the respondents regarding the fact that the petitioner did not enter the witness box. The petitioner is 80 years old. Being a lady of that age, she cannot be non-suited having not entered the witness box. In any case the power of attorney holder who is also her own son and is fully familiar with the facts of the case entered the witness box. In fact there is no averment that he is not aware of the facts of the case or not competent to depose. There is hence no merit in this contention.

It is hence clear that the conclusions in the impugned order of the ARC suffer from material and manifest error and irregularity. It ignored the evidence of DW-1 and fails to take into account evident facts which can be culled out from a reading of the pleadings and evidence on record. The findings and conclusions recorded by the ARC are unreasonable and cannot be reached based on material on record.

32. In the light of the above, the impugned order passed by the ARC suffers from manifest errors. This is a fit case for this court to exercise its Powers under Article 227 of the Constitution of India. Accordingly, the impugned order is quashed. An eviction order is passed in favour of the

petitioner and against the respondent. However, in terms of Section 14 (7) of the DRC Act, the petitioner would be entitled to execute the eviction order only after lapse of six months.

33. The petition is accordingly allowed as above.
34. All pending applications also stand disposed of.

**(JAYANT NATH)**  
**JUDGE**

**JANUARY 12, 2017/rb**