

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

% **Date of decision: 18th July, 2017**

RC.REV. No.449/2016 & CM No.34042/2016 (for stay)

DR DHARAMPAL (DECEASED) THR

HIS LEGAL HEIR

..... Petitioner

Through: Mr. Ratnesh Bansal and Mr. Ashu Singh, Advs.

Versus

CHAUDHARY RAM CHANDER

..... Respondent

Through: Mr. Sudhir Naagar and Mr. Mohit Singh, Advs.

AND

+ **RC.REV. No.480/2016 & CM No.36333/2016 (for stay)**

CHHITAR MAL RAJENDER PRASAD

..... Petitioner

Through: Mr. Ratnesh Bansal and Mr. Ashu Singh, Advs.

Versus

CHAUDHARY RAM CHANDER

..... Respondent

Through: Mr. Sudhir Naagar and Mr. Mohit Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. These Rent Control Revision Petitions, both filed under Section 25B(8) of Delhi Rent Control Act, 1958, impugn the orders of eviction under Section 14(1)(e) of the Act of each of the petitioner from the shop in his tenancy under the same respondent / landlord and in the same property. The orders of eviction impugned in each of the petition though separate but are on the same set of facts. Both petitioners are represented by the same Advocate who has argued both petitions as one only. Hence, this common order in both the petitions.

2. The challenge in R.C.Rev. No.449/2016 is to the order dated 19th May, 2016 in EP No.113/2012 of the Court of Additional Rent Controller (South), Saket District Courts, New Delhi.

3. The challenge in R.C. Rev.No.480/2016 is to the order dated 19th May, 2016 in EP No.109/2012 of the Court of Additional Rent Controller (South), Saket District Courts, New Delhi.

4. Notice of both the petitions was ordered to be issued and the counsel for the respondent / landlord appears.

5. The learned Additional Rent Controller, in the impugned orders, has found / observed:-

(i) that the shop subject matter of R.C.Rev. No.449/2016 was let out to the petitioner / tenant 40 years back and the shop subject matter of R.C.Rev. No.480/2016 was let out to the petitioner/tenant therein 30 years back with the petitioner/tenant in R.C.Rev. No.449/2016 paying a rent of Rs.220/- per month and the petitioner/tenant in R.C.Rev. No.480/2016 paying a rent of Rs.75/- per month;

(ii) the respondent / landlord sought eviction of both the petitioners pleading:-

(a) that he was 70 years of age;

(b) that his family consisted of himself and his two married sons;

(c) the elder son was residing separately from the respondent / landlord but the younger son was

residing along with the respondent / landlord in the same house;

- (d) that both the sons were “unemployed” and surviving on meager rental income;
 - (e) that the respondent / landlord along with his younger son, who was not very qualified, required the shop in the tenancy of the petitioners to open therein a Hardware & Sanitary Shop as the shops in the tenancy of the petitioners are located in the main market;
 - (f) the younger son of the respondent / landlord had attained experience of about five years in hardware business while working with M/s. D.S. Hardware & Sanitary Store, Faridabad;
 - (g) that petitions for eviction of tenants in other shops in the property were also being filed, as even a mediocre hardware and sanitary shop would require a space of about 50 sq. yds. and another 50 sq. yds. for godown / storage of pipes, tiles, tubs, fittings etc.; and,
 - (h) that neither the respondent / landlord nor his sons had any other suitable commercial property available to them in Delhi;
- (iii) the petitioners / tenants applied for leave to defend, not disputing that the respondent / landlord was the owner and

also not disputing that there was a relationship of landlord and tenant with the respondent / landlord but pleading,

- (a) that the site plan filed by the respondent / landlord was incorrect;
- (b) that the respondent / landlord had wrongly pleaded in the petitions for eviction that there were in all six shops in the property; in fact there were seven shops;
- (c) that the certificate of experience qua the younger son of the respondent / landlord was forged and fabricated inasmuch as M/s. D.S. Hardware & Sanitary Store, Faridabad is the business of the son of a close relative of the respondent / landlord;
- (d) that the elder son of the respondent / landlord was not dependent upon the respondent / landlord;
- (e) the younger son of the respondent / landlord is an Income Tax payee earning handsome rental income and along with his son had taken a housing loan of Rs.67,00,000/- and car loan of Rs.37,00,000/- and could not also be said to be dependent on the respondent / landlord;
- (f) the younger son of the respondent / landlord was also the owner of a farmhouse in New Delhi;
- (g) that the residence of the respondent / landlord is also situated in a commercial area, having seven shops on

- the ground floor and from which the respondent / landlord was earning Rs.2,50,000/- per month as rent;
- (h) that the said seven shops were more suitable for the requirement if any of the respondent / landlord to set-up hardware business;
 - (i) that the respondent / landlord was also the owner of several other immovable properties in occupation of different tenants;
 - (j) address of two other properties in Kotla Mubarakpur, New Delhi, where the property in which the shops in the tenancy of the petitioners are also located, was given and it was pleaded that the respondent / landlord is the owner of the said properties along with his brothers;
 - (k) that the respondent / landlord had been disposing of other properties; and,
 - (l) that the respondent / landlord had filed six petitions for eviction of different tenants in the subject property and after obtaining possession of one of the shops, has sold it to the tenant;
- (iv) the respondent / landlord, in his reply to the applications for leave to defend, pleaded:-

- (a) that the property, where he was residing, did not belong solely to him and was ancestral / joint family property;
- (b) one of the properties at Kotla Mubarakpur, New Delhi, address whereof was given, comprises of only two kiosks and which were also ancestral and of which the respondent / landlord was not the sole owner;
- (c) the other property at Kotla Mubarakpur, New Delhi, address whereof was given, was exclusively owned by the brother of the respondent / landlord;
- (d) that the properties which had been sold off were sold off to meet the financial requirement from time to time; and,
- (e) reiterating that there were six shops in the subject property and one of the shops shown in the site plan filed by the petitioners / tenants to be in possession of Moti Lal was nothing but a staircase.
- (v) No rejoinder was filed by the petitioners / tenants to the aforesaid reply.

6. The learned Additional Rent Controller, in the impugned orders, dismissing the application of the petitioners / tenants for leave to defend, has held:-

- (i) that there was no material difference in the site plan filed by the respondent / landlord and the site plan filed by the petitioners / tenants, save for minor difference not causing any prejudice to the petitioners / tenants;
- (ii) in the site plan filed by the petitioners / tenants, no dimensions of various shops situated in the premises were given, while in the site plan filed by the respondent / landlord, dimensions / area of each shop was clearly mentioned;
- (iii) that the seventh shop pleaded by the petitioners / tenants was nothing but a staircase;
- (iv) it thus could not be said that the respondent / landlord had tried to hide the seventh shop;
- (v) that in the site plan of the respondent / landlord also, Moti Lal was shown as tenant under the staircase in the so-called seventh shop;
- (vi) that the plea of the petitioners / tenants, of the certificate of experience of the younger son of the respondent issued by M/s. D.S. Hardware & Sanitary Store, Faridabad being forged and fabricated was immaterial as no prior experience is necessarily required for commencing a business;
- (vii) that the son of the younger son of the respondent / landlord was a Pilot by profession and in the loans taken by him his

father i.e the son of the respondent / landlord was merely a co-applicant, to facilitate the sanction of the loan;

- (viii) that the respondent / landlord in his reply had denied that his son owned any farmhouse and the petitioners / tenants have not filed any documentary proof qua ownership of farmhouse and in the absence whereof the plea in that regard remained bald, not meriting grant of leave to defend;
- (ix) merely because the younger son of the respondent / landlord may be an Income Tax payee, did not make him not dependent for the purposes of accommodation on his father i.e. the respondent / landlord within the meaning of Section 14(1)(e) of the Act;
- (x) that the petitioners / tenants had failed to plead that the respondent / landlord was running any business or had any other occupation;
- (xi) it was also not the case of the petitioners / tenants that the respondent / landlord was in occupation of any vacant shop, either in the subject property or in the property where he was residing;
- (xii) the Income Tax Returns of the younger son of the respondent / landlord filed by the petitioners / tenants also did not show that the younger son of the respondent / landlord was gainfully employed or carrying on any business;

- (xiii) that the respondent / landlord, in his reply to the leave to defend applications, had not disputed existence of seven shops on the ground floor of his residence but had pleaded that each of the said shops was very small in size, *ad measuring* 10^{ft.} x 10^{ft.} and which were not suitable for a hardware and sanitary store; moreover the said property was ancestral / property of the joint family of the respondent / landlord and the respondent / landlord had categorically stated that neither was he fetching any rent therefrom nor had inducted any tenant in any of the seven shops;
- (xiv) the plea of the petitioners / tenants, of two other properties in Kotla Mubarakpur, New Delhi, also did not merit grant of leave to defend to the petitioners / tenants as according to the petitioners / tenants also, they were joint properties of the respondent / landlord and his brothers;
- (xv) sale in the past by the respondent / landlord of immoveable properties did not divest the respondent / landlord of the right on a subsequent date to seek eviction of tenant to fulfill his requirement;
- (xvi) thus the only property over which the respondent / landlord had exclusive control and was entitled to was the subject property, in two of the shops wherein the petitioners were the tenants;
- (xvii) the plea of the respondent / landlord that for a hardware and sanitary shop minimum 50 sq. yds. area and another 50 sq.

yds. for storage was required, was a reasonable and believable plea;

(xviii) even if it were to be believed that the respondent / landlord had obtained possession of one of the six / seven shops in the subject property from the tenant therein, the case of the respondent / landlord was of requiring all the six / seven shops for his business and total area whereof was about 92 sq. meters only;

(xix) the plea of the petitioners / tenants of the respondent / landlord having sold the shop after obtaining possession thereof was bald and no document in support thereof produced; and,

(xx) landlord is the best Judge of his requirement and the tenant cannot dictate terms to the landlord.

7. The arguments of the counsel for the petitioners / tenants remain the same before me.

8. He has contended that (i) the respondent / landlord is a very monied person; (ii) that the requirement pleaded of the shops in the tenancy of the petitioners is false and make believe; (iii) that the respondent / landlord and his son have never carried on any business and it cannot be believed that they are now wanting to commence business; (iv) that in such circumstances, leave to defend should be granted and the requirement of the respondent / landlord should be permitted to be tested; (v) that no business can be commenced without any experience; (vi) that for the reason of concealment by the respondent / landlord from

the petition for eviction of all the other properties aforesaid which in reply to the application for leave to defend were admitted, leave to defend should have been granted; (vii) that the conduct of the respondent / landlord entitles the petitioners / tenants to leave to defend; and, (viii) once the existence of the seven shops on the ground floor of the property where the respondent / landlord and his son are residing was admitted, the question whether they are alternate suitable commercial premises available to the respondent / landlord should not be tested at the stage of leave to defend and should be put to trial.

9. I have considered the aforesaid contentions.

10. Section 14 of the Rent Act protects the tenants against eviction and, notwithstanding anything to the contrary contained in any other law or contract, prohibits an order of recovery of possession of any premises to be made in favour of the landlord and against a tenant save on the grounds specified therein. One of such grounds is that the premises are required *bona fide* by the landlord for occupation for himself or for any member of his family dependent upon him and that the landlord or such person has no other reasonable suitable accommodation.

11. It is owing to the said provision that the petitioners / tenants, though admitted as tenants in the shops, according to the respondent / landlord 30 / 40 years back and according to the petitioners / tenants 50 / 30 years back, have continued to occupy the premises at rents at which they became tenants in the property, save for meager increase permitted under the Rent Act.

12. I am of the view that once the Additional Rent Controller is of the view that a ground of eviction specified in the Rent Act has accrued to the landlord, the Rent Controller cannot then pull back his hands and apply a test stricter than that imposed by the Rent Act for evicting a tenant.

13. Section 37 of the Rent Act requires the Rent Controller to pass an order, after giving a reasonable opportunity of showing cause against the order proposed to be made and until the objections if any and evidence if any produced in support thereof have been considered by the Rent Controller and requires the Rent Controller to follow the practice and procedure of a Court of small causes including the recording of evidence. Rule 23 of the Delhi Rent Control Rules, 1959 requires the Rent Controller to, as far as possible, be guided by the provisions contained in the Code of Civil Procedure, 1908 (CPC). The same has resulted in the Rent Controller following the same procedure as in a Civil Suit, save of framing of issues. The Legislature, in its wisdom, has in Section 25B of the Rent Act provided for a summary procedure for consideration of the petitions for eviction on the ground of the tenancy premises being required by the landlord for his own use. The tenant, on receipt of summons / notice of such petition, is required to within the short time of 15 days apply for leave to defend. The Act mandates grant to the tenant leave to contest the petition for eviction, only if the tenant, in the application for leave to contest, discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground of requirement. Once leave to defend is granted, the Rent Controller is required to follow the same procedure as

provided under Section 37. Thus, the ground of eviction for own requirement of the tenancy premises by the landlord, has been treated differently from the other grounds of eviction provided under the Rent Act, by providing a quick and simple procedure for eviction in such cases which have an element of urgency in the same. Owing to the dockets of the Courts bulging at the seams, the trial of eviction petition, as Civil Suit, ordinarily goes on for years. The Legislative intent clearly is that once landlord has a requirement for the tenancy premises, the same should be satisfied forthwith, without forcing the landlord to face discomfort or inconvenience for any length of time.

14. Supreme Court, in ***Kewal Singh Vs. Lajwanti*** (1980) 1 SCC 290 held that the Rent Act puts personal necessity of the landlord as a special class requiring special treatment for quick eviction of the tenant and cuts out all delays and plugs all the loopholes which may cause delay in getting the relief by the landlord. The said classification made by the legislature in public interest was held to be in complete consonance with the objective sought to be achieved. It was held that the landlords having personal necessity have been brought together as a separate class because of their special needs and the legislature in its wisdom feels that the landlords should get this relief as quick as possible. Again, in ***Inderjeet Kaur Vs. Nirpal Singh*** (2001) 1 SCC 706, it was held that Section 25B is designed so that a landlord need not wait and suffer for a long time.

15. The question which arises is, that once there is such a legislative mandate, should the words “the tenant discloses such facts as would

disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground specified in clause (e) of the proviso to sub Section (1) of Section 14” in Section 25B(5) of the Act be interpreted liberally i.e. grant of leave to defend being mandatory if the tenant merely denies that the landlord has a requirement for the tenancy premises or merely pleads that the landlord has alternate suitable accommodation available to him without specifying where or as to how the alternate accommodation fulfills the need pleaded, or differently.

16. If the aforesaid words are to be liberally interpreted as aforesaid, every tenant represented by Advocates, skilled in drafting, would be able to deny the requirement of the landlord or plead availability of alternate suitable accommodation to the landlord and obtain leave to defend, killing the legislative intent of a summary procedure in petitions for eviction on the ground of requirement of the tenancy premises by the landlord. The meaning which thus has to be ascribed to the words aforesaid in Section 25B(5) is (a) that the pleas in the affidavit accompanying the application of the tenant for leave to defend should not be of mere denial but with all particulars and supporting documents as are in public domain; (b) if pleaded requirement of the landlord is disputed, particulars in that regard should be stated; and, (c) if non-availability of alternate suitable accommodation with the landlord is disputed, then particulars of alternate suitable accommodation and how it satisfies the pleaded requirement of the landlord should be stated.

17. Thus, if the tenant seeks leave to defend controverting the requirement pleaded by landlord on the ground of the landlord, though

at the time of requirement having alternate premises, having not used the same and instead having commercially exploited the same, the tenant must plead (a) the particulars of such premises; (b) the right / title of the landlord to the same; (c) that the said premises were vacant and available for use at the time of the pleaded requirement of landlord; (d) how the said premises were suitable for the pleaded requirement; and, (e) how the landlord has deprived himself thereof i.e. by sale or letting and support the said pleas with material on the basis whereof such pleas will be proved. I say that it is essential to place such material before the Rent Controller because the purpose of trial, resulting from grant of leave to defend, is to prove the said pleas and if the tenant has nothing from which he can possibly prove the said pleas, the trial also will not result in the landlord being “disentitled from obtaining an order for recovery of possession of premises on the ground specified in Clause (e) of proviso to sub Section (1) of Section 14” of the Act, within the meaning of Section 25B(5) supra. This is not to say that the tenant should file fool proof documentary evidence at the stage of leave to defend. However there must be placed on record all the requisite particulars. The onus on the tenant, at the stage of seeking leave to defend, is thus somewhere in between fool proof documentary evidence and a totally vague, bereft of any particulars plea. Where in between, the said onus lies, depends on facts of each case. If tenant is unable to make specific pleas, Controller cannot grant leave to defend on the premise that he will improve his case during trial. Leave to defend is not to be granted to allow to the tenant time to improve his case.

18. Once such particulars are given, the test then to be applied by the Rent Controller is, of the probative value or force of the facts given in the affidavit accompanying leave to defend application of the tenant and reply affidavit thereto of the landlord as held by the Supreme Court in ***Precision Steel & Engineering Works Vs. Prema Deva Niranjana Deva Tayal*** (1982) 3 SCC 270 and ***J.P. Anand Vs. D.G. Baffna*** (2002) 1 SCC 482. It cannot be lost sight of that the decision of the Civil cases is on the basis of preponderance of probabilities emerging from the facts and not by proof beyond doubt.

19. Though at one time it was felt that Section 25B is analogous to Order XXXVII of the CPC and the principles as applicable to Order XXXVII might well be applied to grant of leave to defend under Section 25B as well but Supreme Court in ***Busching Schmitz Private Limited Vs. P.T. Menghani*** (1977) 2 SCC 835 held that it is fallacious to approximate Section 25B(5) with Order XXXVII Rule 3 of the CPC. It was held that the social setting, the nature of the subject matter and above all the legislative diction which has been deliberately designed, demand summary proceeding. It was further held that legal ambit and judicial discretion is wider in Order XXXVII Rule 3 of the CPC and the scope for opening the door to defence is narrowed down by the strict words used in Section 25B(5). It was also held that the Controller's power to give leave to contest is cribbed by the condition that the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground of requirement of the tenancy premises.

20. Again, in **Surjit Singh Kalra Vs. Union of India** (1991) 2 SCC 87, it was held that the defences available to the tenant are strictly limited to the parameters of the grounds of requirement stipulated under the Rent Act whereunder eviction application is filed.

21. Before proceeding further, I may mention that though qua Order XXXVII of the CPC the dicta of the Supreme Court in **Mechelec Engineers & Manufacturers Vs. Basic Equipment Corporation** (1976) 4 SCC 687, particularly in para 8 thereof, held:-

“(a) If the defendant satisfies the court that he has a good defence to the claim on its merits the plaintiff is not entitled to leave to sign judgment and the defendant is entitled to unconditional leave to defend.

(b) If the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgment and the defendant is entitled to unconditional leave to defend.

(c) If the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively and immediately make it clear that he has a defence, yet, shews such a state of facts as leads to the inference that at the trial of the action he may be able to establish a defence to the plaintiff's claim the plaintiff is not entitled to judgment and the defendant is entitled to leave to defend but in such a case the court may in its discretion impose conditions as to the time or mode of trial but not as to payment into court or furnishing security.

(d) If the defendant has no defence or the defence set-up is illusory or sham or practically moonshine then ordinarily the plaintiff is entitled to leave to sign

judgment and the defendant is not entitled to leave to defend.

(e) If the defendant has no defence or the defence is illusory or sham or practically moonshine then although ordinarily the plaintiff is entitled to leave to sign judgment, the court may protect the plaintiff by only allowing the defence to proceed if the amount claimed is paid into court or otherwise secured and give leave to the defendant on such condition, and thereby show mercy to the defendant by enabling him to try to prove a defence.”

but Supreme Court recently in **IDBI Trusteeship Services Ltd. Vs. Hubtown Ltd.** (2017) 1 SCC 568 has held that the said dicta stands superseded by amendment of Order XXXVII Rule 3 of the year 1976. It was held that Order XXXVII Rule 3 post 1976 amendment to the CPC is akin to the Order XXXVII Rule 3 as it stood by the Bombay amendment and on which the Supreme Court had pronounced in **Milkhiram (India) (P) Ltd. Vs. Chamanlal Bros.** AIR 1965 SC 1698. It was held that the position in law now is that the trial Judge is vested with a discretion which has to result in justice being done on the facts of each case; but Justice, like equality, another cardinal constitutional value, on the one hand, and arbitrariness on the other, are sworn enemies; the life of the law not being logic but the experience of the trial Judge, is what comes to the rescue in these cases; at one end of the spectrum is unconditional leave to defend, granted in all cases which present a substantial defence and at the other end of the spectrum are frivolous or vexatious defences, leading to refusal of leave to defend; in between these two extremes are various kinds of defences raised which yield conditional leave to defend in most cases. The test of real doubt about the defendant's good faith and

the genuineness of the triable issue and of plausible but improbable was applied. It was held that the entire transaction on which the suit is based is to be looked as a whole and on the one hand care must be taken to see that the object of the provision, to assist expeditious disposal of commercial causes is not defeated and on the other hand to see that triable issues are not shut out by unduly severe orders as to deposit or security.

22. Though in the light of the dicta aforesaid of the Supreme Court, specific to the Rent Act, the principles of Order XXXVII of the CPC are not to be applied to Section 25B(5) of the Rent Act but the recent dicta aforesaid of the Supreme Court certainly does throw light on the test to be applied at the stage of grant of leave to defend. Just like care has to be taken thereunder to, on the one hand see that expeditious disposal of commercial causes is not defeated and on the other hand that triable issues are not shut out, so does care has to be taken by the Rent Controller to, on the one hand see that the landlord if has a probative case of requirement is not put to trial, thereby compelling the landlord to at the cost of keeping a tenant put himself and family members to inconvenience and discomfort, and on the other hand to ensure that a tenant who would be entitled to, at the end of the trial, have the petition for eviction dismissed is not deprived of such opportunity.

23. The Rent Act is materially different from commercial causes subject matter of Order XXXVII of the CPC. While with the advent of electronic means of communication, the position under Order XXXVII of the CPC is largely based on documents, the Rent Act and particularly

ground of eviction, of requirement by the landlord of the tenancy premises, is concerned with human beings and society. Requirement of premises is a state of mind and dependent upon the social setting of the landlord and largely subjective. The Rent Controller cannot impose its own ethos of requirement on the landlord. Rather the Rent Controller is required to place himself in the armchair of the landlord and to then decide, whether the requirement pleaded is genuine or merely a guise to evict an old tenant paying meager rent. It has been repeatedly held in ***Prativa Devi Vs. T.V. Krishnan*** (1996) 5 SCC 353, ***Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta*** (1999) 6 SCC 222, ***Ragavendra Kumar Vs. Firm Prem Machinery & Co.*** (2000) 1 SCC 679 and ***Siddalingamma Vs. Mamtha Shenoy*** (2001) 8 SCC 561, to name a few, that (a) the landlord is the best judge of his requirement; (b) he has complete freedom in the matter; (c) it is no concern of the Courts to dictate to the landlord how and in what manner he should use his property or to prescribe a standard therefor; (d) there is no law which deprives a landlord of beneficial enjoyment of his property; (e) 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; (f) the Court will not thrust its own wisdom upon the choice by the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his need; (g) the Judge, should place himself in the place of the landlord and then answer whether the *bona fide* requirement is outcome of a sincere, honest desire, instructed by realities of life; and, (h) the law does not command or compel the

landlord to squeeze himself and dwell in lesser premises so as to protect the tenant's continued occupation.

24. In this context I may also notice that the position in this regard hardly changes after trial also. While at the stage of considering grant of leave to defend, the Rent Controller is required to decide on the basis of contents of the petition for eviction duly verified and supported by affidavit, leave to defend and the reply thereto, after trial the Rent Controller has to decide the aspect of requirement on the basis of affidavit by way of examination-in-chief and the cross examination. The cross-examination on the aspect of requirement can only be qua availability of alternate accommodation and suitability thereof; else if the landlord states on affidavit, whether it be in reply to the leave to defend or by way of examination-in-chief, that he requires the premises, the tenant in cross-examination can only suggest otherwise. For instance if the landlord says that he needs a separate bedroom for each of his grandchildren or that he and his wife desire to occupy separate bedrooms, I wonder what can be the cross-examination thereof. All that can be suggested in cross-examination is, that there is no requirement. Similarly here, once the landlord states that he is wanting to commence a business along with his younger son, the petitioners / tenants in cross-examination can only controvert. Just like the Court has to decide now, whether the respondent / landlord, for the reason of having not carried on any business till now, can be denied an order of eviction, the same will have to be decided after trial as well.

25. It would have been different, if the petitioners / tenants had disclosed that the respondent / landlord and / or his sons are already carrying on some other business or are employed or are by reason of their health or other disability cannot be believed to be requiring the premises to commence their business. Nothing of the sort has been disclosed. The principle, that the Court cannot dictate to the landlord how he should live, would apply.

26. It cannot be lost sight of that life is forever evolving and the Court cannot tell the landlord to not commence business. The Legislature has provided safeguards in this respect in Section 19 of the Rent Act by providing that if the landlord, after obtaining possession of the tenancy premises, does not put it to the use for which order of eviction was obtained, the tenant can apply to be put back into possession of the tenancy premises.

27. The only thing which thus remains is, whether the pleas of the petitioners / tenants, of alternative premises available are such which if proved would disentitle the respondent / landlord from an order of eviction.

28. I fail to see what purpose trial will serve in that respect. Two properties at Kotla Mubarakpur, New Delhi and the shops on the ground floor of the residence of the respondent / landlord disclosed by the petitioners / tenants in the application for leave to defend have been admitted by the respondent / landlord. Those pleas do not require any trial. Similarly, the plea of the petitioners / tenants in the application for leave to defend of there being seven and not six shops in the subject

property also call for no trial because there is indeed no substantial difference in the site plans filed by the respondent / landlord and the petitioners / tenants. Considering the total size of the subject property qua which there is no dispute, it matters not whether within that size there are seven shops as pleaded by the petitioners / tenants or six shops as pleaded by the respondent / landlord.

29. The petitioners / tenants, besides the same have also pleaded a farmhouse which has been disputed by the respondent / landlord. The petitioners / tenants having not disclosed any particulars of ownership of the farmhouse are unlikely to succeed thereon, even if granted leave and permitted trial. Moreover, the said plea is not relevant for adjudging the requirement of the petitioners / tenants. Certainly the requirement of the respondent / landlord of opening a shop for hardware and sanitary in Kotla Mubarakpur, New Delhi which is known as a market for said products cannot be fulfilled by the farmhouse even if any. It is also not the case of the petitioners / tenants that the respondent / landlord has no financial means to commence business. Rather, it is the plea of the petitioners / tenants that the respondent / landlord and his sons are very well off. There can thus be no handicap on that account and no need for trial of such a handicap. It has been held in *Mattulal Vs. Radhe Lal* (1974) 2 SCC 365 that litigation in India takes a long time in reaching final conclusion and then also it is uncertain as to how it will end and with that result, unless the landlord could be reasonably sure that he would, within a short time be able to recover possession and start business therefrom, it would be too much to expect from him that he should make preparations for starting new business—it would be foolish

to make arrangements and make investments in capital and obtain permissions required when the landlord does not know whether he will ultimately succeed in the litigation and after how many years. In ***Raghunath G. Panhale Vs. Chaganlal Sundarji & Co.*** (1999) 8 SCC 1, it was held that it is not necessary for the landlord to adduce evidence that he had money in deposit in a bank nor proof of funds to prove his readiness and willingness, as required in a suit for specific performance.

30. The only other factual difference is that while the petitioners / tenants have in leave to defend pleaded that the respondent / landlord is the sole owner of the property where the respondent / landlord is residing, it is the plea of the respondent / landlord that the said property is property of his joint family. The other two properties at Kotla Mubarakpur, New Delhi according to the petitioners / tenants also are jointly owned by the respondent / landlord with his brother. The petitioners / tenants have again however not placed before this Court any particulars to show exclusive ownership of the property where he is residing. Ordinarily, no human being on oath denies ownership and which statement can be used to deprive him of the property. There is no reason to not apply this test and to take notice of this normal human conduct particularly in the light of the application for leave to defend in this regard being sans any particulars.

31. The only question which has thus to be adjudicated is, whether the Rent Controller can interfere with the choice made by the landlord to establish his business in a shop in a property exclusively owned by him rather than in a property jointly owned by him with others. In my view,

No. It cannot be lost sight of that a joint property can be subject matter of partition at any time, with the possibility of depriving the landlord from the benefit of the premises in which he may have commenced business and the goodwill of the said business attached to the premises. Considering the said fact, the choice made by the respondent / landlord to commence his business in his exclusive property is honest and non-arbitrary and the non-interferable by the Rent Controller by dictating to the respondent / landlord to commence business elsewhere.

32. That leaves the argument of the counsel for the petitioners / tenants, of the petitioners / tenants being entitled to leave to defend for the reason of the concealment practiced by the respondent / landlord by non-disclosure of other premises in the petition for eviction.

33. I have recently in *Sunil Kumar Goyal Vs. Hrbans Singh* 2017 SCC OnLine Del 9289, relying on *Bhairab Chandra Nandan Vs. Ranadhir Chandra Dutta* (1988) 1 SCC 383; *M.L. Prabhakar Vs. Rajiv Singhal* (2001) 2 SCC 355; and, *S. Harbant Singh Sahni Vs. Vinod Sikari* 189 (2012) DLT 215 held that once the facts which are alleged to have been concealed have come before the Court and the Court had occasion to consider the same and after considering the same, finds in favour of the landlord, the petition for eviction cannot be dismissed on the ground of concealment and the test to be applied is, whether any prejudice is suffered by the tenant from concealment. Neither have the petitioners / tenants in the present case suffered any prejudice nor has any such argument been raised.

34. The counsel for the petitioners / tenants referred to *Mattulal Vs. Radhe Lal* (1974) 2 SCC 365 and to *Davinder Pal Singh Vs. M/s. Pritam Prakash Dawar & Sons (HUF)* 2013 SCC OnLine Del 4425 but in the light of the discussion above no need to discuss the said judgments in detail is felt. All that needs to be stated, in addition to what is already stated above, in the context thereof is that the Supreme Court in *Dina Nath Vs. Subhash Chand Saini* (2014) 11 SCC 20 and *Nidhi Vs. Ram Kirpal Sharma* (2017) 5 SCC 640 has noted the shift in the recent years in interpretation of Rent Laws; it was held that while earlier the interpretation thereof leaned towards the tenant, now it is not so.

35. Before parting, I may record that these petitions on an earlier date were taken up along with R.C. Rev. No.284/2016 and R.C.Rev. No.285/2016 preferred by the tenants of two other shops in the subject property against the order of eviction passed against them and which tenants have since withdrawn their challenge and have been granted time to vacate the premises.

36. There is thus no merit in these petitions.

37. The petitions are dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 18, 2017

‘pp’..

(Corrected & released on 1st November, 2017)