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

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Date of Decision: 08.03.2017

+ RC.REV. 571/2016 and CM No.44496/2016 (stay)

RAMESH KUMAR BABBAR

..... Petitioner

Through Mr.Gurmeet S. Narula, Advocate
versus

RAJNI GARG

..... Respondent

Through Mr.Amit Vohra, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. By the present revision petition filed under Section 25B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) the petitioner/tenant seeks to impugn the order dated 01.10.2016 by which his application seeking leave to defend was dismissed and an eviction order was passed against him.

2. The respondent filed the present eviction petition under Section 14(1)(e) of the DRC Act seeking an eviction of the property being Shop No.2, 2120/58, Bank Street, Karol Bagh, New Delhi. It is contended that the respondent/landord is the owner of the suit premises vide registered sale deed dated 22.07.2010. The suit property was let out by the predecessor in favour of the petitioner in 1977 on a monthly rent of Rs. 125/-. The rent was subsequently increased to Rs.400/- per month. It is stated that the adjoining shop being No.3 is owned by the petitioner/tenant and had been given on rent by the petitioner at Rs.40,000/- per month. Now the said shop is lying vacant. It is further stated that the respondent is a house wife. Her eldest

daughter Ms.Napur Garg is 22 years old and has completed her one year diploma from National Institute of Fashion Technology. She seeks to start her own boutique. The suit property is located in Karol Bagh which is a famous commercial market. As the suit property is situated at a good location, it is most suitable for the use of the daughter. Hence, the eviction petition.

3. The ARC by the impugned order noted that there is no dispute raised by the petitioner regarding relationship of landlord and tenant. On the availability of alternative suitable accommodation and bona fide requirement of the respondent, it noted that the petitioner though has made some wild allegations about availability of alternative suitable accommodation but has not placed on record any document to show that any of the said properties belongs to the respondent. Hence, the contentions of the petitioner were rejected. The ARC dismissed the application filed by the petitioner seeking leave to defend and passed an eviction order in favour of the respondent.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioner has given a long list containing 13 properties which he alleges are alternative suitable accommodation available with the respondent. It was put to the learned counsel for the petitioner that this long list is nothing but a roving enquiry. He has thereafter confined his arguments to availability of three properties with the respondent details of which are as follows:-

- “1. Property No. 2120/58
Bank Street Karol Bagh
New Delhi Shop No. 1B
Sold vide sale deed dated 13.09.13

2. Property No. 2120/58 the
Hall shown as rented
and given on rent in Jan-Feb'2015
for running a bar and
restaurant name and style
Delly Belly.
3. First Floor Premises Bearing No. 2120/58
Bank Street Karol Bagh
New Delhi

6. The only submission made was that these three properties are available to the respondent as suitable alternative accommodation and hence leave to defend should have been granted to the petitioner.

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

“11..... The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the CPC. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to Sub-section (8) of Section 25B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is according to law'. The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court.

The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law". For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available..."

8. Hence, this court is to test the order of the ARC to see whether it is according to law, and whether the conclusions are not wholly unreasonable.

9. Section 14(1)(e) of the DRC Act reads as follows:

“14. Protection of tenant against eviction.- (1)

Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenant:

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

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(e) that the premises let for residential purpose are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and the landlord or such person has no other reasonably suitable residential accommodation.”

10. The above provisions would in view of the judgment of the Supreme Court in *Satyawati Sharma(dead) by LRs vs. Union of India & Anr.*, AIR 2008 SC 3148 apply to commercial premises also.

11. The essential ingredients which a landlord/respondent is required to show for the purpose of getting an eviction order for bona fide needs are (i) the respondent is the owner/landlord of the suit premises (ii) the suit premises are required bona fide by the landlord for himself and any of his family members dependent upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

12. In the present case the trial court declined to grant leave to defend to the petitioner. The parameters for granting leave to defend are well known.

13. The Supreme Court in *Precision Steel & Engineering Works and another vs. Prem Deva Niranjana Deva Tayal*, AIR 1982 SC 1518 in para 22 held as follows:-

22. What then follows. The Controller has to confine himself indisputably to the condition prescribed for exercise of jurisdiction in Sub-section (5) of Section 25B. In other words, he must confine himself to the affidavit filed by the tenant. If the affidavit discloses such facts-no proof is needed at the stage, which would disentitle the plaintiff from seeking possession, the mere disclosure of such facts must be held sufficient to grant 'leave because the statute says on disclosure of such facts the Controller shall grant leave'. It is difficult to be exhaustive as to what such facts could be but ordinarily when an action is brought under Section 14(1) proviso (e) of the Act whereby the landlord seeks to recover possession on the ground of bona fide personal requirement if the tenant alleges such facts as that the landlord has other accommodation in his possession; that the landlord has in his possession accommodation which is sufficient for him; that the conduct of the landlord discloses avarice for increasing rent by threatening eviction; that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself; that the dependents of the landlord for whose benefit also possession is sought are not persons to whom in eye of law

the landlord was bound to provide accommodation; that the past conduct of the landlord is such as would disentitle him to the relief of possession; that the landlord who claims possession for his personal requirement has not cared to approach the Court in person though he could have without the slightest inconvenience approached in person and with a view to shielding himself from cross-examination prosecutes litigation through an agent called a constituted attorney. These and several other relevant but inexhaustible facts when disclosed should ordinarily be deemed to be sufficient to grant leave.”

14. This court in *Deepak Gupta vs. Sushma Aggarwal, 2013 202 DLT, 121* held as follows:-

“24.From the mere reading of the afore mentioned illuminating observations of the Supreme Court in the case of Precision Steels (supra), it is apparent that the Controller has a statutory duty to grant the leave to defend if the affidavit discloses the facts which could raise suspicion on the genuineness of the need of the landlord which can in effect disentitle the landlord from recovering the possession on the ground of bonafide requirement. The likelihood of success or the failure of the defence is not really determinative of the question as to grant or not grant of the leave to defend but the real question is tenability of the plea which may raise a suspicion on the need of the landlord which may if proved can also lead to disentitlement to the recovery of the possession. Thus, the plea raising a doubt in the mind of the Controller is sufficient to grant the leave. The Controller can also not record the findings on disputed question of the facts by preferring the one set of facts over and above the other. The merits of the pleas raised are not to be gone into at the time of the grant of the leave to defend by going into the complicated questions of fact. For making the enquiry, the affidavit filed by the tenant is helpful.

25. The views expressed by the Supreme Court in the case of Charan Dass (supra) and Precision Steel (supra) are holding

the field and have been consistently followed by the Supreme Court till recently and also by this court from time to time. (kindly see the case of Inderjit Kaur vs. Nirpal Singh, : 2001 (1) R.C.R. 33 and Tarun Pahwa vs. Pradeep Makin, : 2013 (1) CLJ 801 Del.)”

15. The three properties stated above by the learned counsel for the petitioner which are allegedly alternative suitable accommodation available with respondent are all part of the same premises where the tenanted property is situated. The first premises mentioned by the petitioner is Shop No.1B. The respondent has pointed out that the said shop has been sold by the respondent on 13.09.2013. The present eviction petition was filed in 2015. The sale was made two years prior to filing of the eviction petition. Hence, the sale of the said shop cannot be a ground to contend that the present eviction petition lacks bona fide.

16. The second property on which reliance is placed by the petitioner to show that alternative suitable accommodation is available i.e. a hall on the rear side of the said building which as per the petitioner has been let out by the respondent in January-February 2015 for running a restaurant/bar. It is further averred that the hall has been let out along with Shop No.1B which enables the occupant/tenant of the hall to make an entry from the main road into the said hall.

17. A reply had been filed by the respondent to the application for leave to defend. As per the said reply, it was pointed out that the rear hall cannot be used for the purpose of a boutique because the hall is on the backside and the gates opens in a gali. In contrast, the suit property faces the main road, namely, Bank Street and is an ideal place to start a business of a

boutique. The hall does not have an entry from the front side. The present tenant has an entry from the front road based on the understanding with the owner of the Shop No.1B. The said shop does not belong to the respondent. If the respondent was to use the said hall, it would not have the facility of an opening to the main road. The opening to the main hall is from the back side from a gali, on the other hand the tenanted shop which faces the main road i.e. Bank Street. It is obvious that a shop facing the main road would be more lucrative and would be beneficial for the business of the daughter of the respondent as compared to a premises with an opening in a gali.

18. Regarding the third premises which was relied upon by the petitioner i.e. the first floor of the said premises, it is stated that the entire first floor is in possession of the respondent and is an alternative suitable accommodation. Again, a perusal of the reply filed by the respondent would show that it has been stated that the first floor cannot be used for running a boutique as the same is a residential unit. It is not for the petitioner to dictate to the respondent to start a boutique from a residential premises.

19. The facts above show that there is no merit in the contention of the petitioner. The tenanted premises faces the main road in Karol Bagh which is an ideal location for starting a boutique shop by the daughter of the landlord.

20. Reference, in this context may be had to the judgment of the Supreme Court *Anil Bajaj & Anr. vs. Vinod Ahuja, 2014 (6) Scale 572*. That was a case where the landlord owned several properties in the vicinity of the tenanted premises. However, the said landlord was running his shop from a shop facing a narrow street. The tenanted premises was facing the main

road. In those facts the Supreme Court accepted the plea of the landlord and held as follows:-

“6. In the present case it is clear that while the landlord (Appellant No. 1) is carrying on his business from a shop premise located in a narrow lane, the tenant is in occupation of the premises located on the main road which the landlord considers to be more suitable for his own business. The materials on record, in fact, disclose that the landlord had offered to the tenant the premises located in the narrow lane in exchange for the tenanted premises which offer was declined by the tenant. It is not the tenant's case that the landlord-Appellant No. 1 does not propose to utilize the tenanted premises from which eviction is sought for the purposes of his business. It is also not the tenant's case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the same in any way inconsistent with the need of the landlord. What the tenant contends is that the landlord has several other shop houses from which he is carrying on different business and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business. The grounds on which leave to defend was sought by the tenant and has been granted by the High Court runs counter to the fundamental principles governing the right of a tenant to contest the claim of bonafide requirement of the suit premises by the landlord under the Delhi Rent Control Act, 1958. Even assuming the assertions made by the tenant to be correct, the same do not disclose any triable issue so as to entitle the tenant to grant of leave to defend.”

21. Similarly, in *Ragavendra Kumar v. Firm Prem Machinery and Co.*,

[2000] 1 SCR 77, it was held that it is the choice of the landlord to choose the place for the business which is most suitable for him. He has complete freedom in the matter. In *Prativa Devi (Smt.) v. T.V. Krishnan*, (1996) 5 SCC 353, it was held that the landlord is the best Judge of his requirement and Courts have no concern to dictate 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.

22. In *G.C. Kapoor Vs. Nand Kumar Bhasin*, AIR 2002 SC 200, the Supreme Court noted as follows:

“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.”

23. The premises relied upon by the petitioner cannot be said to be alternative suitable accommodation available with the respondent. In view of the above, there is no infirmity in the eviction order passed by the ARC.

24. The petition is accordingly dismissed. All pending applications also stand dismissed.

JAYANT NATH, J

MARCH 08, 2017/rb