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

% ***Date of decision:* 07.02.2017**

+ RC.REV. 45/2017 & CM Nos.4263-4264/2017

SHANTI DEVI & ORS Petitioners
Through Mr.Thakur Sumit & Mr.Naveen
Yadav, Advocates

versus

RAKSHA AHLUWALIA Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. The present Revision Petition is filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (*hereinafter referred to as the 'DRC Act'*) seeking to challenge an eviction order dated 06.09.2016 passed by the Additional Rent Controller (*hereinafter referred to as the 'ARC'*) in the eviction petition filed by the respondent under Section 14(1)(e) of the DRC Act.
2. The respondent filed an eviction petition under Section 14(1)(e) of the DRC Act regarding two shops bearing Nos.6 and 7 which are located in Property No.7, Partap Marg, Kewal Park, Azad Pur, Delhi- 110 033.
3. The respondent contended that she was the owner of the full property. Referring to the site plan, it was stated that the son of the respondent Sh.Rajiv Walia is using the portion shown in black colour for commercial activities from where he is running the business of distributorship for certain

companies; in portion marked as Z-1, the son of the respondent had installed computers and printer etc. and portion marked as Z-2 is being used for the storage purposes; the portion marked as X is in dilapidated condition and is having height of only 7 ft. from road level and is being used by the respondent and her son for the purpose of parking. This area is also being used by two other employees for parking; the portion marked as Y is used by the son of the respondent as his office-cum-godown for the last 20 years and the portion marked as Z is used as washroom and toilet by the staff, visitors and by the son of the respondent; the portion marked as W is used as pantry-cum-kitchen for preparing tea etc. One shop No.3 is said to be in tenancy of Sh.Sohan Lal. Another shop No.4 is in possession of Sh.Anil Kumar against whom a suit for possession is pending. The shop Nos.6 and 7 are in possession of the petitioners.

4. It is further stated that the respondent being a retired school teacher requires the said shops for running a coaching institute as because of passage of time, the price index has increased and the respondent is unable meet her expenses in a meagre pension. The daughter-in-law of the respondent Smt. Rakhi Walia is also a well educated and a qualified teacher as her educational qualification is M.A., B.Ed. The respondent and her daughter-in-law plan to run a coaching institute. The family of the respondent is residing on the first floor of Property No.B-255, Street No.3, Majlis Park, Delhi- 110 033. The respondent has also a small shop near Gaushala, which is known as 17-C Gaushala, Kewal Park, Azad Pur, Delhi- 110 033 but the shop has front of just 7 ft. which cannot be used for a coaching centre. The said place is much away from the disputed property and has no electricity, no sewerage and no water connection and no

wash/bath room at the property. It is an old construction and is in dilapidated condition. Further, even the location of the said shop is in a remote area surrounded by hawkers, bad elements and rickshaw pullers etc. which is not suitable for running a coaching centre which would have a lot of young girls studying. On the other hand the tenanted property is situated in the heart of a heavily populated area with a government secondary school almost next door at just one minute walking distance.

5. The ARC by the impugned order noted that there is no quarrel regarding relationship of the landlord and the tenant. On the issue of bona fide requirement and alternative suitable accommodation, it noted the objection of the petitioner regarding the age of the respondent and held that the age cannot be barrier to start a new business. In any case, the daughter-in-law would be there to assist the respondent who had the qualification of B.Ed. and M.A.Degree. Regarding shop No.5 which is lying vacant, it noted that the same is being used for parking by the son of the respondent. The son has three scooters, in addition large numbers of visitors of the son also park their personal vehicles there. The ARC noted that the petitioners themselves have admitted that there is no parking space in front of the said shop and even if a vehicle is parked in front of the shops, it creates a jam. Hence, the ARC held that the need of shop No.5 as a parking space is bona fide. Regarding alternative property at 17-C, Gaushala, Kewal Park, Azadpur, Delhi, it noted the contention of the petitioners that the said property at Gaushala is more suitable and viable for opening of a coaching centre and the tenanted premises has lesser space. However, this contention of the petitioners was rejected pointing out that it is the prerogative of the landlord to choose the shop from where she should start her business. The respondent

is an old lady and she along with her daughter-in-law intends to open a coaching centre from the tenanted premises. The son of the respondent is also running his own business from a portion of the said premises.

Keeping in view the nature of the locality of the shop in Gaushala area, the ARC held that the desire of the respondent can be said to be bona fide and cannot said to be whimsical.

The ARC also noted contention of the petitioners that the shop Nos.4 and 5 have been vacated and the respondent has received possession. A separate application was filed in this regard. The respondent placed on record execution proceedings to show that the respondent has not yet received vacant possession of the shops. The leave to defend application of the petitioners was dismissed and eviction order was passed.

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

7. The learned counsel for the petitioner has vehemently argued as follows:

(i) The respondent has not been able to show the existence of concrete step that the respondent has taken to show she is in a position to open a coaching institute. Further, she has no experience to start a coaching institute. It is strongly urged that the respondent is an old lady and has no desire to start a coaching institute.

(ii) It was strongly urged that the respondent has an alternative suitable accommodation in Gaushala being No.17-C, Gaushala, Kewal Park, Azadpur, Delhi. It has an area of 330 sq.ft. whereas the tenanted property has an area of 150 sq.ft. It also has a front of 11 sq.ft though it was wrongly mentioned by the respondent as 7 sq.ft. It was urged that would be more suitable to the respondent.

(iii) It is stated that eviction order has been passed against shop No.4. However, the respondent is deliberately delaying the execution so as to create artificial scarcity. The learned counsel for the petitioner also relies on the order-sheets of the execution proceedings.

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.”

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 herself and any of her 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 petitioners. 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 the case of *Sarwan Dass Bange vs. Ram Prakash*, **MANU/DE/0204/2010** noted as follows:-

“7. The Controller has not discussed as to how the pleas raised by the respondent/tenant in the application for leave to defend are such which if established by adducing evidence would disentitle the petitioner/landlord of an order of eviction under Section 14(1)(e) of the Act. Ordinarily, when a tenant approaches an advocate for drafting a leave to defend application, the advocate, using his legal acumen would dispute each and every plea of the landlord in the eviction petition. However, merely because the tenant so disputes and controverts the pleas of the landlord does not imply that the provision of summary procedure introduced in the Act with respect to ground of eviction on the ground of requirement is to be set at naught. The Controller is required to sift/comb through the application for leave to defend and the affidavit filed therewith and to see whether the tenant has given any facts/particulars which require to be established by evidence and which if established would disentitle the landlord from an order of eviction. The test is not of the tenant having controverted/denied the claim of the landlord and thus disputed questions of fact arising; the test is to examine the pleas of facts and then to determine the impact thereof.”

15. Similarly, 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.

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.)”

16. I have to deal with the contentions of the petitioners in the light of the above principles laid down to see whether leave to defend has been rightly declined. I may first deal with the contention of the petitioners about the age of the respondent and the contention that she has no experience or has made no preparations to show that she intends to start a coaching institute. So far as the age of the respondent is concerned, in my opinion that can hardly be a bar for the respondent to start her own work. It may also be noted that she does not propose to start a coaching centre on her own. Her daughter-in-law is well qualified and would also be there to assist her. Further, the respondent is a retired school teacher and there is no reason as to why the two cannot join to start a coaching centre. The desire to have an independent source of income by the respondent would be a bona fide desire and cannot be brushed aside as is being argued by the petitioners.

Regarding the contention about lack of preparation on the part of the respondent and her alleged experience, the said contention has no merits. The landlord is not expected to start preparation prior to filing of an eviction petition and then wait with all the preparations in place for a favourable eviction order by the ARC. Further, the alleged experience of the respondent in running a coaching institute is also not material or relevant. Reference in the said context may be had to the judgment of this court in ***Puran Chand Aggarwal v. Lekh Raj, 210 (2014) DLT 131*** where the court held as follows:

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

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

Start new business/no experience required

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

(ii) In ***Tarsem Singh vs. Gurvinder Singh, MANU/DE/2640/2010: 173 (2010) DLT 379***, it was observed that "If the landlord wants to start his own business in the premises owned by him then by no stretch of imagination, it can be said that the requirement of the landlord for the

premises is neither bonafide nor genuine."

(iii) In *Balwant Singh Chowdhary & Anr. vs. Hindustan Petroleum Corporation Ltd.*, 2004 (1) RCR 487, it was held that "It is not necessary for the landlord to plead and prove the specific business he wants to set up, if the landlord wanted the premises for business purposes."

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

(v) In *Raj Kumar Khaitan & Ors. vs. Bibi Zubaida Khatun & Anr.*, MANU/SC/0411/1995: AIR 1995 SC 576, it was observed that "It was not necessary for the appellants-landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody would bind the landlords to start the same business in the premises after it was vacated."

Hence, the legal position is quite clear. The landlord need not to show evidence that she has experience of said business. It is not necessary for landlord to indicate the precise nature of business which she intends to start in the premises. There is no merit in the contention of the petitioner that the need for starting a coaching institute is not bonafide requirement.

17. As far as the second contention of the petitioner is concerned, i.e. availability of alternative accommodation at 17-C, Gaushala, Kewal Park, Azadpur, Delhi, the respondent explained that the front of the shop is only

about 7 ft. The property has no electricity, water and sewerage connections. It is located in an area which is not conducive for running a coaching centre, as it is located in the periphery area. On the other hand, the tenanted premises are located near the area where the son of the respondent is already carrying his own business. Keeping in view the said facts, the girls studying in the premises at 17-C Gaushala, Kewal Park, Azadpur, Delhi may not feel safe. Further, there is a government secondary school almost next door at just one minute walking distance from the area where the tenanted shop is located.

18. Keeping in view the explanation given by the respondent, in my opinion, the ARC has rightly concluded that the choice of the tenanted premises by the respondent/landlord cannot be said to lack bona fide or said to be a mere fancy or desire.

19. 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.”

20. The Supreme Court in *Dinesh Kumar vs. Yusuf Ali*, (2010) 12 SCC 740 held as follows:-

“8. In *Prativa Devi v. T.V.Krishnan* (1996) 5 SCC 353, this Court 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.

9. However, in *Ram Dass v. Ishwar Chander & Ors.*, AIR 1988 SC 1422, this Court held that ‘bona fide need’ should be genuine, honest and conceived in good faith. Landlord’s desire for possession, however honest it might otherwise be, has, inevitably, a subjective element in it. The “desire” to become “requirement” must have the objective element of a “need” which can be decided only by taking all relevant circumstances into consideration so that the protection afforded to tenant is not rendered illusory or whittled down. The tenant cannot be evicted on a false plea of requirement or “feigned requirement”. (See also *Rahabhar Productions Pvt.Ltd. v. Rajendra K.Tandon*, AIR 1998 SC 1639: (1998 AIR SCW 1387); and *Shiv Sarup Gupta v. Dr.Mahesh Chand Gupta* (AIR 1999 SC 2507) : (1999 AIR SCW 2666).”

21. In *Sarla Ahuja vs. United India Insurance Company Limited* (1996) 8 SCC 119 the Supreme Court 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 is 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.”

22. In the light of the above legal position, it is clear that the bona fide of the requirement of the respondent cannot be faulted with. The respondent prefers the locality from where the tenanted premises is located being adjacent/near to the property from where her son is carrying on his business. She cannot be forced to go the area as suggested by the petitioners.

23. Regarding the alleged delay in taking delivery of possession of the shop, this is a misplaced argument. Merely because the judicial process is taking time, does not show any mala fide intent. In any case as pointed by the ARC, shop No.4 is measuring 90 sq.ft. whereas the tenanted premises is measuring 140 sq.ft. Hence, even availability of shop No.4 as argued by the petitioners would make no difference as it is not a suitable alternative accommodation for a coaching centre to be run by the respondent.

24. There are no grounds to interfere in the order of the ARC. There is no merit in the present petition and the same is accordingly dismissed.

JAYANT NATH, J.

FEBRUARY 07, 2017/v