

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

% **Date of decision: 3rd November, 2017**

+ **RC.REV.628/2015, CM No.29111/2015 (for stay), CM No.3047/2016 (u/O XLI R-27 CPC & CM No.12758/2016 (for direction).**

S. AMOLAK SINGH CORRECT NAME

AMOLAK RAJ SINGH

..... Petitioner

Through: Mr. C.L. Sachdeva, Mr. P.S. Khandelwal, Mr. Preet Pal Singh and Ms. Priyam Mehta, Advs.

Versus

NARENDER KUMAR DANG

..... Respondent

Through: Mr. Rajat Aneja and Ms. Nisha Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order (dated 24th July, 2015 in E.No.763/14/10 of the Court of Additional Rent Controller-02, Central District, Tis Hazari Courts, Delhi) of dismissal of the application filed by the petitioner for leave to defend the petition for eviction under Section 14(1)(e) of the Act filed by the respondent and the consequent order of eviction of the petitioner from Shop No.242, Jawahar Hosiery Market, Sadar Bazar, Delhi – 110 006.

2. The petition was entertained and notice thereof issued. Vide subsequent order dated 28th January, 2016, the Trial Court record was requisitioned. Vide order dated 8th April, 2016, execution of the order of eviction impugned in this petition was stayed. The said interim order has continued to remain in force. The petitioner/tenant has filed CM No.3047/2016 under Order XLI Rule 27 of the Code of Civil Procedure,

1908 (CPC) and to which reply / rejoinder have been filed. The counsel for the petitioner/tenant and the counsel for the respondent/landlord have been heard and the Trial Court record perused.

3. The respondent/landlord sought eviction of the petitioner/tenant pleading, (i) that the respondent/landlord is the owner/landlord of the shop, having along with three other persons purchased the building bearing no.219-226, Jawahar Hosiery Market and 239-244, Post Office Street, Sadar Bazar, Delhi – 110 006, in which the shop is situated, vide Sale Deed dated 20th November, 1978; (ii) that the subject shop, being the part of the said building, under the final decree for partition dated 22nd April, 2010 and 19th May, 2010 in a suit amongst the four co-owners of the building, fell to the exclusive share of the respondent/landlord; (iii) that at the time of purchase of the building by the respondent/landlord along with others, the subject shop was in the tenancy of Amar Singh, father of the petitioner/tenant; (iv) that the respondent/landlord is carrying on business in the name and style of M/s. Bhawani Dass Narender Kumar, from a rented shop bearing no.34, Narain Market, Sadar Bazar, Delhi – 110 006 in the vicinity of the subject shop; (v) that the subject shop is much better suited for the respondent/landlord and the respondent/landlord requires the subject shop in occupation of the petitioner/tenant for carrying on his own business therefrom; (vi) that Vishal Dang, son of the respondent/landlord is also carrying on his business from tenanted shops no.836 and 837, Pan Mandi, Sadar Bazar, Delhi – 110 006; (vii) the said son of the respondent/landlord is residing with the respondent/landlord in the same house; (viii) that the respondent/landlord wants to carry on his business from his own shop i.e. the shop in occupation/tenancy of the petitioner, by shifting his business therein

from tenanted shop; (ix) that the respondent/landlord is facing problems from his landlord; and, (x) that similarly Vishal Dang, son of the respondent/landlord, is also facing problems from the landlord of the shop in his tenancy.

4. The petitioner/tenant applied for leave to defend pleading (i) that there is no relationship of landlord and tenant between the parties; (ii) that the respondent/landlord is not the owner of the shop in the tenancy of the petitioner; (iii) that on the demise of the father of the petitioner/tenant, who was a tenant in the said shop, the tenancy rights were inherited by the mother and other siblings of the petitioner/tenant also and the petition for eviction is bad for non-joinder of the other siblings of the petitioner/tenant; (iv) that the father of the petitioner/tenant was a tenant in the subject shop under Sethani Indermani Jatia Charitable Trust Khurja Uttar Pradesh; (v) that the respondent/landlord does not require the shop in the tenancy of the petitioner/tenant and the respondent/landlord has got several other properties in his own name and in the name of his son and from where the respondent/landlord and his son are carrying on business; (vi) that the son of the respondent/landlord is not dependent on the respondent/landlord; (vii) that the respondent/landlord wants to sell/dispose of the subject shop; and, (viii) that owing to a dispute regarding ownership/landlordship of the shop in the tenancy of the petitioner/tenant, the petitioner/tenant could not tender or deposit rent of the same.

5. The respondent/landlord filed reply to the aforesaid application of petitioner/tenant for leave to defend pleading, (i) that he requires the shop in the tenancy of the petitioner/tenant for shifting his own business from the

tenanted shop to his own shop; (ii) that the Sale Deed dated 20th November, 1978 vide which the building in which the shop is situated was purchased by the respondent/landlord along with three others, was executed by Sethani Indermani Jatia Charitable Trust Khurja U.P. who according to the petitioner/tenant also were the owners/landlords of the shop; (iii) that the respondent/landlord had become the sole owner/landlord of the shop in the tenancy of the petitioner/tenant under the decree for partition amongst the co-owners of the building in which the shop is situated; (iv) that none of the other legal heirs of the father of the petitioner/tenant have any interest or right in the shop inasmuch as the petitioner/tenant alone is in occupation of and carrying on business from the subject shop; (v) that the respondent/landlord, in the petition for eviction itself has disclosed the shop from which the respondent/landlord is carrying on business and the shop from which the son of the respondent/landlord is carrying on business and further that both the said shops are tenanted; (vi) that it is humiliating for the respondent/landlord to carry on his business from a rented shop; (vii) moreover, the subject shop is on the ground floor and it will be convenient for the respondent/landlord to conduct his business therefrom; (viii) that the respondent as landlord is the best Judge of his requirement and the petitioner/tenant cannot dictate in what manner the respondent/landlord should conduct his business; and, (ix) that Vishal Dang, son of the respondent/landlord, is dependent upon the respondent/landlord for accommodation and the respondent/landlord and his son are living in a joint family.

6. Though the petitioner/tenant is found to have filed a rejoinder to the aforesaid reply but need to refer thereto is not felt.

7. From a perusal of the Trial Court record it transpires that an application under Order I Rule 10 of the CPC was filed by Smt. Iqbal Kaur, mother of the petitioner/tenant for impleadment of herself and her another son besides the petitioner/tenant and four daughters as parties to the petition for eviction, pleading that on the demise of Amar Singh, being the father of the petitioner/tenant the tenancy rights in the subject shop were inherited by all of them. However the said application was dismissed vide order dated 3rd August, 2013.

8. The learned Additional Rent Controller, in the impugned order, has found/observed/held (i) that though the petitioner/tenant has denied ownership of the respondent of the shop in his tenancy and relationship of landlord and tenant with the respondent/landlord but the respondent/landlord along with the petition for eviction had filed the Sale Deed dated 29th November, 1978 of purchase with three others of the building in which the shop is situated and the decree of partition amongst the co-owners of the building, in which the shop in the tenancy of the petitioner had fallen to the exclusive share of the respondent/landlord; (ii) that the requirement of Section 14(1)(e) of the Act of ownership is not of absolute ownership but of a title better than the tenant and on the basis of the documents aforesaid, the respondent/landlord had a better title than the petitioner/tenant and the objection raised by the petitioner/tenant in this regard did not raise any triable issue; (iii) that though the counsel for the petitioner/tenant had also argued that the site plan filed by the respondent/landlord is not correct but the petitioner/tenant had not filed any site plan of his own and thus the objection in this regard was also without any merit; (iv) though the petitioner/tenant had controverted the requirement of the respondent/landlord

of the shop in the tenancy of the petitioner but mere denial was not enough and no other alternative accommodation available to the respondent/landlord was disclosed in the application for leave to defend; and, (v) thus the application for leave to defend filed by the petitioner/tenant did not disclose any facts which if proved would disentitle the respondent/landlord from an order of eviction under Section 14(1)(e) of the Act.

9. In the aforesaid state of affairs, no error can be found with the order impugned and it cannot be said that the order of the Additional Rent Controller is not in accordance with law.

10. As far as the requirement under Section 14(1)(e), of ownership and relationship of landlord and tenant is concerned, even though the counsel for the petitioner has not even urged before me on this aspect nor made any submissions on the said aspect but I may still record that according to the plea of the petitioner/tenant in the application for leave to defend as well Sethani Indermani Jatia Charitbale Trust Khurja, U.P. was the owner/landlord and the Sale Deed filed by the respondent/landlord along with the petition for eviction shows the sale to have been effected by the same Sethani Indermani Jatia Charitable Trust Khurja U.P. The respondent/landlord along with the petition for eviction has also filed the final decree for partition in the suit amongst the co-owners and in which the shop in the tenancy of the petitioner/tenant fell to the exclusive share of the respondent/landlord. Moreover it is not the case of the petitioner/tenant that either Sethani Indermani Jatia Charitable Trust Khurja U.P. or anyone else is claiming adversely to the respondent/landlord or claiming to be the owner or claiming rent of the shop from the petitioner/tenant; rather it is the plea of

the petitioner/tenant himself that he has not paid the rent for long. I may in this regard also note that it is not in dispute that the petitioner/tenant continues to be a tenant at a rent of Rs.40.60p per month, perhaps the rent at which the father of the petitioner/tenant was inducted into premises more than half a century back. If leave to defend were to be granted on such vexatious pleas which are vague and without any basis, there would be no case in which leave to defend would not be granted, putting at naught the legislative intent in introducing the summary procedure for decisions of petition for eviction on the ground of requirement of the owner/landlord.

11. As far as the plea of the petitioner/tenant, of the tenancy, from his father having been inherited besides by himself also by his mother and siblings, it is not the case of the petitioner/tenant that his mother or any of his siblings are also in occupation or use of the subject shop. Under the definition of 'tenant' in Section 2(l) of the Delhi Rent Act, in the event of death of tenant, tenancy is inherited by only such of the specified heirs who were in occupation of tenancy premises along with the tenant. Thus, the mother and other siblings of the petitioner/tenant who are not pleaded to be in occupation, have no right. Though the mother of the petitioner/tenant filed an application for impleadment, evidently at the behest of the petitioner/tenant and to delay the disposal of the eviction petition and succeeded therein by keeping it pending for nearly five years at the stage of leave to defend but the said application was dismissed. No further action has been taken. Thus the same also does not constitute a ground for grant of leave to defend.

12. That leaves the aspect of requirement of the respondent/landlord of the shop in the tenancy of the petitioner/tenant. The respondent/landlord, in the

petition for eviction, pleaded that he and his son were carrying on their respective businesses from premises in which they themselves were tenants. The said fact has not been controverted in the leave to defend application. Though the petitioner/tenant in leave to defend application vaguely pleaded that the respondent/landlord and his son had several properties in their names but no particulars were given. Such vague pleas do not constitute facts which Section 25B(5) requires to be disclosed and which if disputed and when proved may disentitle the landlord from an order of eviction under Section 14(1)(e) of the Act. I have dealt in detail on the said aspect in ***Ram Saroop Vs. Viney Kumar Mahajan*** MANU/DE/3530/2017 and need to reiterate is not felt.

13. It is the settled position in law that rented accommodation in possession of the landlord does not constitute alternate suitable accommodation within the meaning of Section 14(1)(e) of the Act. As far back as in ***Sita Ram Verma Vs. Saraswati*** (1991) 43 DLT 629 it was held that it is not open to a tenant to contend that because the landlord of the premises in the tenancy of the landlord is not pressing for eviction, the landlord cannot seek eviction and if the landlord desires to occupy his own premises and not continue in tenanted premises, such a desire cannot be said to be unreasonable. Supreme Court in ***Dhannalal Vs. Kalawatibai*** (2002) 6 SCC 16 held that a landlord cannot be compelled to carry on business in rented premises and his requirement cannot be defeated by the tenant submitting that the landlord can comfortably run his business in rented premises. It was held, though in the context of Madhya Pradesh Accommodation Control Act, 1961, that to be an alternative accommodation, it must be “of own” i.e. the one owned by the landlord. Similarly, in ***Dinesh***

Kumar Vs. Yusuf Ali (2010) 12 SCC 740 also it was held that the landlord could not be forced to continue his business in a rented shop. Yet again in **Krishna Kumar Rastogi Vs. Sumitra Devi** (2014) 9 SCC 309, the factum that the son of the landlord for whose requirement the petition for eviction was filed, was running his business as a tenant in a shop, was held to not disentitle the landlord from obtaining an order of eviction on the ground of own requirement. I have in judgment dated 27th July, 2017 in RC. Rev. No.134/2016 titled **Parveen Kumar Wadhwa Vs. Ram Mehar Tyagi** also held so.

14. It is perhaps for this reason only that the petitioner/tenant has filed the application under Order XLI Rule 27 of the CPC in this Court and the emphasis of the counsel for the petitioner/tenant during the hearing has been with respect thereto only.

15. However, I have in **Rajesh Kumar Vs. Shiv Charan** MANU/DE/7669/2017 held that (i) the legislature, in its wisdom, in Section 25B of the Act has required the tenant, desirous of seeking leave to defend a petition for eviction under Section 14(1)(e) of the Act, to file affidavit within 15 days of service of summons/notice of the petition for eviction and disclosing such facts as would disentitle the landlord from obtaining an order of eviction under Section 14(1)(e) of the Act; (ii) if it were to be held that leave to defend can be granted even on facts which are not disclosed in the application for leave to defend, the same would set at naught the very legislative purpose for providing filing an application for leave to defend within 15 days.

16. It was so held also in, **Krishna Chopra Vs. Raksha** (1999) 82 DLT

360 (SLP (C) No.15794/1999 preferred whereagainst was dismissed on 14th February, 2000); *Gulati Trading Company Vs. Man Mohan Verma* 2014 SCC OnLine 4121; and *Kali Charan & Sons (Jewellers) Vs. Rakesh Jindal* 2014 SCC OnLine Del 4407 (SLP(C) No.32260/2014 preferred whereagianst was dismissed on 3rd December, 2014).

17. I may also notice that Supreme Court in *Prithipal Singh Vs. Satpal Singh* (2010) 2 SCC 15 has held that it is not open to the Rent Controller to condone the delay in applying for leave to defend and this Court in *Kailash Devi Vs. Brij Pal Manocha* (2014) 213 DLT 726 has held that even this Court is not entitled to condone the delay in applying for leave to defend.

18. Once that is so, the question of entertaining the application under Order XLI Rule 27 of the CPC does not arise.

19. However, even if the said application were to be considered, the plea of the petitioner/tenant therein is (i) that the Government issued a circular that those who are carrying on business of paper merchants in Delhi will be shifted from Delhi to Ghazipur, to stop their business of paper merchant from Delhi and invited applications in this regard; (ii) that the respondent/landlord so applied and the Delhi Development Authority (DDA) allotted plot no.168, Pocket-C of 50 sq. mtr. in the layout plan of IFC, Ghazipur to the respondent/landlord, to be used as 'warehouse paper traders' and perpetual Lease Deed of the same was executed in the name in which the respondent/landlord is carrying on business; (iii) that the respondent/landlord, after obtaining possession of the aforesaid plot of land, has constructed a building comprising of a ground floor and first floor thereon and is carrying on business therefrom; and, (iv) that the said facts

were concealed by the respondent/landlord.

20. The respondent/landlord in reply to the application under Order XLI Rule 27 of the CPC, has not disputed acquisition of the property at Ghazipur and has further pleaded that the perpetual Lease Deed of the plot was executed after the filing of the petition for eviction and the construction has been raised thereafter and that the said property is for warehousing purpose and is situated 25 k.m. away from the place where the respondent/landlord is carrying his business and is not alternate suitable accommodation.

21. The counsel for the petitioner/tenant in rejoinder has pleaded that the respondent/landlord as a condition for such allotment has undertaken to remove the existing paper storage and shift the same to the plot.

22. The counsel for the petitioner/tenant has argued (i) that the respondent/landlord concealed the aforesaid facts and is disentitled from obtaining an order of eviction on this ground alone; (ii) it is alternatively argued that for this reason alone, the petitioner/tenant is entitled to leave to defend; (iii) reliance is placed on ***S.P. Chengalvaraya Naidu Vs. Jagannath*** AIR 1994 SC 853 to contend that suppression of documents amounts to fraud and that fraud vitiates all proceedings/transactions; (iv) reliance in this regard only is also placed on ***Commissioner of Customs, Kandla Vs. Essar Oil Ltd.*** (2004) 11 SCC 364 and ***Renu Seth Vs. M/s. Industrial and Allied Sales (P) Ltd.*** 31 (1987) DLT 322.

23. In addition, reliance is placed on (i) ***Chetan Dass Gupta Vs. Sushila Devi*** 1983 (1) RCR (Punjab & Haryana) 585 to contend that without the respondent tenant being under threat of eviction from his own landlord is not entitled to evict his own tenant; (ii) ***Inderjeet Kaur Vs. Nirpal Singh*** (2001) 1

SCC 706; and, (iii) *Sanjay Chug Vs. Opendar Nath Ahuja* 2014 SCC OnLine Del 80 to contend that the present is a case of requirement for additional accommodation and leave to defend is to be necessarily granted.

24. It is also the contention of the counsel for the petitioner/tenant that there is no pleading in the petition for eviction, of the respondent/landlord having no other alternate accommodation and reliance is placed on *Dr. (Mrs.) N.D. Khanna Vs. M/s. Hindustan Industrial Corporation, New Delhi* AIR 1981 Delhi 305 to contend that without the said essential ingredient being pleaded, the petition under Section 14(1)(e) of the Act is not even maintainable.

25. I have already dealt hereinabove with respect to the proposition qua which *Chetan Dass Gupta* supra is cited and thus the need to discuss the judgment of another High Court is not felt when the view of this Court is otherwise, as held in judgments cited above.

26. As far as the contention, that whenever the requirement is for additional accommodation leave to defend has to be granted, is concerned, I have in *S. Kesar Singh Vs. S. Paramjeet Singh* 2017 SCC OnLine Del 10747 held as under:-

“9. Supreme Court, in *Rahabhar Productions Pvt. Ltd. Vs. Rajendra K. Tandon* (1998) 4 SCC 49 held that the plea that the landlord was already in occupation of sufficient accommodation and was seeking additional accommodation by evicting the tenant does not disentitle the landlord from recovering possession of the premises in question and upheld the order of refusal of leave to defend. This Court also in *Krishan Kumar Alag Vs. Jambu Prasad Jain* (2009) 161 DLT 511 held that the plea of the tenant, that since the landlord had sought additional accommodation, it was a

good case for grant of leave to defend, must fail. It was held that once on assessing the requirement of the landlord and the accommodation already available with the landlord, it was found that the landlord requires additional accommodation, leave to defend has to be denied. SLP(C) No.2207/2009 preferred against the said judgment was dismissed on 13th July, 2009. This Court again in **Vinod Arora Vs. Deepak Aggarwal** 2010 (119) DRJ 221 held that the fact that the landlord is in occupation of a part of the ground floor did not entitle the tenant to leave to defend, once the requirement of the landlord for the remaining ground floor in occupation of the tenant was made out. SLP(C) No.028027/2010 preferred thereagainst was also dismissed on 2nd September, 2013. To the same effect are judgments of this Court in **Budh Singh & Sons Vs. Sangeeta Kedia** (2011) 185 DLT 580 and **Megh Raj Roshan Lal Vs. Rashmi Jain** 2013 SCC OnLine Del 4001. Earlier also, in **K.D. Gupta Vs. H.L. Malhotra** 1992 (23) DRJ 234 (SLP(C) No.007073/1992 preferred whereagainst was dismissed on 22nd July, 1992) it was held that it cannot be laid down as a matter of principle that in every case of additional accommodation, leave to defend must necessarily be granted.

10. Even otherwise, no limitation, neither in Section 14(1)(e) nor in Section 25B of the Act to the said effect is to be found. Neither of the said provisions carve out a difference between requirement of tenanted premises when the landlord is not in possession of any accommodation and requirement of tenanted premises when the landlord is in possession of some accommodation and needs more or additional accommodation. No difference in law can be made in the two situations and to create a difference between the two situations would amount to arbitrary discrimination. Requirement of tenanted premises, whether it be on account of no accommodation or for additional accommodation have thus to be treated at par. It cannot be said that the summary procedure under Section 25B of the Act is available only when the landlord is literally on the

road, with no accommodation available to him and is not available when the landlord has some accommodation, even though it may be insufficient for his requirement. Supreme Court, in **Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde** (1999) 4 SCC 1 held that the phrase “reasonably and bona fide required by the landlord” is not to be tested on par with “dire need” of a landlord because the latter is a much greater need. Similarly, in **Raghunath G. Panhale Vs. Chaganlal Sundarji & Co.** (1999) 8 SCC 1 it was held that the word “reasonable” connotes that the requirement or the need is not fanciful or unreasonable but need not also be a “compelling” or “absolute” or “dire necessity”. A reasonable and bona fide requirement was held to be something in between a mere desire or wish on the one hand and a compelling or dire or absolute necessity on the other hand.

11. The counsel for the petitioner has drawn attention to **Santosh Devi Soni Vs. Chand Kiran** (2001) 1 SCC 255 and **S.M. Mehra Vs. D.D. Mallik** (2001) 1 SCC 256 where it has been observed “there is no need to take a summary procedure since it is a case of additional accommodation”.

12. Both the aforesaid are without discussing any facts and without discussing any law and in fact are not even judgments and are reported as orders only. Supreme Court recently in **Pratap Kishore Panda Vs. Agni Charan Das** (2015) 17 SCC 789 held that with exponential increase in the decisions delivered by it, it has become an imperative for Advocates to distinguish between orders and judgments and to correctly cull out the ratio of the judgments. It was held that the decision being relied upon by the counsel before it was an order of the Supreme Court which decided the dispute before it and did not even attempt to or intend to expound the law and was therefore not in the nature of a binding precedent. I may in this regard notice that this Court in **K.D. Gupta** supra also held that **S.M. Mehra** supra did not give the facts in detail and leave to contest in that case was granted in peculiar facts and circumstances of that case and it cannot be held as laying down as a matter of

*principle that in every case of additional accommodation, leave to defend must necessarily be granted. **Santosh Devi Soni and S.M. Mehra** supra, in **Budh Singh & Sons** supra also were not treated as laying down any such ratio.*

*13. For the same reasons, the reference to **S.K. Seth Vs. Vijay Bhalla** 191 (2012) DLT 722, relying on the orders aforesaid of the Supreme Court is of no avail.”*

27. A reading of the petition for eviction as a whole does indeed show the respondent/landlord to have sufficiently conveyed that he and his son are carrying on business from tenanted premises and want to shift to their own premises. **Dr. (Mrs.) N.D. Khanna** supra cited by the counsel for the petitioner/tenant is a dicta more than forty years old and it has been held in **Dina Nath Vs. Subhash Chand Saini** (2014) 11 SCC 20 and **Nidhi Vs. Ram Kripal Sharma** (2017) 5 SCC 640 that interpretation of Rent Control laws though hitherto before was in favour of the tenant, a time has now come to interpret the same without leaning either in favour of the tenant or in favour of the landlord and pragmatically and considering the prevalent facts and circumstances. Once it is found that an overall reading of the petition for eviction shows the same to be disclosing the cause of action, for the technicality of the Advocate for the landlord having not used the same language as used in Section 14(1)(e), a landlord cannot be divested of his right if any to evict the tenant. I may in this context again notice that the petitioner/tenant and his father have been tenants in the subject shop for over half a century, paying the same rent on which the shop was taken on rent i.e. Rs.40.60p per month. The respondent/landlord along with three others purchased the property in 1978 and whereafter there was a partition suit between the co-owners and in which ultimately a final decree for partition

under which the subject shop fell to the exclusive share of the respondent/landlord was passed in the year 2010. In the same year the respondent/landlord filed the petition for eviction from which this petition arises. It is unfortunate that the petition for eviction remained pending before the Additional Rent Controller at the stage of leave to defend for five years thereby negating the legislative intent of summary procedure for such petitions for eviction. Now again unfortunately this Revision Petition has remained pending for over two years. Supreme Court in ***Faruk Ilahi Tamboli Vs. B.S. Shankarrao Kokate*** (2016) 15 SCC 431 has held that where a person purchases a property in occupation of a tenant paying a meagre rent, inference is that the purchase is not for investment but for own use after evicting the tenant. Even if it were to be held that the petition for eviction lacked the ingredient of the respondent/landlord having no other alternate accommodation, now that the matter has been fully thrashed out before the Additional Rent Controller and before this Court and what transpires is that the only other commercial accommodation available with the respondent/landlord is the premises as already disclosed in the petition for eviction and the premises at Ghazipur, certainly the petition for eviction cannot be rejected as sought.

28. That brings me to the aspect of the premises at Ghazipur. The documents filed with respect to the said premises show that the perpetual lease of the land underneath the said property was granted in favour of the respondent/landlord after 6th April, 2011. The petition for eviction from which this Revision Petition arises was instituted prior thereto on 17th August, 2010. Thus the respondent/landlord cannot be said to have indulged in any concealment for the reason of not disclosing what was not existing on

that date. Merely because the respondent/landlord, under a scheme brought out by the Government, prior to the filing of the petition for eviction may have applied for a space in the proposed market, would not require the respondent/landlord to disclose the same in the petition for eviction.

29. Similarly, it is not the case of the petitioner/tenant that the construction on the said plot of land was raised prior to filing of the reply by the respondent/landlord to the application of the petitioner/tenant for leave to defend. I have already noticed above that the leave to defend application of the petitioner/tenant remained pending for unduly long time of five years owing to the dilatory tactics of the petitioner/tenant as evident from the order sheet of the Trial Court. Thus it cannot be said that there was any concealment from the said reply as well. In fact the reply to the application for leave to defend is also found to have been filed prior to the date of grant of perpetual lease of the land.

30. The photographs of the Ghazipur premises filed by the petitioner/tenant himself along with his application under Order XLI Rule 27 of the CPC show the said property as well as the neighbouring properties to be lying unused, with even the road in front of the same having not been constructed. I may in this regard notice that the leases granted by the Government of India, as also the lease filed with the application under Order XLI Rule 27, impose a condition for raising construction within specified time, else entail cancellation of allotment/lease. Thus merely because the respondent/landlord has constructed over the land does not mean that the respondent/landlord is carrying on business from the said premises. It is the plea of the respondent/landlord also that none of the paper merchants have

shifted to the said premises and the paper market continues to be in the locality where the subject shop is situated.

31. I have in Order dated 10th August, 2017 in R.C. Rev. No.313/2016 titled **Rajender Kumar Goel Vs. Surender Lal** dealt with a similar plea in the context of chemical market and where it was found that there is no obligation on the traders to shift till all the facilities are made available by the Government at the alternate market. From the photographs filed by the petitioner/tenant himself, the same is the position here.

32. As far as the contention of the counsel for the petitioner / tenant, of the respondent / landlord in the petition for eviction having not disclosed the allotment at Holambi Kalan is concerned. Supreme Court in **Ram Narain Arora Vs. Asha Rani** (1999) 1 SCC 141 held that the non-disclosure of accommodation which the Court also agrees cannot be alternate suitable accommodation, cannot be fatal to the petition for eviction. I have also in judgment dated 12th January, 2009 in RC (R) No.78-79/2005 titled **Mumtaz Begum Vs. Mohd. Khan** held that non-disclosure of other accommodation available is not always fatal. To the same effect are **Surinder Singh Vs. Jasbir Singh** (2010) 172 DLT 611, **Sukhbir Singh Vs. Dr. I.P. Singh** (2012) 193 DLT 129, **Manju Devi Vs. Pratap Singh** (2015) 219 DLT 260 and **Hameeda Shahzad Vs. Shahjahan Khatoon** 2017 SCC OnLine Del. 7203. I have recently in **Sunil Kumar Goyal Vs. Harbans Singh** 2017 SCC OnLine Del. 9289, referring to earlier judgments, also held that once the facts have come before the Court and the Court has, after dealing therewith held in favour of landlord, the petition for eviction cannot be dismissed on ground of concealment. A mere plot of land at an alternative site for warehousing by

paper traders and where warehouse has not come up as yet, cannot be said to be alternative suitable accommodation for non-disclosure whereof the petition for eviction can be dismissed.

33. There is another aspect of the matter.

34. The documents filed by the petitioner/tenant along with his rejoinder to the application under Order XLI Rule 27 of the CPC show that the premises at Ghazipur are only for warehousing purpose and not meant as a shop. Thus, even if it were to be held that Ghazipur is developed, the respondent/landlord is required to shift only warehousing thereto and is not stopped from retailing paper from the subject shop. The subject shop *ad measures* 15^{ft.} X 7^{ft.} and cannot possibly be used for warehousing paper and is to be used as a shop for retail only and the Ghazipur premises according to the documents of the petitioner/tenant also are not for retail but are only for warehousing.

35. Thus even if the pleas sought to be taken under application under Order XLI Rule 27 of the CPC were to be considered, the same also do not disentitle the respondent/landlord from an order of eviction under Section 14(1)(e) of the Act.

36. There is thus no merit in the petition.

35. Dismissed. Trial Court record be returned forthwith.

No costs.

RAJIV SAHAI ENDLAW, J

NOVEMBER 03, 2017

‘pp’..

(Corrected and released on 27th February, 2018)