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

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Date of decision: 31.01.2017

+ RC.REV. 662/2015

HAMEEDA SHAHZAD

..... Petitioner

Through Mr.Rajeev Saxena & Ms.Namrata
Chauhan, Advocates

versus

SHAHJAHAN KHATOON & ORS.

..... Respondents

Through Mr.N.K.Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present revision petition is filed under section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) seeking to challenge the eviction order dated 28.9.2015 by which the Eviction Petition filed by the petitioner under section 14(1)(e) of the DRC Act was dismissed. The petitioner/landlord filed the eviction petition under section 14(1)(e) of the DRC Act regarding Shop No.413-A, Gali No.4, Okhla, P.O. Jamia Nagar, New Delhi-110025. It was stated in the eviction petition that the petitioner is the owner of the said property measuring 75 sq. yards constructed upto third floor. The property was purchased on 22.6.1983 from Shri Abdul Malik s/o Adul Razak. The property is having three shops on the ground floor. First floor is used by the husband of the petitioner for his workers engaged in a dhaba. The petitioner alongwith her husband lives on the second floor. The son of the petitioner is living on the third floor. The

petitioner has one son and three daughters. The eldest daughter is married and living with her husband in Noida. The younger daughter, namely, Rakshanda Shahzad was married on 9.5.2003 but due to some matrimonial dispute is living with the petitioner. Matrimonial litigations are said to be pending. She has one daughter aged four years. The said daughter Rakshanda Shahzad and granddaughter are said to be completely dependent upon the petitioner and her husband.

2. Reference is also made to the youngest daughter Samra who is also dependent upon the petitioner and her husband. It is urged that there is bona fide requirement of the tenanted shop for the settlement of her daughters. The daughters would like to start a boutique and dress material shop for earning their livelihood. It is averred that the petitioner has no alternative shop available for fulfilling the requirement/settlement of her daughters.

3. The petitioner has pointed out that out of the three shops in the property, one shop is occupied by her husband, one is occupied by respondents/tenants and the third shop is occupied by another tenant Master Abdul Aleem. An Eviction petition has also been filed to evict the said tenant Master Abdul Aleem as the son of the petitioner also requires the said tenanted shop bona fide to start his own business. The shops were given on rent when the children were small but now as they have grown up the shops are required by the petitioner.

4. Respondents have filed their written statement after having been granted leave to defend. Essentially, the defence stated is that the petitioner is not the owner of the property. It is urged that the petition is not maintainable as the petitioner relies upon documents like GPA, SPA, Agreement to Sell etc. executed by Abdul Malik which do not confer title on

the petitioner. It is admitted that the shop was let out by Abdul Malik owner of the shop to late Muzaffar Alam Khan, husband of respondent No.1 and father of respondents No.2 to 7 in November 1976. It is further stated that the respondents became absolute owner of the shop by way of adverse possession as after the death of their father/husband, the respondents are in occupation of the shop in question without any interference and obstruction from any side whatsoever. That in crux was the defence of the respondents in the written statement.

5. The parties led their evidence. The petitioner has examined herself as PW-1. She examined Shri Jagdish Narain Meena, LDC from the office of Sub Registrar-III, Asaf Ali Road, New Delhi as PW-2, Shri Mahesh Chand, Assistant Meter Reader, Delhi Jal Board as PW-3, Mr.Braham Prakash, Head Clerk SDMC as PW-4. The respondent No.1 has herself stepped into the witness box as RW-1. She also examined Ms.Sabiha Saleem, LDC from Khadijatul Kubra Girls Public School, Jamia Nagar as RW-2.

6. The ARC by the impugned order on the issue of landlord-tenant relationship noted that the case of the petitioner is that she has bought the property from Abdul Malik through documents which have been placed on record including Registered GPA, SPA, affidavit, cash receipt, agreement to sell, registered will etc. Further, the mutation letter and original house tax receipts have also been placed on record. The ARC concluded that the respondents are estopped under section 116 of the Indian Evidence Act to challenge the title of the landlord or any person who has purchased the tenanted premises from the admitted landlord. The plea of adverse possession was also rejected. The ARC also noted various receipts issued by

late Muzaffar Alam Khan and concluded that the relationship of landlord tenant exists between the parties.

On the issue of bona fide requirements of the petitioner and availability of alternative suitable accommodation, the ARC noted that in the cross-examination the petitioner has admitted that her daughter Rakshanda Shahzad received Rs.8 lacs for herself and her daughter in lieu of settlement of matrimonial disputes and hence it cannot be said that the daughter is completely dependent upon the petitioner as she has received a lucrative amount for settlement. It also noted that the petitioner admitted that her daughter does not have a diploma or any certificate to run a boutique and no experience of the same though it accepts that the said requirements may not be necessary. The ARC concluded that the onus was on the petitioner to establish her bona fide requirement. It also noted that none of the daughters also entered the witness box. It also noted that in her cross-examination the petitioner had said that the daughter is not working in the Khadijatul Kubra Girls Public School, Jamia Nagar, New Delhi. However, RW-2 Ms.Sabiha Saleem, LDC from Khadijatul Kubra Girls Public School, Jamia Nagar, New Delhi who was summoned has pointed out that Ms.Rakshanda Shahzad was appointed as a teacher in the school from 14.8.2012 and left the school on 31.1.2015. She was employed on temporary adhoc basis on a salary of Rs.6,500/- per month. It noted that these are facts which were not mentioned by the petitioner and that it was the primary duty of the petitioner to approach the court with clean hands and disclose all sources of income without demur. Hence, the ARC held that there was no bona fide requirement on behalf of the petitioner. However, on alternative

accommodation it accepted that there was no alternative accommodation for her bona fide requirement. The eviction petition was accordingly dismissed.

7. I have heard learned counsel for the parties. Learned counsel for the petitioner has pointed out that when the Eviction Petition was filed on 12.9.2008, the daughter of the petitioner Ms.Rakshanda Shahzad was neither teaching anywhere nor had received any alimony. Hence, the question of putting these facts in the eviction petition would not arise. He submits that these are subsequent developments as is clear from the impugned order. As per evidence of RW-2 Ms.Sabiha Saleem, the said daughter Ms.Rakshanda Shahzad has joined as a teacher in August 2012. Same is the case regarding alimony received by the said daughter in lieu of the matrimonial litigation. Hence, it is urged that the ARC has fallen into error in ignoring this aspect and concluding that there is suppression of material facts by the petitioner.

8. Learned counsel appearing for the respondents has stressed on the suppression of material facts by the petitioner. He has also urged that the site plan that was filed by the petitioner was not proved. He pointed out that no dimensions are mentioned in the site plan which is Ex.PW1/14. Learned counsel further submitted that the shop eviction of which is sought measures 3' x 8' which is too small to run a boutique. Hence, he submits that there is no bona fide requirement on the part of the petitioner and the eviction petition has been filed malafidely.

9. 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* 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...”

10. Section 14(1)(e) of the Delhi Rent Control 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 favor of the landlord against a tenant:

(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;”

11. The essential ingredients which a landlord is required to show for the purpose of getting an eviction order for bona fide needs are (i) the party applying 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 ARC has held that there existed relationship of landlord tenant between the parties. Similarly, on the issue of availability of reasonable alternative suitable accommodation, the ARC has held that no such reasonable suitable alternative accommodation is available to the petitioner. No submissions in this regard have also been made before this court.

13. The real controversy centers around the findings recorded by the ARC about lack of bona fide. The only facts on which this conclusion is recorded are three facts which have been brought on record by the respondents, namely, that the daughter of the petitioner Ms.Rakshanda Shahzad has received a sum of Rs.8 lacs as alimony in lieu of the settlement of matrimonial dispute which is a lucrative amount and hence, she cannot be said to be completely dependent upon the petitioner for her maintenance. The second aspect on the basis of which the ARC has drawn an adverse

conclusion is about the fact that Ms.Rakshanda Shahzad worked as a teacher for a small period from 14.8.2012 to 31.1.2015 on a salary of Rs.6,500/- p.m. The ARC held that these were material facts which were not pleaded by the petitioner and hence there is suppression of material facts and held that there is lack of bona fide.

14. Thirdly, the ARC also held that the daughters do not have any experience in running of a boutique and dress material shop.

15. On the issue of experience in running a boutique and dress material shop, it is settled by catena of judgments of this court that the petitioner need not have experience or exposure in the business which he intends to start on the basis of which eviction for bona fide need has been filed. In case of bona fide need the landlord need not even specify the nature of work that he intends to carry out in the premises when it gets vacant.

16. This court in ***Puran Chand Aggarwal v. Lekh Raj, 210 (2014) DLT 131*** 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/1719/2009MANU/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 show evidence that he has experience of running the proposed business. It is also not necessary for the landlord to indicate the precise nature of business

which he intends to start in the premises. The conclusion of the ARC in this regard is contrary to settled legal position.

17. On the fact that the daughter of the petitioner has received some alimony and that she did the job of a teacher for a short duration, in my opinion, as per settled legal position is not factors that are relevant for the purpose of determining bona fide requirement of the petitioner. The admitted position is that the said daughter Ms.Rakshanda Shahzad has separated from her matrimonial home and is living with the petitioner. She has a small daughter. For long term survival she would certainly need to be independent and carry on her own work/business to enable her to earn a livelihood. Merely because she has received some amount of alimony could not affect her bona fide requirements. The sum of Rs.8,00,000/- received by her would not last for her lifetime as has been concluded by the ARC and would not be sufficient for her expenses for rest of her life and for bringing up her daughter. Further merely because she took up a temporary job would not mean that she ceased to need the shop for her bona fide requirement. She is not expected to starve herself and keep herself unemployed till the eviction petition is disposed of.

18. Reference in this context may be had to the judgment of the Supreme Court in the case of ***Raghunath G.Panhale (D) by LRs. Vs. Chaganlal Sundarji & Co., (1999) 8 SCC 1*** where the court held as follows:-

“11. It will be seen that the trial Court and the appellate Court had clearly erred in law. They practically equated the test of "need or requirement" to be equivalent to "dire or absolute or compelling necessity". According to them, if the plaintiff had not permanently lost his job on account of the lock-out or if he had not resigned his job, he could not be treated as a person without any means of livelihood, as contended by him and

hence not entitled to an order for possession of the shop. This test, in our view, is not the proper test. A landlord need not lose his existing job nor resign it nor reach a level of starvation to contemplate that he must get possession of his premises for establishing a business. The manner in which the courts have gone into the meaning of "lock-out" in the Industrial Disputes Act, 1947 appears to us to be nothing but a perverse approach to the problem. One cannot imagine that a landlord who is in service should first resign his job and wait for the unknown and uncertain result of a long drawn litigation. If he resigned his job, he might indeed end up in utter poverty. Joblessness is not a condition precedent for seeking to get back one's premises. For that matter assuming the landlord was in a job and had not resigned it or assuming that pending the long drawn litigation he started some other temporary water business to sustain himself, that would not be an indication that the need for establishing a grocery shop was not a bona fide or a reasonable requirement or that it was motivated or was a mere design to evict the tenant. It is not necessary for the landlord to adduce evidence that he had money in deposit in a Bank nor produce proof of funds to prove his readiness and willingness as in a suit for specific performance of an agreement of sale of immovable property. So far as experience is concerned, one would not think that a grocery business was one which required extraordinary expertise. It is, therefore, clear that the entire approach of both the Courts was absolutely wrong in law, and 'perverse on fact. Unfortunately the High Court simply dismissed the writ petition filed under Article [227](#) stating that the findings were one of fact. That is why we think that this is an exceptional case calling for interference under Article [136](#) of the Constitution of India."

19. It is also a matter of fact that the eviction petition was filed in the year 2008. The said daughter Ms.Rakshanda Shahzad has taken up employment sometime between 2012-15 much after filing of the eviction petition. Similarly, she received the alimony also after filing of the eviction petition.

Hence, the conclusion in the impugned order of holding the petitioner guilty of suppression of material facts is a misplaced conclusion. Even otherwise these facts i.e. taking up a job on temporary basis or receiving alimony are irrelevant issues to decide the issue of bona fide requirement. Omission to mention these facts, does not mean that there is suppression of material facts.

20. Reference in this context may be had to the judgments of this court in ***Manju Devi vs. Pratap Singh, (2015) 219 DLT 260*** where this court held as follows:-

6. Heard learned counsel for the parties and perused the records. Undoubtedly the petitioner has not disclosed property 717G Faridpuri which was owned by her husband in the eviction petition. The same being on rent is not disputed and it is also well settled that if the other accommodation is not suitable then the landlord need not disclose the same in the eviction petition. In *Surinder Singh Vs. Jasbir Singh* 172 (2010) DLT 6117 this Court held -

"25. The mere fact that, respondent did not disclose the accommodation of basement and first floor available with him in the eviction petition, would not prove fatal to the present case, since the same cannot be said to be an alternative suitable accommodation for the purpose of business."

21. Similarly, in ***Sukhbir Singh vs. Dr.I.P.Singh, (2012) 193 DLT 129*** the court held as follows:-

14 Regarding the contention of the respondent tenant that the petitioner did not disclose the fact of being in possession of other properties, it would suffice to say that non-disclosure of properties which were not suitable to meet the petitioner's requirement is not fatal to his case.

22. In the light of the above legal position, it is manifest that the impugned order has been passed contrary to the settled legal position. The facts as available on record have been completely misread and wrong legal conclusions have been recorded. The impugned order dismissing the eviction petition suffers from material illegality. It is a fit case for this court to exercise its revisionary powers under section 25B(8) of the DRC Act. Accordingly, the impugned order is quashed. An eviction order is passed in favour of the petitioner and against the respondent in respect of the tenanted property in issue. However, in terms of section 14(7) of DRC Act the petitioner shall not execute the eviction order before six months from the date of the order.

(JAYANT NATH)
JUDGE

JANUARY 31, 2017/n