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

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Pronounced on: 11.04.2018

+ RC.REV. 74/2017 and CM No. 6184/2017(stay)

SUNDER SINGH TALWAR

..... Petitioner

Through

Mr.Brij Bhushan Gupta, Sr. Advocate
with Mr.Jai Sahai Endlaw, Advocate

Versus

KAMAL CHAND DUGAR

..... Respondent

Through

Mr.Ravi Gupta, Sr. Advocate with
Mr.Ankit Jain, Mr.Sachin Jain,
Mr.Sarvesh Rai and Mr.Manu
Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This revision petition is filed under Section 25B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the 'DRC Act') seeking to impugn the eviction order and judgment dated 09.08.2016 passed by the court of Additional Rent Controller (hereinafter referred to as 'the ARC'). By the impugned order, the ARC dismissed the application for leave to defend under Section 25B of the DRC Act and passed an eviction order under Section 14(1)(e) of the DRC Act.

2. The respondent/landlord filed the eviction petition under Section 14(1)(e) of the DRC Act seeking eviction of the petitioner/tenant from Shop No. 9A situated at ground floor of property No.HS-9, Kailash Colony

Market, New Delhi-11048 on the ground of bona fide requirements of the family members of the respondent. It was pleaded in the eviction petition that the respondent is the absolute owner of the tenanted premises having purchased the same by a registered sale deed dated 31.12.1996. It was pleaded that the property is required for the bona fide requirement to settle his daughter-in-law, namely, Ms.Meenakshi Dugar and his daughter, namely, Ms.Jyoti. The case of the respondent was that Ms.Meenakshi Dugar, the daughter-in-law comes from a business family. After marriage she gave birth to two children who are now school going. Hence, she has sufficient time to engage herself in business activities. Similar plea is raised regarding the daughter-Jyoti, namely, that her children have now started going to school and she also has sufficient time to engage herself. It is pleaded that she does not have a full time job and is also said to be not settled in life. For more than one year, it is pleaded, she is working with a firm M/s. Global Sources and drawing a monthly salary of Rs.25,000/-. It was urged that the said daughter and daughter-in-law require to set up a business for earning their livelihood as at present they are not doing any business. They are planning to set up an eating point to serve regular food to their potential customers. They plan to set up a kitchen on the ground floor with storage at mezzanine floor and a take away point in the front portion of the shop. They are said to be presently without any business and are in need of the commercial premises. It is also pointed out that the respondent and his family members own the property No.HS-9 and third floor of the property HS-10, Kailash Colony, New Delhi. A part of the ground floor and mezzanine is under the tenancy of the petitioner. Another part of the premises is in occupation of the respondent, his son-Sh. Rakesh Dugar and

his son-in-law-Sh. Manish Buchha. The manner of using the shop has been explained, namely, the ground floor is for sale of sweets and snacks from the front portion. In the rear portion of the ground floor, mezzanine and first floor, a regular retail grocery store is being run. The third floor of the building, namely, HS-9 and HS-10 is being used for manufacturing activities of the sweets, snacks and other confectionary items which are being sold under the name and style of M/s.Manav Snacks Pvt. Ltd. Sweets using the brand name of 'Bikaner Namkeen Bhandar'. A portion of the property is also said to be under the tenancy of an old tenant, namely, M/s.National Insurance Co. Ltd. It has been pleaded that apart from the said properties stated in the petition, the respondent does not own or possess any accommodation much less a commercial accommodation in entire Delhi.

3. The ARC by the impugned order noted the submissions/defence of the petitioner/tenant as follows:-

(i) Daughter-Jyoti is not a family member nor dependent on the respondent and does not require the premises. The married daughter, it was pleaded, was residing with her husband and children in her matrimonial home. The daughter not being a member of the family of the respondent, no such petition could be filed for her alleged requirement.

(ii) Daughter-in-law-Meenakshi Dugar is not dependent on the respondent and does not require the premises.

(iii) The first floor of the property was purchased 10-11 years ago and was in occupation of a tenant. Thereafter, it was vacated in 2008-09 and was immediately let out to a tenant for the business of Beauty Parlour and Cafe. The said tenant vacated the first floor two years ago and the floor is lying vacant. It has also been pleaded that the mezzanine floor apart from the said

first floor are lying vacant and unutilized and no business is being run from there as claimed. It is further pleaded that the third floor of HS-10 is lying vacant and is not being utilized by the respondent. The respondent is only using the third floor of property HS-9. Hence, an alternate accommodation is available. It was pleaded that a number of restaurants/eating points are being operated in Delhi including in Kailash Colony Market from the upper floors.

4. The ARC also noted that an additional ground has been taken by the petitioner in the rejoinder, namely, that the landlord/respondent has not filed his ownership documents for the entire building. This plea was rejected noting that it is contrary to the petitioner's own stand in his affidavit. In his affidavit the petitioner had stated that the respondent had purchased the ground floor, mezzanine floor, first, second and third floors at different point of time. Further, the ARC also noted that the plea which was referred to in the rejoinder cannot be gone into.

5. The plea of the petitioner that Ms. Jyoti is not a family member and not dependent on the respondent was rejected by the ARC relying upon the judgment of this court in *Anil Kumar Gupta vs. Deepika Verma, RC.REV. 138/2015* dated 14.10.2015 and on the judgment of the Supreme Court in the case of *Baldev Sahai Bangia vs. R.C.Bhasin, AIR 1982 SC 1091*.

6. The ARC on the issue of bona fide need of the daughter/daughter-in-law concluded that both have a right to set up their own business instead of being an employee of a third entity. The decision cannot be questioned on the ground of want of bona fide. The plea was rejected.

7. On the objections of the petitioner raised i.e. that the first floor and the third floor of HS-10 are available to the respondent as suitable alternative accommodation, the ARC noted that the respondent has denied that the said

portions of the property are lying vacant. Photographs have been filed to show that said premises are in occupation of the respondent and his son. The ARC also noted that the commercial premises on the ground floor of a market area are better suitable for business of fast food/eatery and would certainly invite more footfall. The ARC noted that it is not for the tenant to dictate terms to the landlord as to which floor is more suitable. Noting that no material has been disclosed which is stated to be in possession of the petitioner, which, he intends to bring in evidence so as to falsify the claim of the respondent, the application for leave to defend was dismissed and an eviction order was passed.

8. I have heard learned senior counsel for the parties.

9. Learned senior counsel for the petitioner has vehemently submitted as follows to support his submission that the impugned order is erroneous.

(a) It is pointed out that earlier the landlord/respondent had filed an eviction petition which was dismissed as withdrawn on account of alleged errors. It is pleaded that there are discrepancies in the averments made in the first petition that was filed 04.01.2016 as compared to the averments made in the present eviction petition that was filed on 18.03.2016. In the first eviction petition it was pleaded that there is a requirement of the ground floor for setting up a retail showroom for ladies and kids garments which is materially different from what is pleaded in the present eviction petition, namely, a requirement to open an eatery. This it is pleaded falsifies the claim of the respondent.

(b) It is also pleaded by the learned senior counsel that the respondent and his family own a large area measuring almost 6000 sq. ft. on the ground floor and mezzanine floor, first floor and third floor of property HS-9. In addition,

an area of 1600 sq. ft. is there on the third floor of premises HS-10 Hence, it was pleaded that this area is sufficient and there can be no reason for the respondent to file the present eviction petition seeking additional area.

(c) It is pleaded that the third floor of the property HS-10, Kailash Colony Market, Delhi is actually in the name of Ms.Jyoti, the daughter of the respondent. Hence, it is pleaded that a false plea has been raised in the eviction petition that Ms.Jyoti does not own any commercial area in Delhi. Hence, the present eviction petition, it is pleaded, is liable to be dismissed.

(d) It was sought to be stressed by the learned senior counsel for the petitioner that ordinarily a married daughter cannot be considered as a dependent on her father for seeking eviction of a tenanted property. Reliance was placed on the judgment of the Supreme Court in the case of *Kizhakkayil Suhara & Ors. v. Manhantavida Aboobacker (dead) by LRs. & Anr., (2001) 8 SCC 19* and judgment of this court in **Bhim Singh Saini v. Preet Gupta, (223) 2015 DLT 303/(MANU/DE/3181/2015)** to support the above contentions.

(e) It is further pleaded that a reference has been made to the fact that the daughter/daughter-in-law do not own any property in Delhi. However, there is no such plea raised regarding the son-in-law who is also working with the respondent. Reliance is also placed on the judgment of this court in the case of *Kundan Kaur v. K.P.Verma, MANU/DE/0297/1978* to plead whether a need of a married daughter can be considered as a need of a defendant member of the family, is a disputed question of fact and would require determination after evidence. Hence, it is pleaded that the ARC ought to have granted leave to defend to the petitioner as a triable issue was raised.

10. Learned senior counsel for the respondent has denied the submission of the petitioner. It has also been stressed that the petitioner is not using the suit premises and it is lying locked for several years.

11. 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...”

Hence, this court has to test the order of the ARC as to whether it is according to law.

12. 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.”

In view of the judgment of the Supreme Court in the case of *Satyawati Sharma (dead) by LRs vs. Union of India & Anr., (2008) 5 SCC 287* the aforesaid provision is also now made applicable to commercial properties.

13. 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.

14. 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.

15. This court in the case of *Sarwan Dass Bange vs. Ram Prakash*,¹⁶⁷ (2010) DLT 80 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.”

16. 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.

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.)”

17. The Supreme Court in a recent judgment in ***Vijay Kumar Ahluwalia & Ors. vs. Bishan Chand Maheshwari & Anr. AIR 2017 SC 792*** held as follows:-

"21. It is a settled principle of law that while considering the grant of leave to contest the eviction proceedings under the Rent Laws, the Authority/Court is not expected to examine the merits and demerits of the grounds raised in the application for grant of leave to contest and if the Authority/Court finds that the grounds raised prima facie disclose a defence which, if accepted, may result in non-suiting the landlord from claiming eviction, the tenant is entitled to obtain leave to contest the eviction proceedings on merits. In this case, we find that the Appellants-tenant have made out such grounds and are, therefore, entitled for grant of leave to contest the eviction proceedings filed by Respondent No. 1 against them on merits."

I may hence test the findings recorded by the ARC on the touchstone of the requirement of the parameters stated above for determining as to whether the trial court rightly refused the leave to defend to the petitioners.

18. I will now deal with the said submissions of the learned senior counsel for the petitioner. As far as the first contention is concerned, namely, the submissions that in the earlier eviction petition filed, the premises were stated to be required for setting up a retail showroom for ladies and kids garments and now in this petition it is pleaded that an eatery is to be opened. A perusal of the first eviction petition would show that such a plea has been raised in a portion of the eviction petition. In another portion of the same petition it has been clearly stated that the daughter/daughter-in-law seek to set up an eating point from where they can serve regular food to their potential customers. In fact it has been pointed out by the respondent in the present eviction petition that in the earlier petition, immediately on filing, it was noticed that there were several typographical and technical errors. Hence, the same was withdrawn by the respondent with liberty to file a fresh

eviction petition. It appears that this is one of the errors that was there. The error appears to be a typographical mistake.

Even otherwise, the plea is misplaced and misconceived. It is settled legal position in this regard that a landlord while filing an eviction petition for bona fide need, need not specify the exact business which is proposed to be carried out from the tenanted premises for which the eviction has been sought. In fact, even if in the eviction petition a particular purpose is stated, the landlord is not bound by the said purpose and after an eviction order, can change his mind and use the premises for a different kind of business. It is settled by a catena of judgments that the landlord has not to give an elaborate description of the business or the nature of business that he seeks to carry out in the premises. In this context reference may be had to the judgment of this court in *Puran Chand Aggarwal v. Lekh Raj*, 210 (2014) DLT 131, wherein 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/1719/2009MANU/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 to show evidence that he has experience of said business that he proposes to start. In fact, it is not necessary for landlord to indicate the precise nature of business which he intends to start in the premises. Hence if for some reason there is an impediment in the way of the petitioner/petitioner's son from starting a computer shop from the tenanted premises, the said petitioners would be free to change the nature of business and

use the suit property for carrying on business which confirms to the legal requirements. There is no merit in the contention of the petitioner that the need for starting a computer shop is not bonafide requirement.”

Hence, it is settled law that the landlord need not show evidence that he has experience of said business that he proposes to start. In fact, it is not necessary for the landlord to indicate the precise nature of business which he intends to start in the premises. There is hence no merit in the said contention of the petitioner.

19. Coming to the second contention, namely, about availability of an area of 6000 sq. ft. plus 1600 sq.ft. to the respondent for his business, the plea is misplaced. The said area is being used by the respondent, his son and his son-in-law for carrying out their business. The purpose of the present eviction petition is to help the daughter/daughter-in-law set up an independent business so as to make them independent. Other than a bald denial of the bona fide requirement of the daughter/daughter-in-law, there is no substantial plea raised by the petitioner in this regard.

20. Reference may be had to the judgment of the Supreme Court in the case of *Anil Bajaj & Anr. vs. Vinod Ahuja AIR (2014) SC 2294*. The facts of that case were somewhat similar to the facts of the present case. That was a case where the landlord owned several properties in the vicinity of the tenanted premises. 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.

7. 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.”

Hence, the landlord merely because he owns some other property does not mean he cannot have a bona fide need for seeking eviction of the suit property. In the present case the existence of 6000 sq.ft. with the respondent, does not help the case of the petitioner as the said property is being used by the respondent, his son and his son-in-law. He needs separate space for his

daughter and daughter-in-law to enable them to start a different business so that they settle down. It may be noted that tenanted premises comprises of ground floor measuring about 718 sq.ft. and mezzanine floor measuring 380 sq.ft. The ground floor shop opens into the main market and is bound to attract a lot of foot falls. Hence, the contention of the petitioner about the availability to the respondent of the above noted property is of no consequence and does not in any manner effect the merit of the case of the respondent. The desire to use the shop on the ground floor of the market is a bona fide desire.

21. The next plea raised by the petitioner is that the property on the third floor of HS-10 is in the name of Ms.Jyoti the daughter. It is pleaded that this aspect has been suppressed by the respondent and hence, the present eviction petition ought to be dismissed as a false statement has been made that Ms.Jyoti does not own any other residential or commercial premises.

22. Firstly, it may be noted that no such plea has been raised by the petitioner before the ARC. This is the first time in this revision petition that this plea has been raised. That apart, the plea is misplaced. The plea is not of much material consequence. In the eviction petition, it has been clearly pointed out that respondent and his family members own the property No.HS-9 and the third floor of property No. HS-10, Kailash Colony Market, New Delhi. Even if it is presumed that Ms.Jyoti owns the said property, it has already been explained that the said property is being utilized by the respondent, his son and his son-in-law for carrying out their business. It is not as if the property is lying vacant inasmuch as Ms.Jyoti's husband is also carrying on business from the said property. Hence, the plea is of no consequence.

23. It has next been pleaded by the petitioner that a daughter once married cannot be considered dependent upon the father for the purpose of seeking eviction of a dependent family members under the DRC Act. The contention is misplaced.

24. The Supreme Court in *Joginder Pal v. Naval Kishore Behal*, AIR 2002 SC 2256/(MANU/SC/0453/2002), held as follows:

“24. We are of the opinion that the expression "for his own use" as occurring in Section 13(3)(a)(iii) of the Act cannot be narrowly construed. The expressions must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove we have found the *pari materia* provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependents and kith and kin in the requirement of landlord as "his" or "his own" requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire: (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation or identify nexus

between such person and the landlord so as to satisfy the requirement of the first query.....”

25. Similarly, this court in *New India Assurance Company Ltd. v. Haseena Bano & Ors.*, MAC.A. 93/2013, decided on 18.09.2013, held as follows:

“7. On the issue of dependency, Id. Tribunal has recorded that respondent no. 1 Smt. Haseena Bano, is the wife of the deceased and respondent nos. 2 & 3 are the daughters of the deceased. Both are major and married daughters. However, the claimants have proved that respondent no.3, i.e., Sonali, daughter of the deceased was residing with the deceased along with her husband who was unemployed and earning nothing. Therefore, she was dependent upon the deceased. The dependency of the respondent no. 3 upon the deceased has been corroborated by the Voter Identity Card, which shows the same address as that of the deceased. Mere marriage does not make the person independent. In our society, there are various reasons of getting married. In some cases, even after marriage, he / she remain un-employed as the present case is.”

Hence, it is not a universal rule that married daughter cannot be dependent upon her father. Even otherwise in my opinion, in the present day and age it would be futile to argue that once the daughter is married she ceases to be responsibility of her father. A daughter has equal rights in the estate of the parents in case of intestate death. There can be no reason as to why the father would not like to settle his daughter in business or profession in the same way as he would like to settle his son. The plea to the contrary in the present facts is completely misplaced. It may also be noted that in the present case there is a clear and categorical averment that the daughter does

not own any other property in Delhi and is dependent on the father to be settled.

There is another aspect which the petitioner seems to be ignoring. The property has been sought for the requirement of the daughter and the daughter-in-law of the respondent. As per the contention of the petitioner a married daughter cannot be said to be dependent upon her father. The present eviction petition is filed for the bona fide requirement not for the daughter alone but also for daughter-in-law- Ms.Meenakshi Dugar. As no dispute is raised regarding the bonafide need of the daughter-in-law, the present contention is even otherwise misplaced.

26. The reliance of the learned senior counsel for the petitioner on the judgment of the Supreme Court in *Kizhakkayil Suhara & Ors. v. Manhantavida Aboobacker (dead) by LRs. & Anr* is misplaced. The said judgment has no application to the facts of the present case. The eviction petition in that case had been filed for the bonafide needs of the daughter and son-in-law. In that case before the Supreme Court a plea was raised that where the landlord bona fide needs the building not for his own occupation but for the occupation of a member of the family, it must be shown that such member of the family is dependent on the landlord. It was further urged that the daughter of the landlord is having other non-residential and residential buildings in her own name and hence cannot seek eviction. As this issue was not urged before the lower court, the Supreme Court had remanded the matter back to the rent controller/appellate authority to give opportunity to the parties of being heard. The judgment of the Supreme Court does not help the petitioner in view of the facts of the present case.

27. The next plea raised by the petitioner is that there is no reference to the son-in-law not owning any property in the eviction petition. The respondent has it is pleaded failed to even plead or show that son-in-law does own any property. Reliance was sought to be placed on the judgment of the Supreme Court in ***Koyilerian Janaki & Ors. v. Rent Controller (Munsiff) Cannore & Ors, (2000) 9 SCC 406.***

Merely raising a technical plea would be of no help to the petitioner. Reference in this context may be had to the judgment of the Kerala High Court in ***Safia vs. P.A. Haridasan, MANU/KE/0832/1998*** where the court held as follows:-

“10. In this case, the landlady has clearly stated the purpose for which she was seeking eviction. It was for the occupation of the building by her daughter along with her husband and children. It is true that she had not stated in so many words that the daughter was dependent on her for accommodation. But such a plea is clear from the averments.”

28. The plea raised by the petitioner is merely technical. Reliance of the petitioner on the judgment of the Supreme Court in ***Koyilerian Janaki & Ors. v. Rent Controller (Munsiff) Cannore & Ors.*** (supra) is misplaced. The Supreme Court in that case had stressed that even if it is assumed that the married daughter and son-in-law are a member of the landlord family, the landlord has to plead substantially that they are dependent on the landlord. In the present case there is a clear pleading that the daughter is dependent on the landlord for accommodation and does not own any other building in Delhi. Son-in-law is also working with the landlord in the family business. It is implicit from the pleadings that he is also dependent on the landlord for accommodation. It may be noted that in the eviction petition there is a clear

averment that son-in-law is working along with the respondent and his son and running the business from the premises, details of which have already been noted above. In any case, the present eviction petition is filed for the bona fide requirement not for the daughter alone but also for daughter-in-law-Ms.Meenakshi Dugar. This contention is hence even otherwise misplaced.

29. The petitioner has clearly failed to plead facts that would entitle him leave to defend. There is no error in the impugned order. There is hence no merit in the present petition and the same is dismissed.

(JAYANT NATH)
JUDGE

APRIL 11, 2018/rb

