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

% ***Pronounced on:* 06.04.2018**

+ RC.REV. 338/2014

SANJEEV CHUGH (DECEASED)THROUGH HIS LRS.. Petitioner
Through Mr.Subhiksh Vasudev, Advocate

Versus

OM PRAKASH BATRA & ANR Respondent
Through Mr.K.R.Gupta and Mr.Nitin Gupta,
Advs.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present Revision Petition is filed under section 25-B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act) seeking to impugn the order dated 15.7.2014 by which an order of eviction was passed on a petition filed by the respondents/landlord under section 14(1)(e) of the DRC Act.
2. The respondents/landlords filed the Eviction Petition under section 14(1)(e) of the DRC Act for property being Mezzanine Floor measuring 700 sq.ft. H-4/4, Model Town-II, Delhi which was let out to the petitioner @ Rs.300/- per month. The property originally belonged to Shri Rajender Singh. He sold the aforesaid property to the respondents on 22.5.2002 and handed over vacant possession of the portions in his possession, namely, first and second floors to the respondents which area they are using for storage of their goods/business of Naveen Electronics. The respondents are

also using premises B-2/2, UG-5, Sasco Bhawan, Naniwala Bagh, Azadpur, Delhi for the said storage purposes. The respondent No.1. Shri Om Prakash Batra has one son Arun Batra who has completed his B.Com in the year 2000. The other respondent, i.e. respondent No.2, Sh.Rajinder Batra has a son Aditya Batra who completed his B.Com in the year 2003. Both the sons were said to be dependent on the respective respondents for their residence as well as their livelihood. The respondents alongwith their family are staying at House No.40, Kohat Enclave, Pitam Pura, Delhi which belongs to Smt.Ramesh Batra wife of Shri Om Prakash Batra. The two sons have been accommodated in the family business of Naveen Electronics where they are said to be getting a monthly salary. On account of expanding business of Naveen Electronics Pvt. Limited the respondents also arranged additional space at A-2 G.T.Karnal Road Industrial Area, on a rent of Rs.34,000/-. Hence, the respondents are using the premises at first and second floor at H-4/4, Model Town -II, Delhi; B-2/2, UG-5, Sasco Bhawan, Naniwala Bagh, Azadpur, Delhi; and at AT-2,G.T.Karnal Road Industrial Area, Delhi for the business of the company. It is further urged that the two sons have done courses in computers. In the market which surrounds the tenanted property there is no computer shop and both the sons are interested in doing business in the computer line. The tenanted portion being the front portion of Mezzanine floor is approachable from the main bazaar and is ideally suitable for doing business of computers.

3. The parties have led their evidence. The respondent led the evidence of PW-1 Shri Om Prakash Batra and PW 2 Shri Arun Batra. The petitioners led the evidence of DW-1 Shri Piyush Chugh and DW-2 Shri Ram Babu, LDC, Billing Headquarter, North Delhi Municipal Corporation, Delhi.

4. Based on the evidence on record the ARC noted that as far as the relationship of landlord and tenant is concerned, there is no dispute regarding the same.

5. On the issue of bona fide requirements of the respondents/landlords the ARC noted the fact that the said sons have completed their education in 2000 and 2003 respectively and the fact that the two sons have done diploma in computers. The ARC also noted that there is no computer shop in the entire lane where the property is situated. It also noted that Form 16A of the two sons show their earnings to be in the range of Rs.2 lacs per year only. The income reflected in the certificates do not show that the sons have the capacity to set up their own business independently and hence the ARC concluded that they are dependent upon the respondents for the purpose of accommodation for running their new business. On the objection of the respondents that the mezzanine floor of the property can only be used for storage purposes and the respondents cannot use the same for running of a computer shop, the ARC noting the evidence concluded that the petitioners themselves have been using the tenanted premises for retail purposes. Further, the entire lane where the premises is located is being used for commercial purposes and the municipal corporation has not taken any steps, at any stage. Hence, the ARC concluded that the requirements of the respondents was bona fide.

6. On availability of alternative accommodation the ARC noted that the commercial properties which are available with the respondents are being used only for the purpose of business of the company of the respondents. The other properties said to be available to the respondents are residential properties and do not fulfil the requirements of the respondents. Hence, the

pleas of the petitioner/tenant were rejected and an eviction order was passed against the petitioner/tenant.

7. I have heard learned counsel for the parties. Learned counsel appearing for the petitioner has vehemently argued as follows to contend that the impugned order is liable to be set aside.

(i) The respondents have alternative accommodation from where the two sons can carry on their business. The properties said to be available to the respondents are property at T-27, Moti Nagar, Gali No.1, Gaushala Marg, New Rohtak Road, New Delhi; Quarter No.15, Ratan Nagar, Gaushala Marg, New Delhi; and B-375 Meera Bagh Colony, New Delhi. Hence, the respondents have alternative accommodation available.

(ii) The height of the mezzanine floor i.e. the suit property is only seven feet. As per sanctioned plan Ex.DW2/A, this can be used only for storage purposes. It has no windows. Hence, the said mezzanine floor i.e. the suit property cannot be used by the sons of the respondents for carrying on a computer shop. The plea of the respondents lacks bonafide.

(iii) The respondents never filed Income Tax Returns of the sons. It was only on a direction passed by the ARC on 8.2.2012 that they filed their IT Returns for the last three years which show that the said sons have income at par with that of the HUF and hence cannot said to be dependent upon the respondents for their bona fide requirements.

8. Learned counsel appearing for the respondents has denied the contentions of the petitioners. He has pointed out as follows:-

(i) The so called alternative accommodation said to be available to the respondents and relied upon by the petitioners are all residential accommodation. No doubt one of the properties is in the area of mixed land use and on approaching the municipal corporation and paying necessary charges, the same can be converted for commercial purposes. However, merely for the benefit of the tenant/petitioner the respondents are not obliged to pay large sums to convert it to commercial user.

(ii) Further, it was pleaded that the suit property is facing the main road and is more appropriate and suitable to the respondents.

(iii) It is further contended that the petitioners are also using the mezzanine floor for office purposes and that the entire lane is also doing the same. Hence, the contention of the petitioner to the effect that the suit properties can be used for storage is misplaced.

9. I may first see the scope of the present petition.

10. The Supreme Court in *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta, (1999) 6 SCC 222/(MANU/SC/0132/1999)* described the revisional powers of this court as follows:-

“11..... The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the Legislature in drafting Section 115 of the CPC. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to Sub-section (8) of Section 25B, the expression governing the exercise of revisional jurisdiction by the High Court is 'for the purpose of satisfying if an order made by the Controller is

according to law'. The revisional jurisdiction exercisable by the High Court under Section 25B(8) is not so limited as is under Section 115 C.P.C. nor so wide as that of an Appellate Court. The High Court cannot enter into appreciation or re-appreciation of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of "whether it is according to law'. For that limited purpose it may enter into re-appraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached that conclusion on the material available..."

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

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.”

The above provisions would in view of the judgment of the Supreme

Court in *Satyawati Sharma(dead) by LRs vs. Union of India & Anr., AIR 2008 SC 3148* apply to commercial premises also.

13. The essential ingredients which a landlord/respondent is required to show for the purpose of 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 or any of his family members dependent upon him. (iii) the landlord or such other family members has no other reasonable suitable accommodation.

14. I will first deal with the submissions of the petitioner about availability of alternative suitable accommodation to the respondents. The petitioner has essentially contended that properties at T-27, Moti Nagar, Gali No.1, Gaushala Marg, New Rohtak Road, New Delhi; Quarter No.15, Ratan Nagar, Gaushala Marg, New Delhi; and B-375 Meera Bagh Colony, New Delhi have been deliberately concealed by the respondents in the Eviction Petition and the same are available for the use of the respondents.

It has also been pleaded by the petitioners that firstly one of the said properties is capable of being converted to commercial user and would be an alternative suitable accommodation for the respondents. Secondly, the availability of these properties was not mentioned in the Eviction Petition. Hence, the eviction petition suffers from suppression of material facts.

As far as the contention that one of the properties can be converted to commercial user is concerned this fact came out in the course of cross-examination of Shri Om Prakash Batra/PW-1 on 1.11.2011. PW-1 confirms that the property B-375, Mira Bagh, New Delhi, is a residential property situated at a notified road where the property can be got converted for

commercial use. However, it has not been denied that large sums have to be paid by the respondent/landlord for the purpose of conversion of the said residential property for commercial use. As rightly pointed out by the learned counsel for the respondent the respondent is not obliged to spend large sums for the convenience of the petitioner to get residential property converted to commercial. There is hence no merit in the said plea raised by the petitioner.

The second plea is, namely, that there was suppression by the respondent in the Eviction Petition and the aforementioned residential properties were not disclosed in the petition as alternative suitable accommodation available to the petitioner. The respondents have pointed out that all three properties are residential properties and cannot be used for starting of any business. The copies of the title deeds of the said three properties at Moti Nagar, Gaushala Marg and Mira Bagh Colony have been placed on record which confirm that these properties are residential properties. As the requirement of the respondents is for running a computer shop for the sons, these properties cannot said to be alternative suitable accommodation available to the respondent. It cannot be said that there was a suppression of material facts by the respondent which would disentitle the respondent for any relief of eviction.

The ARC in the impugned order has rightly noted that there was no legal requirement on the part of the respondents to disclose availability of residential properties in the petition as the said properties cannot be termed to be alternative accommodation.

15. In view of the above, the said contention of the petitioner is entirely without merits and has been rightly rejected by the ARC.

16. As far as the second contention is concerned, it is urged that the property in question being the mezzanine floor has a height of 7 feet and usage of the same for office purpose/commercial purpose would be contrary to the bye-laws.

17. The ARC in the impugned order has noted that the respondents have placed on record documents being Ex.PW1/3 to Ex.PW1/11 being retail invoices in the name of Standard Electrical Works showing the address of the tenanted premises which shows that the petitioners are running a shop from the suit premises. Similarly, respondents have placed on record photographs being Ex.PW1/14 to show that a shop and not a godown is being run from Mezzanine floor (suit property) by the petitioner. The order also noted that the petitioner has failed to point out as to from where they are carrying on their retail business. If the tenanted premises is stated to have been used only for storage purposes as claimed by the petitioner then the petitioner would have a separate retail outlet where he would be carrying on his retail business. No such fact has been placed on record. The ARC also noted that DW1 in his cross-examination has admitted installation of a telephone connection in the tenanted premises. The impugned order further noted that photographs Ex.PW1/14, Ex.PW1/15, Ex.PW 1/47 and Ex.PW 1/48 show that the entire lane is being used for commercial purposes. It also noted that the respondents can move an appropriate application seeking necessary permission from the municipal authorities for change of user. For this purpose, it relied upon judgment of this court in ***Hot Chand vs. Dhanpat Rai & Ors., 168 (2010) DLT 78.*** Hence, the ARC concluded that the evidence on record shows that the petitioner is using the suit property for his shop only.

18. Clearly, the findings of fact recorded by the ARC are that the petitioner is himself using the premises for running of his shop. He is not using the tenanted property for storage purpose only. In fact in the entire lane the mezzanine floor is being used for commercial purpose. As the petitioner himself is using the tenanted premises for running a retail outlet he cannot now claim that running of a retail outlet is barred from the premises. Further, the ARC has also recorded a finding of fact that the entire lane is being used for retail purpose. Hence, the argument about there being a bar for use of the suit property for retail purposes is misplaced.

19. In any case it is settled legal position that for eviction of a tenant for carrying out/starting his business the landlord is not obliged to give full details of the business that he proposes to start from the premises which are sought to be got vacated. In case for some reason the sons of the respondents are unable to carry on the business of computers in the suit property it would be open for the sons of the respondents to carry on alternative business which would be permissible from the premises in question. There is no merit in the said contention of the petitioner.

20. 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.

21. The last contention raised by the petitioner is regarding Income Tax Returns of the sons of the respondents. A perusal of the IT Returns of Shri Aditya Batra for Assessment Year 2009-10 shows a gross total income of Rs.2,95,914/-. The computation of income shows that salary received from M/s Naveen Electronics Private Limited is Rs.1,80,000/-. Income from other sources are shown as Rs.60,000/-. Similarly, Form 16A of Shri Aditya Batra shows his salary for Assessment Year 2009-10 from M/s Naveen Electronics Private Limited as Rs.1,80,000/- . As to how these returns in any manner help the case of the petitioner is not clear. The two boys are essentially only working as employees of the company. Their desire is to set up an independent business and independent career. This appears to be a reasonable and bona fide desire. It cannot be said that they are earning

handsomely from the company where they are presently working.

22. I may also note the finding of fact recorded by the ARC in the impugned order that the tenanted premises has an approach from the main model town road which is a notified commercial road. While dealing with somewhat similar facts the Supreme Court in the case of *Anil Bajaj vs. Vinod Ahuja*, AIR 2014 SC 2294 held as follows:-

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

the High Court runs counter to the fundamental principles governing the right of a tenant to contest the claim of bonafide requirement of the suit premises by the landlord under the Delhi Rent Control Act, 1958. Even assuming the assertions made by the tenant to be correct, the same do not disclose any triable issue so as to entitle the tenant to grant of leave to defend.”

23. Accordingly, in view of the above, it is clear that there are no merits in the contentions of the petitioner. The findings recorded by the ARC, namely, that the requirement of the petitioner is bona fide and that there is no other suitable alternative accommodation available with the respondents for the purpose of settling the two sons cannot be faulted with. There is no infirmity in the said order of the ARC. Accordingly, the present petition being without merits is dismissed. All pending applications, if any, also stand disposed of.

JAYANT NATH, J.

APRIL 06, 2018/n