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

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Reserved on: 22nd November, 2018
Pronounced on: 03rd December, 2018

+ **RC.REV. 576/2015, CM APPL.40713/2018**

VINOD GUPTA

..... Petitioner

Through Mr.Rakesh Khanna, Senior
Advocate with Mr.S.N.Gupta,
Mr.Abhishek Vashisht, Ms.Drishti
Rathore, Advocates.

versus

KAILASH AGGARWAL & ORS

..... Respondents

Through Mr.Sachin Chopra, Mr.Kamal
Bansal, Mr.Karan Babuta,
Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This Revision Petition challenges the order dated 06.05.2015 passed in Eviction Petition No.107/12 by the learned Additional Rent Controller, Saket Courts, New Delhi whereby an application filed by the petitioner seeking leave to defend the eviction petition was dismissed.

2. The respondents have filed an eviction petition under Section 14(1)(e) read with 25B of the Delhi Rent Control Act against the petitioners herein qua the rented premises viz., a shop admeasuring 14 Ft x 12 Ft along with the extended area of 10 Ft x 12 Ft situated on the ground floor of property bearing No.1351(MCD No.C-398, Nanak Chand Basti, Mohan Gali), Bhishm Pitamah Road, Wazir Nagar, Kotla

Mubarakpur, New Delhi. The respondents have alleged to be the co-owners/landlords of the entire property in which the tenancy premises is situated. It was purchased by the father of the petitioners vide registered Sale Deed dated 30th June, 1997. It was alleged by the respondents that the eldest daughter of respondent No.1 herein since has completed her professional course of architect and the respondent No.1 has to support her professional career as an architect hence require to open an office for his daughter for providing her full-fledged service of architecture, hence the shop premises which is on ground floor of the property, best suited for his daughter, is bonafide required for the office of his daughter and hence this eviction petition.

3. The petitioners filed leave to defend application wherein, primarily, they took two objections *(a)* the concealment on the part of the respondents qua 14 other properties in Delhi, suitable for the respondent's daughter to open her office of architecture and *(b)* the respondent's daughter since married during the pendency of the eviction petition hence there exist no cause to continue with the eviction petition and it ought to have been dismissed.

4. The respondents filed a reply to leave to defend application and denied these facts and rather explained how such 14 properties were *neither available nor suitable* for the respondent's daughter to start her office of architecture.

5. The learned trial Court passed the following impugned order :-

“20. In order to appreciate the contentions of respondent with respect to availability or otherwise of suitable alternate accommodation it is imperative that the claim and counter claim of such properties is analyzed. The below table gives the detail of property along with its vacancy/usages as claimed by the parties :

S. No.	Property Number	Claim of respondent	Claim of petitioner	Whether available to
1	Shop No.5, 1865, Gurudwara Road, Kotla Mubarakpur.	Available with petitioner	Running Paint and Hardware shop	No
2	M-192, GK Part-II.	Available with petitioner	Sealed by MCD	No.
3	M-22, GK Part-II	Available with petitioner	Petitioner not the owner and taken on rent by M/s Orchids Ceramics rent agreement annexed.	No
4	M-51, GK Part - II	Available with petitioner	Taken on rent by petitioner no.2, rent agreement annexed	No
5	1533, Wajir Nagar, Kotla Mubarakpur.	Available with petitioner	No space is available as Aggarwal Sales corporation is using the same	No
6	E-7A/404, Ratiya Marg, Sangam Vihar.	Available with petitioner	Used as godown and not owned by petitioner, copy of GPA and agreement to sell is annexed	No
7	A-16, Niti Bagh.	Available with petitioner	Residential and suit for specific performance is pending before Hon'ble High Court and therefore not available	No
8	Farm House No.10, West Circular Road.	Available with petitioner	Can not be used for commercial purpose	No
9	1459/1, Wazir Nagar, Kotla Mubarakpur.	Available with petitioner	Used as godown by petitioner no.3	No
10	1865/1, Gurudwara Road.	Available with petitioner	M/s Hardware Solution utilizing the same and no space available	No
11	C-7, Housing Society, Gurudwara Road.	Available with petitioner	M/s Ceramic Points using the same since 1992. No space is available.	No
12	A-244, Shivalik, Malviya Nagar.	Available with petitioner	Used as residential and can not be used for office	No
13	B-58, South Ex. Part-I.	Available with petitioner	Petitioner no.3 is using the same as residence	No
14	PS-22/23, Pritampura.	Available with sister of petitioner	Sister of petitioner is using as residential and petitioner is not the owner.	No
15	1351, Mohan Galli, Wazir Nagar.	Available with petitioner	Petitioner no.2 using as godown for M/s Dream Home and back portion is used as godown by petitioner no.1 and not fit for Architect Office	No

21. In the rejoinder filed by Vinod Gupta in support of leave to defend application it was mentioned that Ms. Divya Aggarwal got married in April 2013 and is not staying in her matrimonial home and therefore the false need if any has ceases to exist. But there is no reply with respect to the explanation given by the petitioner about the ownership and usage of other properties and their consequent non availability.

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28. *The factum of marriage of Ms. Divya Aggarwal during the pendency of the petition is not disputed. The argument of Ld. Counsel for the respondent that after her marriage the bonafide requirement ceases to exist is humbly rejected as no record/document is placed by the respondent to show that the husband and/or in-laws of Ms. Divya Aggarwal owns any commercial property which is suitable for running the office of Architect. The argument that she became part of her in-laws family and the liability of the petitioner to provide suitable commercial accommodation to her comes to an end is rejected as the law provides equal rights in the movable and immovable properties even to the married daughters and therefore it cannot be said that Ms. Divya Aggarwal is no more dependent upon petitioners for commercial accommodation. In the matter of "Shyam Lal (deceased) through LRS. Vs. Murari Lai" 1996 (1) RCR 413 it was held that requirement of married daughter who may not be member of landlord's family can be taken into account in assessing the requirement of landlord. The respondent have failed to bring on record any material to show that Ms. Divya Aggarwal is not dependent for commercial accommodation upon her father.*

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30. *The argument of the respondent that the petitioners have number of alternate suitable accommodations is rejected as the petitioners have given details of ownership/usage of each and every property mentioned in leave, to defend and the respondents have not countered the said usages and their alleged non availability. The petitioner has given reasonable explanation why the tenanted premises is most suitable to start the said office by her daughter. The respondents have not challenged the said suitability.*

6. It was argued by learned senior counsel for the petitioners herein that the learned Additional Rent Controller has erred in deciding the non-suitability of the 14 alternative accommodations for the respondent's daughter and in fact the petitioner herein ought to have been given an opportunity to lead an evidence qua the suitability of each of such accommodation for respondent's daughter. Qua contention **b)** above, the learned senior counsel for the petitioners referred to *Bhim Singh Saini V. Preeti Gupta* RC.REV.No.303/2015 decided by this Court on 22nd September, 2015 wherein the Court held as follows :

10. The second question which arises is that even if she is a member of the family of the petitioner, the next question would arise whether she could be treated as a dependent on the petitioner for the purpose of her accommodation. Certainly, to this question also the answer prima facie should be in negative. The reason being that once the daughter of the petitioner has got married for purposes of any accommodation, she would be dependent on her husband rather on her father.

7. Heard.

8. Before coming to the merits of the case it would be appropriate to note the order dated 5th March, 2018 records the petitioners having failed to comply with order dated 13.02.2017 by not depositing an amount of ₹ 14,000/- per month as user charges for the premises, the stay against execution earlier granted by this Court was vacated. The petitioners herein went in SLP No.10336/2018 and it was also dismissed vide order dated 14.05.2018.

9. The petitioner then moved yet another application CM No.20604/2018 for grant of some more time to vacate the premises but it was dismissed on 17.05.2018. However SLP No.14101/2018 was filed, wherein the Supreme Court granted *three months* time to the petitioner to vacate the suit premises. The order dated 28.05.2018 passed by the Supreme Court is as under :

“We are not inclined to interfere with the order impugned in the special leave petition and the same stands dismissed. However, while dismissing the special leave petition, we allow the petitioner three months’ time to vacate the suit premises. An undertaking to that effect is to be filed in this Court within two weeks from date, and such amount, as may have been determined by way of damages for use of the suit premises per month, shall be continued to be paid in the meantime. In default of filing of such undertaking, this order shall stand vacated.”

10. Neither such undertaking was filed nor the premises vacated, rather the petitioners are now arguing on merits. Qua the concealment and suitability of 14 properties by the respondents herein I may note the learned ARC has aptly dealt with this contention in para 20 of his judgment and has rightly come to the conclusion that no suitable accommodation was available to respondent for his daughter to start her business. The learned ARC has rather compared the suitability/availability of each of such 14 properties in para 20 of the judgment. It is settled law the factum of suitability of the premises needs to be decided by the landlord and is not to be examined on the touchstone of the tenant. The learned ARC has rather noted the petitioners in their rejoinder have not countered the said usage and non-availability of the accommodation, per para 20 (supra) of the impugned.

11. In *Narinder Shah V. Mohan Kumar Gandhi RC* MANU/DE/2505/2017 the Court has held as follows:

10. Once it is found that the other shops claimed to be available, as per the petitioner / tenant himself, are being used by the respondent / landlord for the business already being carried on by the respondent / landlord from the premises, it cannot be said that the said shops are available to the respondent / landlord for the requirement pleaded in the petition for eviction of the younger son of the respondent / landlord who has graduated with honours in Management and Marketing of Textiles and has gained two years experience in Textile business and is wanting to establish his own independent business of Textiles at Chandni Chowk.

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13. Supreme Court in Ram Narain Arora Vs. Aska 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.

12. As the respondents have categorically stated they been carrying on business from other alleged alternative premises, hence those premises were never available for respondent's daughter and thus no fault can be found in the impugned order of learned ARC. Non-disclosure of such unavailable accommodations is not fatal to the petition. Rather in *Krishan Kumar Dua V. Girdhar Gopal Gupta RC MANU/DE/2794/2017* the Court has held:

12. ... A shop on the ground floor is always more commercially viable than a shop on the upper floors of the property and it is for this reason only that not only the purchase value but the rental value of shops on the ground floor is more. ...

13. Coming to contention **(b)** qua dependency of married daughter, I may refer to *Sunder Singh Talwar V. Kamal Chand Dugar 2018 (1) RCR (Rent)537*, wherein the Court held as under :

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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.

14. Further in *Rajender Prasad Gupta V. Rajeev Gagera* 2014 (114) DRJ 182, the Court held as follows :

5. Having considered the arguments of learned counsel for the parties, this Court is of the view that the Trial Court has taken into consideration each of the contentions raised in the leave to defend and found them to be not triable issues. The reasons for and conclusion arrived at cannot be faulted. Furthermore, simply because the daughter of a marriageable age and allegedly likely to marry would not necessarily cut her ties from her maternal family nor would the requirement for her accommodation in her father's house be lessened. Indeed, in the present times a daughter who is married-out, may like to retain her accommodation in her father's house which forms an emotional anchor and a place for refuge for all times. In times of an unfortunate marital discord such need becomes more acute should there be such a need. Conversely her family also would want to retain a room so as to re-assure her of a continued place of residence in her paternal home. A married daughter's ties with her paternal family do not end upon her marriage. For a married daughter her parents' home is always a refuge; an abode of reassurance and an abiding source of emotional strength and happiness. In the present case the daughter is a practicing advocate, i.e. a qualified professional, the need is all the more acute and bona fide. This Court finds, as did the Trial Court did, that no triable issues were raised in the leave to defend. Therefore, there was no need to grant leave or set the matter for trial. The reasons and the conclusion arrived at in the impugned order are correct and call for no interference.

15. Thus the law discussed above does not leave any room for further discussion on this topic. Admittedly the law as it stands, the daughters share equal rights in their parental properties as a son does, hence saying a married daughter sever all her relations with her father's family and would never be considered dependent upon the family's property, residential or commercial, that her parents own, would not be correct. Hence no fault can be found in impugned order even on this score.

16. Lastly I may say in revision the scope of interference of this Court is limited. It is a settled law the *High Court is only entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity, per Gulshera Khanam vs. Aftab Ahmad 2016 AIR (SC) 4810.*

17. Thus, the landlord being the best person to choose how much space is needed for him/her or his family member dependent upon him to start or expand any of his activity, is a sole Judge to decide qua the accommodation he intend to seek eviction for. The concealment of unavailable/unsuitable accommodation is not material and the suitability of accommodation is needed to be judged on the touchstone of the landlord and not of tenant. This Court in revision should be slow to intervene in any such finding of facts by the Additional Rent Controller.

18. This Court also cannot ignore the crucial fact where the petitioner has himself sought time to vacate the premises without challenging the eviction order on merits, and where three months were granted by the Supreme Court to vacate and after the expiry of such period the tenant

has no right to challenge the impugned order once again on merits, after availing such benefit. There being no force in this Revision Petition, it stands dismissed.

19. Pending applications are also dismissed.

YOGESH KHANNA, J.

DECEMBER 03, 2018

VLD

