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

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**Reserved on: 13<sup>th</sup> February, 2019  
Pronounced on: 15<sup>th</sup> February, 2019**

**+ RC.REV. 172/2018, CAV No.373/2018, CM APPL.6811/2018**

**HARBHAJAN SINGH @ BHAJJI** ..... Petitioner  
Through : Mr.T.C.Sharma, Advocate  
versus

**MAHAVIR SINGH** ..... Respondent  
Through : Mr.Praveen Suri and Mr.Lakshay  
Dilavari, Advs.

**CORAM:  
HON'BLE MR. JUSTICE YOGESH KHANNA**

**YOGESH KHANNA, J.**

1. This revision challenges the impugned order dated 15.02.2018 passed by the learned ARC (West), Tis Hazari Courts in Eviction Petition E-25587/2016. This petition was filed by the respondent on following grounds:

*i) The petitioner is owner/landlord of the premises i.e: WZ-451, at Gali Keli Wali, Nangal Raya. New Delhi and is residing on the ground floor and first floor of this property as he has inherited from his forefathers Late Shri Budh Singh.*

*ii) The petitioner had been retired as Boiler Operator in S.B.M. Mills in 1995 and his family consists of his wife and two married sons namely Sh. Gurdutt and Sh. Deepak Kumar. Sh. Gurdutt is working as teacher in Govt. School and his younger Sh. Deepak Kumar is doing private job in MGF Toyota as as Sr. Insurance Officer getting a monthly salary of Rs.16,000/- P.M.*

*which is not sufficient for his family as his wife who is a diploma holder in Cutting & Tailoring and also hair and skin care, but she is not doing anything and his son is totally dependent upon the petitioner.*

*iii) That there is another shop which is also let out to Shri Shobha Singh and the petitioner has filed a separate petition for eviction on the ground of bonafide need as he requires the said shop for his younger son.*

*iv) The petitioner himself requires bonafidely the tenanted shop to start a business of tailoring and cutting with the help of his younger daughter-in-law namely Ms.Hem Lata, as petitioner is not getting any; pension and for meeting his financial requirements he wants to start the aforesaid business as stated above.*

*v) That an eviction order in respect of the tenanted premises as shown in red colour as required for bonafide; need of the petitioner.*

2. In his leave to defend application the petitioner had challenged *a)* the ownership of the respondent; *b)* his bonafide necessity; and *c)* the respondent has an alternative accommodation.

3. The learned ARC has dealt with the three issues as under:

***“ 8(a). There is a relationship of landlord and tenant between the parties and whether petitioner can be termed as owner as envisaged In Section 14 (I) (e) of DRC Act:***  
*As far as the relationship of landlord and tenant between the parties is concerned, respondent has claimed that the petitioner is not the owner of the tenanted premises and one Sh.Ramji Lal and Sh.Harish Chand are the owners. But respondent has not filed any material to substantiate this plea. On the contrary, petitioner has filed copy of one family settlement dated 30.11.1998 in which settlement took place between the petitioner Sh.Mahavir Singh and his three brothers namely Sh.Sohan Lal, Sh.Atma Ram and Sh.Rampal Singh, as per which premises no. WZ-451, had*

been given to the petitioner. This family settlement has been witnessed by Sh. Harish Chand and one of the Executant Sh.Rampal Singh is shown to be the son of Sh.Ramji Lal. When these two persons, who the respondent claims to be the owner, have been a part of this family settlement, no occasion arises for the respondent to challenge the veracity of this family settlement. Mere, hollow assertion that this family settlement is a forged document and does not depict the complete address will not advance the case of the respondent in the absence of any material to substantiate the same. Petitioner has proved his ownership on the basis of his averments as well as this family settlement dated 30.11.1998. Further, during arguments on leave to defend, one of the objections raised was that petitioner has not filed any rent receipt to show the respondent to be his tenant. But this contention is without any force as the respondent has nowhere disputed the fact that the rate of rent is Rs. 100/- in respect of the tenanted premises. It is also not the case of the respondent that he has been paying the rent to some other person and not to the petitioner. Further, it is no longer rest Integra that the word "owner" as used in section 14(1)(e) of DRC Act is not in the sense of absolute owner. In the judgment of M.M. Quasim Vs. Manohar Lal Sharma (1981) 3 SCO 36, it was held that an "owner-landlord" who can seek eviction on the ground of his personal requirement is one who has a right against the whole world to occupy the building in his own right and exclude anyone holding title lesser than his own".

**“8. (b) That the tenanted premises is bonafidely required by the petitioner for himself as the owner or for any member of his family dependent upon him:**

Before this issue is being broached, let me outline certain facts which have not been oppugned by the respondent.

- That the petitioner is a retired person and currently is not in any occupation.
- That the son of the petitioner Sh. Deepak Kumar is working as Senior Insurance Officer with MGF, Toyota.
- That the daughter in law of the petitioner Ms. Hem Lata is a Diploma holder in Cutting and tailoring business. Petitioner has expressed his bonafide requirement of the tenanted premises for starting the business of tailoring shop alongwith his daughter in law in order to supplement

his family income as the son of the petitioner Sh. Deepak Kumar is stated to be earning Rs. 16,000/- per month. Petitioner has filed copy of appointment letter of his son evincing this fact whereas respondent has merely asserted that the said son is getting a handsome salary without filing any material in support of this plea. Although, the appointment letter filed by the petitioner pertains to the year 2012, however, the fact that the tenanted premises is required by the petitioner to start the business with his daughter in law, the question of the salary of the son of the petitioner pales into insignificance. Moreover, petitioner has already stated in the petition that in respect of his another shop, separate petition for eviction is sub-judice in which he intends to settle his younger son Sh. Deepak Kumar. Except for mere denial that the stated bonafide requirement of the petitioner for starting the business of tailoring with the help of his daughter in law is fallacious, respondent has not pleaded any more facts to underpin his plea. When it is an irrefragable position that the petitioner is a retired person and his daughter in law is qualified in the field of tailoring and cutting, then in the absence of any contrary material on record, this requirement of the petitioner cannot be suspected. It will not be out of place to mention here that in today's time, it is generally seen that the retired persons are getting themselves involved in some vocation so as to keep themselves occupied as well as to supplement the family income. Thus, it would be unjustified to dictate any term to the petitioner to not think about starting any vocation for the sole reason of the tenanted premises being in possession of the respondent."

**"8.(c) The petitioner or the landlord has no other reasonably suitable residential accommodation:**

Respondent has assailed the site plan filed by the petitioner and stated that there are three rooms on the ground floor behind the tenanted premises and two rooms on the first floor. However, it is nowhere the contention of the respondent that any of these rooms can be used for commercial purposes or at any point of time was earlier being used for commercial purposes. Petitioner has explained in his reply that the rooms on the ground floor are being used for his and his younger son residential purpose and first floor is in the occupation of his elder son Sh. Gur Dutt Sharma. Again, respondent has not filed any material to substantiate his plea that there are vacant

*rooms in the possession of the petitioner which are suitable for commercial activities. Thus, the requirement that the petitioner does not have any other suitable alternative accommodation for the stated requirement stands proved.”*

4. Yet again the counsel for the petitioner has agitated these issues before me. It is argued the family settlement dated 30.11.1998 is in fact a deed of partition which requires registration and since is not registered; could not have been relied upon by the learned ARC. I disagree with the contention. Firstly because even if this partition deed is ignored still the petitioner is a co-owner of the property as has inherited from common ancestor; and secondly, in *Gopal Kishan vs. Ram Saroop* 243 (2017) DLT 66 the Court held a tenant has no *locus standi* to challenge the family settlement so arrived at between the members of the family of the land lord even if it is not registered. All that the respondent lastly is to show he is having a better status than the tenant, may be he is not an absolute owner of the premises. Admittedly, the petitioner has been paying rent to the respondent.

5. Qua the contention the petitioner though retired in the year 1995 it appears strange he would start any business in 2013 is also of no relevance as this is for the landlord to decide as to when he intends to start business as he has not to seek permission from his tenant for this. Even otherwise, the respondent case is he is not getting any pension and hence has every right to supplement his income.

6. Qua the plea of alternative accommodation the petitioner has not cared to file any site plan of the vacant / available accommodation with the respondent. Rather the respondent has explained the accommodation with him and his family is insufficient to start a business and hence the

argument of petitioner has no force. Even otherwise, the suitability of the accommodation is needed to be looked at the touchstone of the landlord and not of the tenant.

7. In the result, there exist no triable issue as argued by the petitioner. I find no infirmity in the order passed by the learned ARC. It is a settled law, in revision this Court is not to act as a Court of first appeal. It is only when the findings of ARC is based on no evidence or upon misreading of the evidence or is grossly erroneous that if allowed to stand it would result in miscarriage of justice, it is open to this Court to upset such findings. In revision, the revisional power cannot be equated with the power of reconsideration of all questions of facts as a Court of first appeal, per *Hindustan Petroleum Corporation Ltd vs Dilbahar Singh* 2014 AIR(SC) 3708.

8. Hence finding no infirmity in order dated 15.02.2018, the petition is dismissed. All pending applications stands disposed of in terms of above.

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**YOGESH KHANNA, J.**

**FEBRUARY 15, 2019**

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