

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

Judgment reserved on :15.10.2018

Date of decision:17.09.2019

+ RC.REV.567/2017 & CM No.45454/2017 & 5231/2018 &
5229/2018

HIRA NAND

..... Petitioner

Through Mr.Gaurav Mitra, Ms.Rashmita
Roy Chowdury, Advocates

versus

SMT. SHAKUN & OTHERS

..... Respondents

Through: Mr.Sukhbir Singh, Advocate

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner vide the present petition assails the impugned order dated 13.07.2017 of the learned Pilot Court, Central, THC, Delhi in Eviction Petition No.177/2017 whereby the application filed by the petitioner herein who was arrayed as the respondent no.1 to the eviction petition seeking leave to defend the eviction petition filed by the petitioners thereof arrayed as the respondents to the present petition seeking eviction of the petitioner herein from the tenanted premises i.e. the property bearing shop/municipal No.5167, Ward no.13, Mandi Rai (Sarai Haffiz Banna) Sadar Bazar, Delhi-110006 consisting of the ground floor, first floor and second floor shown in

red in the site plan attached to the petition on the grounds of *bona fide* requirement,- was dismissed.

2. The petitioners of the eviction petition i.e. the respondents to the present petition had submitted that Sh. Jai Bhagwan Aggarwal husband of Smt. Kailasho Devi i.e. the respondent no.2 and father of Smt. Shakun, Sh. Narender Garg, Smt. Savita Goyal, Smt. Kavita Goel and Smt. Bharti Goyal i.e. the respondent nos.1, 3, 4, 5 & 6 arrayed to the present petition had purchased the suit premises on 06.07.1982 from Smt. Jamila Begum vide a registered sale deed and at the time of the purchase of the property, it comprised of a ground floor and terrace at the first floor and that the respondent nos. 1 & 2 arrayed to the eviction petition i.e. the petitioner herein Sh. Hiranand and Sh. Vishan Das represented through his legal representatives, were tenants in the ground floor shop at the rate of rent of Rs.28/- per month and had been making the payment of the rent to Sh. Jai Bhagwan Aggarwal during his lifetime and that in the year 1992, the said shop was reconstructed as the ground floor, first floor and second floor and the petitioner herein namely Hiranand and the other tenant Sh. Vishan Das had requested Sh. Jai Bhagwan Aggarwal to let out the entire shop consisting of the ground floor, first floor and the second floor at the rate of rent of Rs.2,500/- per month and thus the rent for the entire property comprising of the ground floor, first floor and the second floor was re-fixed at the rate of rent of Rs.2,500/- in the year 1992.

3. Sh. Jai Bhagwan Aggarwal expired on 13.02.2015 leaving behind the respondents arrayed to the present petition as his legal

heirs. The respondent no.3 Sh. Narender Garg is stated to have visited the suit property after the demise of his father and found that the tenants had illegally sub-let the ground floor of the suit property to various sub-tenants named Manoj Kumar, Jai Prakash and Hori Lal without the permission of Sh. Jai Bhagwan and of the respondents herein. The said suit shop on the ground floor however as per averments made in the petition itself had been vacated by the sub-tenants and was lying vacant but the tenants were not paying the rent to the legal heirs of Sh. Jai Bhagwan Aggarwal after his demise.

4. The respondents herein through the eviction petition had contended that the portion shown in the red on the ground floor, first and second floor of shop property was from where the tenants were sought to be evicted and that they had handed over a portion shown in green in the site plan that had been filed to the said legal heirs of the deceased landlord Sh. Jai Bhagwan Aggarwal.

5. As per the averments made in the eviction petition, the respondents to the eviction petition were not running their business at the suit property and rather the respondent no.1 therein i.e. the petitioner herein was running his business at the shop/municipal No. 5172, Ward no.13, Mandi Rui (Sarai Haffiz Banna) Sadar Bazar Delhi, 110006 with his two sons. As per the averments made in the eviction petition itself, the legal representatives of Sh. Jai Bhagwan Aggarwal had learnt that Sh. Vishan Das had also expired and was represented by the legal representatives of the respondent no.2 (i), (ii), (iii) & (iv) to that eviction petition but that they also never came to the suit shop and the suit property as they were running their independent

business at the shop No. 2346/1, Shop No. 141, Shop No. 2178 Tilak Bazar, Khari Baoli, Delhi-110006. It was submitted through the eviction petition that the petitioner no.3 had requested the respondents to the eviction petition to get the sub-letting stopped and that the respondent no.1 therein i.e. the petitioner herein had offered to hand over the peaceful and vacant possession of the suit property to the heirs of Sh. Jai Bhagwan Aggarwal as the same was not being used for the business purposes anymore and the respondent no.1 i.e. the petitioner to the present petition got one portion on the ground floor vacated from the sub-tenant and handed over the same to the petitioners of the eviction petition i.e. the portion shown in green in the site plan filed with the plaint from which no eviction of the petitioner herein was sought in as much as that portion was also in the possession of the petitioners of the eviction petition and Smt. Kailasho Devi wife of Sh. Jai Bhagwan Aggarwal was stated to have already let out the said portion of the suit property shown in green in the site plan in favour of Sh. Ashok Kumar at the rate of rent of Rs.15,000/- per month w.e.f. 01.10.2017 vide a registered rent deed dated 11.01.2017.

6. It had been averred in the eviction petition that the petitioners thereof i.e. the respondents herein had acquired knowledge that the tenants had illegally constructed a mezzanine at the ground floor without the permission of Sh. Jai Bhagwan Aggarwal from which too they were liable to be evicted and that the petitioners of the eviction petition had also come to know that the sons of the respondent no.1 i.e. the petitioner herein had illegally started demolishing the interior construction on the first and second floor to change and alter the

interior and internal structure of the first and second floor illegally without the permission of the petitioners of the eviction petition, in relation to which a complaint was made by the petitioner no.3 of the eviction petition i.e. Sh. Naresh Garg to the SHO, PS Sadar Bazar on 12.01.2017 and also to the Deputy Commissioner, North MCD, Paharganj Zone on 13.01.2017 but no action was taken by the concerned officials.

7. The petitioners of the eviction petition had further submitted that they had also filed a Civil Suit bearing no.170/2017 through petitioner no.3 thereof i.e. Sh. Naresh Garg for permanent and mandatory injunction qua the same before the Civil Judge, Central at Delhi. The petitioners have further submitted through the eviction petition that in the said suit the respondents thereto had been restrained from demolishing, altering, constructing at the suit shop vide order dated 25.01.2017 and that the son of the respondent no.1 i.e. the petitioner herein had also filed a false suit against the petitioner no.3 of the eviction petition, which was not maintainable.

8. The eviction petition under Section 14(1)(e) of the DRC Act, 1958, as amended, in which the impugned order was pronounced, was filed by the petitioners of the eviction petition on the premise that the petitioner no.1 thereof i.e. Ms. Shakun i.e. the respondent no.1 herein who is the co-owner of the suit shop along with the other petitioners of the eviction petition had two sons namely Love Goyal and Kush Goyal who were completing their Civil Engineering and Chartered Accountant's education respectively and were in dire need of the suitable accommodation and space for establishing/ setting up their

offices and that the petitioner no.1 did not have the suitable accommodation for the same.

9. Through the eviction petition, it had further been submitted that the sons of the petitioner no.1 thereof i.e. Smt. Shakun were then at the verge of completing their education and all expenses were borne by Smt. Shakun and her husband and that the son of the petitioner no.1 i.e. Mr. Love Goyal had virtually completed his degree course in Civil Engineering in the month of May 2017 and intended to establish his business in the field of consultancy and that the younger son Kush Goyal was to complete his course of Chartered Accountancy in the month of December 2017 and had also decided to practice in the field of Chartered Accountancy and thus the petitioners of the eviction petition had submitted that the petitioner no.1 thereof had a bona fide need of space for setting up their respective offices to run their occupation/ profession and that the petitioner no.1 was also duty bound to establish and set up the career of her sons and had no other suitable accommodation/ space for the same.

10. The petitioners of the eviction petition had further submitted that the suit shop was more suitable accommodation/ space for setting up of the offices for the two sons of the petitioner no.1 thereof i.e. the respondent no.1 herein for their occupation and profession and that the petitioner no.1 of the eviction petition had been facing hardship and difficulties in finding a suitable accommodation/ space for her two sons and that the suit shop was lying vacant and belonged to the petitioners of the eviction petition and that the petitioners other than the petitioner no.1 had no objection and had consented to the

establishing of the offices of her sons in the suit shop so that they can start their business and profession. *Inter alia* it had been submitted through the eviction petition that the sons and family of the petitioner no.1 thereof were dependent on the petitioner no.1 for the purposes of setting up their business and career and to earn their livelihoods and were dependent upon her and her husband and that the sons of the petitioner no.1 were not earning at all.

11. *Inter alia* it had been averred in the eviction petition that the suit shop was lying vacant as the first and second floor were lying vacant and locked since May 2015 and the ground floor portion had been lying vacant as the sub-tenants vacated the ground floor as shown in red at the time when the respondents to the eviction petition had handed over the portion shown in green to the petitioners and the respondents to the eviction petition were not at all coming to the suit shop and were running their independent business as already adverted to elsewhere hereinabove and no inconvenience and hardship would be caused to them as they were not running any business at all in the suit shop. *Inter alia* it had been submitted through the eviction petition that the petitioners thereof had no other suitable accommodation/ space for the offices of the sons of the petitioner no.1 who is the co-owner of the suit shop and that the suit shop was the most suitable and appropriate space for the office to be set up by the sons of the petitioner no.1 to start their career in the field/ business of consultancy services for Civil Engineering and Accountancy.

12. The impugned order indicates that the respondents to the eviction petition were served with the notice of the petition seeking

eviction of the respondents thereto on the ground of bona fide requirement and it was only the respondent no.1 i.e. the petitioner herein who appeared and filed an application seeking the leave to defend in terms of Section 25B of the DRC Act, 1958 (as amended) contending to the effect:-

“a) That in the eviction petition, the petitioners have vaguely stated that they have no alternative accommodation, whereas, they are required to categorically make specific averment and show that they have no alternative accommodation besides the suit property.

b) That the petitioners have deliberately concealed one property bearing no. 5294, Sadar Thana Road, Pandit Munna Lai Sharma Marg, Delhi, wherein two floors are lying vacant.

c) That the petitioners have not filed any proof pf operating as a Hindu Undivided Family although their petition have been disguised in a manner to believe that the petitioners are functioning as a Hindu Undivided Family.

d) That the petitioners have also failed to state the other alternative accommodations in possession of other petitioners besides petitioner no. 1. The fact of the matter is that petitioner no. 3 is the owner of the property bearing no. 5294, Sadar Thana Road, Pandit Munna Lai Sharma Marg, Delhi, wherein two floors are lying vacant.

e) That the petitioners themselves have let out one portion of the suit property to one Sh. Ashok Kumar at the rate of rent of Rs.15,000/- per month in January, 2017 and had there been any bonafide requirement, the said premises would not have been let out.

f) That the present petition is bad for non-impleadment of Sh. Ravi Advani and Sh. Anil Advani as respondents. That Sh. Hira Nand was a tenant in the suit property

alongwith his sons, Sh. Ravi Advani and Sh. Anil Advani, who are co-tenants.

g) That petitioner no. 1 is only a co-owner of the suit property but not the landlord.”

13. *Inter alia* the petitioners of the eviction petition filed their response to the application seeking leave to defend filed by the respondent no.1 i.e. the petitioner herein denying the averments made therein and contended to the effect that the relationship of owner and landlord/ landlady and tenant was admitted by the respondent no.1 i.e. the petitioner herein as the suit property had been succeeded and inherited by the petitioners of the eviction petition i.e. inclusive of the petitioner no.1 thereof i.e. the respondent no.1 from her father and that the respondent no.1 i.e. the petitioner herein had admitted that the petitioner no.3 was his landlord and it was a settled law that one owner can also maintain an eviction petition. *Inter alia* the petitioners of the eviction petition had also submitted that Sh. Ravi Advani son of the respondent no.1 i.e. the petitioner herein was born on 07.11.1973 and Sh. Anil Advani was born on 10.01.1980 and could not have become a co-tenant in the year 1965, in as much as they were not even born at that time and that the contention of the respondent no.1 i.e. the petitioner herein is that they were co-tenants, was a vague averment.

14. The petitioners of the eviction petition also stated that the petitioner no.3 was running his business from property bearing No.5294, Sadar Thana Road, Pandit Munna Lal Sharma Marg and that property is owned by the petitioner no.3 and Sh. Fateh Chand having half share each and no floor whatsoever in the said property was lying

vacant and a copy of the sale deed of the said property was also placed on the record.

15. Inter alia the petitioners of the eviction petitioner in their response to the application seeking leave to defend filed on behalf of the tenant, i.e., the petitioner to the present petition stated that it was the bona fide need of the petitioner No.1 of the eviction petition i.e., the respondent No.1 herein which had to be considered and she did not have any other alternative suitable accommodation. The petitioners of the eviction petition further submitted that the respondent No.1 i.e., the petitioner No.1 to the present petition had already admitted that the petitioners of the eviction petition and the petitioner No.1 in particular were the owners of the suit property. The petitioners of the eviction petition further denied that the ingredients of Section 14(1)(e) of the Delhi Rent Control Act, 1958, makes it mandatory that the landlord or such person who is dependent on the landlord has to swear on affidavit that there is no other reasonably suitable residential accommodation/space for their bona fide requirement or that the petitioners of the eviction petition have vaguely stated in their petition that they did not have any other alternative office space for the sons of petitioner No.1 to the eviction petition.

16. The petitioners of the eviction petition denied that the eviction petition had been filed at the instance of the petitioner No.3 who had roped in all other petitioners in his nefarious design to forcefully or illegally evict the respondents i.e., inclusive of the petitioner herein or his two sons the alleged co-tenants of the suit property.

17. *Inter alia* the petitioners of the eviction petition submitted that the tenant had no right to dictate to the petitioners as to which premises is suitable for the petitioner No.1 as per settled law as laid down by the Hon'ble Supreme Court and this Court.

18. The petitioners of the eviction petition also denied that they had filed the petition in the disguise of being an Hindu Undivided Family or that they were living under one roof and thus they had no alternate accommodation/space or that the petitioners were not members of the Hindu Undivided Family and were living separately and had numerous accommodations/commercial spaces for their stated bona fide requirement.

19. *Inter alia* , the petitioners of the eviction petitioner submitted that the two sons of the petitioner herein, i.e., the tenant are not the co-tenants in the suit property and have no right, title or interest in the suit property and precluded them from claiming being co-tenants of the respondent No.1 i.e., the petitioner No.1 to the eviction petition.

20. *Inter alia*, the petitioners of the eviction petition submitted that the petitioner No.1 /respondent No.1 had every right to maintain the petition under Section 14 (1)(e) of the Delhi Rent Control Act, 1958, as per law and that the tenant, i.e., the petitioner herein had admitted that the petitioner No.1 had no alternative suitable accommodation/commercial space and that the property bearing No. 5294, Sadar Thana Road, Pandit Munna Lal Sharma, Marg, Delhi belonged to the petitioner No.3 and Fateh Chand having half share each, and that the petitioner No.3 was running his business there and

no floor, whatsoever at the said property was lying vacant and that half of the said shop is in possession of Sh.Fateh Chand.

21. The petitioners of the eviction petition further denied that the respondent No.1 to the eviction petition, i.e., the petitioners to the present petition or his sons were running the business from the suit property and submitted that the said aspect was established in view of the service of the summons on the address mentioned in the petition by the petitioner of the eviction petition. The petitioners of the eviction petition denied that the respondent No.1 i.e., the petitioner herein or his sons operate their business from the suit shop bearing No. 5167 or had any dealing of interest in business operating from the suit property since inception or had acquired a reasonable goodwill and in such circumstances where the entire family of respondent No.1, i.e., the petitioners to the present petition, was dependent on operation of their business at the suit property or the respondent No.1, i.e., the petitioner to the present petition, was entitled to the leave to contest the eviction petition.

22. Inter alia, the petitioners of the eviction petition submitted that it was not necessary for the sons of the petitioner No.1, i.e., the respondents herein to have any experience to start their new business.

23. Vide the impugned judgment of the learned Rent Controller, Pilot Court (Central District) Tis Hazari Courts, Delhi, it was observed that in as much as it was not in dispute that all the petitioners of the eviction petition were legal heirs of late Sh. Jai Bhagwan Aggarwal, who was admittedly the original owner of the premises in question, the respondent, i.e., the petitioner No.1 herein was estopped from

disputing that the petitioner No.1 thereof was not the landlord of the premises in question and that further more the tenant having admitted the co-ownership of the petitioner No.1 i.e., the respondent No.1 herein, the respondent, i.e., the petitioner to the present petition was estopped from disputing that the petitioner No.1 was the co-owner of the premises in question.

24. It was also observed vide the impugned order to the effect that the sons of the respondent No.1 i.e. Ravi Advani and Anil Advani, i.e., the petitioners herein were claimed to be co-tenants and thus their non-impleadment did not make the petition bad and there was no proof filed by the respondent to substantiate that the rent was ever paid by Ravi Advani or Anil Advani to the petitioners of the eviction petition, and even otherwise the respondents, i.e., the petitioners herein being the father of Ravi Advani and Anil Advani, the interest of Ravi Advani and Anil Advani was duly represented by the respondent, i.e., the petitioner herein and thus there was no necessity of their separate impleadment in the present petition at the time of seeking eviction of the tenant from the suit premises.

25. The submissions made by the petitioner of the present petition are similar as had been raised before the learned Rent Controller.

ANALYSIS

26. It is essential to observe that the petitioners of the eviction petition were, as rightly held by the learned Rent Controller, legal heirs of the original owner of the suit premises and thus apparently the eviction petition could have been filed by the respondent No.1, herein

who was arrayed as the petitioner No.1 to the eviction petition even herself if other co-owners had not objected to the institution of the same. In the instant case, the other co-owners have clearly consented to the institution of the eviction petition against the petitioner herein on the grounds of *bona fide* requirement and thus it is apparent that the contention raised on behalf of the petitioner of the present petition that the eviction petition was not maintainable as having been filed for the need of the petitioner No.1 alone, cannot be accepted.

27. The verdicts of the Hon'ble Supreme Court in ***Om Prakash & Anr. V. Mishri Lal (Dead) Represented by His LR.Savitri Devi;*** Civil Appeal No. 4309/2017 arising out of SLP(C) No. 17414/2015, a verdict dated 21.3.2017 reiterates the law to the effect:

“32. It is no longer res integra and is settled by this Court in Sri Ram Pasricha vs. Jagannath and Ors., (1976) 4 SCC 184, Dhannalal vs. Kalawatibai and Ors. (2002) 6 SCC 16 and India Umberalla Manufacturing Co. and Ors. vs. Bhagabandei Agarwalla (dead) by Lrs. Savitri Agarwalla (Smt.) and Ors. (2004) 3 SCC 178 that a suit for eviction of a tenant can be maintained by one of the co-owners and it would be no defence to the tenant to question the maintainability of the suit on the ground that the other co-owners were not joined as parties to the suit. The judicially propounded proposition is that when the property forming the subject matter of eviction proceedings is owned by several co-owners, every co-owner owns every part and every bit of the joint property along with others and thus it cannot be said that he is only a part owner or a fractional owner of the property and that he can alone maintain a suit for eviction of the tenant without joining the other co-owners if such other co-owners do not object.....”

28. Thus the said contention raised on behalf of the petitioner of the present petition that the eviction petition was not maintainable having been filed by the petitioners of the eviction petition admittedly the heirs of the erstwhile owner of the suit premises who had let out the premises to the petitioners herein,-- cannot be accepted in as much as as already observed herein above that the petitioner No.1 of the eviction petition could have instituted the eviction petition for the eviction of the present petitioners of her own if other co-owners had not objected to the same and in the instant case the petition has been filed by petitioner No.1 along with the co-owners of the suit property putting forth no objection to the claim of *bona fide* requirement of the suit premises by the petitioner No.1 thereof, i.e., the respondent No.1 herein.

29. As regards the contention raised on behalf of the petitioner of the present petition i.e. the respondent No.1 to the eviction petition, that the eviction petition was bad for non-impleadment of Ravi and Anil Advani his sons, the verdict of this Court in ***Rajender Kumar Sharma And Ors. V. Leela Wati and Others***; 155(2008) DLT 383 wherein it has been observed vide paragraph 14 to the effect:

“14. It is also settled law that when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenant is occupation of all the joint tenants. It is not necessary for landlord to implead all legal heirs of the deceased tenant, whether they are living in the property or not. It is sufficient for the landlord to implead only those persons who are living in the property, as party. There may be a case where landlord is not aware of all the legal heirs of deceased tenant and impleading only those LRs who are in occupation of the property is sufficient for the purpose of filing Eviction

Petition. An eviction petition against one of the joint tenants is an Eviction Petition against all the joint tenants and all joint tenants are bound by order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs. Thus, the plea of the tenants on this count must fail.”

and the verdict of this Court in **Smt.Narender Kaur v. Mahesh Chand and Sons (HUF)**; R.C.Rev.29/2012 wherein it has been observed vide paragraph 8 to the effect:

“ 8. The contention of the learned counsel for the petitioner that the eviction petition was not maintainable due to non-joinder of legal heirs of Sharnagat Singh, who was the son of original tenant, is unsustainable. It is settled legal position that it is not necessary for the landlord to implead all the legal heirs of the deceased tenant. It is sufficient if the landlord files an eviction petition against any one of the joint tenants and all the joint tenants are equally bound by the order in the eviction petition filed against one of the tenants.”

make it apparent that as Ravi Advani and Anil Advani were the sons of the petitioner of the present petition in as much as the present petitioner was the tenant of the suit premises in question, the non-impleadment of Ravi Advani and Anil Advani to the eviction petition does not non-suit the petitioners of the eviction petition by their non-impleadment.

30. As regards the contention raised on behalf of the petitioner of the present petition that there was no *bona fide* requirement of the suit premises in question, it is essential to observe that it is the landlord who is the best judge of his or her own needs. In the instant case, the petitioner No.1 of the eviction petition has categorically stated that she

required the premises for the sustenance of the business of her sons who had just graduated and commenced the business.

31. The verdicts of this Court in ***Babu Lal v. Atul Kumar***; 2014 VII AD (Delhi) 128 with observations in para 9 thereof which read to the effect:

*“ 9 . Another argument brought forward by the tenant was that the landlord did not need the accommodation as claimed as they had sufficient space available with them. It is settled law that tenant is not one to dictate to the judiciary as to how it can use the property. Such liberty is not vested with either the Court or the tenant. This Court and the Supreme Court has held time and again that the landlord, once having shown that he genuinely needs the property, there can be no interference on how the property should be put to use. The Supreme Court in ***Prativa Devi v T. V. Krishnan*** (1996) 5 SCC 353 held:*

2 . The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.....There is no law which deprives the landlord of the beneficial enjoyment of his property.”

*The Supreme Court in ***Meenal Eknath Kshirsagar (Mrs) v Traders and Agencies*** (1996)5 SCC 344 held that the landlord has liberty to occupy the premises so tenanted if the premises he is occupying is insecure or inconvenient. ***Under any circumstances, the landlord is the best judge of his residential requirement.***”*

and the verdict of this Court in ***Gauri Shanker v. Laxmi Chand***; 2019 V AD(Delhi) 596 to similar effect wherein it has been laid down vide paragraph 26 to the effect:

*“ 26. In view of the observations of the Hon'ble Supreme Court in Civil Appeal No. 4244 of 2006 titled as '**Dinesh***

Kumar Vs. Yusuf Ali: AIR 2010 SC 2679 and of this Court in R.C. REV. 307/2018 titled as "Simarjit Singh Vs. Balbir Singh": 252(2018) DLT 737 and in R.C. REV No. 588/2015 titled as "Subhash Chander Rana Vs. Jitender Verma"; it is well settled that the landlord is the best judge of his own needs and cannot be mandated and dictated by the tenant as to in which portion of the property, he needs to run his own business."

it is apparent that it cannot be contended in the facts and circumstances of the instant case where the petitioner of the present petition himself submits that the petitioner No.1 of the eviction petition, i.e., the respondent No.1 herein was the most vulnerable and economically weaker legal heir of Late Sh. Jai Bhagwan Aggarwal and had thus sought the eviction of the petitioners to the present petition from the suit premises on the grounds of *bona fide* requirement to open the offices for her two sons, it is apparent that the findings of the learned Rent Controller that the need of the petitioner No.1 of the eviction petitioner, i.e., the respondent No.1 for the suit premises was *bona fide*- cannot be faulted with. Thus, it is apparent that need of the petitioner No.1 of the eviction petition seeking the eviction of the present petitioners i.e. the tenant from the suit premises is *bona fide*.

32. As regards the contention raised on behalf of the petitioners to the present petition that there were alternative suitable accommodations available to the petitioners of the eviction petition, the records speak eloquently to the effect that the tenanted alternative accommodation No. 5294, Sadar Thana Road, Pandit Munna Lal Sharma Marg, Delhi belonged to only petitioner No.3 of the eviction

petition i.e. Naresh and Fateh Chand and was in occupation of both of them. It is apparent that in as much as the property No. 5294 Sadar Thana Road, Pandit Munna Lal Sharma Marg, Delhi is not under the co-ownership of the petitioner No.1 of the eviction petition and the petitioner No.3 of the eviction petition, the petitioner No.1 of the eviction petition could not have sought the eviction of the tenant in the same for her *bona fide* need.

33. As regards the contention raised on behalf of the petitioners of the present petition that the petitioners of the eviction petition had let out one portion of the suit property to one Sh. Ashok Kumar for a rent of Rs.15,000/- per month and that if there had been any bona fide requirement, the same would not have been so let out, as rightly observed by the learned Rent Controller, that the rent deed showed that the suit property was rented out by the petitioner No.2 to Sh. Ashok Kumar on 11.1.2017 and that the petitioner No.1 of the eviction petition i.e., the respondent herein, along with other petitioners were co-owners of the said property, the petitioner No.1 to the eviction petition could not have herself alone stopped the petitioner No.2 of the eviction petition from re-letting part of the suit property to Sh. Ashok Kumar on 11.1.2017, the contention thus raised on behalf of the petitioner of the present petition that there were alternative accommodation available to the petitioners of the eviction petition other than the suit premises even if the need of the petitioner No.1 of the eviction petition is held to be *bona fide*— cannot be accepted.

34. As regards the contention raised on behalf of the petitioner of the present petition that the verdict of the Hon'ble Supreme Court in ***Satyawati Sharma (Dead) by LRs v. Union of India & Another***; (2008) 5 SCC 287 was assailed in ***Ram Gopal v. Prem Chand Sharma***; to be tagged with Civil Appeal No. 3793/2016 arising out of Special Leave Petitions (Civil) No. 8560/2016 where it has been challenged that Section 14(1) (e) of the Delhi Rent Control Act, does not contemplate the properties of commercial nature required for commercial purposes, it is essential to observe that the Hon'ble Supreme Court of India vide a verdict in ***Vinod Kumar v. Ashok Kumar Gandhi***; Civil Appeal No. 3793/2016 which is the appeal which is referred to in Ground 'D' of the present petition, it has been categorically laid down that vide para 57 thereof to the effect:

“ 57. The above authority duly supports our view that law has been made by the Parliament in enacting Act, 1995 which accepts the suggestion of Constitution Bench in Gian Devi Anand and hence what has been held by Satyawati Sharma was felt both by this Court and Legislature. We, thus, do not find any good ground to refer the judgment of this Court in Satyawati Sharma for reconsideration by a larger Bench. We, thus, reject the submission of the learned Counsel for the Appellant that Satyawati Sharma needs to be referred to a larger Bench for reconsideration.”

it was held that there was no good ground to refer the judgment of the Hon'ble Supreme Court in Satyawati (supra) for re-consideration by a Larger Bench. The observations in paragraphs 45, 46, 47 to 56 in the said verdict of the Hon'ble Supreme Court in ***Vinod Kumar*** (supra) to the effect:

45. Much emphasis has been given by the learned Counsel for the Appellant on the fact that various tenants are tenants of small shops which are their source of livelihood when application under 14(1)(e) filed by the landlord on bona fide need, they are not even entitled to contest the application by filing written statement. They are obliged to obtain leave to defend as per Section 25B which leave to defend is rejected in most of the cases which causes great hardship on the tenants. It is submitted that in so far as applicability of the procedure Under Section 25B is concerned, the issue needs to be revisited to save the tenants from hardship. In our view this cannot be a ground for referring the judgment of Satyawati Sharma to larger Bench for reconsideration of judgment of Satyawati Sharma. Satyawati Sharma having not said about the procedure, there is nothing in the judgment which needs to be revisited on the above aspect. It is for the Legislature to take stock of situation and if it so decides it can make necessary changes in the procedure for considering the application Under Section 14(1)(e) with regard to eviction of commercial tenants on the ground of bona fide need of the land lord. We need to add nothing more on the subject. In so far as submission of the learned Counsel for the Appellant is that Under Section 14(1)(e) in respect of commercial tenancy leave to defend is generally rejected, it is suffice to say that rejection of leave for a particular case is matter to be examined in each case and no general observation can be made in this regard.

46. There is one more aspect of the matter which needs to be noted. We have already extracted observation of Constitution Bench judgment in Gian Devi Anand in paragraph 39 where the Constitution Bench observed that bona fide need of the landlord stands very much on the same footing in regard to either class of premises,

residential or commercial. We, therefore, suggest that Legislature may consider the advisability of making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well. After more that a decade of the above observation, a comprehensive Legislation, namely, Delhi Rent Act, 1995 has been enacted to provide for the Regulation of rents, repairs and maintenance and evictions relating to premises and of rates of hotels and lodging houses in the National Capital Territory of Delhi. In Act, 1995 the definition of premises as was contained in Act, 1958 remained same. With regard to protection of tenant against eviction a new Section 22(r) which provides as follows:

Section 22(r) that the premises let for residential or non-residential purposes are required, whether in the same form or after re-construction or rebuilding, by the landlord for occupation for residential or non-residential purpose for himself or for any member of his family if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation:

Provided that where the landlord has acquired the premises by transfer, no application for the recovery of possession of such premises shall lie under this Clause unless a period of three years has elapsed from the date of the acquisition:

Provided further that where an order for the recovery of possession of any premises is made on the ground specified in this clause, the landlord shall be entitled to obtain possession thereof on the expiration of a period of six months in the case of residential premises and one

year in the case of non-residential premises from the date of passing of eviction order.

47. We may notice another three-Judge Bench judgment of this Court, i.e., Subramanian Swamy and Ors. v. Raju through Member, Juvenile Justice Board and Anr., (2014) 8 SCC 390. This Court in the above judgment laid down that reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is clear. We need to notice the issues raised in the above case and the ratio of the judgment. Above was a case where a lady of 23 years in age in moving bus was brutally assaulted sexually and physically. The lady succumbed to her injuries. Five persons were apprehended in connection with the crime. The Respondent, Raju was below 18 years of age on the date of commission of the crime. His case was referred for inquiry to the Juvenile Justice Board. The other Accused were tried in a regular Sessions Court and have been found guilty of the offences Under Section 376(2)(g) and Section 302 of the Penal Code. Other Accused were sentenced to death, appeal against which was dismissed by the High court. The Petitioners had filed applications for impleadment before the Juvenile Justice Board. The case of the Petitioners was that on a proper interpretation of the Act (Juvenile Justice (Care and Protection of Children) Act, 2000), the Juvenile (Respondent) was not entitled to the benefits under the Act but was liable to be tried under the penal law of the land in a regular criminal court along with the other Accused.

48. A writ petition was also filed in the High Court praying for an authoritative interpretation of Sections

2(l) and 2(k) of the Act that the criterion of 18 years set out therein does not comprehend cases of grave offences in general and of heinous crimes against women in particular that shakes the root of humanity in general. The writ petition was dismissed by the High Court holding that against the order of the Juvenile Justice Board the alternative remedies were available under the Act which should be first exhausted. The prayer for impleadment of the Petitioners was also rejected.

49. A Special Leave Petition against the above judgment of the High Court as well as writ petition was filed in this Court. The submissions of Petitioners were noted by this Court. In paragraphs 59 and 60 this Court noticed the submissions made on behalf of the Petitioner as below:

59. Dr. Swamy at the outset has urged that there is no attempt on his part to challenge the constitutional validity of the Act, particularly, the provisions contained in Sections 2(k) and 2(l) of the Act and what he seeks is a mere reading down of the Act.....

60.. Dr. Swamy would urge that the relevant provisions of the Act i.e. Sections 1(4), 2(k), 2(l) and 7 must be read to mean that juveniles (children below the age of 18) who are intellectually, emotionally and mentally mature enough to understand the implications of their acts and who have committed serious crimes do not come under the purview of the Act. Such juveniles are liable to be dealt with under the penal law of the country and by the regular hierarchy of courts under the criminal justice system administered in India.....

50. *This Court in the background of the above submissions laid down following in paragraph 61:*

61. *Reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is clear. The fundamental principle of the "reading down" doctrine can be summarized as follows. Courts must read the legislation literally in the first instance. If on such reading and understanding the vice of unconstitutionality is attracted, the courts must explore whether there has been an unintended legislative omission. If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality. The above is a fairly well established and well accepted principle of interpretation which having been reiterated by this Court time and again would obviate the necessity of any recall of the huge number of precedents available except, perhaps, the view of Sawant, J. (majority view) in **Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Ors.** 1991 Supp. (1) SCC 600 which succinctly sums up the position is, therefore, extracted below:*

255. *It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its*

unconstitutionality. It is an extension of the principle that when two interpretations are possible--one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires extensive additions and deletions. Not only it is no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so.

51. Rejecting the submission of the Petitioner to read down the statute following was held in paragraph 64:

64. If the provisions of the Act clearly indicate the legislative intent in the light of the country's international commitments and the same is in conformity with the constitutional requirements, it is not necessary for the Court to understand the legislation in any other manner. In fact, if the Act is plainly read and understood, which we must do, the resultant effect thereof is wholly consistent with Article 14. The Act, therefore, need not be read down, as suggested, to save it from the vice of unconstitutionality for such unconstitutionality does not exist.

52. Now reverting to the judgment of this Court in Satyawati Sharma (supra), in the said judgment this Court did not read down the provision of Section 14(1)(e) of the Delhi Rent Control Act. This Court held that Section 14(1)(e) is not intra vires the doctrine of equality enshrined in Article 14 of the Constitution. In paragraph 31 following was laid down:

31.In our considered view, the discrimination which was latent in Section 14(1)(e) at the time of enactment of the 1958 Act has, with the passage of time (almost 50 years), become so pronounced that the impugned provision cannot be treated intra vires Article 14 of the Constitution by applying any rational criteria.

53. *After considering all aspects of the matter, this Court in Satyawati Sharma held that Section 14(1)(e) is violative of the doctrine of equality embodied in Article 14 of the Constitution. This Court, thus, struck down the discriminatory portion of Section 14(1)(e). In paragraphs 38 and 39 following was laid down:*

38. *In view of the above discussion, we hold that Section 14(1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only.*

39. *However, the aforesaid declaration should not be misunderstood as total striking down of Section 14(1)(e) of the 1958 Act because it is neither the pleaded case of the parties nor the learned Counsel argued that Section 14(1)(e) is unconstitutional in its entirety and we feel that ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e)...*

54. *The judgment of Satyawati Sharma was, thus, not a case of reading down of Section 14(1)(e) rather it was a case where portion of Section 14(1)(e) was struck down as discriminatory and violative of Article 14 of the Constitution. Thus, three- Judge Bench judgment in Subramanian Swamy and others (supra) is clearly*

distinguishable and does not affect the ratio laid down by two-Judge Bench judgment in Satyawati Sharma case.

55. The Legislature itself notices the need for providing a ground for eviction to landlord on bona fide need with regard to residential as well as non-residential premises. Thus, what was said in Gian Devi Anand in paragraph 39 was duly accepted by Legislature. It is another matter that Delhi Rent Act, 1995 even though it received assent of the President could not be enforced. Section 1(3) provided that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Central Government did not issue any notification in the Official Gazette for enforcement of the Act. Writ Petition was filed in Delhi High Court for issuance of mandamus to Central Government to enforce Act, 1995 which was dismissed. From the above, it is clear that what was observed by Gian Devi Anand was also accepted by the Legislature in providing for eviction from both the residential and non-residential premises on the ground of bona fide need in Act, 1995. Although, said Act could not be enforced, the Legislation is complete when the Act is passed by the Legislature and receives the assent of the President.

56. A Constitution Bench in State of Kerala and Ors. v. Mar Appraem Kuri Company Limited and Anr., (2012) 7 SCC 106, laid down following in paragraphs 50 and 51:

50. Broadly speaking, law-making is exclusively the function of the legislatures (see Articles 79 and 168). The President and the Governor are a part of the Union or the legislatures of the States. As far as Parliament

is concerned, the legislative process is complete as soon as the procedure prescribed by Article 107 of the Constitution and connected provisions are followed and the Bill passed by both the Houses of Parliament has received the assent of the President Under Article 111. Similarly, a State legislation becomes an Act as soon as a Bill has been passed by the State Legislature and it has received the assent of the Governor in accordance with Article 200. It is only in the situation contemplated by Article 254(2) that a State legislation is required to be reserved for consideration and assent by the President. Thus, irrespective of the date of enforcement of a parliamentary or State enactment, a Bill becomes an Act and comes on the statute book immediately on receiving the assent of the President or the Governor, as the case may be, which assent has got to be published in the Official Gazette.

51. The legislature, in exercise of its legislative power, may either enforce an Act, which has been passed and which has received the assent of the President or the Governor, as the case may be, from a specified date or leave it to some designated authority to fix a date for its enforcement. Such legislations are conditional legislations as in such cases no part of the legislative function is left unexercised. In such legislations, merely because the legislature has postponed the enforcement of the Act, it

does not mean that the law has not been made.”

are thus categorical that Section 14(1) (e) of the Delhi Rent Control Act, 1958 as amended can be invoked by the landlord both in relation to the residential and commercial tenancy.

35. In the circumstances, the petition and CM. no. 5229/2018 are thus dismissed.

36. As regards CM No. 5231/2018 filed on behalf of the respondents to the present petition seeking directions to the petitioner to make the payment of Rs.2,00,000/- per month as per the market rent, from the date of institution of the present petition till the petitioner vacates and hands over the possession of the suit property to the respondents, taking into account that the operation of the impugned order had been stayed vide order dated 15.12.2017 by this Court, the Court does not consider appropriate to grant the prayer made by the said application which is declined. Further more, there is no specific averment with details in the application filed by the applicant/respondents to substantiate the contention that similarly situated property has been let out at the prevalent rate of rent in the area where the said premises is situated is Rs.2,00,000/- currently. Needless to say, the respondents may seek *mesne* profits as per law till the date the possession of the suit property is handed over to them.

37. The CM No. 45454/2017 stands dismissed.

The Trial Court Record which was requisitioned for consideration of the appeal be returned forthwith.

ANU MALHOTRA, J

SEPTEMBER 17, 2019/NC/SV

