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

% Date of Decision : 9th July, 2020

+ RC. REV. 269/2018 & CM APPL. No. 24045/2018

GAFFAR AHMAD

..... Petitioner

Through: Mr. J.K. Bhola, Adv. along with
petitioner-in-person.

versus

SHIV KUMAR OHRI

..... Respondent

Through: Mr. Siddhartha Singh and Ms.Sarita
Gupta, Advs. along with respondent-
in-person.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

The petitioner/tenant impugns order dated 30.01.2018 whereby the leave-to-defend application filed by him in eviction petition E No./ARC No. 799/2016 has been dismissed and an eviction order has been passed against the petitioner. The eviction petition was filed by the respondent/landlord on the ground available under section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act', for short) seeking eviction of the petitioner from shop No. B-18/4 Shopping Centre, Jhilmil, Tahirpur, Delhi (now known as B-Block Market, Vivek Vihar Phase-1, Delhi) ('subject premises', for short) citing *bona-fide* requirement of the landlord's son.

Landlord's case :

2. The case set-up by the landlord in the eviction petition is that the tenant was inducted in the subject premises on 28.07.2011 at a rent of Rs.3,000/- per month excluding electricity and water charges; and that the landlord now required the subject premises for commercial use of his son, who was unemployed and wanted to start a new business. It was also averred that the landlord had no other commercial premises available; while on the other hand, the tenant had purchased a shop in the same B-Block Market, Vivek Vihar, Phase-I, Delhi from which the tenant was already running a well-established beauty parlour.

Tenant's case :

3. The tenant filed his application seeking leave to defend the eviction petition, citing the following grounds :
 - (a) that the landlord was not the 'owner' of the subject premises, since it is leasehold property, with the Delhi Development Authority as the owner/lessor ; and the landlord was only a 'co-lessee' under the DDA alongwith one Shri Prem Nath Ohri ;
 - (b) that the rate of rent of the subject premises was, by the landlord's own reckoning, Rs. 3,850/- per month; and therefore the eviction petition was barred by section 50 read with section 3(c) of the DRC Act. In support of this contention, the tenant cited Civil Suit No. 271/2015 filed by the landlord in the court of the learned Additional District Judge, Karkardooma Courts, New Delhi, in which the landlord had mentioned the rate of rent

as Rs. 3,850/- per month. It is however the conceded position that the said suit was subsequently withdrawn ;

- (c) that the landlord had already sold the subject premises to one Shri Siddharth Singh, Advocate; and as a result, the eviction petition could not have been filed by the landlord, nor could the eviction petition have been filed by the said purchaser, since section 14(6) of the DRC Act stood in the way. In support of this claim, the tenant cited legal notice dated 17.02.2015 issued by the said advocate, where the advocate had claimed to be owner of the subject premises ;
- (d) that the landlord did not require the subject premises *bona fide* for the commercial requirements of his son, since the son was gainfully employed and was running a business of manufacturing plastic products/moulding factory. It was further alleged that, in any case, the son cannot run a manufacturing unit from the subject premises, since the subject premises is situate in a residential area market, from where such activity is not permissible;
- (e) that the tenant was inducted in the subject premises in the year 1978 at a rent of Rs. 225/- per month; and that earlier-on the landlord had filed eviction petition E.P. No. 119/2005 titled ***Shiv Kumar Ohri vs. Ghias Ahmed*** under sections 14(1)(a) and 14(1)(b) of the DRC Act in collusion with the tenant's brother (who was respondent in that eviction petition); and had even obtained an eviction order dated 29.07.2010. But the landlord did not execute the eviction order and only used it to pressurise

the tenant into signing a lease deed dated 28.07.2011 increasing the rent to Rs. 3,200/- per month, at which time the landlord also took Rs.13,00,000/- from the tenant in cash, as premium or *pugree*. It was further claimed that since the subject premises is the only source of income for the tenant, under pressure and compulsion, the tenant was now paying rent of Rs. 3500/- per month, which is the last paid rate of rent.

4. Both parties also cited certain judicial precedents in their favour before the ARC.

Additional Rent Controller's reasoning & decision :

5. In the impugned order, the learned ARC has dealt with the grounds raised in the leave-to-defend application in the following way :

- (i) **On ownership and landlord-tenant relationship :** Insofar as the issue of ownership and consequent issue of landlord-tenant relationship is concerned, the ARC has decided this issue in favour of the landlord on the basis that the tenant himself filed lease agreement dated 28.07.2011 signed between the parties; as also rent receipt dated 15.01.2015 for Rs.7,000/- towards payment of rent for a 2-month period from 01.12.2014 to 31.01.2015. On the basis of these documents filed by the tenant himself, the ARC has held that the landlord-tenant relationship stands admitted; by virtue of which the tenant is estopped from challenging the ownership of the landlord in view of section 116 of the Indian Evidence Act 1872. The ARC has further held that since, concededly, the landlord was receiving rent in his own right and not on behalf of any third

person, the tenant's denial of the landlord-tenant relationship does not raise a triable issue.

- (ii) **On *bona-fidé* personal requirement** : As far as the *bona-fidé* requirement cited and the landlord's averment as to lack of suitable, alternate accommodation is concerned, the ARC has disregarded the tenant's denials, observing that the tenant has only made bald allegations, without giving any specifics as to where the landlord's son is working; while on the other hand the landlord has categorically averred that his son is unemployed. The ARC has observed that in eviction petition No. E 32/2015 filed against a different tenant on a similar ground of *bona fidé* requirement, the landlord had averred that his son was running a business from a *rented* accommodation; and that the business was running in losses since it was overburdened with the rental expenses for that premises, which plea was consistent with the landlord's stand taken in the eviction petition under consideration. For completeness, it is recorded in the impugned order that eviction petition No. E 32/2015 was disposed of *vidé* order dated 01.10.2016 since after the demise of the tenant in that case, the requisite application under Order XXII Rule 4 CPC was not filed within time and the delay in filing that application was not condoned.
- (iii) Furthermore, the ARC observed that the tenant had failed to file any document or other material to support his claim that the landlord's son was working elsewhere or even working from the earlier rented premises. The ARC further observed

that *bona fide* requirement is to be seen at the time of filing of the eviction petition, and the tenant had brought nothing on record to show that the landlord's son was working elsewhere at that time, thereby holding that the allegation that the landlord does not *bona-fide* require the subject premises, is baseless and does not raise any triable issue.

- (iv) **On the subject premises having been sold :** To support his allegation that the landlord had already sold the subject premises to his advocate, the tenant had filed notice dated 17.02.2015 stated to have been issued by the said advocate, claiming ownership of the subject premises, which notice was disputed by the landlord as being a forged document. The ARC observed that the tenant had failed to even state, much less bring on record anything to show, as to how and in what manner the tenant received the notice. The ARC observes that if the notice was received by post then at least an envelope or some other proof of having received it by post should have been filed. If the notice was received by hand, the particulars of the person delivering it should have been mentioned. In the absence of any material to show the mode of receipt of purported notice dated 17.02.2015, the ARC has disregarded the said notice and has held that this allegation also fails to raise a triable issue.
- (v) **On the eviction petition being barred by section 50 :** As for the allegation that the eviction petition is barred by section 50 of DRC Act, the ARC has proceeded on the basis of rent

receipt dated 15.01.2015 filed by the tenant himself, which discloses payment of Rs.7,000/- towards rent for two months, i.e. rent of Rs.3500/- per month. The ARC has also noticed an averment made in the leave-to-defend application, where the tenant has stated that “... *and now the last date (sic, rate) of rent is Rs.3500/- per month.*” (para h/6 of the leave-to-defend application). With regard to the allegation that in Civil Suit No. 271/2015 filed by the landlord, he had stated that the rate of rent was Rs.3,850/- per month, the ARC says that that rate of rent was concededly arrived at starting from a rent of Rs. 3,200/- per month for the period 01.04.2011 to 01.03.2015 (sic) ; thereafter increasing it to Rs. 3,500/- per month from 01.04.2013 to 28.02.2014 ; and then incorporating a 10% increase (every year), bringing it to Rs. 3,850/- per month. The ARC holds however, that such increase was admittedly *never accepted nor paid* by the tenant; and therefore the *last paid rent* must be taken to be what the tenant admits, viz. Rs.3,500/- per month; in view of which the eviction petition is maintainable in light of section 3(c) of the DRC Act. The ARC also records that the civil suit was withdrawn as being barred by the provisions of the DRC Act. The ARC has also noted that the tenant has not filed any document to show that he had paid rent of Rs.3,850/- per month to the landlord at any stage. The ARC has accordingly rejected this contention, holding that this allegation also did not raise any triable issue.

6. In the submissions made before this court, Mr. J.K. Bhola, learned counsel appearing for the tenant and Mr. Siddharth Singh, learned counsel appearing for the landlord, have essentially reiterated the submissions made before the ARC. Counsel have also cited judicial precedents in support of their respective positions. The precedents cited on behalf of the tenant are: ***Liaq Ahmed & Ors. vs. Habir-Ur-Rehman*** : AIR 2001 SC 2176; ***Vijay Kumar Ahluwalia & Ors. vs. Bishan Chand Maheshwari & Ors.*** : judgment dated 07.02.2018 in Civil Appeal No.1546/2017; and ***Inderjeet Kaur vs. Nihal Singh*** : (2001) SCC 706. On behalf of the landlord the following judgments have been cited : ***Satyawati Sharma vs. Union of India*** : (2008) 5 SCC 287; ***Balwant Singh Choudhary & Anr. vs. Hindustan Petroleum Corporation Ltd.*** : 2004 (1) RCR 487; ***Jeewan Lal vs. Gurdial Kaur & Ors.*** : 57 (1995) DLT 262; ***Nemchand Daga vs. Inder Mohan Singh Rana*** : 94 (2001) DLT 683; ***Ramesh Chand vs. Uganti Devi*** : 157 (2009) DLT 450; ***Shanti Sharma vs. Ved Prabha*** : 1987 RLR 526 SC ; ***Precision Steel & Engineering Works & Anr. vs. Prem Devi Niranjana Deva Tayal*** : (1982) 3 SCC 270 ; ***Ram Babu Agrawal vs. Jai Kishan Das*** : (2010) 1 SCC 164; ***Tarsem Singh vs. Gurvinder Singh*** : 173 (2010) DLT 379; ***Subhash Jain vs. Ravi Sehgal***: judgment dated 04.02.2014 in R.C. Rev. No. 292/13; and ***Bhushan Kumar Jhanb vs. Jawahar Lal Talwar*** : judgment dated 06.07.2011 in R.C. Rev. No.96/2010.
7. Having considered the rival contentions of the parties, this court is of the opinion that, first and foremost, since the scope of revisional

powers under section 25B(8) of the DRC Act is limited, it is not necessary in the present proceedings to delve beyond a point into the rival *factual contentions* raised by the parties.

Scope of revisional power :

8. The decision of the Supreme Court in *Sarla Ahuja vs. United India Insurance Company Limited*¹ on the scope of revisional powers of the High Court under section 25B(8) of the DRC Act still holds the field, in which case the Supreme Court has summarised the scope of such powers as follows :

"7. Although, the word "revision" is not employed in the proviso to Section 25-B(8) of the Act, it is evident from the language used therein that the power conferred is revisional power. In legal parlance, distinction between appellate and revisional jurisdiction is well understood. Ordinarily, appellate jurisdiction is wide enough to afford a rehearing of the whole case for enabling the appellate forum to arrive at fresh conclusions untrammelled by the conclusions reached in the order challenged before it. Of course, the statute which provides appeal provision can circumscribe or limit the width of such appellate powers. Revisional power, on the contrary, is ordinarily a power of supervision keeping subordinate tribunals within the bounds of law. Expansion or constriction of such revisional power would depend upon how the statute has couched such power therein. In some legislations, revisional jurisdiction is meant for satisfying itself as to the regularity, legality or propriety of proceedings or decisions of the subordinate court. In Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar [(1980) 4 SCC 259] this Court considered the scope of the words ("the High Court may call for and examine the records ... to satisfy itself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order ...") by which power of revision has been conferred by a particular statute. Dealing with the contention that the above words indicated conferment of a very wide power on the revisional authority, this Court has observed thus in the said decision: (SCC p. 262, para 3)

"The dominant idea conveyed by the incorporation of the words 'to satisfy itself' under Section 25 appears to be that the power conferred on the High Court under Section 25 is essentially a power

¹ (1998) 8 SCC 119

*of superintendence. Therefore, despite the wide language employed in Section 25 the High Court quite obviously **should not interfere with findings of fact merely because it does not agree with the finding of the subordinate authority.***

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*"10. The Bench has, however, cautioned that the High Court should not interfere merely because it considered that **possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at**".*

"11. Learned Single Judge of the High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable. A reading of the impugned order shows that the High Court has overstepped the limit of its power as a revisional court. The order impugned on that score is hence vitiated by jurisdictional deficiency."

(Emphasis supplied)

Considerations for grant of leave-to-defend :

9. The considerations for grant of leave-to-defend in an eviction petition filed under section 14(1)(e) of the DRC Act have been explained by the Supreme Court in ***Precision Steel & Engineering Works & Anr. vs. Prem Devi Niranjana Deva Tayal***² in the following words:

"10. ... The provision is cast in a mandatory form. Statutory duty is cast on the Controller to give leave as the legislature uses the expression "the Controller shall give" to the tenant leave to contest if the affidavit filed by the tenant discloses such fact as would disentitle the landlord for an order for recovery of possession. The Controller has to look at the affidavit of the tenant seeking leave to contest. Browsing through the affidavit if there emerges averment of facts which on a trial, if believed, would non-suit the landlord, leave ought to be granted. Let it be made clear that the statute is

² (1982) 3 SCC 270

not cast in a negative form by enacting that the Controller shall refuse to give to the tenant leave to contest the application unless the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order, etc. That is not the mould in which the section is cast. The provision indicates a positive approach and not a negative inhibition. When the language of a statute is plain, the principle that legislature speaks its mind in the plainest language has to be given full effect. No canon of construction permits in the name of illusory intendment defeating the plain, unambiguous language expressed to convey the legislative mind. And the legislature had before it Order 37, an analogous provision where leave to defend is to be granted and yet avoiding the phraseology of the Code of Civil Procedure, namely, “substantial defence” and “vexatious and frivolous defence”, the legislature used the plainest language, “facts disclosed in the affidavit of the tenant”.

"11. The language of sub-section (5) of Section 25-B casts a statutory duty on the Controller to give to the tenant leave to contest the application, the only pre-condition for exercise of jurisdiction being that the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground mentioned in Section 14(1)(e). Section 14(1) starts with a non obstante clause which would necessarily imply that the Controller is precluded from passing an order or decree for recovery of possession of any premises in favour of the landlord against the tenant unless the case is covered by any of the clauses of the proviso. The proviso sets out various enabling provisions on proof of one or the other, the landlord would be entitled to recover possession from the tenant. One such enabling provision is the one enacted in Section 14(1) proviso (e). Upon a true construction of proviso (e) to Section 14(1) it would unmistakably appear that the burden is on the landlord to satisfy the Controller that the premises of which possession is sought is (i) let for residential purposes; and (ii) possession of the premises is required bona fide by the landlord for occupation as residence for himself or for any member of his family etc.; and (iii) that the landlord or the person for whose benefit possession is sought has no other reasonably suitable residential accommodation. This burden, landlord is required to discharge before the Controller gets jurisdiction to make an order for eviction. This necessarily transpires from

the language of Section 14(1) which precludes the Controller from making any order or decree for recovery of possession unless the landlord proves to his satisfaction the conditions in the enabling provision enacted as proviso under which possession is sought. Initial burden is thus on the landlord."

*"12. ... On a combined reading of Section 14(1) proviso (e) with Section 25-B(1) and (4) the legal position that emerges is that on a proper application being made in the prescribed manner which is required to be supported by an affidavit, unless the tenant obtains leave to defend as contemplated by sub-sections (4) and (5) of Section 25-B, the tenant is deemed to have admitted all the averments made in the petition filed by the landlord. The effect of these provisions is that the **Controller would act on the admission of the tenant** and there is no better proof of fact as admission, ordinarily because facts which are admitted need not be proved. But what happens if the tenant appears pursuant to the summons issued, under sub-section (2) of Section 25-B, files an affidavit stating the grounds on which he seeks to contest the application. As a corollary it would transpire that the facts pleaded by the landlord are disputed and controverted. How is the Controller thereafter to proceed in the matter. It would be open to the landlord to contest the application of the tenant seeking leave to contest and for that purpose he can file an affidavit in reply but production and admission and evaluation of documents at that stage has no place. The Controller has to confine himself to the affidavit filed by the tenant under sub-section (4) and the reply, if any. On perusing the affidavit filed by the tenant and the reply if any filed by landlord the Controller has to pose to himself the **only** question: Does the affidavit **disclose, not prove**, facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in clause (e) of the proviso to Section 14(1). ..."*

(Emphasis supplied)

Ownership/title of landlord :

10. Apropos the matter of ownership/title of a landlord, this issue has to be assessed based on the law laid down by the Supreme Court in ***Shanti***

Sharma & Anr. vs. Ved Prabha & Ors.³, in which the Supreme Court has said this :

"14. ... In this context, the phrase "owner" thereof has to be understood, and it is clear that what is contemplated is that where the person builds up his property and lets out to the tenant and subsequently needs it for his own use, he should be entitled to an order or decree for eviction the only thing necessary for him to prove is bona fide requirement and that he is the owner thereof. In this context, what appears to be the meaning of the term "owner" is vis-a-vis the tenant i.e. the owner should be something more than the tenant. Admittedly in these cases where the plot of land is taken on lease the structure is built by the landlord and admittedly he is the owner of the structure. So far as the land is concerned he holds a long lease and in this view of the matter as against the tenant it could not be doubted that he will fall within the ambit of the meaning of the term "owner" as is contemplated under this section. This term came up for consideration before the Delhi High Court and it was also in reference to Section 14(1)(e) and it was held by the Delhi High Court in T.C. Rekhi v. Smt Usha Gujral [1971 RCJ 322, 326 (Del HC)] as under:

"The word 'owner' as used in this clause, has to be construed in the background of the purpose and object of enacting it. The use of the word 'owner' in this clause seems to me to have been inspired by the definition of the word 'landlord' as contained in Section 2(e) of the Act which is wide enough to include a person receiving or entitled to receive the rent of any premises on account of or on behalf of or for the benefit of any other person. Construed in the context in which the word "owner" is used in clause (e), it seems to me to include all persons in the position of Smt Usha Gujral who have taken a long lease of sites from the government for the purpose of building houses thereon. The concept of ownership seems now to be eclipsed by its social and political significance and the idea of ownership, in case like the present is one of the better right to be in possession and to obtain it. To accede to the contention raised by Shri Kapur would virtually nullify the effect of clause (e) and would render all such landlords remediless against tenants however badly they may need the premises for their own personal residence. I do not think such a result was intended by

³ (1987) 4 SCC 193

the legislature and I repel the appellant's contention. I consider it proper before passing on to the next challenge to point out that the word 'owner' as used in clause (e) in Section 14(1) does not postulate absolute ownership in the sense that he has an absolutely unrestricted right to deal with the property as he likes. To describe someone as owner, and perhaps even as an absolute owner, of property is to say two things: it is to assert that his title to the property is indisputable and that he has all the rights of ownership allowed by the legal system in question. Rights of ownership may, therefore, be limited by special provisions of law and include in those provisions such as are in force in New Delhi according to which citizens are granted long leases of sites for constructing buildings thereon. Now, the words of a statute, though normally construed in their ordinary meaning, may contain inherent restrictions due to their subject matter and object and the occasion on which the circumstances with reference to which they are used. They call for construction in the light of their context rather than in what may be either their strict etymological sense or their popular meaning apart from the context (see Halsbury's Laws of England, Third Edn., Vol. 36 para 893 p. 394). The meaning of the word "owner" in clause (e) is influenced and controlled by its context and the appellant's construction is unacceptable because it seems to be quite clearly contrary to the reasonable operation of the statutory provision."

(Emphasis supplied)

11. In a later decision of a Single Bench of the this court in ***Ramesh Chand vs. Uganti Devi***⁴ it was held that a *landlord* who was receiving rent for *himself* shall be entitled to be considered as the *owner*, however *imperfect his title to the property may otherwise be*, in the following words :

"7. It is settled preposition of law that in order to consider the concept of ownership under Delhi Rent Control act, the Court has to see the title and right of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit

⁴ 157 (2009) DLT 450

*and not for and on behalf of someone else. **If the landlord was receiving rent for himself and not on behalf of someone else, he is to be considered as the owner, howsoever imperfect his title over the premises may be.** The imperfectness of the title of the premises cannot stand in the way of an eviction petition under Section 14(1)(e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent, acts dishonestly. I, therefore, find that there was no infirmity in the order of learned ARC in this respect.”*

(Emphasis supplied)

Therefore a Single Judge of our High Court has held in ***TC Rekhi***, as quoted in ***Shanti Sharma*** (supra), that the term ‘landlord’ “is wide enough to include a person receiving or entitled to receive the rent of any premises on account of or on behalf of or for the benefit of any other person” and that ‘owner’ is someone with “a better right to be in possession and to obtain it”. In ***Uganti Devi*** it was opined that a ‘landlord’ would be ‘owner’ provided he was “receiving rent for himself and not on behalf of someone else”. In ***Uganti Devi*** our High Court has also clearly opined that imperfection in the landlord’s title, even if that be so, does not raise a triable issue at the hands of a tenant. In the present case therefore, the respondent is both owner and landlord for purposes of section 14(1)(e).

Bona-fidé requirement :

12. Coming next to the interpretation of the phrase “required *bona fide* by the landlord”, this court is guided by the decision of the Supreme Court

in *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta*⁵, in which the Supreme Court has made the following observations:

"13.... The phrase "required bona fide" is suggestive of legislative intent that a mere desire which is the outcome of whim or fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the court. The judge of facts should place himself in the armchair of the landlord and then ask the question to himself — whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach

⁵ (1999) 6 SCC 222

instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against."

(Emphasis supplied)

Conclusions & decision :

13. In the backdrop of the law as laid down by the Supreme Court, the factual matrix presented in this case, and the above discussion, this court is of the following view :

- (a) that though the tenant challenges the rate of rent, he has himself filed before the ARC rent receipt dated 15.01.2015 disclosing payment of Rs.7,000/- for the period 01.12.2014 to 31.01.2015, that is for 2 months, implying thereby a rent of Rs. 3,500/- per month; which squarely brings the matter within the purview of the DRC Act in view of section 3(c) of the statute. Therefore, based on the tenant's own document, no issue arises on this aspect and no trial is called for ;
- (b) that the tenant's challenge to the landlordship of the respondent or the landlord-tenant relationship is also *ex-facie* meritless in view of lease deed dated 28.07.2011 and rent receipt dated 15.01.2015 filed by the tenant himself. By filing these documents the tenant admits that the respondent is 'landlord' of the subject premises; and no issue therefore arises on this aspect that would require trial. So, no triable issue is disclosed on this point ;

- (c) that as for the challenge raised to the ‘ownership’ of the landlord, in view of the decision of the Supreme Court in *Shanti Sharma* (supra), all that the law requires is that the landlord should hold a premises in a capacity of *something more than that of a tenant* and proof of title beyond that point is not required. In the present case, as per the tenant’s own allegations, the landlord holds the land on which the subject premises is constructed on long lease granted by the DDA. The landlord is therefore *owner of leasehold rights* in the land comprised in the subject premises. For purposes of section 14(1)(e) of the DRC Act, ‘ownership’ is not meant only to be freehold and absolute ownership of property but includes *rights in the property that are more than that of a tenant, regardless of other imperfections in title*. Yet again therefore, no trial is called for on this point ;
- (d) that in support of the tenant’s objection to the genuineness of the landlord’s requirements, the tenant has failed to file any document nor has he even made any credible averment to support the allegation that the landlord's son was employed *or* was running a business from an alternate premises that he owns. The tenant has thereby failed to cast a credible doubt over the landlord’s assertion that the landlord’s son is running a business from rented premises ; and that therefore, the landlord wants the subject premises for use by his son to run the latter’s business. Again therefore, no triable issue has been raised on this aspect. In saying so, this court reminds itself of the principle laid down

by the Supreme Court that *it is not for the tenant to dictate to the landlord as to which premises to use to fulfil a bona-fidé requirement*. Once the court is satisfied that the requirement cited by a landlord is *bona-fidé*, it is the landlord's prerogative to seek eviction from a given premises of his choice. In the present case in any case there appears to be no alternate premises *owned (not rented) by the landlord or his son* from which the son could conduct business;

- (e) that as far as the allegation of the subject premises having been sold is concerned, this court is of the opinion that, first of all no material has been presented by the tenant to support this allegation, except a notice purportedly issued by an advocate claiming the right to seek eviction, which notice is disputed and denied *inter alia* on the basis that it is a forged document. Furthermore, the tenant has not been able to produce any material, or even answer as to how he received that notice. For the foregoing reasons there appears to be nothing substantial in the objection raised, that would call for a trial. Besides, in the face of the denial by the landlord that the subject premises has been sold to the advocate, or for that matter to any other person, if the tenant's allegation were true, and if after obtaining eviction the subject premises is let or transferred to any other person within the prohibited time-frames, the tenant would have the right to seek re-entry and re-induction under section 19 of the DRC Act;

- (f) that lastly, apropos the allegation that the eviction petition is barred under section 50 read with section 3(c) of the DRC Act since the rate of rent exceeds Rs. 3,500/- per month, it is evident from rent receipt dated 15.01.2015 filed by the tenant himself as also from the admission made in para h/6 of the leave-to-defend application, that the last paid rate of rent was Rs.3,500/- per month. There is accordingly no basis for the tenant to allege, in the teeth of the tenant's own admission, that the rate of rent is above Rs.3,500/- per month. Again therefore, this is not a triable issue;
- (g) that for sake of completeness it may also be said, that though it is the tenant's allegation that the landlord was only a *co-lessee* of the subject premises under the DDA *along with* one Shri Prem Nath Ohri, the fact that only one co-lessee had filed the eviction petition is no bar to its maintainability. This issue is no longer *res integra* and it stands settled by several decisions of the Supreme Court that even one of the co-owners can, alone and in his own right, file a proceeding for ejectment of a tenant; and a tenant cannot question the maintainability of the proceedings on this score. (cf. ***Kasthuri Radhakrishnan & Ors. vs. M. Chinnian & Anr.***⁶ para 29).

14. In view of the above discussion, this court is satisfied that order dated 30.01.2018 made by the ARC, dismissing the tenant's leave-to-defend

⁶ (2016) 3 SCC 296

application and thereby passing an eviction order, is in accordance with law. This court is also satisfied that the ARC has drawn inferences and conclusions on the basis of documents filed and admissions made by the tenant himself, and the admitted position between the parties. In view thereof, no triable issue arises between the parties on any material aspect of the matter that would warrant the grant of leave-to-defend.

15. Accordingly, impugned order dated 30.01.2018 is upheld and the revision petition is dismissed as being without merit ; without however, any order as to costs.

ANUP JAIRAM BHAMBHANI, J.

09th July, 2020/uj