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

Date of decision: 21st August 2020

+ **RC. REV. 349/2018 & CM APPL. No. 33344/2018**

SMT. VIDYAWATI

..... Petitioner

Through: Mr. Rajesh Yadav, Advocate
with Mr. Dhananjay Mehlawat,
Advocate.

versus

SHRI GAUTAM MAHAJAN & ORS.

..... Respondents

Through: Mr. Preet Pal Singh, Advocate
with Ms. Priyam Mehta,
Advocate and Mr. Saurabh
Sharma, Advocate for
respondent Nos.1(c)(i), 1(c)(ii),
2, 3(a) & 3(b).

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

By way of the present petition filed under Section 25B (8) of the Delhi Rent Control Act 1958 ('DRC Act', for short), the petitioner, who is the owner/landlady of the Ground Floor of property bearing No.16/1667 Abdul Rehman Road, Karol Bagh, New Delhi ('subject premises', for short) impugns order dated 15.05.2018 passed by the learned Additional Rent Controller, Pilot Court, CCJ-cum-ARC (Central) Tis Hazari Courts, Delhi in case bearing No.E-795/17 titled

Smt. Vidyawati vs. Shri Gautam Mahajan & Ors. By order dated 15.05.2018 the learned ARC has been pleased to allow the respondents' application under section 25B (8) of the DRC Act and has thereby granted to the respondents leave-to-defend the eviction petition filed by the petitioner.

Petitioner's contentions :

2. A conspectus of the case as argued by Mr. Rajesh Yadav, learned counsel appearing for the petitioner is the following:

- (i) The subject premises was let-out by the predecessor-in-interest of the petitioner, Rao Jaswant Singh, to the respondents *vidé* agreement dated 27.02.1975 at a monthly rent of Rs.660/- per month excluding all other charges;
- (ii) The subject premises was inherited by the petitioner and her four sisters as legal heirs of their brother Rao Jaswant Singh, who passed away on 26.02.1997. Thereupon, three of the petitioner's sisters executed release deeds and the fourth sister executed a sale deed, all dated 27.04.2016, in respect of the subject premises in favour of the petitioner; and thereby the petitioner became sole and absolute owner of the subject premises;
- (iii) By way of the eviction petition, the petitioner who was then 86 years of age, sought eviction of the

respondents citing *bona fide* requirement for herself and of her two married daughters, Smt. Hemant Yadav and Smt. Neena Yadav. The *bona fide* requirement pleaded in relation to Smt. Hemant Yadav was that she planned to run a coaching-cum-tuition centre from the subject premises; and that the subject premises was most suitable since the Karol Bagh area is central, well connected by road and metro transport to other parts of the city and is adjoining Rajender Nagar, which has become a hub of coaching centres. It was further pleaded that Smt. Hemant Yadav was well-qualified, eligible and competent to run a coaching-cum-tuition centre, being an M.A. in History and a B.Ed. from Delhi University. The requirement cited in relation to the other daughter, Smt. Neena Yadav/Neena Singh was that she plans to start a consultancy business in human resources from the subject premises, for which she is well-qualified, having earned an M.A. degree in Sociology from Delhi University and having previously worked as Additional Secretary at the PHD Chambers of Commerce & Industry. It was further pleaded that the petitioner's daughters were her only children; that neither the petitioner nor her daughters had any alternate, reasonable and suitable accommodation for the purpose for which eviction

was sought; and accordingly, the daughters were dependent upon the petitioner *for commercial accommodation* as aforesaid, which purposes could be served by the subject premises;

- (iv) Furthermore, the details of the accommodation available with the petitioner for the aforesaid purposes were set-out in the eviction petition, including the exact requirement of space for the respective businesses that the two daughters proposed to run from there;
- (v) It was also disclosed in the eviction petition that though the petitioner had a 20% undivided share in another property, bearing No.1000 Shivaji Street, Arya Samaj Road, Karol Bagh, ('Arya Samaj Road property', for short) that property was however not available for use of the petitioner's daughters since it was jointly-owned by the petitioner and the petitioner's three sisters; and accordingly the said other property could not be considered suitable, alternate accommodation in the hands of the petitioner for the purpose for which eviction was sought;
- (vi) It was averred that the petitioner had filed all relevant documents alongwith the eviction petition, including original rent agreement dated 27.02.1975,

three release deeds and one sale deed executed by the petitioner's sisters releasing/transferring their undivided share in the subject premises in the petitioner's favour. It was stated that the petitioner had also filed a copy of order dated 06.12.2017 made in another matter EP No. 542/07/02 between the petitioner and the respondents, whereby the ARC in that case had allowed an application filed by the petitioner under Order 22 Rule 10 of the Code of Civil Procedure 1908, thereby holding that the petitioner had become sole and absolute owner of the subject premises; arguing therefore, that there was no dispute as to the petitioner's ownership of the subject premises. The petitioner is also stated to have filed on the record of the ARC the educational degrees of her daughters in support of the claim that they were qualified to conduct the businesses proposed to be run from the subject premises;

- (vii) It was further averred in the eviction petition that though Smt. Hemant Yadav's husband owns the first floor of a property bearing No. FU-68 Pitampura, Delhi, that property is a residential house; and further that Smt. Hemant Yadav's husband also has a share in an ancestral property at Village Badli; but that neither of those two properties is suitable,

alternate accommodation for purposes of running a coaching institute;

- (viii) It was also averred that though Smt. Neena Yadav's husband owns the first floor of a property bearing No.D-226A Sarvodaya Enclave, New Delhi, that property is again a residential house and is not suitable for running the proposed consultancy business.

3. It may be mentioned that only some of the tenants in the subject premises filed leave-to-defend applications while others did not. The principal ground for claiming leave to defend the eviction petition was that since the petitioner's daughters were married and living with their respective husbands in their own respective homes, the daughters were not 'dependent' on the petitioner; and that therefore, the petitioner was not entitled to invoke the provisions of section 14(1)(e) of the DRC Act to seek eviction for the *bona fide* requirements of her daughters. It was further contended in the leave-to-defend application that the plea of *bona fide* requirement was also false, since going by their own allegations, Smt. Hemant Yadav had obtained her B.Ed. degree some 39 years back and Smt. Neena Yadav had obtained her Master's Degree in Sociology about 32 years ago; and the plea that they were proposing to open a coaching centre and a consultancy business respectively after all these years was *ex-facie* unbelievable and false. It was further contended that Smt. Hemant Yadav was running a gas agency alongwith her husband and that the couple owned other

properties as well. It was also alleged that Smt. Neena Yadav was a Director in various companies. It was contended that Smt. Neena Yadav had the first floor of property No. D-226A Sarvodaya Enclave, New Delhi comprising 5-6 rooms and another property in Sarvodaya Enclave comprising 4-5 rooms owned by her husband, available for her use. It was further contended that, in any case, the petitioner has suitable, alternate accommodation available to her since one big shop on the ground floor and four rooms on the first floor of the subject premises are lying vacant; and further that the petitioner is also the owner in exclusive possession of property bearing No.1000 Arya Samaj Road, Karol Bagh, which is a commercial premises with 15-16 rooms. All these premises were stated to be available for the requirements of the daughters.

4. The petitioner refuted the allegations made in the leave-to-defend application; the details whereof may however not be relevant for the purpose of deciding the present petition.

5. By the impugned order, the ARC has granted leave-to-defend to the respondents principally on two grounds : *firstly*, that the petitioner cannot seek eviction for the alleged *bona fide* requirement of a married daughter, since after marriage the daughter must be held to be dependent upon the husband and her in-laws and not on her parents. The ARC has purported to find support for this proposition in a decision of a learned single Judge of this court in ***Bhim Singh Saini vs. Preeti Gupta*** : 223 (2015) DLT 303. *Secondly*, the ARC holds that the petitioner had failed to file any document to show that she was

owner of only 20% undivided share in the Arya Samaj Road property, especially since the petitioner herself had placed on record a sale deed showing that one of her sisters had sold 1/5th share in that property to the petitioner. This however is evidently incorrect on point of fact, inasmuch as it has been clarified in the course of arguments in these proceedings, that this was plainly an erroneous reading of the document filed, since the sale deed filed related to the Abdul Rehman Road property, namely the property of which the subject premises is a part and *not* to the Arya Samaj Road property. The document in question is the sale deed by one of the petitioner's sisters, who sold her 1/5th share to the petitioner, which share alongwith the other 3/5th share of the other three sisters which they relinquished in the petitioner's favour, made the petitioner sole and absolute owner of the subject premises. It was further clarified, that in any case, the Arya Samaj Road property had since been sold by the petitioner alongwith her sisters *vidé* separate sale deeds dated 25.09.2018; and is therefore no longer available for use at all. This sale is an event subsequent to the passing of the impugned order; and it was urged that the effect of this sale may also be considered by the court in these proceedings.

6. At this point, it is relevant to extract the reasoning given by the ARC in the impugned order granting leave-to-defend to the respondents, as contained in paras 21 and 22, which read as under:-

“21. Admittedly, both the daughters of the petitioner are married and are presently living with their respective husband and in-laws in their matrimonial house. It is a well established fact under the DRC Act that the

petitioner cannot seek eviction of the tenant for the requirement of married daughter, as after marriage, the daughter is said to be dependent upon her husband and in-laws, rather than her parents, for the purpose of accommodation. Reliance in this regard is placed upon the case-law titled as **Bhim Singh Saini v. Preeti Gupta, 223 (2015) DLT 303**, wherein it has been held that “The daughter of the petitioner after having got married, even though continues to be a member of the family but she ceases to be directly dependent upon him once she moves to her matrimonial home. Although, she may have a right of succession under the statute but that is on different aspect. She cannot be treated as member of the family dependent upon the petitioner for the purpose of eviction of a tenant. She cannot be treated to be dependent upon the petitioner for the purpose of her accommodation. The reason being that once the daughter of the petitioner has got married for the purposes of any accommodation, she would be dependent on her husband rather on her father”. Thus, in view of the above cited case-law, triable issue is raised with respect to the bonafide requirement of the petitioner qua the premises in question.

“22. Further, it is averred by the respondents that the petitioner is also the owner and in exclusive possession of entire very big property No.1000, Arya Samaj Road, Karol Bagh, New Delhi, which too is also commercial and situated on the main Arya Samaj Road and has about 15-16 rooms, which are lying vacant under the locks and keys of the petitioner and can be used by her for the alleged bonafide requirement. On the other hand, it is submitted by the petitioner that the property at Arya Samaj Road, is a joint property of petitioner and her four

sisters which has not been partitioned till date. The petitioner cannot put to use the entire property to herself, to the exclusion of her sisters. It is further submitted that since the said building is very old and is not safe and also not in a habitable condition. However, the petitioner has failed to file any document to show that the said petitioner has only 25% undivided share in the said property or that she is not in exclusive and physical possession and in occupation of the whole of the said property. Moreover, the petitioner has herself placed on record the copy of the sale deed with respect to property no.1000, Arya Samaj Road, Karol Bagh, Delhi, by virtue of which one of the sister of the petitioner Smt. Kaushalya Devi had sold her 1/5th share in the said property in favour of the petitioner and thus, the petitioner become the sole and absolute owner of the said 1/5 share of the property no.1000, Arya Samaj Road, Karol Bagh, New Delhi. Filing of the said Sale Deed by the petitioner with respect to 1/5th share in property no.1000 in her favour itself contradict the statement made by the petitioner in her reply to leave-to-defend application that the said property is joint and not partitioned till date. Thus, triable issue is also raised with respect to availability of alternate suitable accommodation with the petitioner in the form of property no.1000, Arya Samaj Road, Karol Bagh, New Delhi, for her alleged bonafide requirement.”

(emphasis supplied)

7. In support of his contention that the ARC erred in holding that married daughters cannot be taken to be dependent for accommodation upon the petitioner, counsel for the petitioner has relied upon the following judgments :

- (a) ***Joginder Pal vs. Naval Kishore Behal*** : (2002) 5 SCC 397
- (b) ***Sunder Singh Talwar vs. Kamal Chand Dugar*** : 2018 SCC OnLine Del 8376 : (2018) 249 DLT 94
- (c) ***Krishan Kumar Gupta vs. Swadesh Bhushan Gupta*** : 152 (2008) DLT 556
- (d) ***Rajender Prasad Gupta vs. Rajeev Gagera*** : ILR (2014) IV DELHI 2241
- (e) ***Sarvan Dass Bange vs. Ram Prakash*** : 2010 (167) DLT 80 : 2010 (4) AD (Delhi) 252

8. The petitioner relies first upon *Joginder Pal* (supra) wherein the Supreme Court has interpreted the words ‘for his own use’ in section 13(3)(a)(ii)(a) of the East Punjab Urban Rent Restriction Act 1949. Although the facts of the case were limited to the *bona fidé* requirements of the landlord’s son, the Supreme Court said that the *bona fidé* requirement of the landlord would include the requirements of family members including a widowed daughter. The petitioner next relies upon *Sunder Singh Talwar* (supra) whereby a single Judge of this court, while upholding the eviction order granted on the ground of *bona fidé* need *inter alia* of the landlord’s married daughter, has held that in the present day and age, it would be futile to contend that a daughter, once married, ceases to be the responsibility of her father. In the decision in *Krishan Kumar Gupta* (supra) a single Judge of this court has upheld the ARC’s order declining leave-to-defend to the tenant, where the ground for eviction *inter alia* was the *bona fidé* requirement of a married daughter who was stated to be dependent on

her father for residential accommodation. The petitioner further relies upon a decision of a single Judge of this court in *Rajender Prasad Gupta* (supra), whereby the court rejected the tenant's contention that the *bona fide* requirement of the landlord's daughter would not sustain since she was of marriageable age; holding that a daughter's ties with her family do not end upon her marriage. The petitioner also relies upon *Sarvan Dass Bange* (supra) in which case a single Judge of this court has held that the tenant is required to give all necessary particulars in support of his plea in the affidavit itself; and that a mere assumption on the tenant's part would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement is real and genuine.

Respondents' contentions :

9. Controverting the case set-up by the petitioner, Mr. Preet Pal Singh, learned counsel appearing for the respondent has contended that :

- (a) The petitioner has failed to make-out any case of material legal irregularity in the impugned order that would warrant re-assessment or re-appreciation of the case in the limited revisional jurisdiction of this court under section 25B(8) of the DRC Act ;
- (b) At the stage of deciding the leave-to-defend application, the ARC is not expected to assess whether the pleas taken by the respondents would ultimately succeed or fail. At this stage the ARC has

only to examine if the tenant has been able to 'disclose' a triable issue, which issue can only be decided after evidence is led during trial ;

- (c) The petitioner's wish and desire to give the subject premises to her married daughters to use for their business purposes cannot be said to comprise *bona fide* requirement ; and at the very least, it is a triable issue which can be adjudicated only after evidence is led ;
- (d) Whether her *married* daughters can be said to be dependent upon the petitioner; whether *self-supporting* daughters can be deemed to be dependent upon the petitioner; and also whether her married daughters *in fact want* to start the businesses as alleged, are all triable issues which can be adjudicated only after leading evidence ;
- (e) According to the respondents, the *bona fide* requirements of the petitioner and her two married daughters canvassed in the eviction petition are a 'set-up' and manipulated case, based on imaginary ideas to raise a false plea of *bona fide* requirement. Both daughters are in fact well-settled and are conducting their well-established businesses, apart from having other accommodation available to

them, as detailed by the respondents in their leave-to-defend application ;

- (f) In response to the disclosures relating to the petitioner made by the respondent in the leave-to-defend application, the petitioner has sought to give explanations; however without filing, and in fact by concealing, documents to contradict such disclosures. It is urged that such concealment vitiates the proceedings ;
- (g) The petitioner has in her possession other accommodation on the entire first floor and the second floor of the subject premises, which is lying vacant and which can admittedly be used for commercial purposes ;
- (h) The petitioner had let-out the first floor of the subject premises to one M/s Punjab Khadi Mandal, which got vacated about three years ago and which is still lying vacant, under lock and key; and is available with the petitioner. Furthermore, the second floor of the subject premises was also let-out by the petitioner to M/s Punjab Khadi Mandal, which also the petitioner has got vacated in May 2018 and which again continues to be kept vacant, under lock and key, with the petitioner ;

- (i) On the date of filing of the eviction petition as also at the time when the leave-to-defend application was decided, the petitioner was also co-owner of commercial property on Arya Samaj Road with about 15-16 rooms, which is situate on the main Arya Samaj Road ; and so long as the said property was not divided among the co-owners, the petitioner had a share in each and every portion of the said property, which the petitioner could have used since that property was also lying vacant under lock and key;
- (j) If the petitioner's requirement for herself and for her daughters were genuine, the upper floors of the subject premises as also the Arya Samaj Road property would not have been kept vacant for the last number of years, which again shows that the requirement cited is only a concocted plea, canvassed *mala fidé* to obtain eviction on false pretext ;
- (k) The sale of the Arya Samaj Road property, though made after the passing of the impugned order, shows the petitioner's real intention even in relation to the subject premises, namely that the petitioner would sell the subject premises as well after obtaining possession;

- (l) In the year 2002 the petitioner had filed an eviction petition against the respondents on the grounds available under section 14(1)(a), (b) and (j) of the DRC Act. The petition under section 14(1)(a) and (b) was dismissed *vidé* judgment dated 03.11.2017 ; while the petition under section 14(1)(j) is still pending since the respondents have challenged the findings on section 14(1)(j) by way of an appeal ;
- (m) For the foregoing reasons, the petition under section 14(1)(e) is *mala-fidé* and based on false and frivolous pleas and requires to be rejected.

10. In support of their contentions, the respondents have relied upon the following judicial precedents :

- (a) ***Sarla Ahuja vs. United India Insurance Company Ltd.***: (1998) 8 SCC 119
- (b) ***Tarun Pahwa vs. Pradeep Makin*** : 2013 (1) RLR 15
- (c) ***Inderjeet Kaur vs. Nirpal Singh*** : 2001 (1) SCC 706
- (d) ***Santosh Devi Soni vs. Chand Kiran*** : 2001 (1) SC 255
- (e) ***D.N. Gupta vs. Jaswant Singh*** : 1982 (21) DLT 8
- (f) ***Prit Pal Singh vs. Ramesh Kumar Dora*** : 2014 (4) AD (Delhi) 83
- (g) ***Bhim Singh Saini vs. Preeti Gupta*** (supra)

11. The respondents first rely upon *Sarla Ahuja* (supra) whereby the Supreme Court has reiterated the scope of the revisional power of the High Court under section 25B(8) of the DRC Act, observing that that may include reappraisal of evidence only to the extent of ascertaining whether the conclusion reached by the fact-finding court is wholly unreasonable. The respondents also rely upon *Tarun Pahwa* (supra) in which case the court reiterates that when there is alternate accommodation in his possession, the burden to prove *bona fide* requirement falls upon the landlord. The respondents also rely upon *Inderjeet Kaur* (supra) to contend that at the stage of granting leave, the real test should be whether the facts disclosed in the tenant's affidavit *prima facie* show that the landlord would be disentitled from obtaining an order of eviction; and not whether the defence may fail at the end. The respondents next rely on *Santosh Devi Soni* (supra), in which the Supreme Court has held that normally leave-to-defend should not be refused in cases where the landlord has additional accommodation available. The respondents then rely upon judgments of single Benches of this court firstly in *D.N. Gupta* (supra), whereby the single Judge has held that where there are disputed questions of fact, such as whether the landlord's son was dependent on him and whether other existing accommodation owned by the son was suitable alternate accommodation, leave-to-defend could not be refused. The respondents further rely upon *Prit Pal Singh* (supra) in which the court held that where there is a doubt as to whether a particular accommodation can be reasonably suitable, a decision on that aspect should be taken based on findings of fact, after trial. Finally, the

respondents rely upon *Bhim Singh Saini* (supra) to contend that the landlord's daughter, once married and having ceased to live with him, cannot be considered dependent on him; rather she would be dependent on her husband.

Discussion and conclusions :

12. Relying upon the judicial precedents cited and based upon direct or inferential reasoning, it is essentially the petitioner's endeavour to show that the *bona fide* requirement of a married daughter *can* be considered in an eviction petition under section 14(1)(e) of the DRC Act. It is found that this issue has been considered and a consistent view has been taken in some subsequent judgments as discussed below.

13. On the other hand, the judicial precedents cited on behalf of the respondents are mainly on the scope of the revisional power of this court under Section 25B(8) and on the situations where leave-to-defend may be allowed; and the only judgment cited on whether the *bona fide* requirement of a married daughter can form the basis of a section 14(1)(e) petition is *Bhim Singh Saini* (supra), in which a single Judge of this court has taken the view that once a daughter gets married, for the purpose of *any accommodation*, she would be dependent on her husband and not on her father. As discussed in greater detail below, I am afraid this view is based on an erroneous reading of earlier precedents and is therefore a discordant note in an otherwise consistent judicial view on the issue.

14. One of the earlier decisions in this regard is by a Division Bench of this court in **Gobind Dass vs. Kuldip Singh**¹, where the court has held that an extended meaning is to be given to the word ‘family’, observing that: (ILR pp. 588-589)

“The word “family” has not been defined in the Act and we feel advisedly so, the concept of what constitutes a family when a number of persons are related or are living together is not something static or capable of concise definition. What constitutes a family in a given set of circumstances or in a particular society depends upon the habits and ideas of persons constituting that society and the religious and socio-religious customs of the community to which such persons may belong....

** * * * **

...“: A remote relation may, in a given case of set circumstances be treated as a member of the family, whereas in another set of circumstances the same relation may not be legitimately called as a member of the family. ”...

15. Another decision is **Sunder Singh Talwar vs. Kamal Chand Dugar**², in which, while dealing with a similar fact situation, a single Judge of our High Court has held as under :

"30. The Supreme Court in Joginder Pal v. Naval Kishore Behal, (2002) 5 scc 397 : AIR 2002 SC 2256, held as follows:

“24. We are of the opinion that the expression "for his own use" as occurring in Section 13(3)(a)(iii) of the Act cannot be narrowly construed. The expressions must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the

¹ ILR (1970) 1 Del 585

² 2018 SCC OnLine Del 8376

landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove we have found the pari materia provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependents and kith and kin in the requirement of landlord as "his" or "his own" requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire: (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation or identify nexus between such person and the landlord so as to satisfy the requirement of the first query

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“31. Hence, it is not a universal rule that married daughter cannot be dependent upon her father. Even otherwise in my opinion, in the present day and age it would be futile to argue that once the daughter is married she ceases to be responsibility of her father. A daughter has equal rights in the estate of the parents in case of intestate death. There can be no reason as to why the father would not like to settle his daughter in business or profession in the same way as he would like to settle his son. The plea to the contrary in the

present facts is completely misplaced. It may also be noted that in the present case there is a clear and categorical averment that the daughter does not own any other property in Delhi and is dependent on the father to be settled.”

(emphasis supplied)

thereby holding that it is not a universal rule that a married daughter can never be dependent upon her parents.

16. In another decision rendered by a single Judge of our High Court in ***Vinod Gupta vs. Kailash Aggarwal & Ors.***³ where the *bona-fidé* requirement of a married daughter was canvassed, the single Judge relying upon the decision in *Sunder Singh Talwar* (supra) has also referred to a 2014 decision as follows :

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

"5. Having considered the arguments of learned counsel for the parties, this Court is of the view that the Trial Court has taken into consideration each of the contentions raised in the leave-to-defend and found them to be not triable issues. The reasons for and conclusion arrived at cannot be faulted. Furthermore, simply because the daughter of a marriageable age and allegedly likely to marry would not necessary cut her ties from her maternal family nor would the requirement for her accommodation in her father's house be lessened. Indeed, in the present times a daughter who is married-out, may like to retain her accommodation in her father's house which forms an emotional anchor and a place for refuge for all times. In times of an unfortunate marital discord such need becomes more acute should there be such a need. Conversely her family also would want to retain a room so as to re-assure her of a continued place of residence in her

³ 2018 SCC OnLine Del 12794

paternal home. A married daughter's ties with her paternal family do not end upon her marriage. For a married daughter her parents' home is always a refuge; an abode of reassurance and an abiding source of emotional strength and happiness. In the present case the daughter is a practicing advocate, i.e. a qualified professional, the need is all the more acute and bona fide. This Court finds, as did the Trial Court did, that no triable issues were raised in the leave-to-defend. Therefore, there was no need to grant leave or set the matter for trial. The reasons and the conclusion arrived at in the impugned order are correct and call for no interference."

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

(emphasis supplied)

The single Judge thereby upheld the denial of leave-to-defend to the tenant.

17. While the ARC has clearly erred in holding that the requirement of a married daughter can never be considered while deciding the *bona-fidé* requirement of a landlord under section 14(1)(e) since a married daughter does not remain a member of the family, another question arises in the present case, and that is : *whether in assessing the availability of suitable, alternate accommodation for the use of a married daughter, it is necessary to first assess the availability of such*

accommodation in the hands of the husband ; or is it permissible to assess the availability of such accommodation in the hands of the maternal family of the married daughter. In the opinion of this court, this question must be answered from the perspective of the eviction petitioner who seeks recovery of possession for the *bona fide* requirement of a dependent family member. Accordingly, the availability of suitable, alternate accommodation is to be seen in the hands of the person filing the eviction petition, in this case the mother/landlady; and it is not relevant whether *other relatives of the dependant family member* have any alternate accommodation available. In this case, it is therefore not relevant whether the petitioner's sons-in-law have alternate accommodation or not.

18. Another well-settled principle that would apply to this issue is that it is *not for the tenant to dictate* to the landlord as to which premises may be suitable to satisfy the *bona fide* requirement cited in a petition under section 14(1)(e). Reference in this regard may be made to the decision of the Supreme Court in ***Sait Nagjee Purushotham & Co. Ltd. vs. Vimalabai Prabhulal & Ors***⁴ where, in para 4, Supreme Court has reiterated this principle in the following words:

"4. *It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not*

⁴ (2005) 8 SCC 252

genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business..... ”

(emphasis supplied)

This principle was followed yet again in **Anil Bajaj & Anr. vs. Vinod Ahuja**⁵ , where the Supreme Court has said :

"6.What the tenant contends is that the landlord has several other shop houses from which he is carrying on different businesses and further that the landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business, ”

(emphasis supplied)

19. If an eviction petitioner has multiple premises available with him and, as per settled law, the tenant cannot dictate to him which of the premises he may seek to get vacated, then the question of the tenant dictating that the landlord should first utilise premises owned by the *landlord's relatives*, in this case the petitioner's sons-in-law, simply does not arise. In the present case, if the petitioner/landlady, being the mother, asserts that she requires the subject premises for the *bona fide* requirement of her married daughters, then it is not for the tenant to say that such requirement must first be satisfied using the properties of their husbands, if any.

⁵ (2014) 15 SCC 610

20. As far as the respondents' allegation that sale of the Arya Samaj Road property illustrates the real intention of the petitioner, namely that after the subject premises is vacated, the petitioner will sell or re-let the subject premises as well, this allegation, in the opinion of this court, is speculative and misconceived. In any case, if after the subject premises is vacated, it is either not put to use for the purpose cited in the eviction petition, or is re-let, or is otherwise transferred to a third party without the permission of the Rent Controller, then the provisions of section 19 of the DRC Act will kick-in; and the respondents will be entitled to be re-inducted into the subject premises within the time-frame mentioned in the provision. This would take care of the respondents' apprehension, however imaginary.

21. Moreover, *bona fide* requirement under the DRC Act does not imply a situation of 'dire' or 'distressed' necessity. Reference in this regard may be made to the decision of the Supreme Court in ***Raghunath G. Panhale (Dead) by LRs vs. Chaganlal Sundarji & Co.***⁶ Consider a scenario where a landlord's dependant is not in dire straits and may even be in a position to purchase or rent premises, whether for residential or commercial purposes, from her own resources. However, a landlord may have suitable premises available for residential or commercial purposes; and may wish to give that premises to the dependant, so as to obviate the need for the dependant to spend her resources to purchase or rent other premises. The landlord may not want the dependant to needlessly deploy her own

⁶ (1999) 8 SCC 1 : paras 6,11

resources to buy or rent premises from a third-party, while leaving the landlord's premises in the use of an incumbent tenant. In the opinion of this court, even this kind of requirement would fall within the concept of *bona fide* requirement of the landlord or a family member dependant on the landlord; and a tenant cannot contend that while the tenant should continue to enjoy the landlord's premises, the landlord's dependant should acquire her own premises through other resources. Any other view would mean that while deciding *bona fide* requirement of a landlord for a dependant, the independent resources of the dependant would also have to be considered in detail before accepting the plea of *bona fide* requirement.

22. What the law contemplates is a requirement and not some dire or absolute or compelling or distressed need. The law further contemplates that such requirement be an honest requirement and not a mere ruse or stratagem or falsehood to seek eviction. That is all, nothing more and nothing less.

23. In the present case, even if it is assumed that the married daughters are capable of acquiring, by purchase or tenancy, other premises for use for their proposed businesses through their own resources or the resources of their husbands, why should the premises available with their mother, which the mother is willing to make available for their *bona fide* commercial requirement, not be available *first* to them instead of being available with the tenant, even more so when the tenant has already been in use and occupation of the premises since 1975.

24. In the opinion of this court, the two grounds on which leave-to-defend has been granted to the respondents are untenable for the following reasons:

- (i) The premise that a married daughter ceases to be a member of her maternal family - is flawed. Since 'family' has not been defined in the DRC Act, there is no warrant for reading into the DRC Act any absolute restrictions in relation to who all may be included in that word. As held by a Division Bench of this court in *Gobind Dass* (supra), an extended meaning is given to the word 'family'. *In the opinion of this court, the change in the 'marital status' of a daughter does not change her 'birth status'. While marital status may change and re-change, birth status does not. Getting married does not make her any the less a daughter of the family into which she was born; and therefore, a married daughter most certainly remains a 'member' of her maternal family.* Accordingly, under the DRC Act the test would be whether the married daughter, who remains a member of the family, is *dependent* on the landlord for the particular requirement cited in the eviction petition. We should be clear that it is not that the married daughter must be *wholly and completely* dependent on the landlord for her day-to-day existence. *Dependence is to be assessed with respect to the particular requirement cited.* Of course the *bona fides* of the requirement are also to be assessed;

- (ii) Insofar as the second premise on which leave-to-defend has been granted, namely the sale deed, which the ARC reads as relating to the Arya Samaj Road property, that is *ex-facie* an error. The sale deed in question relates to the subject premises, namely the Abdul Rehman Road property; and is the document by which the petitioner became sole and absolute owner of the subject premises. A plainly erroneous reading of this document cannot be the basis for granting leave-to-defend.

25. At this point one may allude to the scope of the revisional power of this court under section 25B(8) of the DRC Act, as enunciated in the decision of the Supreme Court in ***Ram Narain Arora vs. Asha Rani & Ors.***⁷ where the Supreme Court has said this :

"12. It is no doubt true that the scope of a revision petition under Section 25-B(8) proviso of the Delhi Rent Control Act is a very limited one, but even so in examining the legality or propriety of the proceedings before the Rent Controller, the High Court could examine the facts available in order to find out whether he had correctly or on a firm legal basis approached the matters on record to decide the case. Pure findings of fact may not be open to be interfered with, but (sic, if) in a given case, the finding of fact is given on a wrong premise of law, certainly it would be open to the revisional court to interfere with such a matter. In this case, the Rent Controller proceeded to analyse the matter that non-disclosure of a particular information was fatal and, therefore, dismissed the claim made by the landlord. It is in these circumstances that it became necessary for the High Court to re-examine the matter and then decide the entire question. We do not

⁷ (1999) 1 SCC 141

think that any of the decisions referred to by the learned counsel decides the question of the same nature with which we are concerned. Therefore, detailed reference to them is not required."

(emphasis supplied)

26. This court is therefore well within its revisional jurisdiction to correct the erroneous legal premise as regards a married daughter's status in the maternal family ; as well as the *ex-facie* erroneous reading of the document of title as discussed above, and to remedy the position.

27. Insofar as the allegation regarding sale of the Arya Samaj Road property *after* passing of the eviction order is concerned, it needs to be borne in mind *firstly*, that the property that is subject matter of the eviction proceedings is the Abdul Rehman Road property and not the Arya Samaj Road property. It is therefore not as if the petitioner has sold the subject premises immediately after an eviction order was passed in respect thereof. *Secondly*, in relation to the Arya Samaj Road property, the petitioner's case has always been that that was jointly owned by the petitioner with her sisters; and was therefore not available for exclusive use even by the petitioner, muchless by her daughters. It was the petitioner's case that therefore the Arya Samaj Road property was not suitable, alternate accommodation for the purposes of the eviction proceedings. *Thirdly*, it is relevant that the Arya Samaj Road property was *sold after passing of the eviction order* and not before that, meaning that the purpose of selling that property was not to artificially create shortage of accommodation, to bolster the eviction case filed against the respondents. On point of law,

subsequent events are to be considered in eviction proceedings on the following rationale and in the following circumstances, as explained by the Supreme Court in ***Kedar Nath Agrawal (Dead) & Anr. vs. Dhanraji Devi (Dead) by LRs & Anr.***⁸ in the following words:

"16. In our opinion, by not taking into account the subsequent event, the High Court has committed an error of law and also an error of jurisdiction. In our judgment, the law is well settled on the point, and it is this: the basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit or proceeding and the suit/action should be tried at all stages on the cause of action as it existed at the commencement of the suit/action. This, however, does not mean that events happening after institution of a suit/proceeding, cannot be considered at all. It is the power and duty of the court to consider changed circumstances. A court of law may take into account subsequent events inter alia in the following circumstances:

- (i) the relief claimed originally has by reason of subsequent change of circumstances become inappropriate; or*
- (ii) it is necessary to take notice of subsequent events in order to shorten litigation; or*
- (iii) it is necessary to do so in order to do complete justice between the parties."*

(emphasis supplied)

Clearly, none of the circumstances referred to above applies to this case insofar as the sale of the Arya Samaj Road property is concerned. In the opinion of this court therefore, the sale of the Arya Samaj Road property is irrelevant for considering the merits of the impugned order.

⁸ (2004) 8 SCC 76

28. In view of the above discussion, this court holds that no triable issue has been raised in the leave-to-defend application filed by the respondents. There was accordingly no basis for grant of leave-to-defend. In this view of the matter, order dated 15.05.2018 made in Eviction Petition No. E-795/2017 titled *Vidyawati vs. Gautam Mahajan & Ors* is set-aside. The petitioner shall be entitled to recover possession of the subject premises, in accordance with law.

29. The revision petition is accordingly allowed; without however any orders as to costs.

ANUP JAIRAM BHAMBHANI, J.

21st August, 2020

Ne/j/uj

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