

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

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Judgment reserved on: 01.09.2020

Judgment delivered on: 11.01.2021

+ RC.REV. 599/2018

KHANNA JEWELLERS

..... Petitioner

versus

KAPIL TANDON & ORS.

....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Sudhanshu Batra, Senior Advocate with Mr. Rambhakt Agrawal, Advocate

For the Respondents : Mr. Suhail Dutt, Senior Advocate with Mr. Vikas Tiwari, Mr. Faizal Khan and Mr. Kumar Deepraj, Advocates for R-1 & R-2 along with R-2 in person.
Mr. Rushab Aggarwal with Mr. Mohit Paul, Advocates for R-3.

+ RC.REV. 129/2020

RAJEEV TANDON

..... Petitioner

versus

M/S KHANNA JEWELLERS & ORS.

....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Mohit Paul and Mr. Rushab Aggarwal, Advocates.

For the Respondents : Mr. Sudhanshu Batra, Senior Advocate with Mr. Rambhakt Agrawal, Advocate for respondent No.1.
Mr. Suhail Dutt, Senior Advocate with Mr. Vikas Tiwari, Mr. Faizal Khan, Mr. Kumar Deepraj and Ms. Ritika Priya, Advocates for R-2 & R-3 with R-2 and R-3 in person.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

Signature Not Verified

Digitally Signed By: HON'BLE MR. JUSTICE SANJEEV SACHDEVA
Signing Date: 11.01.2021 20:38:08
This file is digitally signed by PS to HMJ Sanjeev Sachdeva.

RC.REV. 599/2018 & RC.REV. 129/2020

Page 1 of 27

RC.REV. 599/2018 & CM APPLN. 52211/2018, 52213/2018, 13763/2019, 14710/2019, 22274/2019, 29718/2019, 13291/2020, 15856/2020, 15858/2020 & 18719-20/2020

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RC.REV. 129/2020

1. Petitioner in RC.REV. 599/2018 (i.e. Respondent No. 1 in the Eviction Petition) is the Tenant in the tenanted property and impugns order dated 09.07.2018 passed by the Rent Controller, dismissing the application for grant of leave to defend the Eviction Petition filed by Respondents 1 & 2 therein (i.e. Petitioners in the Eviction Petition).
2. Petitioner in RC.REV. 129/2020 (i.e. Respondent No. 2 in the Eviction Petition) is a co-owner of the subject property and impugns order dated 09.07.2018 passed by the Rent Controller to the limited extent that the Tenant has been directed to deliver possession of the tenanted premises exclusively to Respondent No. 2 & 3 (i.e. the EVICTION PETITIONERS).
3. For the sake of convenience Petitioner in RC.REV. 599/2018 (also the Respondent No. 1 in RC.REV. 129/2020) shall be referred to as the TENANT. Petitioner in RC.REV. 129/2020 (also the Respondent No. 3 in RC.REV. 599/2018) shall be referred to as the CO-OWNER. Respondent No. 1 & 2 in RC.REV. 599/2018 (also the Respondent No. 2 & 3 in RC.REV. 129/2020) shall be referred to as the EVICTION PETITIONERS.
4. The EVICTION PETITIONERS filed the subject Eviction Petition under section 14(1)(e) read with Section 25B of the Delhi Rent

Control Act, 1958 (hereinafter referred to as '*the Rent Act*') seeking eviction of the TENANT on the ground of bonafide necessity. The TENANT sought leave to defend the eviction petition but by the impugned order dated 09.07.2018, the application seeking leave to defend filed by the TENANT has been dismissed and an eviction order has been passed.

5. The EVICTION PETITIONERS contended in the eviction petition, that they are the co-owners of property bearing No. G – 3, situated in New Delhi South Extension Market, N.D.S.E.-I, New Delhi-110049. Said property was purchased jointly by (i) Smt. Usha Rani Tandon, mother of the EVICTION PETITIONERS, (ii) Sh. Ravi Shanker and (iii) Sh. Subhash Tandon by way of a registered sale deed dated 09.04.1969. The sale deed describes the shares of aforesaid persons in the property. The mother of the EVICTION PETITIONERS possessed 50% share in the said property.

6. It is contended that upon death of Smt. Usha Rani Tandon on 01.08.1993 and in pursuance to registered Relinquishment Deed dated 30.08.1993 executed by Sh. Purshottam Lai Tandon and Relinquishment Deed dated 30.08.1993 executed by Smt. Ritika Sachdev, EVICTION PETITIONERS succeeded to the half share (50%) in the above said property. Other 25% share which was owned by Sh. Ravi Shankar has been succeeded by Sh. Rajiv Tandon (Petitioner in RC.REV. 129/2020 the CO-OWNER). Remaining 25% in the property is now jointly owned by (i) Smt. Madhu Rani Tandon, (ii) Sh. Sanjeev Tandon, (iii) Sh. Sumeet Tandon and (iv) Sh. Sudhir Tandon.

7. It is further contended that Smt. Usha Rani Tandon along with other co-owners entered into the lease agreement dated 12.05.1979 with the TENANT for letting out one shop measuring 67 x 14.5 ft. on the ground floor of the entire property no. G – 3. The monthly rent was Rs. 1,000/-. Later on, a basement measuring 46 x 14.5 ft. was constructed underneath this shop and the rate of rent was increased to Rs. 1,200/- per month. The shop on the ground floor along with the basement underneath is the subject tenanted premises.

8. It is *inter alia* contended in the Eviction Petition that the EVICTION PETITIONERS require the tenanted premises to fulfill the *bonafide* need of their children. It is stated that the son of Eviction petitioner no. 1 and elder daughter of Eviction petitioner no. 2, intend to start their own business in partnership with each other, however, due to unavailability of any suitable commercial space they are unable to start the same.

9. It is contended that the Eviction Petitioner No. 1 has two sons (1) Kartik Tandon and (2) Kritin Tandon, while Eviction petitioner No. 2 has two daughters namely (1) Ms. Revti Tandon and (2) Ms. Ujasvini Tandon. The son of Eviction Petitioner No. 1 (Sh. Kartik Tandon) and elder daughter of Eviction Petitioner No.2 (Ms. Revti Tandon) have studied from Pearls Fashion Academy, New Delhi and are to start their own venture in partnership, however, due to paucity and unavailability of any suitable and commercial space/accommodation, the partnership have not been able to carry their business. It is contended that the EVICTION PETITIONERS,

therefore, require the rented shop in occupation and possession of the TENANT to have the showroom of their newly formed business, besides, they would require sufficient space for Accessories and for a Studio, which requirement shall be met from the 50% share in part at the first floor and second floor of the property, likely to be possessed soon in the partition suit/proceedings pending in the High Court.

10. It is contended that the son of the Eviction Petitioner No. 1 and the Daughter of Eviction Petitioner No. 2 are dependent on the EVICTION PETITIONERS for requirement of commercial space so as to have a showroom and other commercial space for Accessories and a Studio for their business.

11. It is further contended that the EVICTION PETITIONERS do not own any other commercial property in Delhi except the properties detailed in the Eviction Petition i.e. 1/6th undivided share each in the property at Karol Bagh and the 50% share jointly in the property in question viz. G – 3, situate in N.D.S.E. Market, N.D.S.E.-I, New Delhi-110049 while the father of the EVICTION PETITIONERS also has certain share in the abovementioned two immovable properties. It is contended that none of the above said properties except the property in question where the rented premises is situated, is either available or suitable so as to meet the requirement of the children of the EVICTION PETITIONERS.

12. The TENANT applied for grant of leave to defend raising primarily six grounds as noticed by the Rent Controller.

13. First of all, it was contended that the tenanted premises is jointly owned by seven persons and since the other five owners have not given any permission to the EVICTION PETITIONERS to initiate the eviction petition, therefore, the present petition is liable to be dismissed.

14. Secondly, it was contended that the deed of partnership for the proposed business executed between the children of the EVICTION PETITIONERS, (who need the premises for their own use), was executed soon before the initiation of the present proceedings therefore, the bonafide need as alleged is a false one and the children of the petitioners do not intend to start their own business venture at all.

15. Thirdly, it was contended that EVICTION PETITIONERS have various other suitable accommodations available with them to fulfill their alleged bonafide need.

16. Fourthly, it was contended that the TENANT is a partnership firm and since the partners of this partnership firm have not been specifically sued, therefore, the eviction petition is untenable in law.

17. Fifthly, it was contended that the basement in the tenanted premises was constructed at the expense of the partners of the TENANT firm in the year 1981 – 82 with the understanding that since they have spent so much money in constructing the said basement, their possession over the same shall never be disturbed.

18. Lastly, it was contended that the procedure prescribed under Section 25B of the Rent Act and the relief available to the landlord under section 14 (1) (e) of the Rent Act cannot be availed by the EVICTION PETITIONERS since the tenanted premises is a commercial premises and these provisions are not applicable to commercial tenanted premises.

19. The Rent Controller in the impugned judgment has noticed that there is no dispute regarding the tenanted premises, the lease agreement dated 12.05.1979 and that the status as a tenant is admitted and it is also admitted that the EVICTION PETITIONERS are co-owners and co-landlords of the tenanted premises.

20. The Rent Controller has held that the premises was let out to M/s Khanna Jewellers, a partnership firm and the eviction petition has also been filed against M/s Khanna Jewellers and notice of the petition was also addressed to M/s Khanna Jewellers and the leave to defend has been filed by one of the partners of M/s Khanna Jewellers, so the plea that the partners have not been separately impleaded is a minor technical defect and is not sufficient to raise a triable issue.

21. Before this court, no challenge has been raised by learned senior counsel for the TENANT on the said ground.

22. With regard to the plea that the basement was constructed at the expense of the partners of the TENANT firm in the year 1981 – 82 with the understanding that their possession over the same shall never be disturbed, no such ground/plea was raised before this court. Even

otherwise, the Rent Controller has held that nothing has been filed on record to show that any such alleged understanding regarding transfer of rights qua the basement took place between the landlord and tenant and also as to when such an arrangement was arrived at and exactly between whom is not even mentioned by the respondent in the leave to defend application, therefore, appears to be a bald, vague and unsubstantiated averment.

23. With regard to the ground taken in the leave to defend application that the relief available to the landlord under section 14 (1) (e) of the Rent Act cannot be availed by the EVICTION PETITIONERS since the tenanted premises is a commercial premises and these provisions are not applicable to commercial tenanted premises, the Rent Controller has relied upon the judgment of the Supreme Court in *Satyawati Sharma versus Union of India (2000) 5 SCC 287* that a landlord may seek eviction of tenant from a commercial property also invoking the provisions and procedure prescribed in Section 25B and Section 14 (1)(e) of the Rent Act.

24. Before this court, the focus of the submissions of learned Senior Counsel appearing for the TENANT is with regard to the first three pleas raised in the leave to defend application i.e. (i) that the Eviction Petition was not maintainable in the absence of the consent of the other co-owners; (ii) availability of alternative accommodation and (iii) the partnership between the daughter and son of the EVICTION PETITIONERS is a sham partnership executed solely to create a ground for eviction.

25. It is contended by learned senior counsel for the TENANT that the Eviction Petition was filed without the consent of the other co-owners and as such the petition was not maintainable. It is contended that all the seven co-owners and co-landlords are litigating amongst themselves for partitioning the property at G-3, NDSE-I, New Delhi.

26. It is contended that the CO-OWNER has categorically stated in his written statement in the Partition Suit that the Eviction Petition has been filed without consulting him. It is submitted that no eviction order can be passed against the tenant if a co-owner / co-landlord does not consent to such an eviction. Reliance is placed on the decision of the Supreme Court in *Sk. Sattar Sk. Mohd. Choudhari versus Gundappa Amabadas Bukate* (1996) 6 SCC 373.

27. Learned Senior Counsel relies upon the decision of the Supreme Court of India in *Girish s/o Dharamvir Madan versus Nanadkumar s/o Shankarrao Rasne & Ors* (2018) 13 SCC 255 to contend that till the Partition Suit is finally decreed, the Eviction Proceedings should remain stayed.

28. Learned Senior Counsel for the Petitioner further relies upon the decision of a coordinate bench of this court in *Ranbir Yadav versus Life Insurance Corporation of India* (2018) 253 DLT 611 to contend that only one co-owner cannot terminate the tenancy, once there is objection of the other co-owners.

29. Before proceeding further, it would be expedient to consider the scope of the Revisional Jurisdiction of the High Court under Section

25B(8) of the Rent Act. The scope has been explained by the Supreme Court of India in *Shiv Sarup Gupta versus Mahesh Chand Gupta (Dr)*, (1999) 6 SCC 222 as under:

11. Section 25-B of the Delhi Rent Control Act, 1958 finding its place in Chapter III-A of the Act was inserted in the body of the main Act by Act 18 of 1976 with effect from 1-12-1975. It provides for a special procedure to be followed for the disposal of applications for eviction on the ground of bona fide need. Obviously, this ground for eviction of the tenant has been treated on a footing different from the one on which other grounds for eviction of the tenant stand. Section 25-B is a self-contained provision in the sense that remedy against an order passed by the Rent Controller thereunder is also provided by that provision itself. Sub-section (8) provides that no appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in Section 25-B:

“Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law (or not), call for the records of the case and pass such order in respect thereto as it thinks fit.”

The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the legislature in drafting Section 115 of the Code of Civil Procedure. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to sub-section (8) of Section 25-B, the expression governing the

exercise of revisional jurisdiction by the High Court is “for the purpose of satisfying if an order made by the Controller is according to law”. The revisional jurisdiction exercisable by the High Court under Section 25-B(8) is not so limited as is under Section 115 CPC nor so wide as that of an appellate court. The High Court cannot enter into appreciation or reappraisal of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of “whether it is according to law”. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available. Ignoring the weight of evidence, proceeding on a wrong premise of law or deriving such conclusion from the established facts as betray a lack of reason and/or objectivity would render the finding of the Controller “not according to law” calling for an interference under the proviso to sub-section (8) of Section 25-B of the Act. A judgment leading to a miscarriage of justice is not a judgment according to law. (See: Sarla Ahuja v. United India Insurance Co. Ltd. [(1998) 8 SCC 119] and Ram Narain Arora v. Asha Rani [(1999) 1 SCC 141] .)

(underlining supplied)

30. Coming to the contention of the TENANT that the Eviction Petition was not maintainable in the absence of the consent of the other co-owners, the Rent Controller, in the impugned judgment, has noticed that the legal position, that even one of the co-owners/co-landlords can file a suit for eviction of a tenant, has not been disputed by the TENANT. The argument raised was that the filing of the Partition Suit between the co-owners showed that the consent, which

is usually presumed amongst co-landlords to file an eviction against a tenant, stood dispelled.

31. The Rent Controller further held that, from the proceedings before the Hon'ble High Court, it was clear that all the parties to the Partition Suit were well aware of the pendency of this Eviction Petition and none had opposed or objected to these eviction proceedings. The Rent Controller has further noticed that Rajiv Tandon, the CO-OWNER, who was impleaded in the Eviction Petition, neither objected to the maintainability of the petition nor contended that the eviction of the TENANT was not desired by him also.

32. The Supreme Court of India in *Kanta Goel versus B.P. Pathak*, (1977) 2 SCC 814 has held “*that a co-owner is as much an owner of the entire property as any sole owner. Therefore, there is no substance in the contention that the absence of the other co-owners disentitled the 1st respondent from suing for eviction*”.

33. In *Dhannalal versus Kalawatibai*, (2002) 6 SCC 16, *India Umbrella Manufacturing Co. versus Bhagabandei Agarwalla (dead) by LRs Savitri Agarwalla*, (2004) 3 SCC 178 the Supreme Court of India held “*that consent of co-owner is assumed, unless it is shown that other co-owner is not agreeable to eject the tenant and the proceedings for ejectment are inspite of the disagreement*”.

34. The Supreme Court in *Mohinder Prasad Jain versus Manohar Lal Jan* (2006) 2 SCC 724 has held that “*a suit filed by a co-owner, thus, is maintainable in law. It is not necessary for the co-owner to*

show before initiating the eviction proceedings before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event a co-owner objects thereto, the same may be a relevant fact.”

35. Before this Court the CO-OWNER – Rajiv Tandon, has filed an affidavit dated 10th February, 2020 and contended that the impugned order is bad insofar as it grants exclusive possession to the EVICTION PETITIONERS as specific portions of the property have not been demarcated/allotted to any of the co-owners. He has further stated that he also has bona fide need for the subject premises in question as the deponent has three grown up children (2 sons and 1 daughter), for whose need and benefit he requires the subject premises in question and his need is greater than the bona fide need of the EVICTION PETITIONERS.

36. As noticed hereinabove, Rajiv Tandon, the CO-OWNER has also filed a Petition (RC. REV. 129/2020) impugning the order dated 09.07.2018. In the said Revision Petition also he has not objected to the eviction of the TENANT. He has prayed that the impugned order be set aside to the extent the TENANT has been directed to deliver the possession to the EVICTION PETITIONERS.

37. Even before this court, the categorical submission of learned counsel appearing for the CO-OWNER is that he is not opposing the eviction of the TENANT but contends that the possession should either be given jointly to the owners or leave to defend should be granted

and evidence should be led to show as to who out of the owners should be given possession.

38. It is noticed that the CO-OWNER neither before the Rent Controller nor before this court has objected to the eviction of the TENANT but has only disputed the grant of possession to the EVICTION PETITIONERS. Even in the Affidavit filed by the CO-OWNER in the Revision Petition filed by the TENANT and in the Revision Petition filed by him, he has not objected to eviction but has only claimed joint possession.

39. There is accordingly no opposition of objection by any of the other co-owners to the eviction of the TENANT.

40. Reliance placed by learned senior counsel for the TENANT on the judgment in *Sk. Sattar Sk. Mohd. Choudhari versus Gundappa Amabadas Bukate (supra)* is misplaced. In the said case the issue was with regard to splitting of tenancy and a co-sharer initiating action for eviction of the tenant from a portion of the property and not the entire property. Said issue does not arise in the present case. The Eviction Petition has been filed for the entire tenanted premises and not a portion thereof. There is no question of splitting of the tenancy.

41. The judgment in *Ranbir Yadav versus Life Insurance Corporation of India (supra)*, relied upon by learned senior counsel for the TENANT, is not applicable to the facts of the present case. As noticed above the CO-OWNER has not objected to the eviction of the TENANT. The stand of the CO-OWNER is only that exclusive possession

cannot be given to the EVICTION PETITIONERS. Opposing eviction of the TENANT is different from seeking joint or exclusive possession of the tenanted premises, post eviction of the TENANT.

42. Further, reliance placed by learned Senior Counsel for the TENANT on the judgment in *Girish s/o Dharamvir Madan Versus Nanadkumar s/o Shankarrao Rasne & Ors* is misplaced. In as much as in the said case a preliminary decree of partition had already been passed and the identification of the respective shares was pending and the Supreme Court directed appointment of a commissioner to identify the respective shares of the parties and pending the same kept the eviction proceedings in abeyance. In the present case there is no preliminary decree of partition and identification of respective shares of parties.

43. In view of the above, the plea of the TENANT that as the other co-owners have not consented to the filing of the eviction petition and as such the petition is not maintainable, does not hold any merit and does not give rise to any issue, which if proved, would disentitle the landlord from any order of eviction.

44. Further, the submission of learned counsel for the CO-OWNER that possession should either be given jointly to the owners or leave to defend should be granted and evidence should be led to show as to whom out of the owners should be given possession, is not sustainable. It may be noticed that Rajeev Tandon - the CO-OWNER has only a 25% share in the property. The EVICTION PETITIONERS have 50% share and the remaining 25% co-owners have not come forward

to oppose the petition. In any event the TENANT is not concerned with this issue and this would be a question which would be determined by the concerned court before which the Partition Suit between the owners is pending.

45. A submission is made by learned Senior Counsel for the Petitioner, that in case the CO-OWNER were to get possession of the tenanted premises or a portion thereof, after the eviction of the TENANT, either under some interim arrangement or on final division of the properties in the Partition Suit, the same would be in breach of Section 19 of the Rent Act.

46. This submission merits rejection for the reason that the restriction imposed by Section 19 of the Rent Act on the landlord i.e. *not to re-let the whole or part of the premises within three years from the date of obtaining such possession, except with the permission of the Controller*, is not an absolute restriction but is subject to the conditions mentioned therein. Further, section 19 of the Rent Act comes into operation post the obtaining of possession by the landlord.

47. In this case, the TENANT is merely speculating that such a contingency may arise in the future. At the stage of the consideration of the application for grant of leave to defend, the court has to consider the facts as pleaded by the TENANT in the leave to defend application and not base the decision on speculative assumptions being made by the TENANT.

48. With regard to the ground of the TENANT that the Deed of Partnership for the proposed business executed between the children of the EVICTION PETITIONERS is a sham document and the children of the petitioners do not intend to start their own business venture at all, the Rent Controller has held that even if the Partnership Deed was taken off the record, there was nothing on record to hold that the children of the petitioners did not intend to start their own business.

49. The Rent Controller has held that executing a formal written partnership deed is no prerequisite for starting a new business venture and the need to start one, cannot be doubted only on the basis of some insufficiency in proper execution of any document pertaining to the proposed business.

50. Learned Senior Counsel for the Petitioner has not been able to show anything to cast a doubt on the genuineness of the Partnership Deed.

51. Further, the need projected by the EVICTION PETITIONERS in the Eviction Petition is that the son of Eviction Petitioner no. 1 and the elder daughter of Eviction Petitioner no. 2, have studied from Pearls Fashion Academy, New Delhi and are to start their own venture in partnership, however, due to paucity and unavailability of any suitable commercial space/accommodation, the partnership has not been able to carry the business. It is contended that the EVICTION PETITIONERS therefore, require the rented shop in occupation and possession of the TENANT to have the showroom of their newly formed business, besides requiring sufficient space for Accessories and for a Studio

which requirement shall be met from the 50% share in part of the first floor and second floor of the property, likely to be possessed soon in the partition suit/proceedings pending in the High Court.

52. It may be observed that for seeking eviction on the above ground, no formal Deed of Partnership was required to be executed. The children of the EVICTION PETITIONERS were not required to enter into any formal partnership to start the business from the tenanted premises. Since no formal partnership was required to start the business, so it does not stand to reason that the EVICTION PETITIONERS would create a sham Partnership Deed for the purposes of seeking eviction of the TENANT.

53. In the Revision Petition filed by the TENANT, an additional plea has been taken, which had not been taken in the leave to defend application i.e. that Kartik Tandon, the son of the Eviction Petitioner No. 1 has migrated abroad. Reliance is placed on online profiles of Kartik Tandon (Annexure P – 25).

54. It is submitted by learned Senior Counsel appearing for the EVICTION PETITIONERS that Kartik Tandon had gone to pursue higher course in Global Fashion and after completion of his course he has returned to India.

55. Though the TENANT cannot be permitted to raise a fresh plea, not taken in the application seeking leave to defend, this plea is liable to be rejected even on merits. The online profiles of Kartik Tandon show that he was pursuing his Masters of Science – MS, Global

Fashion Enterprise from the Philadelphia University for the academic session 2017 – 2019. Nothing has been produced by the TENANT to show that Kartik Tandon has migrated abroad.

56. Now coming to the availability of suitable alternative accommodations, as contended by the TENANT in the leave to defend application, it may be seen that the EVICTION PETITIONERS in the Eviction Petition have stated that they do not own any other commercial property except 50% share in the property in which the tenanted premises is situated and 1/6th undivided share in property bearing No. 2874, Hardhian Singh Road, Karol Bagh, which comprises of built up ground floor, mezzanine floor and first floor. 1/6th share is owned by the father of the Petitioners while the remaining 50% share is owned by Legal Representatives of Late Sh. Subhash Tandon. In the said property, the family business in the name and style of M/s Ushnak Mal Mool Chand is being carried on by the Petitioners alongwith their father on the ground floor and mezzanine floor, while the first floor of the said property is in occupation of Allahabad Bank as a tenant.

57. The Rent Controller in a tabular form has dealt with the ground raised by the TENANT about alternative accommodations as under:

<i>S.No.</i>	<i>Property</i>	<i>Explanation of Petitioner</i>
1.	<i>First and the second floor of property no. G3, South Extension Market, Part I.</i>	<i>The first and the second floor is not as conducive for attracting customers as the tenanted premises on the ground floor. Additionally that the first floor would be</i>

		<i>required for a work studio for the articles which will be exhibited in the ground floor showroom.</i>
2.	<i>The first and the second floor of building no. G11, South Extension Market, Part I.</i>	<i>Again being on the first and the second floor is not suitable for the proposed business of the children of the petitioner. Further, as admitted by the respondent itself, this property is not vacant and is in occupation of another tenant, since December 2014 i.e. more than a year prior to filing of the present petition. Also the respondent has stated in the leave application that this property is owned by the father of the petitioner.</i>
3.	<i>Shop measuring 1800 sq. ft. on ground floor of building no. G11, South Extension Market, Part I.</i>	<i>This property is already let out to another commercial tenant and no space is vacant. Further, it is the own case of the respondent that this property is owned by the father of the petitioner.</i>
4.	<i>2874, Hardayan Singh Road, Karol Bagh, New Delhi – 110005.</i>	<i>Business under the name and style of M/s Ushnak Mal Moolchand is already being carried out from this premises (in the leave itself the respondent has mentioned that indeed such a business is being carried out). No space is vacant in this premises for starting the new business of the children of the petitioner.</i>

58. It is not the case of the TENANT that apart from the above properties, there is any other commercial property available, which could be suitable or alternative.

59. The Supreme Court of India in *Shiv Sarup Gupta versus Mahesh Chand Gupta (Dr)*, (1999) 6 SCC 222 has held that “*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 instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.”

60. The Supreme Court in *Shiv Sarup Gupta versus Mahesh Chand Gupta (Dr)*, (*supra*) has further held that an alternative accommodation, to entail denial of the claim of the landlord, must be

reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction.

61. A commercial premises on the ground floor cannot be said to be reasonably suitable and alternative in comparison to a commercial premises on the first and second floor.

62. The Supreme Court in *Dhannalal versus Kalawatibai*, (2002) 6 SCC 16 has held that an accommodation situated on the first floor cannot be said to be an alternative suitable accommodation in comparison with the shops situated on the ground floor. A shop on the first floor cannot attract the same number of customers and earn the same business as a shop situated on the ground floor would do.

63. In *Uday Shankar Upadhyay v. Naveen Maheshwari*, (2010) 1 SCC 503, the Supreme Court held that *once it is not disputed that the landlord is in bona fide need of the premises, it is not for the courts to say that he should shift to the first floor or any higher floor. It is well known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily. The court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide.*

64. A tenant cannot dictate as to how else a landlord can adjust himself. It is for the landlord to choose the place of business more suitable to him. He has complete freedom in the matter.¹ The Landlord is the best judge of his requirement and it is neither open to

¹ *Bhupinder Singh Bawa Versus Asha Devi* (2016) 10 SCC 209
Anil Bajaj & another Versus Vinod Ahuja (2014) 15 SCC 610

the tenant nor to the Court to dictate to him with regard to his requirement and utilisation and it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.²

65. It is further noticed by the Rent Controller that in the additional written arguments filed by the TENANT on 25.05.2018 it was contended that the first floor of property no. 2874, Hardayan Singh had since been vacated by the erstwhile tenant, Allahabad Bank recently and this space is also available to the petitioners for fulfilling the bonafide need of their children. The Rent Controller has found the same to be not a suitable alternative accommodation to the tenanted premises.

66. Said premises is situated on the first floor of a property on Hardayan Singh Road, Karol Bagh and not in New Delhi South Extension Market. Applying the above referred principles, it can also not be treated as a comparable premises to the tenanted premises and as such has rightly been held not to be a suitable alternative premises.

67. Clearly, there is no infirmity in the finding returned by the Rent Controller that no triable issue arises. Even before this Court, the TENANT has not been able to show such facts which, if proved, would disentitle the EVICTION PETITIONERS from an order of eviction. There is no merit in the Revision Petition (RC.REV. 599/2018) filed by the TENANT against the order dated 09.07.2018 dismissing the application seeking grant of leave to defend.

²

Salra Ahuja Versus United India Insurance Co. Ltd (1998) 8 SCC 119

68. Further, the CO-OWNER Rajeev Tandon, has filed the Revision Petition (RC.REV. 129/2020) impugning the order dated 09.07.2018. However, in the said Revision Petition he has not objected to the eviction of the TENANT but has only prayed that the impugned order be set aside to the extent the TENANT has been directed to deliver the possession to the EVICTION PETITIONERS.

69. As held hereinabove, the TENANT is not concerned with this issue and this would be a question which would be determined by the Court before which the Partition Suit between the owners is pending. Accordingly, there is no merit in the said Revision Petition also.

70. Both the Revision Petitions are accordingly dismissed. In view of the fact that the TENANT is in the business of jewellery and would be required to shift his stronghold etc, one month's time is granted to the TENANT to vacate the tenanted premises and hand over the peaceful vacant possession of the same, subject to paying, to the EVICTION PETITIONERS, the entire arrears of use and occupation charges @ Rs. 4,00,000/- per month in terms of order of this Court dated 16.01.2019. The arrears shall be paid within two weeks. There shall be no orders as to costs.

71. The amounts already deposited by the TENANT with the Registrar General of this Court shall be released by the Registry in favour of the EVICTION PETITIONERS alongwith the interest accrued thereon.

72. On receipt of the amount from the Registry of this court and the arrears of use and occupation charges from the TENANT, the EVICTION PETITIONERS, shall immediately pay to the other co-owners of the property their respective share.

PENDING APPLICATIONS IN RC.REV.599/2018

CM APPLN. 52211/2018 (by TENANT for stay of impugned judgment), **CM APPLN. 52213/2018** (by TENANT for permission to place on record additional evidence), **CM APPLN. 22274/2019** (by TENANT for vacation of order directing deposit of use and occupation charges), **CM APPLN. 13291/2020** (by EVICTION PETITIONERS for dismissal of Revision Petition for non compliance of order dated 16.01.2019)

These applications are disposed of in terms of the orders passed in RC.REV.599/2018.

CM APPLN. 12142/2019 (by TENANT for condonation of delay in depositing charges), **CM APPLN. 14710/2019** (by EVICTION PETITIONERS for change of date), **CM APPLN.15856/2020** (by TENANT to consolidate with RC REV 129/2020), **CM APPLN.15858/2020** (by TENANT for hearing through VC), **CM APPLN. 18719/2020** (by TENANT for permission to deposit user charges)

In view of orders passed in RC.REV.599/2018, these applications are dismissed as infructuous.

CM APPLN. 29718/2019 (by EVICTION PETITIONERS under section 340 Cr.P.C. against the TENANT)

In view of the facts and circumstances of this case, this court does not find it expedient or in the interest of justice to direct conduct of any inquiry in the allegations contained in the application.

The application is dismissed.

CM APPLN. 18720/2020 (by TENANT for exemption from filing attested affidavits)

Exemption is allowed in accordance with the rules. The duly attested affidavits be filed within one week of the resumption of normal functioning of the court.

CM APPLN. 13763/2019 (by EVICTION PETITIONERS for direction to TENANT to pay user charges from date of the eviction order)

1. EVICTION PETITIONERS seek a direction to the TENANT to pay use and occupation charges from the date of the eviction order.
2. It is contended that in terms of the judgment of Supreme Court in *Atma Ram Properties (P) Ltd. Versus Federal Motors (P) Ltd. (2005) 1 SCC 705* the use and occupation charges are liable to be paid from the date of the eviction order (i.e. 09.07.2018) and not from 09.01.2019 i.e. after the expiry of the period of six months of the eviction order.
3. It may be noticed that in *Atma Ram Properties (P) Ltd. (supra)* the Supreme Court directed that while passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed and insofar as those proceedings are concerned.

4. In the present case, the Eviction Petition has been filed under section 14(1)(e) of the Rent Act and the eviction order was passed on 09.07.2018. In terms of Section 14(7) of the Rent Act, the landlord was not entitled to obtain possession of the premises before the expiration of a period of six months from the date of the eviction order i.e. till 09.01.2019.

5. The eviction petition in *Atma Ram Properties (P) Ltd.(supra)* had been filed on the ground of sub-letting under section 14(1)(b) of the Rent Act, where there is no such restriction as imposed by Section 14(1)(7) of the Rent Act.

6. Accordingly, the EVICTION PETITIONERS are not entitled to recover use and occupation charges for the period 09.07.2018 till 08.01.2019, during which period there was a statutory bar from recovery of possession. The stay order in the Revision Petition came into effect only from 09.01.2019 and the TENANT has been directed to pay use and occupation charges from the said date.

7. The application is accordingly dismissed.

8. Copy of the Judgment be uploaded on the High Court website and be also forwarded to learned counsels for the parties through email by the Court Master.

SANJEEV SACHDEVA, J

JANUARY 11, 2021

HJ