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

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*Decided on: 21.12.2021*

+ RC.REV. 252/2018, CM APPL. 22503/2018, CM APPL. 32685/2018  
& CM APPL. 25236/2021

PAWAN KUMAR JAIN

.....Petitioner

Through: Ms. Noopur Singhal, Advocate for  
petitioner.

versus

ANIL AGGARWAL

..... Respondent

Through: Mr. M.N. Siddiqui, Mr. Suhail Khan  
and Mr. Vishal Raj Sehijpal,  
Advocates for Respondents.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**NAJMI WAZIRI, J. (ORAL)**

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. This petition impugns the eviction order dated 23.01.2018 apropos part of property bearing no. 417 (old no. 240), Chitla Gate, Chawri Bazar, Delhi-110006. Monthly rent for the premises are Rs.266/-, respectively, excluding water and electricity charges. The area occupied by petitioner-tenant is a shop admeasuring 6ft.x8ft. The site plan of the tenanted premises is reproduced hereunder:-





2. The respondent-landlord had sought the properties for settling his younger son-Abhinav Aggarwal, who desires to start a commercial business venture from the said premises. The respondent/landlord suffers from blood cancer for the last many years and is stated to have spent a considerable amount on his treatment. In this stage of his life, he wishes to see his son settled. The tenant had sought leave to defend which was declined. The learned counsel for the respondent/landlord submits that the tenant has listed the following properties owned by the landlord:-

- “(i) Property bearing no. 361, Chitla Gate, Chawri Bazar, Delhi.*
- (ii) Property bearing no. 362, Chitla Gate, Chawri Bazar, Delhi.*
- (iii) Property bearing no. 609, Gazipur Market, Delhi.*
- (iv) Property bearing no. 4675/B/21, Ansari Road, Daryaganj, Delhi.*
- (v) First, Second and Third floors of property bearing no. 417, Chitla Gate, Chawri Bazar, Delhi.*
- (vi) Property bearing no. 900-901, Chawri Bazar, Delhi.*
- (vii) Portions of property bearing no. 417, Chitla Gate, Chawri Bazar, Delhi of which possession has been obtained by the petitioner from erstwhile tenants Rambaksh Gupta, Jai Prakash, P.K. Gadodia and R.N. Mishra.”*

3. The eviction order records the tenant's averments, as under:-

*“8. It is averred that the petitioner has not disclosed as to from which part of the building at property no. 417, Chitla Gate, Chawri Bazar, Delhi, his son wishes to start his business. It is stated that prior to filing of the present case, the petitioner has already*



*filed eviction petitions against the respondent and other tenants on the ground that property bearing no. 417 is dangerous, ready to fall and requires reconstruction. It is argued that if the premises is in such dilapidated state, it cannot be suitable for the petitioner's son to start his business. The respondent has pleaded that the alleged bonafide need of the petitioner is fake and malafide and has prayed that leave to defend the petition may be granted to the respondent as the application/affidavit of the respondent/tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises under section 14 (1) (e) of DRC Act."*

4. The landlord had refuted the tenant's contentions and had reiterated that the entire building at property bearing no. 417 (old no. 240), Chitla Gate, Chawri Bazar, Delhi-110006, was required for the younger son to start his business and the properties enumerated by the tenants were either not available or otherwise not suitable. All the properties have been duly considered by learned Rent Controller in the impugned order as under:-

*"15. With respect to property bearing no. 361, Chitla Gate, Chawri Bazar, Delhi, the petitioner has stated that this premises only measures 6 sq. ft. This has also been admitted by the respondent in his application for leave to defend. It is the case of the petitioner that he needs a large sized property for his son to start a business. The court is of the view that keeping in view the small size of property bearing no. 361, this property is not reasonably*



*suitable for the need of the petitioner. The petitioner cannot be expected to provide such a small property to his son to start a new business and to settle himself, when he owns much larger property which is in occupation of the respondent and other tenants. Even otherwise, this property is said to be in possession of a tenant named Sanjay Kumar and not in the possession of the petitioner.*

- 16. It is averred by the respondent in his application for leave to defend that only part of the property no. 361, Chitla Gate, Chawri Bazar is in possession of the tenant Sanjay Kumar. It is stated that the petitioner has concealed that one big shop next to the premises of Mr. Sanjay Kumar is lying vacant. This has been denied by the petitioner.*
- 17. The respondent has not place on record any material to substantiate his claim about availability of such space. The respondent has not even sufficiently described the big shop which is allegedly next to the shop in possession of Mr. Sanjay Kumar. On reading of paragraph no. 10 of the reply to the application for leave to defend, it appears that the big shop which as per the respondent is vacant next to the shop of Mr. Sanjay Kumar, is the portion of property no. 362 which has been described by the petitioner as a hall. The petitioner has admitted that he is in possession of this hall which he is using as a godown*
- 18. With respect to the property bearing no. 362, Chitla Gate, Chawri Bazar, Delhi, it is submitted by the petitioner that it consists of two portions. It is*



*stated that in terms of his family settlement, this property initially came in the share of the petitioner. However, the front portion of the property which is in the form of a shop has been sold by him to his brother Dharamveer Aggarwal in the year 1987. Copy of the sale deed has been filed. It is submitted that the said brother is running business under the name & style of M/s Gathbandhan Cards from this portion. It is averred that the other portion is on the back side of the property and is a hall being used as a godown by the petitioner. It is stated that since the hall is not on the main road and is atleast 15 feet behind it, it is not suitable for the requirement of the petitioner.*

- 19. The court is of the view that the property on the rear side of the building cannot be considered as suitable for starting a new business as is the tenanted premises. The petitioner cannot be expected to provide a commercially unprofitable premises to his son for starting a new business by allowing the respondent to use his better property.*
- 20. With respect to property bearing no. 609, Gazipur Market, Delhi, it is submitted by the petitioner that it is situated at a deserted place and therefore not suitable for the son to start his business. It is pointed out that on the other hand the tenanted premises is best suitable accommodation since it is in main market of Chawri Bazar.*



21. *The court is of the view that the petitioner cannot be compelled to provide a property to his son for starting a business, which is not commercially viable, by allowing the respondent and other tenants to occupy petitioner's property which is located in a more commercially suitable place.*
22. *In respect of property bearing no. 4675/B/21, Ansari Road, Daryaganj, Delhi, it is submitted by the petitioner that this property is owned by his wife. It is denied by the petitioner that this property is suitable as per his requirement. No material has been placed on record by the respondent to show that this property is reasonably suitable for starting a new business and has sufficient space as does the tenanted property. The Hon'ble High Court of Delhi in the case of Rajender Kumar Sharma v. Smt. Leela Wati 155 (2008) DLT 383 held that the respondent ought to place on record some material in support of the assertions made in the application for leave to defend.*
23. *With respect to First, Second and Third floors of property bearing no. 417, Chitla Gate, Chawri Bazar, Delhi, it is pointed out by the petitioner that since the property is dilapidated, the said floors of the building cannot be used for his son to start his business. The petitioner has also placed reliance upon a certificate issued by an Architect/Engineer In this regard. Even otherwise, the property on the ground floor of the building are more commercially viable than the ones on higher floors. In the cases*



*of Dhannalal Vs. Kalawatibai (2002) 6 SCC 16 and Uday Shanker Upadhyay Vs. Naveen Maheshwari (2010) 1 SCC 503, it was held that judicial notice can be taken of the fact that the upper floors are generally not commercially viable and consumers and patrons of the market are reluctant to walk into the same and are more prone to walk into a shop on the ground floor. Relying on these decisions, the Hon'ble High Court of Delhi in the case of M/s A.K. Woolen Industries & Ors. Vs. Shri Narayan Gupta RC. Rev. No. 495/2017 dated 31.10.2017 held that availability of upper floors above the tenanted premises on the ground floor cannot be said to be alternate suitable accommodation. The son of the petitioner cannot be expected to run his new business from higher floors which are not commercially viable.”*

5. Regarding property bearing no. 900-901, Chawri Bazar, Delhi, the learned Trial Court has recorded that the landlord and his brother-Subhash Aggarwal are joint tenants of the Delhi Waqf Board. Apropos other portions at property bearing no. 417, Chitla Gate, Chawri Bazar, Delhi, which have been vacated by the other tenants, the impugned order has recorded that the said portions could not be sufficient for the needs of the son and it is for the landlord to decide as to what area would be sufficient for the bonafide need and the same cannot be dictated by the tenant so as to adjust the tenant in some manner or the other.
6. It is settled law that the tenant cannot dictate or instruct a landlord as



to how and in which manner, a landlord should use his property. The Supreme Court in *Sarla Ahuja v. United Insurance Company Ltd.* (1998) 8 SCC 119 held *inter alia* as under:

“ ...

*14. The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by the courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.*

... ”

7. It is the prerogative of the landlord to determine the suitability of the land/space available with him for the need espoused. This court in *Sudesh Kumari Soni and Ors. V. Prabha Khanna and ors.*, RC.REV. 44/2004 held *inter alia* as under:

*“24. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to*



*make an endeavour as to how else the landlord could have adjusted himself.*

*25. Suitability has to be seen from the convenience of the landlord and his family members and on the basis of the circumstances including their profession, vocation, style of living, habits and background. Landlord is the best judge of his residential requirement. In view of well settled law, I hold that accommodation available with the petitioner is insufficient as against total family members. Hence the petitioner has made out a case under Section 14(1)(e) of Delhi Rent Control Act and is entitled for relief claimed.”*

8. Chawri Bazar in the Shahjahanabad area of Delhi, is a known hub for paper trade. The son would like to start his business in a renovated, and more amenable office with a space for storage, washroom, pantry, sitting area, reception area, etc. According to the learned counsel for the respondent these amenities and facilities are essential for the present-day customers and traders. The learned counsel for the tenant has referred to properties bearing nos. 361 and 362, Chitla Gate, Chawri Bazar, Delhi. The landlord states that property bearing nos. 361 is in another area and the same had been sought for bona fide need of the landlord's elder son- Haren Aggarwal. Apropos property bearing no. 362, the petitioner only owns the backside of the property and the same is being used as a godown. The frontside of the said property is owned by the brother of the landlord. The backside of the said property is at least 15 feet away from the main road, and is not suitable for the landlord. Therefore, reference to all properties owned



by the respondent is misleading and should not be misconstrued. The learned counsel for the landlord submits that in RC.REV. 243/2019 apropos property no. 361, the tenant has agreed to vacate the premises. In any case, the shop bearing no. 361 is an area of 2x3 square feet, and as noted hereinabove, the said properties are for the benefit of the elder son. Therefore, the same cannot be utilised for the younger son.

9. As regards the tenant's contentions that property bearing no. 417, Chitla Gate, Chawri Bazar, Delhi is in a dilapidated condition and is dangerous for habitation/occupation, therefore, it will be of no use to the landlord. The impugned order has rightly noted that there is no bar on the landlord to reconstructing or renovating a property so as to make it optimally utilizable for the son.
10. The tenant says that some of the properties owned by the landlord were not disclosed. Therefore, the petition ought to be dismissed on the ground of concealment of material facts. The learned Rent Controller rejected the said contention, he referred to the dicta of the Supreme Court in *Ram Narayan Arora vs. Aska Rani* (1999) 1 SCC 141, which held that non-disclosure of accommodation, which the court agrees cannot be alternate suitable accommodation, cannot be fatal to the eviction petition. This court too has held in *Mumtaz Begum vs. Mohd. Khan* RCR No. 78-79/2005 dated 12.01.2009, that non-disclosure of other accommodation available to landlord is not always fatal. The tenant's contention that the son-Abhinav Agarwal is already running a business independently, even if it is accepted to be correct, would not disentitle him to start a new business. Reliance has



been placed upon the dicta of the Supreme Court in *Sait Nagjee Purushottam & Co. Ltd. vs. Vimalabhai Prabhulal & Ors.*, 2005 (8) SCC 252, which held that when the dependent sons of the landlord desire to expand their business, it cannot be presumed that the landlord's need is a false pretence. It was further observed that it is a common experience that landlord-tenant disputes in our country take a lot of time, and one cannot wait indefinitely for resolution of such litigation.

11. When children want to expand their business, it cannot be said that their need is not in bona fide. Even if the son is running a business independently and if he was otherwise dependent upon the father for additional space, the said dependency cannot be ignored. The father would have a right to file a petition for eviction.
12. No other ground is raised in the petition. The landlord's *bona fide* need has been rightly held. No case is made out by the tenant for interfering with the impugned order of eviction, which has considered all aspects.
13. The petition, along with pending applications, is without merit and is accordingly, dismissed.
14. Interim orders stand vacated.

**NAJMI WAZIRI, J**

**DECEMBER 21 2021**

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