



\$~1 (SB-I)

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

Decided on: 30.03.2022

+ RC.REV. 158/2020

DR. SANJIV GUPTA & ANR.

..... Petitioners

Through: Mr Mukul Gupta, Senior
Advocate with Mr Nitin Soni,
Mr Sanjay Sharma and Mr
Sumit Kumar Mishra,
Advocates. (M: 9810434067)

versus

SH. S.S. VERMA

.... Respondent

Through: Mr Mohit Khanna, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZRI, J. (ORAL)

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

1. The petitioners impugn the order dated 24.10.2019 passed by the learned Additional Rent Controller ('ARC'), Patiala House Courts, New Delhi, granting the respondent-tenant Leave to Defend, in the petitioner's application seeking the tenant's eviction under section 14(1) (e) of the Delhi Rent Control Act, 1958. Since 1983, the tenant is in occupation of the tenanted premises comprising two rooms- one large and one small, one pantry, one wash room and an open area in the rear portion of the building numbered as 82/10, First Floor, Tolstoy Lane,



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Janpath, New Delhi. The property is located in New Delhi's most prestigious commercial area. The tenanted area marked in the site plan filed with the eviction petition is reproduced hereunder:-





2. The son and daughter-in-law of petitioner no.1 are professionals. Since 2009 the son is a practicing advocate in Delhi, his wife is a Chartered Accountant. They are dependent upon petitioner no. 1 for their office accommodation and would like to be provided the same at the earliest so that they can firmly establish and augment their professional career. According to them, there can be no other place more suitable, convenient and a more prestigious, address than the tenanted premises which lies in the heart of New Delhi, i.e. Connaught Place.
3. There is no dispute qua the existence of landlord-tenant relationship. The petitioners/landlords have brought on record documents to show their right and title in the property. It has been mentioned in the impugned order as under:

“ ...

4. In support of their case, petitioners have filed the documents viz. Copy of ID proof of petitioner, copy of memorandum, copy of rent receipts, copy of the cheque, copy of the letter dated 19.02.1997, copy of the lease deed, copy of lease deed : 2008, copy of lease deed dated 14.02.2011, copy of memorandum of agreement dated 07.06.2013, copy of Will dated 13.06.2013, copy of settlement agreement dated 23.08.2013, copy of lease deed dated 30.08.2013, copy of cheque, copy of graduation degree alongwith certificates, copy of the site photograph, copy of the site plan map. ... ”
4. The sole reason why the leave to defend was granted is that the tenants had made out a triable case apropos the



petitioners/landlords having alternate accommodation in the vicinity.

5. In the leave to defend application, the respondent/tenant has contended that the landlord owns: i) a property bearing no.2, Commissioner Lane, Civil Lines, Delhi -110054, where four people reside, ii) property nos. 82 & 84 Tolstoy Lane, Janpath, which are composite properties and there are a lot of vacant portions available therein; iii) petitioner no.1 is “stated to be occupying” 200 sq. ft. of area on the ground floor of property bearing no. 82, Tolstoy Lane, Janpath; iv) the petitioners have let out 2673 sq. ft. of the first floor to a tenant and some portion to ICICI Bank on the ground floor and; v) the petitioners also own a property in Bazar Sitaram, Delhi.
6. It is the tenant’s contention that the leave to defend has rightly been granted because the landlord is seeking additional accommodation whereas, he is already in possession of alternate vacant space in the same building one unit-room on the ground floor, which was earlier occupied by the bank, now stands vacated.
7. In the eviction petition, the petitioners/landlords have elaborately explained the reason why the shop on the ground floor, albeit larger in size, than the tenanted premises, is not suitable. It has averred as under:

“(xii) The petitioners submit that so far as the rear portion of property bearing no.82, Janpath, New Delhi is concerned it is submitted that there is a vacant shop available on the Ground Floor, however,



the same is not suitable to the son of the petitioner no.1 for the reason that the entire Tolstoy Lane is over-crowded and the said lane is mainly used for parking purposes. Besides, right in front of the shop there is a huge electricity transformer being used by the NDMC Department for transmission of electricity, also known as the 'Electricity Sub Station'. Due to this there is constant movements of electricity vehicles, cars of officials etc. The petitioners submit that adjoining to the said shop there is a restaurant which is being visited by number of patrons.

(xiii) The petitioners submit that the son of the petitioner no.1 is carrying on his professional activities and the space available in the form of a shop on the ground floor is not suitable on account of disturbances created by NDMC electricity transformer, parking of cars, various visitors to the restaurants and other shops situated in Tolstoy Lane. The petitioners further submit that there is no toilet, bathroom available along with that space on the Ground Floor portion. Even otherwise for son of the petitioner no.1 tenanted space is most suitable..."

8. According to the tenant, the eviction petition admits, that the landlord is in possession of 1440 sq. ft of commercial space, (in the middle portion of the ground floor); that if the entrance to the 1440 sq. ft. area on the ground floor is considered unattractive, inconvenient and an impediment then the same factors would be applicable to the tenanted premises also, because entrance to the tenanted premises is from the same rear lane.
9. The landlord says that the vacant shop on the ground floor is not suitable for the professional consultancy services of the



dependent children, who need the tenanted premises for lawyers and a Chartered Accountant office.

10. The front portion of premises/building was leased out to Bank of Rajasthan (now 'ICICI Bank') for utilisation as a Service Branch. It did not require any bank customers to visit the said office. The back portion does not have a washroom and/or other basic necessities for a lawyer's office. The front portion of the said premises continues to be let out to the said Bank. Convenient access from the front portion to the back portion of 1440 sq. ft would be contingent upon permission being given by the occupant (Bank). Surely, for security concerns and otherwise for obviating any situation of chaos, the lessee Bank will not allow unknown entities, persons or visitors to enter the erstwhile 'service area', located in the middle area. The said 1440 sq. ft. could best be used as an extension of the front office.

11. Petitioner no.1 submits that all the other portions of 82, Tolstoy Lane, Janpath are occupied by his brother (petitioner no.2 in the impugned order); and the latter cannot be asked to vacate his own premises, simply to accommodate the *bona-fide* needs of the children of petitioner no.1. It is asserted that the requirements/need of the son and daughter-in-law of petitioner no.1 stands proven.

12. The learned counsel for the respondent/tenant submits that two shops which were lying vacant with the landlord at the time of filing of the eviction petition could well have been utilized for



the so-called *bona fide* need.

13. The eviction petitioners had disclosed the details of the these shops in the building owned by them as under:-

“(xiv). The petitioners submit that the other area on the ground floor which is shown in green colour is at present in possession and occupation of brother of the petitioners, namely, Sh. Sharad Gupta. It is submitted that in terms of the oral settlement arrived at amongst the petitioners, their brother Sharad Gupta and their mother along with the other family members the entire property bearing No.82 Janpath, New Delhi came to the share of the petitioners and it was expected that after execution of the above mentioned settlement agreement the brother of the petitioners or his own would vacate and hand over the said portion under his possession. However, till date he has neither vacated nor handed over possession to the petitioners which led to filing of a suit seeking recovery, of possession in the Hon'ble High Court. Besides, there are three small shops, two admeasuring 72 square feet and one ad measuring 50 square feet, available on the passage on the rear side ground floor of property bearing No.82, Janpath, New Delhi. Out of these three shops, one. shop on the right side of the stair case which is admeasuring 72 square feet, has been given on rent to M /s Bharti Airtel by Smt. Shakuntla Gupta vide lease deed dated 14.02.2011 for a period of 9 years and after her death the rent is being paid to the petitioners. The said space is not suitable for office purposes and the said shop is used only to keep servers by Bharti Airtel and the same remains locked. most of the time. The other two shops admeasuring 72 square feet and 50 Square feet respectively are not at all suitable for office purposes. The said two shops are very small in size to be put to use for office purposes 'and there is no attached toilet & we and for this reasons the said shops are lying vacant for the last several years ...”



14. The learned Senior Counsel for the petitioners/landlords submits that the two shops which are said to be available with the petitioners/landlords are so small that a table and a chair could barely be fitted into it, let alone the same being used as an office for consultation by a lawyer or a Chartered Accountant. Furthermore, the said shop did not have and there is no scope for constructing a toilet nor does it have any conference room or waiting room or a space for office staff, pantry and other amenities, which are necessary for a modern day law office and/or a CA office. The size of the said shops and their not having an attached toilet, is not controverted in the leave to defend.

15. It is settled law that apropos suitability of tenanted premises for the landlords' bona fide need, the landlord is the best judge. It is the prerogative of the landlord to determine the suitability of the land/space available with him for the need espoused. The tenant cannot dictate to or instruct a landlord as to how and which property of the latter should be used for which purpose. This stands settled in *Sarla Ahuja v. United Insurance Company Ltd.* (1998) 8 SCC 119, which 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 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.
...”

16. 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.”

17. The issue to be seen is: whether the space available to the petitioners/landlords could be considered as suitable for the purposes for which the tenanted premises is sought. The son of the petitioner no.1 is a practising lawyer and the daughter-in-law is a practising Chartered Accountant. Both professionals



would require independent units comprising rooms for lawyers/CAs, conference room, room for juniors, washroom, pantry, sitting area, reception area, pantry, storage space, etc.

18. The impugned order has not referred to these aspects. It has not even considered the fact that the properties at Commissioner Lane, Civil Lines, Delhi is a residential space. The need of the landlord is a commercial one and the aforesaid property (Civil lines) is used for residential purpose and it cannot be put to commercial use. Therefore, *ex-facie* this property cannot be considered as being alternate accommodation available with the landlord.

19. There is nothing better for the petitioner no.1/landlord than to provide a space in the most prestigious commercial area of the city, for his dependant son and daughter-in-law to establish their respective independent practice. The property mentioned in Bazar Sitaram (Old Delhi) cannot be compared to Connaught Place. In any case, landlords have denied the availability of any accommodation in Bazar Sitaram. They say that it is an ancestral property, in which petitioner no.1 is one of the co-owners and it is not available to the petitioner no.1 for his exclusive use nor is it suitable.

20. Surely, the Bazar Sitaram property, is in a narrow lane in Old Delhi and cannot be compared to an easily accessible commercial space in the well-known central point of New Delhi i.e., Connaught Place.



21. The Supreme Court in *Anil Bajaj V. Vinod Ahuja*, (2014) 15 SCC 610 held, *inter alia*, as under:

“6. In the present case it is clear that while the landlord (Appellant 1) is carrying on his business from a shop premise located in a narrow lane, the tenant is in occupation of the premises located on the main road which the landlord considers to be more suitable for his own business. The materials on record, in fact, disclose that the landlord had offered to the tenant the premises located in the narrow lane in exchange for the tenanted premises which offer was declined by the tenant. It is not the tenant's case that the landlord, Appellant 1, does not propose to utilise the tenanted premises from which eviction is sought for the purposes of his business. It is also not the tenant's case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the same in any way inconsistent with the need of the landlord. 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 utilised by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business.”

22. The court is persuaded by the petitioners' aforesaid argument, that a law office and/or CA's office needs to have certain basic facilities like the reception area, waiting area, a conference



room, lawyers' chambers, space for juniors and assisting staff, washrooms, pantry area, storage area for files, computers and other space etc.

23. The important element is that the portion now occupied by the tenant/respondent is a readymade unit which has enough space for the functioning of a modern day office along with the wash rooms and pantry area in which the petitioner's son, a practicing advocate can shift into immediately, of course after minor repairs. Interestingly, the tenant, a Chartered Accountant, is using the said tenanted premises as his office. He would be replaced only by another professional, who is dependent upon the landlord.

24. Photographs filed by the petitioners/landlords show that the state of entrance of the commercial space admeasuring 1440 sq. ft. (in the middle portion of the ground floor) is the most unattractive. The photographs also show that the shops are too small and abut the rear lane/service lane of the building. The petitioners say that they are not suitable for the petitioners' *bona fide* needs as professionals. It is argued that the mere access to the so-called 1440 sq. ft. (the middle space on the ground floor) and the two dingy-looking constructed shop-space, would be sufficient to chase-away any prospective clients of a professional lawyer or C.A.









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25. What the tenant refers to spaces on the ground floor are shops with a built-up space of 50 sq. ft. or 70 sq. ft. Surely a lawyer's office cannot be run from such constricted space. A decent size table along with a chair itself would occupy most of the area and there would be hardly any space for anybody else to sit inside the shop, let alone provide any chair for any support staff or juniors. Therefore, the said two shops cannot be considered as alternate accommodation.
26. The tenant's next argument is apropos the maintainability of the eviction petition itself. He contends that the petition falls foul of section 14(6) of the Delhi Rent Control Act, 1958, in as much as, it was filed prior to five years, having lapsed from the date of 'acquisition by transfer', of the premises to the petitioners/landlords. Admittedly, the petition was filed on 02.05.2018; the transfer document was executed on 07.06.2013. Therefore, at first glance, the petition would appear to be premature by about a month. However, this contention is refuted by the learned Senior Advocate for the landlords. He submits that this issue was never raised before the learned Rent Controller. In any case, the document recording the transfer of interest and/or title in the said premises was a family settlement deed, which was registered with Sub-Registrar-VII, Delhi/New Delhi on 13.06.2013. It records an oral family arrangement which reads, *inter alia*, as under:-



“...22. That with a view to not only save the honour of the family but also to preserve the peace and security of the family by avoiding litigation, and to further preserve the properties and to put an end to all the disputes and differences, which may arise between them, the Parties hereto, who are members of the same family, on 27th March, 2013 on the festival of Holi, bonafide arrived at an oral Family Agreement in respect of all the aforesaid properties.

23. That during those discussions on 27th March, 2013; the First Party (Smt. Shakuntala Gupta) expressed her incapability to continue to manage and maintain the following three properties which were held in the name of First Party (Smt. Shakuntala Gupta) since the said First Party (Smt. Shakuntala Gupta) had become quite weak and feeble especially due to her old age and the First Party (Smt. Shakuntala Gupta) expressed her desire that she would like to continue as the owner of all other properties except the following three properties:-

(a) Built up Property Bearing Municipal No. 6, Under Hill Road, Civil Lines, Delhi-110054 (also known as Property Bearing Municipal No. 6B, Under Hill Road, Civil Lines, Delhi-110054 in the municipal records) ad-measuring 3410 square yards.

(b) Entire built up Property Bearing No. 82, Janpath, New Delhi-110001 ad-measuring 673 square meters approximately

(c) 20%(one-fifth) undivided share in built up Property Bearing. -No.2717, Gali Arya Samaj, Bazar Sita Ram, Delhi-110006.

24. That on 27th March, 2013, it was amicably and mutually resolved and decided as under:-

(I) That the Second Party (Shri Sanjiv Gupta), Third Party (Shri Sharad Gupta) and Fourth Party (Shri Vikas Gupta) will have equal one-third (33.33%) share each in the following properties:-



(a) Built up Property Bearing Municipal No. 6, Under Hill Road, Civil Lines, Delhi-110054 (also known as Property Bearing Municipal No. 6B, Under Hill Road, Civil Lines, Delhi -110054 in the municipal records) ad-measuring 3410 square yards.

(b) Entire built up Property Bearing No. 82, Janpath, New Delhi-110001 ad-measuring 673 square meters approximately.

(II) That the Fifth Party (Smt. Charu Gupta) and Seventh Party (Smt. Gauri Gupta) will have equal one-half (50%) share each in the following properties:-

(a) Entire built up Property Bearing No. 2B, Commissioner's Lane, Kripa Narain Marg, Civil Lines, Delhi-110054, ad-measuring 892 square yards approximately.

(b) Part of built up Property Bearing No. 6, Commissioner's Lane, Kripa Narain Marg, Civil Lines, Delhi-110054, ad-measuring 380 square yards approximately.

(III) That the Parties valued the properties and it was agreed as follows:-

(a) Value of 577 square yards of land alongwith proportionate built up superstructure in built up Property Bearing Municipal No. 6, Under Hill Road, Civil Lines, Delhi-110054 (also known as Property Bearing Municipal No. 6B, Under Hill Road, Civil Lines, Delhi-110054 in the municipal records) is equivalent to value of 50% undivided share in following two properties:

(i) Entire built up Property Bearing No. 2B, Commissioner's Lane, Kripa Narain Marg, Civil Lines, Delhi-110054.

(ii) Part of built up Property Bearing No. 6, Commissioner's Lane, Kripa Narain Marg, Civil Lines, Delhi-110054.

(b) Value of 220 square yards of land alongwith proportionate built up superstructure in built up Property Bearing Municipal No. 6 Under Hill Road,



Lines, Delhi-110054 (also known as Property Bearing Municipal No. 6B, Under Hill Road, Civil Lines, Delhi-110054 in the municipal records) is equivalent to value of one sixth ($1/6^{\text{th}}$) undivided share in entire built up Property Bearing No. 82, Janpath, New Delhi 110001.

(IV) That the Seventh Party (Smt. Gauri Gupta) herein gave up all her rights, title and interest in one half (50 %) undivided share in (i) Entire built up Property Bearing No. 2B, Commissioner's Lane, Kripa Narain Marg, Civil Lines, Delhi-110054 and (ii) Part of built up Property Bearing No. 6, Commissioner's Lane, Kripa Narain Marg, Civil Lines, Delhi-110054 in favour of the Second Party (Shri Sanjiv Gupta) herein.

(V) That the Second Party (Shri Sanjiv Gupta) herein gave up his rights, title and interest to the extent of 577 square yards of land alongwith proportionate built up superstructure in built up Property Bearing Municipal No. 6, Under Hill Road, Civil Lines, Delhi-110054 (also known as Property Bearing Municipal No.6B, Under Hill Road, Civil Lines, Delhi-110054 in the municipal records) in favour the Seventh Party (Smt. Gauri Gupta) herein.

(VI) That the Second Party (Shri Sanjiv Gupta) herein gave up and his rights, title and interest to the extent of 220 square yards of land alongwith proportionate built up superstructure in built up Property Bearing Municipal No.6 Under Hill Road, Civil Lines, Delhi-110054 (also known as Property Bearing Municipal No. 6B, Under Hill Road, Civil Lines, Delhi-110054 in the municipal records) in favour of the Third Party (Shri Sharad Gupta) herein.

(VII) That the Third Party (Shri Sharad Gupta) herein gave up his rights, title and interest to the extent of one sixth ($1/6^{\text{th}}$) undivided share in entire built up Property Bearing No. 82, Janpath, New Delhi-110001 in favour of the Second Party (Shri Sanjiv Gupta) herein.

(VIII) That the Fourth Party (Shri Vikas Gupta) herein gave up his rights, title and interest to the extent of 220



square yards of land alongwith proportionate built up superstructure in built up Property Bearing Municipal No. 6, Under Hill Road, Civil Lines, Delhi-110054 (also known as Property Bearing' Municipal No. 6B, Under Hill Road, Civil Lines, Deihi-110054 in the municipal records) in favour of the Third Party (Shri Sharad Gupta) herein.

(IX). That the Third Party (Shri Sharad Gupta) herein gave up his rights, title and interest to the extent of one sixth (1/6th) undivided share in entire built up Property Bearing No. 82, Janpath, New Delhi-110001 in favour of the Fourth Party (Shri Vikas Gupta) herein.

(X). That the Entire built up Property Bearing No., 2B, Commissioner's Lane, Kripa Narain Marg, Civil Lines, Delhi-110054. ad-measuring 892 square yards approximately shall be exclusively owned and possessed jointly by the Second Party (Shri Sanjiv Gupta) herein and the Fifth Party (Smt. Charu Gupta) herein to the extent of one half (50%) share each to the exclusion of everybody else.

(XI) That the Part of built up Property Bearing No. 6, Commissioner's Lane, Kripa Narain Marg, Civil Lines, Delhi-110054 ad-measuring 380 square yards approximately shall be exclusively owned and possessed jointly by the Second Party (Shri Sanjiv Gupta) herein and the Fifth Party (Smt. Charu Gupta) herein to the extent of one half (50%) share each to the exclusion of everybody else.

(XII) That the entire built up Property Bearing No.82, Janpath, New Delhi - 110001 shall be exclusively owned and possessed jointly by the Second Party (Shri Sanjiv Gupta) herein and Fourth Party (Shri Vikas Gupta) herein to the extent of one half (50 %) share each to the exclusion of everybody else.

(XIII) That the Second Party (Shri Sanjiv Gupta) herein shall be the owner to the extent of 340 square yards of land alongwith proportionate built up superstructure in built up Property Bearing Municipal No. 6, Under Hill



Road, Civil Lines, Delhi-110054 (also known as Property Bearing Municipal No. 6B, Under Hill Road, Civil Lines, Delhi-110054 in the municipal records).

(XIV). That the Third Party (Shri Sharad Gupta) herein shall be the owner to the extent of 1577 square yards of land alongwith proportionate built up superstructure in built up Property Bearing Municipal No. 6. Under Hill Road, Civil Lines, Delhi-110054 (also known as Property Bearing Municipal No. 6B, Under Hill Road, Civil Lines, Delhi-110054 in the municipal records). However, the Third Party (Shri Sharad Gupta) further divided this 1577 square yards of land alongwith proportionate built up superstructure in built up Property Bearing Municipal No. 6, Under Hill Road, Civil Lines, Delhi-110054 (also known as Property Bearing Municipal No. 6B, Under Hill Road, Civil Lines, Delhi-110054 in the municipal records) within his immediate, family members in the following ratio/extent/manner:

<i>S.No</i>	<i>Name</i>	<i>Extent of Ownership in 1577 Square Yards</i>
<i>1.</i>	<i>Shri Sharad Gupta (THIRD PARTY)</i>	<i>526</i>
<i>2.</i>	<i>Smt. Rakhi Gupta (SIXTH PARTY)</i>	<i>526</i>
<i>3.</i>	<i>Shri Nakul Gupta (TENTH PARTY)</i>	<i>525</i>
	<i>Total</i>	<i>1577</i>



(XV). That the Fourth Party (Shri Vikas Gupta) herein shall be the owner to the extent of 916 square yards of land alongwith proportionate built up superstructure in built up Property Bearing Municipal No. 6, Under Hill Road,. Civil Lines, Delhi-110054 (also known as Property Bearing Municipal No. 6B, Under Hill Road, Civil Lines, Delhi-110054 in the municipal records). Additionally the Seventh Party (Smt. Gauri Gupta) herein shall be the owner to the extent of 577 square yards of land alongwith proportionate built up superstructure in built up Property Bearing Municipal No. 6, Under Hill Road, Civil Lines, Delhi-110054 (also known as Property Bearing Municipal No. 6B, Under Hill Road, Civil Lines, Delhi-110054 in the municipal records). However, the Fourth Party (Shri Vikas Gupta) herein and the Seventh Party (Smt. Gauri Gupta) herein further divided their 1493 (916+577=1493) square yards of land alongwith proportionate built up superstructure in built up Property Bearing Municipal No. 6, Under Hill Road, Civil Lines, Delhi-110054 (also known as Property Bearing Municipal No. 6B, Under Hill Road, Civil Lines, Delhi-110054 in the municipal records) within their immediate family members in the following ratio/extent/manner:

S.NO	Name	Extent of Ownership in 1493 Square Yards
1.	Shri.Vikas Gupta (FOURTH PARTY)	687
2.	Smt. Gauri Gupta (SEVENTH PARTY)	687
3.	Shri Abhinn V.	119



	<i>Gupta (ELEVENTH PARTY)</i>	
	<i>Total</i>	<i>1493</i>

(XVI) That in view of the Agreement between the family members, the built up Property Bearing Municipal No. 6, Under Hill Road Civil Lines, Delhi-110054 (also known as Property Bearing Municipal No. 6B, Under Hill Road, Civil Lines, Delhi-110054 in the municipal records) admeasuring 3410 square yards shall be exclusively owned and possessed by the Second Party (Shri Sanjiv Gupta), Third Party (Shri Sharad Gupta), Fourth Party (Shri Vikas Gupta), Sixth Party (Smt. Rakhi Gupta), Seventh Party (Smt. Gauri Gupta), Tenth Party (Shri Nakul Gupta) and Eleventh Party (Shri Abhinav V. Gupta) herein to the exclusion of everybody else in the following ratio/extent/manner:

<i>S.NO</i>	<i>Name</i>	<i>Extent of Ownership in 3410 Square Yards</i>
<i>1.</i>	<i>Shri Sanjiv Gupta (SECOND PARTY)</i>	<i>340</i>
<i>2.</i>	<i>Shri Sharad Gupta (THIRD PARTY)</i>	<i>526</i>
<i>3.</i>	<i>Shri Vikas Gupta (FOURTH PARTY)</i>	<i>687</i>
<i>4.</i>	<i>Smt. Rakhi Gupta (SIXTH PARTY)</i>	<i>526</i>
<i>5.</i>	<i>Smt. Gauri</i>	<i>687</i>



	<i>Gupta (SEVENTH PARTY)</i>	
6.	<i>Shri Nakul Gupta (TENTH PARTY)</i>	525
7.	<i>Shri Abhinn V. Gupta (ELEVENTH PARTY)</i>	119
	<i>Total</i>	3410

...”

(Emphasis supplied)

27.As evident from the above, the said document is a comprehensive family arrangement which has been made apropos residential and commercial properties owned by the family. It was subsequently crystallised and registered as noted above.

28.The learned Senior Advocate for the petitioners submits that if any of the parties to the settlement, had any objection to the settlement having been crystallised on 27.03.2013, then surely, they would not have signed the document. The petitioners rely upon the dicta of the Supreme court in *Korukonda Chalapathi Rao v. Korukonda Annapurna Sampath Kumar*, 2021 SCC OnLine SC 847 which reads, *inter alia*, as under:-

“... 15. There is a long line of judgments of this court dealing with the question as to whether a family arrangement is compulsorily registrable. We need only refer to the case of *Kale v. Dy. Director of Consolidation*. This



Court has summed up the essentials of the family settlement in the following proposition:

“10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

“(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

(3) The family arrangement may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the



arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement...”

(Emphasis supplied)

29. A family arrangement may be even an oral arrangement, in which case, no registration is necessary. It is only necessary if the terms of family arrangement are reduced into writing.
30. In the present case, both aspects are covered. The registered document clearly records, the date on which the family arrangement came into existence i.e. 27.03.2013, in which case the petition having been filed on 02.05.2018, is after five years of ‘acquisition by transfer’ and would not be restricted by section 14(6) of the DRC Act.
31. For the aforesaid reasons, the court is of the view that the impugned order has erred in granting leave to defend because there was no triable issue raised by the tenant, which needed determination. The petitioners had fairly disclosed all properties owned by them and the fact that of all those properties none of it was available nor suitable as alternate accommodation.



32. In the circumstances, the impugned order is unsustainable; the petitioners have made out a case for grant of eviction of the respondent from the premises.
33. In view of the above, the impugned order dated 24.10.2019 granting the leave to defend to respondent is set aside. Eviction order is passed in favour of the petitioners and against the respondent, directing respondent to hand over to the petitioner the peaceful vacant possession of the property bearing no.82/10, first floor, Tolstoy Lane, Janpath, New Delhi-110001, as shown in the site plan annexed with the eviction petition.
34. The petition is accordingly allowed in the above terms. However, in terms of section 14(7) of the Delhi Rent Control Act, 1958 this order shall not be executable for a period of six months from receipt of copy of the order.

MARCH 30, 2022

rd/dss

NAJMI WAZIRI, J