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

+ **RC.REV. 36/2023 & CM APPL. 6147/2023**

M/S RAM SWAROOP RADHEY SHYAM THROUGH ITS
PROPRIETOR

..... Petitioner

Through: Mr. Madhu Mukul Tripathi, Utkarsh
Tripathi and Mr. Shubham,
Advocates.

versus

SH. AJAY SHUKLA

..... Respondent

Through: Mr. Ravish Kumar Goyal, Mr. Nitin
Sharma, Mr. Pawan Kaushik, Mr.
Iram Naaz, Mr. Hitesh Kumar
Sharma, Advocates.

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Reserved on: 10th February, 2023
Date of Decision: 10th April, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

CAV. 78/2023

Learned counsel for the Respondent has entered appearance and
addressed arguments.

Accordingly, the Caveat stands discharged.

RC.REV. 36/2023, & CM APPL. 6147/2023

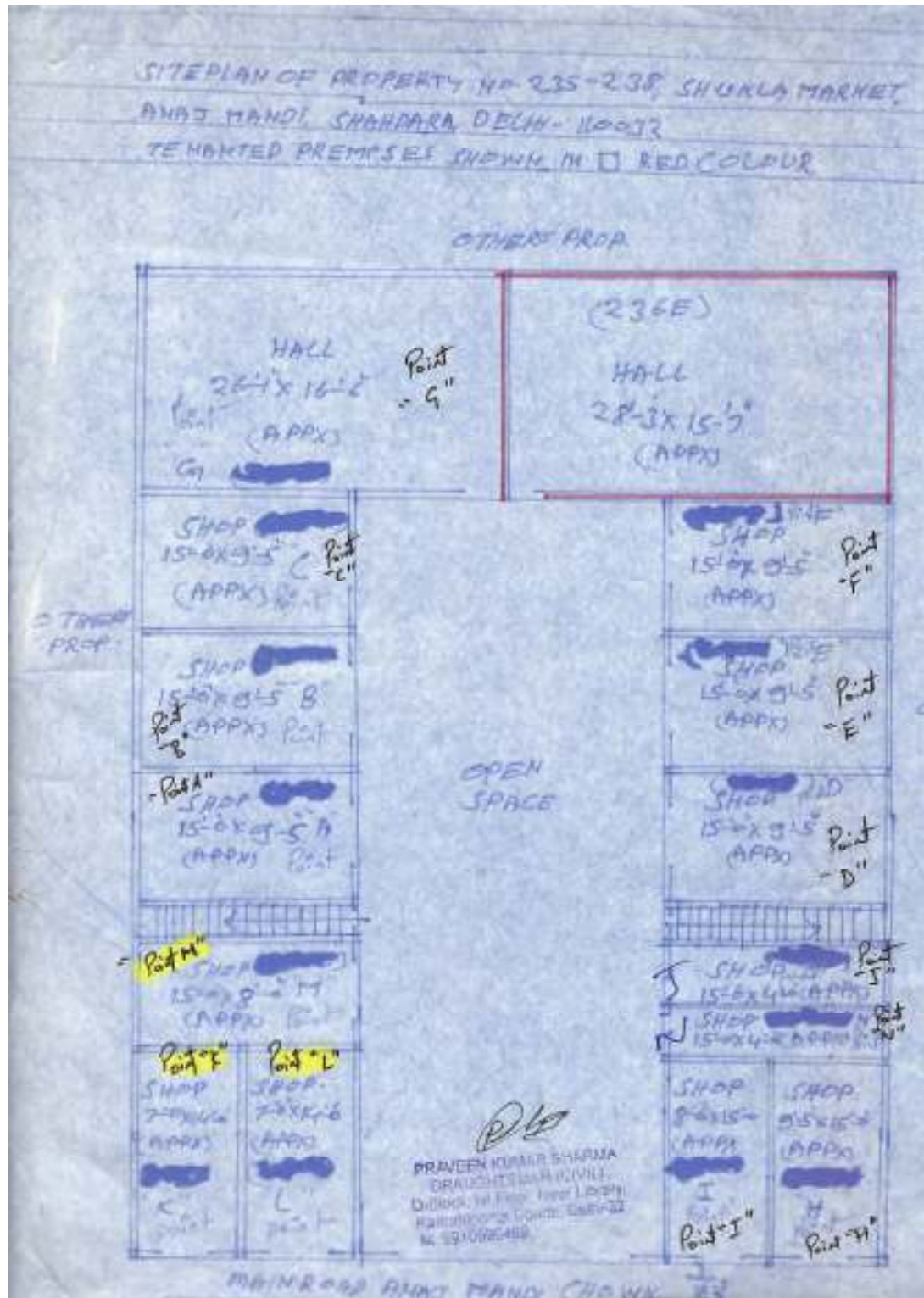
1. The present revision petition has been filed by the Petitioner
(‘Tenant’), assailing the order dated 19.09.2022 passed by the Senior Civil

Judge acting as Rent Controller, Shahdara District, Karkardooma Courts, Delhi ('Trial Court'), in RC ARC No. 224/19, whereby the Petitioner's application seeking leave to defend has been dismissed; and an eviction order has been passed in favour of the Respondent ('Landlord') *qua* shop on the ground floor of property bearing no. 236 E, Shukla Market, Anaj Mandi, Shahdara, Delhi – 32, admeasuring 444.31 sq. feet approx. ('tenanted premises').

2. The Landlord filed an eviction petition under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act'), on the ground of *bona fide* requirement for himself as well as his only son. The eviction petition was filed on 15.05.2019 stating that the Landlord, who was then employed with the Punjab National Bank was scheduled to superannuate on 31.03.2020; and the tenanted premises were required for continuing the employment of Landlord, who wishes to run a departmental store. In addition, it was stated that the only son of the Landlord had also completed his MBA and he as well requires the tenanted premises for running and operating a business.

2.1 It was stated that the Landlord requires the tenanted premises for starting his independent business of a departmental store for selling grocery, which would require 350-450 sq. ft. area for the purpose of displaying and stocking of goods.

2.2 It was stated that the tenanted premises is located in the property bearing No. 235-238, Shukla Market, Anaj Mandi, Shahdara, Delhi-110032 ('Property No. 235-238'). It was stated that there are fourteen (14) shops in the Property on the ground floor, which are marked as Point 'A' to 'N' in the site plan. It is stated that the tenanted premises is marked in red colour in the site plan, which is being reproduced hereinunder for ease of reference:



2.3 It is stated that the Property No. 235-238 was owned by the parents of the Respondent and the title has devolved upon the Respondent upon their demise. It is stated that except four (4) shops marked as Point K, L, M and N on the site plan, the remaining ten (10) shops stand sold. The date of sale of the said ten (10) shops has been duly disclosed in the eviction petition.

2.4 With respect to shops marked as Point K, L and M, it has been stated that the said shops are in occupation of old tenants, who have statutory protection under the DRC Act. With respect to shop marked as Point N, it has been stated that the said shop, ad-measuring 64.583 sq. ft., was let out on 06.12.2018 *vide* a registered agreement. It has been stated in the eviction petition that the said area of 64.583 sq. ft. is not suitable for the requirement of the Landlord, who requires an area of 350-450 sq. ft.

2.5 The Landlord has also disclosed that he owns a property bearing No. 3/34, Gali Shuklan, Chotta Bazar, Shahdara, Delhi-110032 ('Property No. 3/34'). It is stated in the eviction petition that the said property is the residence of the Landlord's family and has been the residence of his ancestors as well. It is stated that in the said property there is one shop on the ground floor, which is occupied by an old statutory tenant since the year 1988. It is stated that except for the said one shop, the entire property No. 3/34 is residential in nature and is not suitable for commercial activity.

3. The Tenant had filed his application for leave to defend on 04.06.2019 and raised a plea disputing the ownership of the Respondent, Landlord. The said plea was however abandoned and, in fact, the Tenant categorically admits that the tenanted premises have devolved upon the Respondent, Landlord herein. The Tenant admits that the rent is paid to the Respondent herein. Accordingly, the existence of relationship of Landlord

and Tenant stands admitted.

3.1 The Tenant has however, raised a dispute on the ground that the Landlord does not have any *bona fide* need for the tenanted premises either for himself or for his sole son. It was stated that the Landlord is financially well off and does not require income from the business.

3.2 The Tenant disputed the plea that the son of the Landlord is not gainfully employed. The Tenant along with his application dated 16.08.2022 has sought to place on record the user profile of the Respondent's son, Mr. Paras Shukla, as available on the professional social networking website i.e., LinkedIn, to contend that the Mr. Paras Shukla is gainfully employed since February, 2019. The said application was however, dismissed and the said document has not been taken on record.

3.3 The Tenant also raised a plea with respect to availability of alternative suitable accommodation in the Property No. 235-238 as well as Property No. 3/34.

4. The Trial Court *vide* impugned eviction order dated 19.09.2022 dismissed the application seeking leave to defend on the finding that the Tenant has failed to substantiate the plea that the Landlord has alternative suitable accommodation available with him. The Trial Court held that there exists a Landlord-Tenant relationship between the parties; and the Landlord herein has a *bona fide* need for the tenanted premises to sustain himself. The Trial Court thus concluded that no triable issue has been raised by the Tenant.

Arguments of the Petitioner Tenant

5. The learned counsel for the Petitioner states that the arguments on the leave to defend were heard and the order was reserved on 17.11.2021;

whereas, the impugned eviction order was passed on 19.09.2022 and therefore, on account of the delay of ten (10) months, it raises a presumption that the impugned eviction order suffers from errors.

5.1 He states that the Trial Court failed to appreciate that the first floor in Property bearing No. 235-238, above shops marked as Point K, L and M was let out recently to one Mr. Shravan Kumar. The said first floor is being used commercially and for this purpose, the Tenant relies upon the electricity bill dated 31.05.2019, filed subsequently with the rejoinder to the leave to defend. He states that the said first floor is suitable for the Landlord's alleged *bona fide* need. He states that the Landlord recently let out a newly constructed hall at first floor to 'Royal Kitchen Appliances' in property No. 236-B, Shukla Market, Anaz Mandi, Shahdara, Delhi.

5.2 He relies upon the summary filed as 'Annexure A' to the rejoinder to the leave to defend to substantiate the plea that the Landlord has frequently sold portions of several commercial premises owned by him, between the year 2012-2019.

5.3 He states that the Trial Court failed to appreciate that the Landlord has vacant accommodation available with him in Property bearing No. 3/34; as is evident from the site plan of the said property wherein, two vacant halls are seen on the ground floor. He states that the said property is surrounded by commercial shops and is therefore, available for commercial use.

5.4 He states that the Trial Court failed to appreciate that in view of the fact that the Landlord has in the past sold several shops in Property No. 235-238 itself and let out shops in the recent past, the said conduct of the Landlord belies his plea of *bona fide* need. In this regard, he refers specifically to shop marked as Point 'J' on the site plan and states that said

shop has been sold to one Mr. Surendar Pal and the shop marked as Point 'N' on the site plan has been recently let out to one Mr. Naveen Pal on 06.12.2018.

5.5 He states that the Petitioner has sought to place on record the user profile of Respondent's son i.e., Mr. Paras Shukla, as available on the professional social networking website LinkedIn, which shows that Mr. Paras Shukla is gainfully employed since February, 2019. He states that thus, there is no *bona fide* need of accommodation for the Respondent's son.

Arguments of the Respondent Landlord

6. In reply, learned counsel for the Respondent states that Property No. 3/34 is used as residence by the Landlord and it is structurally built to be used as a residence. He states that the said property has been used only for residential purposes since decades. He states that the two halls on the rear side of the ground floor in this property are being used for residential purposes. He further states that the rear side does not abut any street and is therefore, not even viable for commercial use. He states that, therefore, there is no alternate suitable accommodation available to the Landlord in this property.

6.1 He states with respect to Shop No. 236-J/B, situated on the first-floor of property No. 235-238, Shukla Market, Anaj Mandi, Delhi, the first floor is under the tenancy of Mr. Shravan Kumar since 20.09.2013. He states that the said floor is not used for sales/showroom by the said Tenant i.e., Mr. Shravan Kumar as there is no footfall of customers on the first floor.

6.2 He states that the business under the name and style of 'Royal Kitchen Appliances' is carried on from the shop marked as Point 'D' in Property No. 235-238 on the ground floor. He states that the said shop was sold to Mr.

Shravan Kumar in the year 1966-1967 and this fact was duly disclosed in the eviction petition.

6.3 He states that with respect to shop marked as Point 'N' on the site plan, the same admeasures only 64.583 sq. ft. and is therefore, insufficient and not suitable for the requirement of the Landlord, who requires an area of 350-450 sq. ft. for running his departmental store. He states this fact was duly disclosed in the eviction petition and the measurement of 64.583 sq. ft. is not in dispute.

6.4 He states that with respect to shop marked as Point 'J' on the site plan; the said shop was sold to one Sh. Surender Pal on 20.06.2017 to meet the financial needs of the Landlord. He states that the sale of the said shop was duly disclosed in the eviction petition. He states that the said shop as well admeasures 64.583 sq. ft. and is therefore, not suitable for the need of the Landlord.

6.5 He states that the Landlord has disclosed all material facts pertaining to the shops, which exist in Property No. 235-238 and there is no other alternate suitable accommodation admeasuring 350-450 sq. ft. available with the Landlord for starting his departmental store for selling groceries.

6.6 He states that the Petitioner herein had filed two applications dated 26.11.2021 and 16.03.2022 for bringing on record alleged subsequent events pertaining to alternative suitable accommodation as well as documents. He states that however, the said applications were dismissed by the Trial Court *vide* order dated 16.07.2022, which order was assailed before this Court in CM(M) No. 702/2022. He states that the contentions raised before this Court with respect to availability of alternate accommodation has been considered and rejected by a Coordinate Bench of this Court *vide* judgement dated

21.07.2022 passed in CM(M) 702/2022 and therefore, the Petitioner herein is precluded from raising the plea with respect to the first floor of the premises located above shops marked as Point K, L and M as well as shop marked as Point 'N'. He states that the Petitioner is relitigating the same issues.

Analysis and findings

7. This Court has heard the submissions of the parties and perused the record as well as the written submissions filed by the parties in this petition. The facts set out in the eviction petition and leave to defend have been noted hereinabove.

Existence of Relationship of landlord and tenant

8. In the eviction petition, the Landlord had duly stated at paragraph 18(a)(i) that his parents were the absolute owner of the tenanted premises and the property has devolved on the Respondent after their death. The Respondent also averred that the Petitioner herein has attorned in favour of the Respondent and was paying rent to the Respondent, Landlord.

8.1 The Petitioner, Tenant, in his affidavit seeking leave to defend at para 3(i)(a) specifically disputed that the Respondent is the owner of the tenanted premises and in fact alleged that the Respondent is guilty of concealment. The relevant para reads as under: -

“a. The petitioner is not the owner of the suit property and is not entitled for any relief and his petition is liable to be dismissed with heavy cost for concealment as he is not in need of tenanted shop for purpose as alleged.”

8.2 The Petitioner, Tenant, reiterated the said stand at paragraph 2 in his rejoinder to the reply to the leave to defend application. The Petitioner disputed the relationship of the Landlord-Tenant as well. The relevant para

reads as under: -

“2. That the Petitioner is neither the owner nor let-out the suit property to the Respondent.”

8.3 The Petitioner thus sought leave to defend on the said specific plea raising dispute of ownership.

8.4 However, in the revision petition, the Petitioner at paragraph 2 (a) and (i) while narrating the facts has categorically admitted that Mr. Uma Shankar Shukla i.e., late father of the Respondent had let out the tenanted premises to Mr. Radhey Shyam i.e., late father of the Petitioner herein. It is further admitted that the Petitioner herein attorned to the Respondent herein and was tendering rent to him.

8.5 In the aforesaid admitted facts, the Trial Court in the impugned eviction order correctly held that since the Respondent is the Landlord of the tenanted premises, he is entitled to maintain the eviction petition. The relevant portion of the order reads as under: -

“6. However, in leave to defend affidavit, the respondent has not raised any issue which may require evidence. Respondent has stated that petitioner is not owner of the rented premises but he has not disclosed who is the actual owner of the said property. The respondent has not denied that the petitioner is not the landlord. In other words, the respondent has admitted that the rent is being received by the petitioner in respect of the rented premises. Therefore, the petitioner is entitled to seek eviction of the respondent from the tenanted premises.

7. Otherwise also the term “owner” as used in the section 14(1)(e) of the DRC Act does not connote the same meaning as in the case of a title suit for property. The petitioner need not prove the absolute ownership. He has only to show that he has better title in respect of the property than the tenant. This interpretation of the word “owner” has been accepted by Hon’ble Supreme Court in Smt. Shanti Sharma and others Vs. Smt. Ved Prabha and others (1987) 4 SCC 193. Under the Delhi Rent Control Act, the word “owner” occurring in clause (e) of the proviso to Section 14 (1) is not used in the sense of absolute owner. It is only used in contradistinction with a landlord as defined, who is not an owner but holds the property for the benefit of another

person. A landlord as defined, who is holding the property for himself and for his own benefit and not for the benefit of another person, is certainly the owner/landlord. The similar view has been expressed by the Hon'ble Delhi High Court in Kanwal Kishore Chopra Vs. O.P. Dwivedi and others (AIR 1978 Delhi 53)."

8.6 In view of the said fact, this Court does not find any infirmity in the finding of the Trial Court and, in fact, the plea raised by the Petitioner in his leave to defend is false to his knowledge. The falsity of the said plea made on a sworn affidavit with respect to the fundamental relationship between the parties, would necessarily require this Court to examine the remaining pleas raised by the Petitioner, Tenant, with great circumspection.

Bona fide need

9. The Respondent, Landlord, has with respect to his *bona fide* need averred in the eviction petition that he was due for superannuation from his job at Punjab National Bank as on 31.03.2020. It was stated that he was keen to continue to work post his retirement and remain gainfully employed. It was stated that since his monthly income is bound to reduce on retirement, he needed the premises to augment his income.

9.1 In addition, it was stated that his sole son as well has completed his MBA and requires the tenanted premises to join the business of the Respondent and thereafter, for carrying on his own business after the lifetime of the Respondent, Landlord.

9.2 In the eviction petition, the Respondent narrated in detail at paragraph 18 (a)(ii) to (xii) [except paragraph (viii)] his personal *bona fide* requirement for the tenanted premises, the proposed user of the premises and the suitability of the tenanted premise for the intended use.

9.3 The Petitioner, Tenant in the leave to defend has not disputed the

averments made in paragraphs 18(a)(ii) to (xii) [except paragraph (viii)] with respect to the personal *bona fide* requirement of the Landlord. In the leave to defend, the Petitioner raised a dispute only with respect to the requirement of the Landlord's son, which was pleaded at paragraph 18 (a)(viii).

9.4 The crux of the challenge laid by the Tenant in his leave to defend was that the Landlord has suitable alternative accommodation available.

9.5 Therefore, there was no dispute raised to the *bona fide* requirement of the Landlord for the tenanted premises to start a departmental grocery store in view of his then imminent retirement on 31.03.2020 at the age of 60 years. The Landlord's requirement to continue to work at age of 60 years for his own betterment as well as to augment his income give rise to a strong presumption in his favour and the Petitioner herein, Tenant has not even disputed the said material facts.

9.6 The Supreme Court in its recent authoritative judgement in ***Abid-ul-islam vs. Inder Sain Dua, 2022 6 SCC 30***, while discussing the scope of Section 14(1)(e) *vis-à-vis* Section 25-B (8) of DRC Act has held that the Tenant's contention regarding availability of alternative accommodation is only an incidental one. The Supreme Court reiterated that Section 14(1)(e) of the DRC Act creates a presumption *qua bona fide* need in favour of the Landlord and a mere assertion by the Tenant in the leave to defend would not be sufficient to give rise to a triable issue. The relevant portion of the judgement reads as under: -

18. For availing the leave to defend as envisaged under Section 25-B(5), a mere assertion per se would not suffice as Section 14(1)(e) creates a presumption subject to the satisfaction of the learned Rent Controller qua bona fide need in favour of the landlord which is obviously rebuttable with some material of substance to the extent of raising a triable issue. The satisfaction of

the Rent Controller in deciding on an application seeking leave to defend is obviously subjective. The degree of probability is one of preponderance forming the subjective satisfaction of the Rent Controller. Thus, the quality of adjudication is between a mere moonshine and adequate material and evidence meant for the rejection of a normal application for eviction

28. The High Court, while ignoring the aforesaid conduct of the respondent, as noted by the learned Rent Controller, proceeded to allow the revision by treating it like an appeal. It did not even reverse the findings of the learned Rent Controller, but proceeded to hold that the denials of the appellant in his reply to the application seeking leave to defend are vague, qua the plea of alternative accommodation, notwithstanding the rejection of the contention of the respondent that he cannot question the title. This approach, in our considered view, cannot be sustained in the eye of the law.

***29. Section 14(1)(e) deals with only the requirement of a bona fide purpose. The contention regarding alternative accommodation can at best be only an incidental one.** Such a requirement has not been found to be incorrect by the High Court, though it is not even open to it to do so, in view of the limited jurisdiction which it was supposed to exercise. Therefore, the very basis upon which the revision was allowed is obviously wrong being contrary to the very provision contained in Section 14(1)(e) and Section 25-B(8)."*

(Emphasis Supplied)

9.7 Thus, in the opinion of this Court in the absence of any specific dispute with respect to the need of the Landlord, the *bona fide* requirement of the Landlord stands admitted on record.

9.8 The pleading in the eviction petition as regards the *bona fide* requirement of the son was an additional plea and it was qualified with the statement that the premises shall be used by the son after the lifetime of the Landlord. The relevant paragraph no. 18(a)(viii) of the eviction petition reads as under: -

"(viii) That the sole son of the petitioner has also completed his MBA, who is dependent upon the petitioner, and he also wants to do aforesaid business in the tenanted premises along with the petitioner, once the vacant possession of the tenanted premises is received by the petitioner. The son of the petitioner also bonafidely requires the tenanted premises to do the aforesaid business with the petitioner, and also wants to continue the aforesaid business in the tenanted premises after the life of the petitioner."

(Emphasis Supplied)

No suitable alternate accommodation

10. As noted above, the crux of the defence raised by the Tenant is that the Landlord has alternate accommodation available with him in Property No. 235-238 and at Property No. 3/34.

10.1 With respect to Property No. 235-238, it was stated by the Tenant that the first floor above shops marked as Point K, L and M as shown in the site plan can be used by the Landlord for commercial space. The Tenant admits that the said space on the first floor has been let out to a third person namely Mr. Shravan Kumar.

10.2 In this regard, the Landlord has already stated that the first floor is not suitable for opening a departmental store for selling groceries as it would not attract customer's footfall.

10.3 It is also stated that the said space on the first floor is not being used even by the current tenant for commercial sale purposes and he uses the ground floor shop for sale purposes, which fact is not disputed by the Tenant. The Petitioner has not brought on record any evidence to show that the first floor is being used for showroom/sales purposes by the existing tenant.

10.4 It is trite law that a shop located on a ground floor has an enormous advantage over the shops located on the first floor. In this view of the fact, the Landlord's plea that he wants the tenanted premise for running and operating a departmental store cannot be faulted. Therefore, in the opinion of this Court, the first floor hall available above shop marked as Point K, L and M in Property No. 235-238 has been rightly held by the Trial Court to not to be an alternate accommodation. In this regard, it would instructive to refer to judgment of this Court in ***M/s A.K. Woolen Industries & Ors. v.***

Shri Narain Gupta, 2017 SCC OnLine Del 11363, wherein the Court relying on the dicta of the Supreme Court has held that the availability of accommodation on the upper floors cannot be said to be an alternate accommodation as the same are generally not commercially viable and the customers are reluctant to walk into the same. The relevant portion of the said judgment reads as under:

“24. Supreme Court, in Dhannalal v. Kalawatibai (2002) 6 SCC 16 and in Uday Shankar Upadhyay v. Naveen Maheshwari (2010) 1 SCC 503 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. Thus availability of the upper floors above the shop Nos. 602 and 603 supra on the ground floor cannot be said to be alternate suitable accommodation”

(Emphasis Supplied)

10.5 The Tenant has next referred to two vacant halls on the rear side of the ground Floor in Property No. 3/34 to contend that the said vacant halls can be converted and used as shops. The Landlord has explained that Property No. 3/34 is his residence and the said two halls located on the rear side are not vacant and are being used as a part of the residential accommodation. The Tenant has not disputed that the said property is the residence of the Landlord and his family. The Tenant has not brought on record any document to disprove the said contention of the Landlord as regards its existing use for residential purposes.

10.6 This Court is unable to accept the contentions of the Tenant that since this property is located in the commercial hub, the Landlord has the option to convert his existing residential accommodation on the ground floor for shops. The Landlord has sufficiently explained that the current use of the said property is residential and in the opinion of this Court, the said explanation is sufficient to hold that the said property cannot be considered

as an alternate accommodation. The Tenant cannot compel the Landlord to convert his existing residential premises for commercial purposes to meet his *bona fide* requirement.

10.7 This Court therefore, finds that there is no error in the finding of the Trial Court holding that the Landlord's need is *bona fide* and he has no other alternative accommodation. The relevant portion of the eviction order reads as under: -

"8. Respondent has also taken the ground that petitioner is having big vacant shops at the ground floor of the property no. 3/34, Chhota Bazaar, Shahdara, Delhi and other four shops which are lying vacant. The respondent has also alleged that petitioner has not filed the correct site plan to depict the correct dimensions of the properties. However, the respondent has not cared to file the correct site plan and he has also failed to show that the shops which are lying vacant are suitable for the purpose of the business which the petitioner along with his son wants to undertake. The plea taken by the respondent that petitioner has sold several properties is not relevant because petitioner is entitled to sell his property as and when he wishes and the respondent is not within his rights to challenge the same. In any case, those properties were sold in the past and have no bearing to the current need of the petitioner. The respondent has also not placed on record any material to show that petitioner's son who has completed his MBA is doing any job or is otherwise employed and is not dependent upon the petitioner. The respondent has not disclosed when the petitioner has let out the newly constructed shops. Similarly, the source of earnings of the petitioner including the shares and rent are not relevant for the purpose of deciding whether the need of the petitioner is bona fide or not.

9. The respondent has not mentioned any property other than shop no. 3/34 as an alternative accommodation which may be available to the petitioner. The petitioner has categorically stated that shop no. 3/34 is in occupation a tenant. Respondent has not brought on record any proof to show that shop no. 3/34 is being used by the petitioner for his business. Respondent has also failed to provide any material to show that petitioner is having any other job to sustain himself. Therefore, it is clear that no triable issue has been raised by the respondent in leave to defend affidavit. Leave to defend is declined."

(Emphasis Supplied)

Time lapse between reserving the Judgement and pronouncement of orders

11. Lastly, the Petitioner has contended that arguments were heard and

concluded before the Trial Court on 17.11.2021 and the judgement was delivered on 19.09.2022. It is contended that in this delay, there is a presumption that the Trial Court would have not remembered the arguments of the Petitioner herein.

11.1 This Court finds no merit in the aforesaid submission. The Trial Court record shows that immediately on 26.11.2021, the Tenant filed an application (1st) for placing on record additional facts. This was followed by another application (2nd) dated 16.03.2022, filed by the Tenant for placing on record additional documents. This issue of alternate accommodation was specifically agitated in these applications. However, the said applications despite being contested and argued, were subsequently dismissed by the Trial Court by a detailed order dated 16.07.2022. The said order was impugned before a Coordinate Bench of this Court in CM (M) No. 702/2022 and this Court *vide* judgment dated 21.07.2022 dismissed the petition and upheld the order dated 16.07.2022.

11.2 The Tenant undeterred by the orders dated 16.07.2022 and 21.07.2022 filed 3rd application on 08.08.2022 for appointment of a local commissioner and 4th application on 23.08.2022 for amending to leave to defend and raising fresh pleas. The arguments on the said applications were addressed on 20.08.2022, 23.08.2022 and 19.09.2022. However, the said applications as well have also been dismissed by the Trial Court by a separate order dated 19.09.2022.

11.3 The aforesaid facts with respect to filing of four (4) substantive applications after arguments were heard on Tenant's leave to defend application on 17.11.2021 would show that the Tenant kept the Trial Court

engaged and prevented the Court from passing the order with respect to the leave to defend application; and in fact, the Trial Court was engaged in hearing the successive applications filed by the Petitioner herein. In fact, the Trial Court has taken an adverse note in this regard in its order dated 20.08.2022, which reads as under: -

“ Ld. Counsel for petitioner states that he does not want to file any written reply to the application of the respondent filed w/o 26 Rule 9 CPC for appointment of Local Commissioner and is ready to advance arguments.

The Ld. Counsel for respondent states that he cannot advance argument in the absence of written reply from the side of the petitioner. No justifying round has been offered by the respondent's counsel and both the counsels are directed to advance the arguments.

At this stage, Ld. Counsel for respondent has stated that he is not feeling well and cannot argue the application.

Ld. Counsel for petitioner has contended that the application has been moved on frivolous ground in order to delay the matter.

The record shows that after the hearing of the arguments on leave to defend, the respondent has moved one application after the other. Two of his applications to bring on record subsequent events and certain documents have been dismissed vide order dated 16.07.2022.

The Hon'ble High Court in CM(M) 702/22 filed by the respondent has up held the order. The record clearly shows that respondent is trying to delay the matter and Ld. Counsel for respondent is seeking adjournment without any reasonable ground. Right of the respondent to argue the application is hereby closed. Arguments on the part of the petitioner heard.

Put up for order at 4:00 pm.”

(Emphasis Supplied)

11.4 The fact pertaining to filing of four (4) substantive applications and the passing of the orders dated 16.07.2022 and 19.09.2022, disposing of the said applications sufficiently evidences that the matter was consistently argued and reagitated before the Trial Court between 17.11.2021 and 19.09.2022; and therefore, the Trial Court was aware of the rival pleas of the

parties and consistently reminded by the Petitioner herein. In fact, the Petitioner herein has had three (3) attempts at arguing his leave to defend due to the filing of the said applications.

11.5 This Court therefore, finds no merit in the submission of the Petitioner that presumably an error has crept in due to the passing of the order on 19.09.2022 after ten (10) months. No alleged error has been argued before this Court.

11.6 The said facts also show that the Trial Court was constantly apprised of the Petitioner's defence as raised in the leave to defend and there was no occasion for the Trial Court to not remember the arguments of the Petitioner.

12. In view of the aforesaid discussion, this Court finds that the order of the Trial Court suffers from no infirmity and merits no interference. In this regard, the Supreme Court in *Abid-ul-Islam (Supra)* has held at paragraph 23 that the scope of interference by the High Court in revisional jurisdiction is very restrictive. The relevant para reads as under: -

"23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature."

13. In view of the aforesaid discussion, the revision petition along with

pending application stands dismissed and eviction order dated 19.09.2022 is upheld.

MANMEET PRITAM SINGH ARORA, J

APRIL 10, 2023/rhc/aa/ms

