



2023:DHC:8295



\$~

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**Judgment pronounced on: **20.11.2023**+ **RC.REV. 21/2023 & CM APPL. 3720/2023****SWARANJIT SINGH & ANR.**

..... Petitioners

versus

**SHRIMATI SAROJ KAPOOR**

..... Respondent

**Advocates who appeared in this case:**

For the Petitioners: Mr. Pradeep Dewan Senior Advocate  
with Mr. Rajinder Mathur, Mr. Tarun  
Mathur, Mr. Akshat Singhal, Advocates  
For the Respondents: Mr. Vikas Mehta, Advocate

**CORAM:****HON'BLE MR. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.:**

1. The present Revision Petition has been filed impugning the Order dated 20.10.2022 [hereinafter referred to as the "Impugned Order"] passed by the learned Trial Court, Central District, Tis Hazari Courts, Delhi wherein the Leave to Defend Application filed by the Petitioners was dismissed. By the Impugned Order, the Petitioners/Tenant have been directed to vacate premises at portion of the first floor, rear side of the property comprising of office space, pantry and toilet at 3830/XI, Lal Kothi, Pataudi House Road, Darya Ganj, New Delhi – 110002 [admeasuring about 540 sq. feet] [hereinafter referred to as the "demised Premises"].

2. The facts in brief are, that on 16.04.1984, a rent deed was executed



between the Petitioners/Tenant and the Respondent/Landlady. Initially a monthly rental of Rs. 500/- was paid, which was thereafter increased to Rs.660/- per month exclusive of electricity charges and taxes.

2.1 On 12.02.2020, an Eviction Petition was filed against the Petitioners/Tenant by the Respondent/Landlady under Section 14(1)(e) read with section 25B of the Delhi Rent Control Act, 1958 [hereinafter referred to as “the DRC Act”] for the *bona fide* requirement of the married daughter who resides with her alongwith her children at the demised Premises.

2.2 It is averred in the Eviction Petition that the Respondent/Landlady is a widow and is residing with her daughter, son-in-law and two grandchildren on the second floor and partly built up third floor of the demised Premises. The daughter of the Respondent/Landlady is engaged in a business of ladies fashion, precious and semi-precious costume jewellery, accessories etc. for the last few years, from her residence on second floor of the building where the demised Premises is located. It is further stated that the daughter of the Respondent/Landlady is facing great difficulty in conducting her business from the second floor since there is no retail shop/display counter or showroom for displaying and meeting customers and space is also required for staff as it is highly inconvenient to have customers visiting the residence of the Respondent/Landlady for buying products.

2.3 It is further contended that neither the daughter nor the son-in-law of the Respondent/Landlady have any property either residential or commercial in their name or possession and that there is no other suitable alternative accommodation available with the Respondent/Landlady in her



possession or lying vacant.

2.4 The demised Premises is a portion on the first floor of a Building [hereinafter referred to as the “subject building”]. The subject building comprises of basement, ground floor, first floor, second floor and partially built third floor/barsati. It is stated that the basement comprising of one hall and one small servant room admeasuring 8’x5’ is under occupation of an old tenant namely Mr. Arun Kumar Sharma. The ground floor comprises of two halls and one room and toilet which is under the possession of another tenant namely M/s. Bablani Brothers since 2011. Two halls, two rooms, kitchen and hall on the first floor on the right side are in possession of a tenant, namely M/s. Sahara India since 2005. The other hall on the first floor is under the occupation of another old tenant namely M/s. Jindal & Co. for the last 30 years. The third floor/barsati is used by servant and drivers and the same cannot be used for non-residential purposes. It is submitted that the rents received by the Respondent/Landlady from the tenant’s M/s. Sahara and M/s. Bablani Brother are the only source of income of the Respondent/Landlady.

2.5 The Petitioners/Tenant filed an Application for Leave to Defend in the Eviction Petition stating that the alleged *bona fide* requirement of the married daughter of the Respondent/Landlady with regard to her residential and commercial needs is legally unsustainable. It was further submitted that the Respondent/Landlady has suppressed the fact that various parts of the subject building had fallen vacant in 2019 and the same were re-let by the Respondent/Landlady at an enhanced rent and as such the Eviction Petition is only a ruse to evict the Petitioners/Tenant so that the Respondent/Landlady can let out the demised Premises to



somebody else at a higher rate.

2.6 It is further stated in the Leave to Defend Application that the Income Tax Returns (ITRs) of the Respondent/Landlady's son-in-law and the name and address of the company in which her son-in-law was working in, was not mentioned. The validity of the Respondent/Landlady's ITR were objected on the ground that though the annual receivable rent is shown as Rs.18,46,660/-, the said computations mentioned the names of two tenants M/s. Bablani Brothers and M/s. Sahara India, while there was no reference to the rent received from the other two tenants.

2.7 No documents were filed by the Petitioners/Tenant except a Power of Attorney to file the Application/Affidavit to file the Leave to Defend.

2.8 The Respondent/Landlady in her Reply to the Leave to Defend Application averred that in March, 2020, after the filing of the Eviction Petition, her daughter separated from her husband on account of matrimonial disputes, and she along with two children continued to reside in demised Premises and to run her business.

2.9 The Petitioners/Tenant by way of a Rejoinder reiterated that the Respondent/Landlady has extended the term/period of the Lease Deeds of her other tenants till 2022, hence, the need of the Respondent/Landlady is not genuine. It is further stated that the Respondent/Landlady has concealed business income of her daughter and son-in-law.

3. By the Impugned Order, the learned Trial Court, after considering all the facts and circumstances of the case, dismissed the Leave to Defend Application filed by the Petitioners/Tenant, holding that no triable issue had been raised by the Petitioners/Tenant.



3.1 The Impugned Order held that there was no dispute on the landlord/tenant relationship. The Leave to Defend Application had raised the issue of the availability of an alternate or additional accommodation which has to be seen from the point of view of the Respondent/Landlady and her felt need. The learned Trial Court further held that the premises on the second and third floor were being presently utilised by the Respondent/Landlady and thus the same cannot be termed as suitable accommodation. The need for the demised Premises cannot also be termed as additional accommodation.

3.2 It was further held that a married daughter is part of the “family” under the DRC Act and that there is no universal rule that a married daughter cannot be dependent upon her parents.

3.3 With regard to the contention of non-disclosure of business and income of the son-in-law of the Respondent/Landlady, it was held that such non-disclosure and the non-availability of the ITR of the son-in-law had no bearing on the case at hand.

3.4 On the availability of the other floors in the property which were in the occupation of other tenants, it was held that these tenants are old tenants and the rental income received from them is the only source of livelihood for the Respondent/Landlady.

3.5 The learned Trial Court, therefore, dismissed the Leave to Defend Application of the Petitioners/Tenant on the ground that the Petitioners/Tenant have failed to show that there is any other alternative premises available with the Respondent/Landlady to cater her daughter’s *bona fide* commercial requirement.

4. Aggrieved by the Impugned Order passed by the learned Trial



Court, this Revision Petition has been filed.

4.1 On 01.02.2023, the matter was heard at some length by the Coordinate Bench and directions were passed to the Petitioners/Tenant to clear the arrears of rent @ Rs. 660/- per month. The said payment was made thereafter. However, no user and occupation charges are being paid after the passing of the Impugned Order.

4.2 The matter was thereafter heard by this Court and judgment in the matter was reserved. Both parties have since filed their respective written submissions and judgments relied upon in the matter.

5. Learned Senior Counsel, Mr. Pradeep Dewan appearing for the Petitioners/Tenant has *inter-alia* raised the pleas of *availability of alternate accommodation* and of *no bona fide* need. It has been contended that a part of the subject building on first floor, admeasuring 540 square feet was let out to the Petitioners/Tenant, however, the remaining portion of the premises i.e., the basement, ground floor and first floor are in the occupation of different tenants of the Respondent/Landlady. It was thus contended that the Respondent/Landlady admittedly has other premises, which she has let out to tenants, therefore, leave to contest ought to have been granted by the Trial Court.

5.1 The plea of the Respondent/Landlady is not *bona fide* as she had suitable alternate accommodation within the property which has been let out to tenants after the expiry of their respective leases in the year 2022 itself. Since the Respondent/Landlady has let out these premises, this is a case of additional accommodation and hence Leave to Defend should be granted.

5.2 It was further averred on behalf of the Petitioners/Tenant that the



daughter of the Respondent/Landlady and her husband have no commercial property but there is no mention of their other property or assets. Additionally, that the daughter of the Respondent/Landlady has not filed any documents in support of the business that she is running.

5.3 An additional contention was raised during arguments regarding the fact that the road abutting the demised Premises i.e. Pataudi House Road has been notified as a "*street for Commercial use*" under the Master Plan for Delhi (MPD), 2021 and since the entire street/road is deemed as commercial, the second floor in which the Respondent/Landlady resides along with her daughter can be used for commercial purpose as well.

5.4 This contention was, however, objected to by the Respondent/Landlady as, it has been raised for the first time in the Revision Petition and did not form part of the Leave to Defend Application filed by the Petitioners/Tenant.

6. Learned Counsel, Mr. Vikas Mehta, appearing on behalf of the Respondent/Landlady has contended that the Petition does not fall within the scope of Section 25-B(8) of the DRC Act as held by the Supreme Court in the *Abid-ul-islam vs. Inder Sain Dua*<sup>1</sup>. Reliance has also been placed on the judgment of the Coordinate Bench of this Court in the case of *Vidyavati vs. Gautam Mahajan & Ors.*<sup>2</sup> to state that the powers exercised by this Court under the provisions of Sub-Section (8) of Section 25-B DRC Act have seriously been curtailed. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the record, the Court should not interfere with the order passed

---

<sup>1</sup> (2022) 6 SCC 30

<sup>2</sup> RC Rev. 349/2018



by the Trial Court.

6.1 The Respondent/Landlady is a senior citizen and widow aged 73 years old. The daughter of the Respondent/Landlady who has separated from her husband resides along with her two children with the Respondent/Landlady on the second floor. The daughter owing to financial difficulties, has set up a small ladies fashion boutique in the demised Premises. The Respondent/Landlady's daughter has no other source of income except this boutique and she now requires the demised Premises, as she wishes to move out her small business which she operates from a portion of the residence, into the demised Premises. Hence, there is a *bona fide* need of the demised Premises. The fact that the daughter has been residing in the second floor of the suit property for many years and is evidenced by copies of documents including Aadhar Card/Passport and some utility bills, old rent receipts, ITR of the Respondent/Landlady and her daughter, which form part of the Trial Court record.

6.2 The learned Counsel for the Respondent/Landlady further submits Respondent/Landlady has no other source of income except for the rent that she receives from the tenants on the basement and the ground floor and the remaining portion of the first floor of the demised Premises. The said income is utilised by her for all her expenses and thus, the tenancy of these tenants was renewed by the Respondent/Landlady in 2022. In this regard he places reliance on the judgment of ***Sunil Kumar Goyal Vs. Harbans Singh***<sup>3</sup>, stating that the desire to seek economic gain is legitimate and does not amount to making the need of the landlord *mala fide*.

6.3 Further, the Petitioners/Tenant has taken grounds in the instant

---

<sup>3</sup> 2017 SCC Online Del 9289



Revision Petition which are beyond their Application for leave to defend and the same is not permissible, unless they are subsequent events and even then are required to be considered carefully. In this regard, reliance is placed on the judgment of this Court in ***K.B. Watts Vs. Vipin Kalra***<sup>4</sup> wherein it has been observed:

*“11. it is trite law that the tenant cannot take new pleas beyond those taken in the leave to defend Application as the amendments would have the effect of extending the time to file the leave to defend Application which is not permissible unless they are subsequent events which are also required to be considered cautiously.”*

7. The short question which arises for consideration in the present case is whether the Impugned Order suffers from infirmities and if the Application for Leave to Defend filed by the Petitioners/Tenant raised any triable issues.

8. Section 25B of the DRC Act lays down the "special procedure for the disposal of application for eviction on the ground of bona fide requirement". Sub-section (1) of Section 25B says that every application for recovery of possession on the ground specified in Section 14(1)(e) of the DRC Act shall be dealt with in accordance with the procedure specified in Section 25B. Sub-section (8) says that no appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Rent Controller in accordance with the procedure specified in this section.

8.1 The proviso to Section 25-B(8) of the DRC Act set forth that this Court may exercise jurisdiction to satisfy itself if an order passed under Section 25-B is according to law as follows :

---

<sup>4</sup> 220 (2015) DLT 402



“....(8) 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 this section:

**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, call for the records of the case and pass such order in respect thereto as it thinks fit.”**

[Emphasis supplied]

8.2 The Supreme Court in *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta*<sup>5</sup> has explained the powers of this Court as revisional in nature in the following extract:

“11....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’....”**

[Emphasis supplied]

8.3 The Supreme Court in the *Abid-ul-islam* case while relying on the judgment in the case of *Sarla Ahuja v. United India Insurance Co. Ltd.*<sup>6</sup> has clarified these revisional powers and the scope and ambit of the proviso to Section 25-B(8) of the DRC Act. It has been held that the Legislature was very clear in its intent to consciously remove the right of two stages of appeal and replace it with the power of revision. The scope of interference has been confined to an error apparent showing absence of adjudication *per se*, the High Court should not interfere with a decision of

---

<sup>5</sup> (1999) 6 SCC 222

<sup>6</sup> (1998) 8 SCC 119



the Trial Court. It is further held that the suggestion of the High Court must be confined to the limited sphere that the order of the Rent Controller is in accordance with law and that the Rent Controller would have reached such a finding based on the facts involved. Reliance is placed on the extract below:

*“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.*

....

*25. The aforesaid decision has been recently considered and approved by this Court in Mohd. Inam v. Sanjay Kumar Singhal [Mohd. Inam v. Sanjay Kumar Singhal, (2020) 7 SCC 327 : (2020) 4 SCC (Civ) 107] : (SCC pp. 340-41, paras 22-23)*

*“22. This Court in Sarla Ahuja v. United India Insurance Co. Ltd. [Sarla Ahuja v. United India Insurance Co. Ltd., (1998) 8 SCC 119] had an occasion to consider the scope of proviso to Section 25-B(8) of the Delhi Rent Control Act, 1958. This Court found, that though the word “revision” was not employed in the said proviso, from the language used therein, the legislative intent was clear that the power conferred was revisional power. This Court observed thus : (SCC p. 124, para 11)*

*‘11. The learned Single Judge of the High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.’*



*It could thus be seen, that this Court has held, that the High Court while exercising the revisional powers under the Delhi Rent Control Act, 1958 though could not reassess and reappraise the evidence, as if it was exercising appellate jurisdiction, however, it was empowered to reappraise the evidence for the limited purpose so as to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.....”*

[Emphasis supplied]

9. In addition, this Court is required to examine whether a case under Section 14(1)(e) read with Section 25B of the DRC Act was made out if the Petitioners/Tenant were to be granted Leave to Defend.

9.1 The Supreme Court in the case of *Inderjeet Kaur v. Nirpal Singh*<sup>7</sup>, has specified that the Leave to Defend to a tenant cannot be granted on a mere asking and what has to be seen while granting a Leave to Defend Application is that there is a strong *prima facie* case against the landlord who is seeking eviction.

*13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be a right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord, leave to defend should not be granted when it is not the requirement of Section 25-B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter III-A of the Act. Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under clause (e) of the proviso to sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. ....*

*The ground under clause (e) of the proviso to sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an*

---

<sup>7</sup> (2001) 1 SCC 706



enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance, a wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend, but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defence may fail. It is well to remember that when leave to defend is refused, serious consequences of eviction shall follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the eviction petition by cross-examination. It may also be noticed that even in cases where leave is granted provisions are made in this very Chapter for expeditious disposal of eviction petitions.”

[Emphasis supplied]

10. Admittedly, in the present petition, the landlord-tenant relationship between the Petitioners/Tenant and the Respondent/Landlady is not disputed.

10.1 The Petitioners/Tenant has, however, averred that the *bonafide* requirement of a married daughter is unsustainable in law and as such she cannot be a dependent on the Respondent/Landlady as a member of her ‘family’.

10.2 The Division Bench of this Court in *Gobind Dass vs. Kuldip Singh*<sup>8</sup> has held that an extended meaning is to be given to the word ‘family’, under the provisions of the DRC Act observing that:

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

---

<sup>8</sup> AIR 1971 Delhi 151



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

[Emphasis supplied]

11. This Court finds that the *bona fide* requirement of a married daughter in an Eviction Petition under section 14(1)(e) of the DRC Act, has been considered and a consistent view has been taken that the requirement of a married daughter, would be the requirement of the Respondent/Landlady.

11.1 In a decision of a Coordinate Bench of this Court in ***Sunder Singh Talwar vs. Kamal Chand Dugar***<sup>9</sup>, in which, while dealing with a similar factual situation, it was held that it is not a universal rule that a married daughter can never be dependent upon her parents:

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

*““24. We are of the opinion that the expression “for his own use” as occurring in Section 13(3)(a)(iii) of the Act cannot be narrowly construed. The expressions must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfill the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove we have found the pari materia provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependents and kith and kin in the requirement of landlord as “his” or “his own” requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular*

---

<sup>9</sup> 2018 SCC Online Del 8376



region, to which the landlord belongs, it may be obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the Court shall with circumspection inquire : (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close inter-relation or identify nexus between such person and the landlord so as to satisfy the requirement of the first query..... ” .....

32. Hence, it is not a universal rule that married daughter cannot be dependent upon her father. Even otherwise in my opinion, in the present day and age it would be futile to argue that once the daughter is married she ceases to be responsibility of her father. A daughter has equal rights in the estate of the parents in case of intestate death. There can be no reason as to why the father would not like to settle his daughter in business or profession in the same way as he would like to settle his son. The plea to the contrary in the present facts is completely misplaced. It may also be noted that in the present case there is a clear and categorical averment that the daughter does not own any other property in Delhi and is dependent on the father to be settled.”

[Emphasis supplied]

11.2 This Court is in agreement with this interpretation. In keeping with the times, a married daughter is certainly a member of the family of the Respondent/Landlady and her requirement could be considered as the requirement of the Respondent/Landlady.

11.3 In the present case, the married daughter has been living with the Respondent/Landlady and pursuing her business from the residential premises and documents in support thereof are on record. There is a categorical averment by the Respondent/Landlady that her daughter does not own any other suitable accommodation. The objection of the married daughter not being dependent has been discussed in detail and found to be



without merit. It is contended that the daughter of Respondent/Landlady is supporting herself and her children through her business which requires the additional space. This finding in the Impugned Order needs no interference and the requirement of the married daughter of the Respondent/Landlady is a *bona fide* one.

12. The other contention that has been taken by the Petitioners/Tenant is that there are portions on the ground and first floor of the building which had fallen vacant in 2019 and were re-let by the Respondent/Landlady at enhanced rent. It is contended that the need of the Respondent/Landlady is not *bona fide* and the Respondent/Landlady is creating a paucity of accommodation with a view to evict the Petitioners/Tenant. Reliance in this regard is placed on the judgment of the Supreme Court in the case of ***Amarjit Singh v. Smt. Khatoon Quamarain***<sup>10</sup> to submit that a landlord is disentitled to evict a tenant, if the landlord lets out another property for a higher income, after the need arose for the tenanted property.

12.1 The Petitioners/Tenant has further contended that only the rentals with respect to two tenants i.e. M/s. Bablani Brothers and M/s. Sahara India form part of the ITRs of the Respondent/Landlady while the rental income from other two tenants, M/s. Jindal & Co and Mr. Arun Kumar Sharma, is not available.

13. The law is well settled that a tenant cannot dictate to the Respondent/Landlady as to which premises is more suitable to satisfy the *bona fide* requirement under the DRC Act. Reference in this regard may be made to the decision of the Supreme Court in ***Sait Nagjee***

---

<sup>10</sup> 1986 (4) SCC 736



***Purushotham & Co. Ltd. vs. Vimalabai Prabhulal & Ors<sup>11</sup>*** and in ***Anil Bajaj & Anr. vs. Vinod Ahuja<sup>12</sup>***, wherein the Supreme Court has reiterated this principle in the following words:

*"6. ....What the tenant contends is that the Landlady has several other shop houses from which he is carrying on different businesses and further that the Landlady 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 Landlady as to how the property belonging to the Landlady should be utilized by him for the purpose of his business. ...."*

[Emphasis supplied]

13.1 It is the case of the Respondent/Landlady that except for the subject building, there is no other property available either with Respondent/Landlady, and her daughter to cater to her daughter's *bona fide* commercial needs. The Petitioner/Tenant has not been able to controvert this contention either before the Trial Court or this court. This case thus does not fulfil the criteria for "Additional Accommodation" either.

14. The Respondent/Landlady has four tenants. The rental income from M/s. Sahara India and M/s. Bablani Brothers forms the income of the Respondent/Landlady. The other tenants Mr. Arun Sharma and M/s Jindal & Co. occupy part basement and one hall on the back of the first floor respectively, of the subject building. The Respondent/Landlady has contended that the demised Premises is better suited for the requirement of her daughter comprising of an office/hall, pantry and a kitchen.

14.1 The landlord is the best judge of his requirements, and has complete

---

<sup>11</sup> (2005) 8 SCC 252

<sup>12</sup> (2014) 15 SCC 610



authority to prioritize the needs of his family and those who are dependent on him over any hardship that might be caused to the tenant on eviction. What needs to be seen is if the requirement is honest and not a mere desire of the landlord. A review of the site plan as filed with the Petition shows that the premises in the basement is smaller and the hall on the first floor is not suited for requirement as it does not contain a kitchen or washroom. Thus, this finding in the Impugned Order remains unimpeached as well.

15. Lastly, it has been contended that the need of the Respondent/Landlady is *malafide* and that the Eviction Petition has been filed only seeking economic gain by the Respondent/Landlady. This contention has also been dealt with in the Impugned Order. The Petitioners/Tenant has relied on the judgment in ***Amarjit Singh*** case to submit that if the landlady or landlord had the option of alternate accommodation after their need surfaced, and they compromised their entitlement to the property by leasing it for higher income/rental, they would forfeit the right to evict their tenant on the basis of their need.

15.1 The Respondent/Landlady has sought the demised Premises for the purpose of retail shop/display counter or showroom for her daughter's jewellery business. The Respondent/Landlady's daughter is running a business, the Income Tax Returns of the daughter of the Respondent/Landlady evidence that she is running a business from the demised Premises of the sale of jewellery. No documents has been filed by the Petitioners/Tenant to controvert the same.

15.2 The judgment of ***Amarjit Singh*** case as relied upon by the Petitioner/Tenant is distinguishable on facts. The landlady in that case was a lady of means and from a family of high status and was educated abroad.



Her father was a leading lawyer, who was pioneer in women education in India. She founded Women's College in Aligarh University. The husband of the landlady was the Manager of Reserve Bank of India. The landlady was connected with various organisations such as YWCA, All-India Women's Conference, Indian Council for Child Welfare and some such other organisations. It was also noted in that case that the landlady had the opportunity of occupying a floor in the house which fell vacant not once but twice subsequent to arising of her need for reasonable accommodation, but chose not to use this alternate accommodation as she required the rental from this property. It was in these facts that the Supreme Court held that as the landlady has sufficient income, despite which she chose not to use the alternate accommodation. Thus, she was disentitled the right to evict the tenant.

15.3 *Per contra*, the facts in the present case is that admittedly, the only source of income for the Respondent/Landlady is from the other tenanted premises. Further, that there is a *bonafide* need of the daughter of the Respondent/Landlady to use this premises for the subsistence of her family. The fact in the present case are thus entirely different.

16. There is another aspect as well on which this Court basis its opinion. Although the DRC Act was originally enacted as a beneficial legislation in the year 1958, there has been a paradigm shift for the last several years in the interpretation of law to protect the landlords from tenants who continue to occupy properties paying little or nothing for their use and occupation. A coordinate bench of this Court in the case of **Rajbir Pal v. Kanwar Partap Singh**<sup>13</sup> while deciding whether Section 14(1)(e) of the

---

<sup>13</sup> 2023 SCC OnLine Del 2320



DRC Act is applicable to both residential and commercial properties, has held that reasons which weighed with the Court earlier have changed in the past 44 years and there has been a enormous change in the housing scenario in Delhi and substantial increase in the availability of buildings and premises, as well:

*“22. What can be discerned from the above is that the DRC Act was promulgated as a beneficial legislation to protect the interests of poor tenants who were merciless in front of mighty and avaricious landlords. The Courts consistently delivered decisions involving interpretations of the law that favoured tenants. However, in due course of time, the winds of change ushered in an era when the jurisprudence started tilting in favour of the landlords who were rendered helpless due to tenants who would not only pay peanuts for rent, but would also refuse to vacate the tenanted premises. It was under such circumstances that Section 25B was enacted and the initial intent of the DRC Act came to be balanced out. To state that the interpretation of any provision of the DRC Act should be done with the purpose of protecting the tenant would be fallacious given the course that the jurisprudence governing this sphere of law has taken...”*

[Emphasis supplied]

16.1 A similar view was taken by another Coordinate Bench of this Court in the ***Sunil Kumar Goyal*** case which has discussed and interpreted the ***Amarjit Singh*** case and held that the DRC Act is a statute that is of a different era and that there is a shift in the interpretation of this Act from what was there in 1980’s. It was further held that the dicta in the ***Shiv Sarup Gupta*** case of the year 1999 will prevail over the ***Amarjit Singh*** case of the year 1987 and economic considerations will also now have to be taken into account. The following extract is relevant:

*“25. I would be failing in my duty if do not mention Amarjit Singh v. Smt. Khatoon Quamarain (1986) 4 SCC 736 holding that if the landlady could have reasonable accommodation after her need arose and she by her own conduct disentitled herself to that property by letting it out for higher rent, she would be disentitled to evict her tenant on ground of her need.*



26. However it cannot be lost sight of that the Rent Acts are statutes enacted in a different era and govern human relationships and have to necessarily evolve with the times. **There indeed has been a perceptible shift in the interpretation of the various provisions of the Rent Acts in the last about 20/30 years, so much so that in Satyawati Sharma v. Union of India (2008) 5 SCC 287, Section 14(1)(e) of the Act which as per its express language permitted order of eviction to be passed thereunder only with respect to the premises let out for residential purposes, has been held to be violative of doctrine of equality embedded in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non residential purpose when the same are required bona fide by the landlord for occupation for himself or for any of his family members dependent upon him and the words 'let for residential purposes' have been struck down therefrom. Reference in this regard can also be made to Raghunandan Saran Ashok Saran (HUF) v. Union of India, (2002) 95 DLT 508 striking down Section 6 of the Rent Act. Civil Appeal no. 6183/2002 titled Vishwant Kumar v. Union of India was dismissed as abated on 22<sup>nd</sup> April, 2009. In the same vein, I am of the opinion that the dicta in Shiv Sarup Gupta supra of the year 1999 will prevail over the dicta of the year 1987 in Amarjit Singh supra. Following the dicta in Shiv Sarup Gupta supra while construing the suitability of the alternative premises for the landlord, economic considerations will also have to be taken into consideration.**

27. I find that this Court in Om Prakash Bajaj v. Chander Shekhar, (2003) 67 DRJ 674 to have held that suitability of the alternative premises cannot be determined by mere counting the rooms but has to be determined keeping in view the totality of the facts, the nature of need pleaded by the landlord, his and his family's standard and style of life and the purpose to which the landlord wants to actually put it after coming it into possession thereof. **The respondent/landlord who it is not disputed has no other source of income cannot be compelled to deprive himself of the rent being earned from the other shop of Rs. 10,000/- Rs. 12,000/- per month and to starve himself and his family members. It is well known fact of life that establishing** a business and earning handsomely from it has a gestation time and it cannot be expected that the respondent/landlord after evicting the tenant paying Rs. 10,000/- Rs. 12,000/- per month and establishing his business from the other shop would immediately start earning an equivalent amount.

[Emphasis supplied]

16.2 The Supreme Court in *Shiv Sarup Gupta* case held that for a



Petition for eviction under Section 14(e) of the DRC Act to succeed, the concept of *bonafide* need is required to be looked at practically in view of realities of life, neither a too liberal nor a too conservative approach must be taken. If the alternate accommodation available does not satisfy the need of the landlord or the convenience or safety of the landlord and their family members, the same cannot be held to be reasonable suitable accommodation. It was further held that the Court must consider the profession/vocation of the landlord and its family members, their style of living, habits, and their background.

16.3 It was also observed in the *Sunil Kumar Goyal* case and its desire to seek economic gain cannot make the need of the Respondent/Landlady *mala fide*:

*“19. Mention may also be made of Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta (1999) 6 SCC 222 laying down that the term bona fide refers to a state of mind and a requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of his family. It was held that the Court should place itself in the armchair of the landlord and then ask the question to itself whether in the given facts substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest and that if the answer is in the positive, the need is bona fide. It was further held that 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 need. The concept of bona fide need was held to require a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against. It was yet further held that wherever another accommodation is shown to exist as available, then the Court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need; if the landlord convinces the Court that the alternative*



*accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist, then the petition for eviction under Section 14(1)(e) has to succeed. Convenience and safety of the landlord and his family members were held to be relevant factors. It was held that the Court must keep in mind the profession or vocation of the landlord and his family members, their style of living, their habits and background wherefrom they come.*

[Emphasis supplied]

17. In the instant case, the Respondent/Landlady is an old widowed lady living with her daughter and grandchildren. Her ITRs reflect that her main source of income is from the rentals as received from the various other tenants. From an overall examination of this case, the need of the Respondent/Landlady cannot be said to be *mala fide*. Relying on the judgment of the Supreme Court in the **Shiv Sarup Gupta** case and of this Court in **Sunil Kumar Goyal** case and **Rajbir Pal** case, this Court is of the view that no triable issue has been raised by the Petitioner/tenant which merits interference with the Impugned Order.

17.1 The contentions raised by the Petitioners/tenant for the first time before this Court have not been considered in view of the dicta in the **K.B. Watts** case. The street where the demised Premises is situated was notified sometime in the year 2006, as a “commercial street”. Thus, in any event, this contention raised by the Petition/Tenant is not a subsequent event, as the Eviction Petition was filed in the year 2020.

18. Section 19 of the DRC Act affords adequate protection to the tenant against unscrupulous landlords who get the demised Premises vacated on the false premise that the property is required for their *bona fide* need or for the need of other persons who are dependent on the Landlady. The



Petitioners/Tenant always has the option to invoke Section 19 of the DRC Act to get back the possession of the demised Premises, in case the Respondent/Landlady does not use the demised Premises for the purpose as set forth in the Eviction Petition.

19. Since the demised Premises has continued to be occupied pursuant to the passing of the Impugned Order, in terms of the judgment in the case of *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*<sup>14</sup> which has been upheld in *Martin & Harris (P) Ltd. v. Rajendra Mehta*<sup>15</sup>, once the Eviction Order is passed, a Tenant is liable to pay damages/*mesne* profits which have admittedly not been paid.

19.1 The rental for the other portion on the first floor which is in the occupation of tenant M/s. Sahara India admeasures 1530 sq. ft. The lease deeds which are on record show a rental of approx. Rs. 75,000/- per month for this portion. The rental for the premises on the ground floor on the other hand was Rs. 1,10,000/- per month in 2022. The demised Premises is on the first floor and is approximately one-third in size of the premises occupied by M/s. Sahara India in the same building. Accordingly for the demised Premises a *pro rata* damages/user charges in the sum of Rs.25,000/- per month is fixed which shall be paid by the Petitioners/Tenant.

19.2 In these circumstances, from 20.04.2023 onwards till the date the premises are vacated, *mesne* profits/damages at the rate of Rs. 25,000/- per month shall be paid by the Petitioners/Tenant to the Respondent/Landlady. This payment shall be made within six weeks.

---

<sup>14</sup> (2005) 1 SCC 705

<sup>15</sup> (2022) 8 SCC 527



2023:DHC:8295



Payments already made by the Petitioners/Tenant during this period, if any, may be deducted prior to making such payment.

20. In view of the discussions above, this Court, therefore, finds no infirmity with the Impugned Order. The Revision Petition and all pending Applications are accordingly dismissed.

21. There shall be no orders as to costs.

**TARA VITASTA GANJU, J**

**NOVEMBER 20, 2023/SA/yg**

*Click here to check corrigendum, if any*