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

+ **RC.REV. 57/2018 & CM APPL. 5788/2018**

BABU RAM

..... Petitioner

Through: Mr. Prem Chand Ganganiya,  
Advocate with Petitioner in person

versus

BUDH SINGH

..... Respondent

Through: Mr. K. N. Bhargava and Mr. Ibansara  
Syiemlieh, Advocates

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Date of Decision: 26<sup>th</sup> May, 2023

**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**J U D G M E N T**

**MANMEET PRITAM SINGH ARORA, J (ORAL):**

1. This petition has been filed by the Petitioner, tenant, assailing the eviction order dated 11.07.2017, passed by the Additional Rent Controller, North East District, Karkardooma Courts, Delhi ('Trial Court'), in RC ARC No. 7231/15, wherein post-trial, the eviction petition filed by the Respondent under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act') was allowed with respect to a shop in property bearing no. C-108, Prem Vihar, Shiv Vihar, Gali No.8, Karwal Nagar, Delhi – 110094 ('tenanted premises').

2. The eviction petition was instituted on 10.10.2014 by the Respondent, landlord, who is a retired government servant, for the *bona fide* need of



himself and his handicapped son, who suffers from 70% disability, to start independent business of photocopy and stationary

3. The Petitioner's application seeking leave to defend was allowed by the Trial Court *vide* order dated 03.07.2015, on the ground of availability of alternate accommodation with the Respondent in the form of an adjoining shop. The matter was set down for trial and evidence was led by both the parties. The Trial Court after evaluating the evidence concluded that the Respondent, landlord, does not have any suitable alternate accommodation available to him and the adjoining structure, in fact, as per the admission of the Petitioner, tenant, in his cross examination of PW-2 is lying in a state of disuse and is without a roof.

4. The learned counsel for the Petitioner during the course of oral arguments in present petition has reagitated the issue of availability of the adjoining shop with the Respondent and in this regard he has placed reliance on the cross examination of PW-2 i.e., Mr. Ashok Kumar, son of the landlord. He relies upon the cross examination to contend that PW-2 has admitted that two shops exist in the property bearing no. C-108, Prem Vihar, Shiv Vihar, Gali No.8, Karwal Nagar, Delhi – 110094 ('subject property') as on the said date. He states that in view of the said admission made by PW-2, the Respondent has available with him the adjoining shop, which is suitable and since it is not being used by the landlord, he does not have a *bona fide* need for the tenanted premises.

5. In reply, learned counsel for the Respondent states that the plea of availability alternate accommodation is incorrect. He has relied upon the evidence led by the Petitioner, tenant herein, who stepped in the witness box as RW1.



5.1. He relies upon the cross examination of RW1, wherein RW1 has admitted that the adjoining shop, which is alleged to be the alternate accommodation, is closed from all four sides with walls and does not even have a roof. He states that the said structure is in a dilapidated condition and cannot be used as a shop.

5.2. He reiterates that the Respondent herein is now 76 years old and he requires the shop *bona fide* for himself and his handicapped son, who suffers from 70% disability. He states that the Respondent's son was 39 years old in 2015, when the eviction petition was filed and is now 47 years old and therefore, even more in need of the tenanted premises as on today.

6. This Court has considered the submissions of the parties, and has perused the impugned eviction order dated 11.07.2017.

7. With respect to the existence of landlord and tenant relationship, the Trial Court has returned the following finding:-

*"12. In the case in hand, respondent apart from the pleadings admitted in his evidence that shop in question was purchased by petitioner from erstwhile owner. As such, he did not dispute the factum of petitioner being owner of shop in question. Further, he did not dispute the fact that he is not paying rent to petitioner. So, the factum of petitioner being owner and landlord of respondent, as such, was not disputed by respondent. Coupled with the same, this Court had found existence of said relationship vide its order dated 03.07.2015 while allowing the application for leave to defend which has now become final. Based on said reasoning, I find that petitioner is able to prove that he is the owner of shop in question and is landlord of respondent."*

(Emphasis Supplied)

7.1. From a perusal of the aforesaid finding, it is evident that the issue with respect to the existence of the landlord and tenant relationship was also held in favour of the Respondent by the Trial Court *vide* its order dated 03.07.2015.



7.2. The learned counsel for the Petitioner has fairly not contested the said finding and therefore, the said issue has attained finality.

8. With respect to the issue of the *bona fide* need of the Respondent, the Trial Court has returned the following finding:-

*13. This brings me to the bonafide requirement of petitioner. Being retired person from DDA, petitioner requires shop in question so that, he can run his business of photocopy and stationary in the said shop. He wants to run the said business with his son who inturn is unemployed, as on date. Respondent disputed the said bonafide need by claiming that son of petitioner is working as a teacher. Since, respondent had disputed the said bonafide need so onus rested on him for proving his version. In his evidence, he did not place on record the details of work profile of son of respondent. Apart from that, while cross-examining petitioner witnesses, respondent did not put any suggestion that son of petitioner is working as a teacher in some particular/ specific school/college. Infact, he did not put any suggestion regarding absence of bonafide need while cross-examining petitioner as PW1. Petitioner on his apart stuck to the version that he requires shop in question for aforesaid need. He deposed about the said bonafide need in response to the Court questions and also in response to the questions put by Counsel for respondent. So, as such, there is nothing on record which could have created in the bonafide of petitioner in requiring shop in question. The fact that petitioner did not know about the contents of his affidavit Ex.PW1/A did not create any difference as he was a person having educational qualification till third standard only and from such scarcely educated person, one cannot expect that he must be knowing about the significance of his affidavit. His cross-examination revealed that he was in his senses when he had come for deposition. His cross-examination also revealed that he was clear regarding the reason of filing this petition which was, his need for shop in question. So, as such, testimony of petitioner on one hand was not challenged by respondent, so far as his bonafide need is concerned and on the other hand, he stuck to his version. Accordingly, based on his testimony, I believe that petitioner requires shop in question for running business. So far as his Son Ashok Kumar is concerned, he also deposed in the similar lines as deposed by his father. He refuted the suggestions that he is working elsewhere as teacher and that this petition was filed by petitioner with false motive. As such, no malafide can be imputed from the testimony of PW2- Ashok Kumar. I believed his testimony to be truthful.*

(Emphasis Supplied)

8.1. The Trial Court after assessing the oral testimony of the landlord (PW-1) and the tenant (RW-1) has returned a finding that the personal *bona*



*fide* need of the landlord stands established and the Respondent has not led any evidence which would cast doubt on the said need.

8.2. Further, with respect to the *bona fide* need of the Respondent's son, Mr. Ashok Kumar, the Trial Court returned the following finding at para 14 and 15 of the impugned eviction order, which reads as under:

"14. Coming to the testimony of respondent, I find that in his testimony, he did not give the details of the employment where as per son of petitioner is employed. Surprisingly, in his cross-examination, he deposed that son of petitioner is doing the work of computer. That fact was an improved version on his part as in his pleadings and cross-examination of plaintiff witnesses it was never his case that son of petitioner is doing the work of computer. His case on the contrary was that son of petitioner is teaching in school. To that extent, I found that he not only improved his version rather did not give any proof regarding employment of son of petitioner.

15. The net result of aforesaid appreciation is that respondent failed to prove the factum of employment of son of petitioner. I believed the version of petitioner. Therefore, the picture which has come up is that son of petitioner is unemployed alongwith the petitioner. As such, bonafide requirement exists in favour of petitioner with respect to shop in question. "

(Emphasis Supplied)

8.3. From a perusal of the aforesaid findings, it can be seen that initially during trial, the Petitioner, tenant, had sought to alleged that the Respondent's son is employed with a school; however, during evidence the said plea could not be established and thus, the Trial Court after evaluating the evidence on record, returned the finding at paragraph Nos. 14 and 15 of the impugned eviction order that the requirement of the tenanted premises for the handicapped son of the Respondent was genuine.

8.4. Even during the course of oral arguments before this Court no challenge was laid by learned counsel for the Petitioner to the Trial Court's findings qua *bona fide* need of Respondent, landlord and his son and therefore, this finding as well has attained finality.



9. As noted hereinabove learned counsel for the Petitioner has addressed oral arguments only on the ground of availability of alternate accommodation with the Respondent. It is contended by the Petitioner that the Respondent has available with him the adjoining premises for running a shop. He has also placed on record a site plan to delineate the area available with the Respondent.

9.1. The Trial Court's finding with respect to the said issue reads as under:

*"16. In addition to aforesaid aspect, respondent had claimed availability of alternative suitable accommodation with petitioner to run his business. Contrary to the said stand taken in the pleadings and in his examination-in-chief, he admitted in his cross-examination that he had no details of alternative suitable accommodation available with petitioner. As such, his said claim remained bald claim and I did not believe it. With regard to shop adjacent to the shop in question, I found from the photographs Ex.RW1/5 (Colly) and from testimony of RW1 that said adjacent shop is closed from all four sides. As such, said shop is not a suitable accommodation for running the business and therefore the existence of said shop did not create any difference to the case of petitioner."*

(Emphasis Supplied)

9.2. The aforesaid finding of the Trial Court is based on a correct appraisal of the record. This Court has perused the cross examination of RW1. The relevant extract of the RW1's cross examination reads as under:

*"It is wrong to suggest that there are no shops, adjacent to the shop in question. It is correct that the shop adjacent to shop in question has been closed down by petitioner by removing the shutter and putting a wall in place of it. Vol. As on date, the shop adjacent to the shop in question is completely closed from all four sides through wall and the roof the said shop is also removed by petitioner. It is wrong to suggest that petitioner has neither removed the shutter nor has removed the roof of the shop adjacent to the shop in question.*

(Emphasis Supplied)

9.3. A perusal of the said cross examination of RW-1 duly discloses that the adjoining premises is closed from all four sides with walls and is not in a condition where it could be considered to be suitable or available for



carrying on business.

9.4. Therefore, in view of the Petitioner, tenant's, own testimony the contention that the adjoining premises is a suitable alternate accommodation is not borne out. The Trial Court therefore, currently concluded that the Respondent has no alternate accommodation available with him for starting business.

9.5. No other details of any other premises have been pleaded by the tenant to allege availability of any other alternate suitable premises for the landlord. Therefore, this Court is of the opinion that the finding of the Trial Court at paragraph 16 of the impugned eviction order does not suffer from any infirmity and does not merit any interference.

10. The Supreme Court in *Abid-Ul-Islam vs. Inder Sain Dua, (2022) 6 SCC 30*, while dealing with the issue of alternate accommodation has specifically observed that the contention of the tenant as regards alternate accommodation can at best be only an incidental one and unless the said allegation is substantiated with material, it cannot be a cause for denying relief to the landlord, who has filed the petition for recovery of the possession of the premises, on a *bona fide* need. The relevant portion of the judgment reads as under:

*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(S).*

*30. We have already discussed the scope of Section 14(1)(e) vis-à-vis Section 25-B (8) of the Act. Therefore, the mere existence of the other properties which are, in fact, denied by the appellant would not enure to the*



benefit of the respondent in the absence of any pleadings and supporting material before the learned Rent Controller to the effect that they are reasonably suitable for accommodation.”

(Emphasis Supplied)

10.1. In the same judgment, the Supreme Court has also emphasized that the object of Section 14(1)(e) and Section 25 (B) of the DRC Act, was to provide a speedy recovery of the possession of the premises to the landlord.

The relevant portion of the impugned order reads 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.

19. Before a presumption is drawn, the landlord is duty-bound to place prima facie material supported by the adequate averments. It is only thereafter, the presumption gets attracted and the onus shifts on the tenant. The object of Section 14(1)(e) vis-a-vis Section 25-B has to be seen in the light of yet another provision contained under Section 19. Section 19 gives a right to the dispossessed tenant for repossession if there is a non-compliance on the part of the landlord albeit after eviction, to put the premises to use for the intended purpose. Such a right is available only to a tenant who stood dispossessed on the application filed by the landlord invoking Section 14(1)(e) being allowed. Thus, Section 19 inter alia throws more light on the legislative objective facilitating a speedy possession. The object is also reflected in the proviso to Section 25-B(8), denying a right of appeal.”

20. Dealing with a pari materia provision, this Court in Baldev Singh Bajwa v. Monish Saini, was pleased to clarify the aforesaid position holding the procedure as summary. In such a case, the tenant is expected to put in adequate and reasonable materials in support of the facts pleaded in the form of a declaration sufficient to raise a triable issue. One cannot lose sight of the object behind Section 25-B in facilitating not only the expeditious but effective remedy for a class of landlords, sans the normal procedural route...”

(Emphasis Supplied)



10.2. Pertinently, in the present case, the eviction petition has been filed in the year 2014 and the Respondent herein has been awaiting recovery of the premises for more than nine (9) years.

10.3. Further, the Supreme Court at para 23 of *Abid-ul-Islam* (Supra), after taking note of the authoritative judgments has reemphasized that the scope of the revisional jurisdiction under Section 25-B (8) of the DRC Act is limited and has to be exercised with due caution. The relevant paragraph 23 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.*

(Emphasis Supplied)

11. In the aforesaid facts and circumstances and keeping in view the dicta of the Supreme Court, this Court is of the view that the pleas raised by the Petitioner herein do not merit any interference with the impugned eviction order and the findings of the Trial court do not suffer from any infirmity.

12. The Trial court has rightly held that the Respondent has been able to prove his case regarding existence of *bona fide* requirement and has satisfied the ingredients of Section 14 (1) (e) of the DRC Act.

***Use and occupation charges***



13. In the facts and circumstances of the present case, the eviction order was passed on 11.07.2017, however a stay has been in operation since 13.02.2018. The Respondent has averred that the prevalent market rent of the tenanted premises in this commercial area is at least ₹ 5,000/- per month. He has also stated in his affidavit dated 25.05.2023 that there are occupants/tenants in the said area, who are paying a rent of ₹ 6,000/- per month.

13.1. In reply, learned counsel for the Petitioner states that the premises were let out to the Petitioner, tenant, in the year 1998 at ₹ 500/- per month and thereafter, the standard rent was fixed by the Rent Controller at ₹ 880 in the year, 2007. He states that the market rental in this area for the tenanted premises is ₹ 2,000/- per month.

13.2. This Court has considered the submissions of the parties. Taking into account the fact that in the year 2007, the rent was fixed at Rs. 880/- per month, and even after accounting for escalation and looking at the prevalent cost of living, this Court is of the opinion that the use and occupation charges in this area would be at least ₹ 4,000/- per month.

13.3. Accordingly, the Petitioner is directed to pay the use and occupation charges at ₹ 4,000/- per month w.e.f. 01.02.2018 till 31.05.2023 (64 months), after accounting of the statutory period of six (6) months. The arrears stand at ₹ 2,56,000/-. The arrears of rent shall be paid by the Petitioner tenant, in three (3) equal instalments on 30.06.2023, 31.07.2023 and 31.08.2023.

13.4. It is made clear that in the event, the Petitioner, tenant, fails to pay the said arrears of use and occupation charges, the Respondent will be at liberty to recover the said amount in execution proceedings. It is further directed



that the Petitioner, tenant will continue to remain liable to pay use and occupation charges at ₹ 4,000/- per month until he hands over vacant and peaceful possession of the tenanted premises to the Respondent herein.

13.5. At this stage, learned counsel for the Petitioner states that rent at the rate of ₹ 880/- has been paid till 31.03.2020. Accordingly, subject to the Petitioner submitting a proof of the said payment, he will be entitled to seek adjustment of the said sum of ₹ 880/- against the payment of use and occupation charges of ₹ 4000/- per month.

14. With the aforesaid directions, the present petition is dismissed. Pending applications, if any, are also disposed of. No order as to costs.

15. The Respondent is directed to have his affidavit dated 25.05.2023 placed on record.

**MANMEET PRITAM SINGH ARORA, J**

**May 26, 2023**

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