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

Judgment reserved on: 08.07.2022

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Judgment pronounced on: 06.01.2023

+ **RC.REV. 138/2022 and CM APPL. NO. 27549/2022 (STAY)**

ANITA JAIN

..... Petitioner

Through: Mr. Siddharth Tyagi, Advocate.

versus

PARVEEN KUMAR JAIN

..... Respondent

Through: Mr. Awijit Paliwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

SACHIN DATTA, J.

1. The present revision petition, under Section 25(B)(8) of the Delhi Rent Control Act, 1958 (*hereinafter, referred to as the 'DRC Act'*), assails the judgment dated 25.01.2022, passed by the learned Additional Rent Controller, Shahdara District, Karkardooma Courts, Delhi (*hereinafter referred to as the 'ARC'*) in Eviction Petition No. RC ARC No. 302/2018 titled as *Parveen Kumar Jain Vs. Anita Jain*, whereby the learned ARC dismissed the leave to defend application filed by the petitioner and allowed the Eviction Petition filed by the respondent under Section 14(1)(e) read with Section 25B of the DRC Act.

2. The Eviction Petition which culminated in the impugned judgment was filed seeking eviction of the petitioner/tenant in respect of the tenanted premises being, one shop at ground floor in House No. 1754-E, Gali No. 5,

near Sabzi Mandi, Kailash Nagar, Delhi – 110031 (*hereinafter, referred to as the 'tenanted premises'*). It was averred in the Eviction Petition that the building in question where the tenanted premises are situated, is a residential-cum-commercial property with two shops on the ground floor (commercial in nature) and first floor, second floor, third floor and fourth floor (residential in nature). A site plan depicting the same was filed along with the Eviction Petition. It was asserted that the first floor to the fourth floor of the building are residential premises, where the family members of the respondent reside, except one room on the first floor, which is on rent. It was further averred that the entire commercial area in the building comprise of two shops on the ground floor, one of which was under the tenancy of the petitioner herein (the tenanted premises) and the other is in the tenancy of some other tenant (*hereinafter, referred to as the 'the adjacent shop'*). It was pleaded in the eviction petition that the respondent/ landlord has a *bonafide* requirement in respect of the tenanted premises, since the son of the respondent wants to start his business of wholesale stationery from the said shop. It was further stated that the dimensions/area of the tenanted premises is 8'4" x 23'3", and that the same was larger in size than the adjacent shop, which made it conducive for the requirement of the respondent. It was further stated that the adjacent shop on the ground floor was smaller in dimension as compared to the tenanted premises, and also had a staircase going through it, which made it unsuitable for the respondent. It is also averred in the Eviction Petition as under:-

"4. That the wife of the petitioner has a small stationary shop at property bearing no. IX/218/5, Gali. No. 9, Kailash Nagar, Delhi which she operates on her own. The petitioner himself is operating from the small, tenanted shop at property bearing no. IX12202, Gali No.9 Kailash Nagar, Delhi along with her daughter Priya Jain and also does some gifts and toys business. The landlord of the shop from where the petitioner operates his business has instructed the petitioner to vacate the said shop."

3. In the leave to defend application, filed by the petitioner herein, under Section 25(B)(4) of the DRC Act, it was averred that the petitioner took the tenanted premises on rent from the erstwhile owner, namely, Deepak Jain, in the year 1989. It was asserted that there was an understanding between the petitioner and the said Deepak Jain that the petitioner would not be evicted from the tenanted premises. It was also asserted that the adjacent shop on the ground floor was bigger in size as compared to the tenanted premises. It was also asserted that the son of the respondent, for whose requirement the Eviction Petition had been filed, was in fact running a shop in property bearing No. IX/2202, Gali No. 9, Kailash Nagar, Delhi (*hereinafter referred to as 'shop no. 2202'*). It was also asserted that the wife of the respondent is having other shop in property bearing No. IX/2185, Gali No. 9, Kailash Nagar, Delhi (*hereinafter referred to as 'shop no. 2185'*). It was further asserted that the respondent has sufficient alternate accommodation at his disposal.
4. A perusal of the impugned judgment reveals that it minutely examines the respective assertions of the parties on the touchstone of the statutory requirements, and based on the material on record.
5. The impugned judgement renders a categorical finding as regards existence of the landlord tenant relationship in the following terms:

“12. The respondent has admitted that she is paying rent @ Rs. 700/- per month excluding electricity and other charges to the petitioner but has stated that the wife of the petitioner Poonam Jain has executed the registered sale deed dated 09.11.1995 qua property no. 1754 E Gali no. 5 Near Sabzi Mandi, Kailash Nagar, Delhi-110031 in favour of the petitioner but has not disclosed about the shop in question therein so the petitioner is not entitled to file this petition. The petitioner on the other hand relies on the registered sale deed dated 09.11.1995 to contend that he is the owner of the property in question and has relied on rent receipts to show landlord-tenant relationship between the parties. In this behalf, the judgment of Hon'ble Delhi High Court in PlastiChemicals Company v. Ashit Chadha and Anr 114 (2004) DLT 408, 2004 (76) DRJ 654 says that if a landlord is able to show by producing a

document of his ownership on record, landlord is deemed to have discharged his burden of ownership vis-a-vis the Rent Control Act and such a document can at best be challenged by the heirs of the owner and not by the tenant. The fact that in the case herein the petitioner is claiming his ownership and thus landlordship of the tenanted premises in question by virtue of the registered sale deed dated 09.11.1995 executed by his wife in his favour, the tenants i.e. respondents herein cannot assail now that petitioner is not the landlord. Also, it has not been stated by the respondent that if the petitioner is not the owner/landlord then who is the owner/landlord of the tenanted premises in question. The respondent is estopped under S. 116 of the Indian Evidence Act from assailing the title of the landlord.

13. In Ramesh Chand vs. Uganti Devi reported as 157 (2009) DLT 450 the Hon'ble High Court of Delhi held:

" The imperfectness of the title of the premises cannot stand in the way an eviction petition under section 14 (1) (e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent acts dishonesty "

14. Furthermore, since the rent had been paid by the respondent to the predecessor-in-interest of the petitioner i.e. previous owner Sh. Deepak Jain who had inducted the respondent as a tenant in the shop in question in the year 1989, as well as the petitioner, she is now estopped from denying the title of the petitioner under Section 116 of the Evidence Act. The Hon'ble Supreme Court in the case of Bansraj Laltaprasad Mishra v. Stanley Parker Jones (2006) 3 SCC 91 held that:

"..... 13. The underlying policy of section 116 is that where a person has been brought into possession as a tenant by the landlord and if that tenant is permitted to question the title of the landlord at the time of the settlement, then that will give rise to extreme confusion in the matter of relationship of the landlord and tenant and so the equitable principle of estoppel has been incorporated by the legislature in the said section.

14. The principle of estoppel arising from the contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his contract of tenancy admitting the right of the landlord situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord. It is on account of such a contract of tenancy and

as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted.

15. Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time "

15. In another case title as Atyam Veerraju v. Pechetti Venkanna (1996) 1 SCR 831, the Hon'ble Supreme Court quoted with approval the judgment of the Privy Counsel in Bilas Kunwar v. Desraj Ranjit Singh, wherein it was observed as follows:

"A tenant who has been let into possession cannot deny his landlords title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord."

16. The principle attracted herein is once a tenant always a tenant. The tenant cannot dispute the title of his landlord or his successor-in-interest. Since the predecessor-in-interest of the petitioner had inducted the predecessor-in-interest of the respondent as a tenant, the respondent is estopped from challenging the title of the petitioner, in view of the provisions of section 116 of the Evidence Act. Further, if the transfer of the landlord's title is valid, and even if the tenancy is not attorned in favour of the transferee, the lease continues. Thus, a transferee of the landlord's rights, steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. Attornment by the tenant is unnecessary to confer validity to the transfer of the landlord's rights and there is no such statutory requirement. Reference may be made to the case of Hajee K. Assainar vs. Chacku Joseph AIR 1984 Ker 113. In the case of Mahendra Rathunathdas Gupta vs. Vishyanath Bhikaji Mogul AIR 1997 SC 2437, it was held that attornment by tenant is not necessary though it is desirable.

17. Thus, the petitioner is the owner of the tenanted premises and that there is a relationship of landlord and tenant between the petitioner and the respondent herein in respect of the tenanted premises for the purpose of section 14 (1) (e) of Delhi Rent Control Act."

6. As regards the *bonafide* requirement asserted in the Eviction Petition, the impugned judgment holds as under:-

"22. The case of the petitioner is that the family of the petitioner consists of the petitioner, his wife, two sons, i.e Puneet Jain & Krishna Jain. It is submitted that Sh. Puneet Jain is married and is currently unemployed while Krishna Jain is studying. The petitioner has three daughters, i.e Preeti Jain, Garima Gupta and Priya Jain. It is submitted that the Smt. Garima Gupta is married and staying with her in-laws whereas Smt. Preeti Jain is married but

is presently involved in marital dispute with her husband and so she is also staying with the petitioner and his family. It is submitted that Priya Jain is currently unmarried and is working along with the petitioner. That the shop under the tenancy of the respondent is required bonafide by the petitioner since one of the sons namely Sh. Puneet Jain who is married and has a family to look after is unemployed. That the petitioner thus requires the shop under the tenancy to settle his son so that he can start his own business of whole sale stationary. The petitioner is himself carrying out a small business from tenanted accommodation and is being pressurized by his landlord to vacate the tenanted shop and as such there is no other place to carry out the business. That the shop is thus bonafide required by the petitioner for the aforesaid purpose to settle his unemployed son.

23. *It is no more res integra that a son can be dependant on his parents for accommodation, residential or commercial or both. It is also settled principle of law that the landlord is entitled to seek eviction of tenanted premises not only for himself/herself, but for other dependant family members. There is no dispute that the parents are under moral obligation to help establish their son in business and can seek eviction of the tenanted premises for them. Reference in this regard can be made to the case of Joginder Pal v. Naval Kishore Behal, (2002) 5 SCC 397, where the Supreme Court held that:*

"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..... Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be the 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."

24. *In Kharati Ram Khanna & Sons. vs. Krishna Luthra, 2010 (172) DLT 551, it was observed that the requirement of the landlord to settle down her two sons separately and independently was found to be genuine and bonafide. In Labhu Lal vs. Sandhya Gupta, 2010 (173) DLT 318, it was observed that the landlord's son and daughter in law are dependent for accommodation on respondent the requirement of the landlord's son and daughter in law for expanding clinic being run in premises in question is genuine. In Sh. Ravinder Singh v Sh. Deepesh Khorana (RC. Rev. No.3/2011, Date of decision: 10th December, 2012), it was observed that the son of the*

*respondent is unemployed and is dependent on respondent for his livelihood. It is nothing but bona fide for the respondent to require the suit shop to set up a computer business for his son and to help him find a source of income and subsequently settle down in life. In **Brij Mohan vs. Shri Pal Jain, 49 (1993) DLT 543**, it was observed that it is settled law that grown up children require separate rooms to live in a manner he or she likes. In **Ram Babu Aggarwal v. Jay Kishan Das, 2009 (2) RCR 455**, the court recognized the right of the landlord for possession of his property for setting up a business for his son.*

25. *In view of the aforesaid discussions and case laws, the requirement of the petitioner as mentioned herein above is found to be genuine and bonafide and son of the petitioner is held to be dependant on the petitioner for the premises in question to run his business."*

7. The impugned judgment also deals with the contention of the petitioner regarding availability of alternate accommodation. With regard to the mentioning of the name of the son of the respondent/landlord on a board displayed outside the shop being run by the respondent/family of the respondent/wife of the respondent, it has been held as under:-

"30. It is stated by the respondent that the petitioner has 3 shops and also has shops in property no. 2202, Gali no. 9, Kailash Nagar, Gandhi Nagar, Delhi in the name of Garima Selection. It is stated that there are 10 tenants in the said property owned by the petitioner but he has kept his son Puneet in tenanted premises with ulterior motive in order to evict the respondent but this plea is of no assistance to the respondent as she has not shown by placing any material on record in this regard and mere bald averments in this regard are not sufficient. In this regard it is stated by the petitioner that the petitioner himself is operating from the small tenanted shop at property bearing no.IX/2202, Gali No.9, Kailash Nagar, Delhi along with her daughter Priya Jain and also does some gifts and toys business. The landlord of the shop from where the petitioner operates his business has instructed the petitioner to vacate the said shop. Also, in the reply to the application for leave to defend it has been stated by the petitioner that the said tenanted shop in property bearing no.IX/2202, Gali No.9, Kailash Nagar, Delhi has been vacated by the petitioner. The photograph of Puneet Jain as per the respondent is of the stationary shop, which as per the petitioner is run by his wife, but the board carrying Puneet Jain's name is of Garima Selection ie the business of the petitioner which he was doing with his daughter and both the businesses were run from different premises, therefore, clearly, the submissions qua employment of Puneet Jain is vague and contradictory. There is nothing on record to show that apart from the 2 shops in 1754-E, Gali no. 5, Near Sabzi Mandi, Kailash Nagar, Delhi-110031 the petitioner owns any other property which is suitable for Puneet Jain, son of the petitioner, to run his business.

31. It is stated by the respondent that the shop adjacent to the shop in question in the same property was let out to Rakesh Jain in 2015 and the petitioner could have used the adjacent shop for his business or for business of his son Puneet Jain. This plea is without any merits as there is nothing on record to show that in 2015 the petitioner required a shop/accommodation. Even otherwise, the petitioner has already explained as mentioned hereinabove that the said shop under tenancy of Rakesh Jain is not suitable for starting the business for his son although he may require it later on.

34. The respondent has raised the plea that the petitioner has alternative suitable premises and thus this petition is not maintainable is without any merits as neither the respondent has brought forth any material to show an alternative suitable accommodation nor details of such alternative suitable accommodation is given. Clearly, this is a sham defence. It is well settled that the tenant is required to give all necessary facts and particulars supported by documentary evidence if available to prove his plea in the affidavit itself so that the controller will be in a position to adjudicate and decide the question of genuine or bonafide requirement of the landlord; a mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine. (See: Sarwan Dass Bange V. Ram Prakash 2010 IV AD (Delhi) 252). ”

8. In the above background, learned counsel for the petitioner broadly raises four contentions. *Firstly*, it is contended that the site plan filed by the respondent with the Eviction Petition is incorrect as is evident from a bare perusal of the dimensions depicted therein and therefore, according to the petitioner, the same negates the assertion of the respondent/landlord that the dimensions of the tenanted premises were larger than the adjacent shop on the ground floor of the suit property. *Secondly*, it is contended that the son of the respondent, for whose *bonafide* requirement the Eviction Petition was filed, was already running a business out of shop no. 2202. It was strongly emphasized that the name and mobile number of the respondent's son was mentioned on the board outside the said shop. *Thirdly*, it is contended that the erstwhile owner of the tenanted premises had an agreement/understanding that the tenant/petitioner herein would not be

evicted from the tenanted premises and that the respondent/landlord has deliberately concealed the transfer/sale document executed by the erstwhile owner in favour of the wife of the respondent/landlord and only a subsequent sale deed, executed by the wife of the respondent/landlord in favour of the respondent, has been filed. *Fourthly*, it is contended that in another Eviction Petition filed qua the adjacent shop on the ground floor, it has been averred by the tenant therein that the respondent/landlord had agreed to sell the said shop to the tenant of the said adjacent shop, which again negated the assertion of the landlord in these proceedings that the premises were required for the *bonafide* requirement of the respondent herein.

9. Having considered the respective submissions of learned counsel for the parties, no merit is found in the aforesaid contentions raised on behalf of the petitioner herein.

10. As far as the correctness of the site plan relied upon by the respondent is concerned, the impugned judgment rightly relies upon the judgement of this Court in ***Rishal Singh vs. Bohat Ram*** (2014) 144 DRJ 633 and holds as under:-

*“18. It is stated by the respondent that the site plan is wrong as according to the site plan the petitioner has shown property built upto 5th floor however the petitioner has raised illegal construction upto 6th floor. But the respondent has not placed on record any document in support of this contention and in the present case the respondent/tenant has not filed any site plan of her own. Mere bald averments in this regard is of no assistance to the respondent. Thus, the said submission is without any merits. Furthermore, it has been held in ***Rishal Singh Vs. Bohat Ram*** (2014) 144 DRJ 633 that when the tenant controverts the accuracy of the site plan filed by the landlord, he is required to file a copy of the site plan he believes to be correct so as to guide the Court in finding the discrepancies of the site plan filed by the landlord; without such site plan filed, mere contentions raised to this effect will be considered meritless. Hon'ble High Court of Delhi in ***Satish Kumar Vs. Subhash Chand Agarwal*** 2012 SCC OnLine Del 4447 (SLP(C) No.27431/2012 preferred where against was dismissed vide order dated 15th October, 2012) held that if a tenant does not file his site plan showing*

*that the plan filed by the owner is incorrect, then, the site plan filed by the owner would be assumed to be correct. Reference can also be made to **R.K. Bhatnagar Vs. Sushila Bhargava ILR(1987) II Delhi 607 and Ghanshyam Vs. Vijender 2014 SCC OnLine Del 3983 (SLP(C) No.3654/2015 preferred where plea was dismissed vide order dated 27th February, 2015), to the same effect. Thus, the respondent tenant, without filing a site plan of his own, cannot dispute the site plan of the landlord. (See: **Anil Bhasin vs Imarti Devi decided on 6 November, 2017 by Hon'ble High Court of Delhi in Crl Rev 266/2017.)*****

11. Furthermore, it is also clearly noticed in the impugned judgment that the plea of the petitioner herein that the adjacent shop is larger as compared to the tenanted premises is a bald averment, without any material whatsoever being filed by the petitioner to corroborate the said assertion. In this regard, reference is made to paragraph 19 of the impugned judgment, which reads as under:-

“19. The respondent has stated that the shop in which the respondent is a tenant is smaller to the other shop under the tenancy of Sh. Rakesh Jain but has not placed any material on record to show the same. Mere bald averments in this regard is of no assistance to the respondent. Thus, the said submission is without any merits.”

12. Even otherwise, it is not for the petitioner/tenant to insist that the respondent/landlord must seek to occupy/ carry out business from the adjacent shop in preference over the tenanted premises. The law is well settled that it is not for the tenant to dictate terms to the landlord as to how he can adjust himself without getting possession of the tenanted premises. In this regard, reference may be made to the judgement of the Supreme Court in the case titled as **Sarla Ahuja v. United Insurance Company Ltd., (1998) 8 SCC 119**, wherein it has been held as under:-

“14. The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it is open to the Rent Controller to draw a presumption that the requirement of

the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

(emphasis supplied)

13. The Supreme Court has reiterated the above principle in numerous other cases, including recently in **Balwant Singh alias Bant Singh and Anr. V. Sudarshan Kumar and Anr.**, 2021 SCC Online SC 114, wherein it has been held as under:-

“11. On the above aspect, it is not for the tenant to dictate how much space is adequate for the proposed business venture or to suggest that the available space with the landlord will be adequate. Insofar as the earlier eviction proceeding, the concerned vacant shops under possession of the landlords were duly disclosed, but the case of the landlord is that the premises/space under their possession is insufficient for the proposed furniture business. On the age aspect, it is seen that the respondents are also senior citizens but that has not affected their desire to continue their business in the tenanted premises. Therefore, age cannot be factored against the landlords in their proposed business.”

(emphasis supplied)

14. In **Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal**, (2005) 8 SCC 252, the Supreme Court has held as under:

“4. It is true that the landlords have their business spreading over Chennai and Hyderabad and if they wanted to expand their business at Calicut it cannot be said to be unnatural thereby denying the eviction of the tenant from the premises in question. It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business. However, the trial court held in favour of the appellant tenant. But the appellate court as well as the High Court after scrutinising the evidence on record, reversed the finding of the trial court and held that the need of establishing the business at Calicut by the landlords cannot be said to be lacking in bona fides.”

(emphasis supplied)

15. This court in *Sudesh Kumari Soni v. Prabha Khanna*, 2008 SCC OnLine Del 1128, inter alia, held as under:-

“25. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.

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

16. Thus, once the *bona fide* requirement of the respondent/landlord is established, it is not open to the petitioner/tenant to insist that the adjacent rented shop on the ground floor is more suitable for the requirement of the landlord/respondent.

17. As regards the contention regarding availability of shop no. 2202 for the purpose of the business of the son of the respondent/ landlord, the impugned judgment in paragraph 30 thereof clearly notices that the said shop was a tenanted shop. It was further noted that the landlord of the said shop was seeking vacation of the same. In the reply to the leave to defend application, it has been stated by the respondent/landlord that the said shop has been vacated by the respondent. In the present proceedings, the respondent/landlord has filed an affidavit dated 29.06.2022, stating that the shop no. 2202 was under his occupation in the year 2017-2018, but it was vacated and since the year 2018, the said shop is neither under his occupation nor available with the respondent/landlord for any purpose whatsoever. The respondent has also filed a copy of a sale deed in respect of the said shop along with a snapshot of the Delhi Online Registration

Information System (DORIS) portal of the Delhi Government, to seek to demonstrate that he has no rights in respect of the said shop.

18. It has also been noted in the impugned judgment, as also brought out in the pleadings filed before the learned ARC, that shop no. 2185, was being operated by the wife of the respondent/landlord.

19. The impugned judgment rightly concludes that mere inclusion of the name/mobile number of the son of the respondent/landlord outside any shop being run by the respondent/any other family member of the respondent, would not negate the *bonafide* requirement made out by the respondent/landlord. A categorical finding has been rendered in the impugned judgement, that there is nothing on record to show that apart from the two shops in property bearing no. 1754-E/building in question, the respondent was the owner of any other property which is suitable for his son to run his business. The said finding is clearly borne out from the material on record.

20. As such, there is no cogent basis or any material on record which lends credence to the petitioner's assertion regarding availability of sufficient alternate accommodation with the respondent, except for bald averments.

21. In ***Baldev Singh Bajwa Vs. Monish Saini***, (2005) 12 SCC 778, it was held as under:-

“19.....In our view there are inbuilt protections in the relevant provisions for the tenants that whenever the landlord would approach the court he would approach when his need is genuine and bona fide. It is, of course, subject to the tenant's right to rebut it but with strong and cogent evidence. In our view, in the proceeding taken up under Section 13-B by the NRI landlords for the ejectment of the tenant, the court shall presume that the landlord's need pleaded in the petition is genuine and bona fide. But this would not disentitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars”

supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine."

(emphasis supplied)

22. The contention of the petitioner based on the alleged understanding with the erstwhile owner of the tenanted premises, is again bereft of any document/material in support thereof. The impugned judgment also notes the same and goes on to hold as under:-

"21. The averment of the respondent that respondent cannot be evicted as previous landlord Sh Deepak Jain had inducted the respondent in the shop in question in 1989 and it was agreed that he and the subsequent owner shall not evict the respondent is without any merits as there is nothing on paper in this regard and also it is believed that there existed such an agreement then previous owner Sh Deepak Jain could not have bound the subsequent owner of the property with such a restriction when petitioner/subsequent owner did not authorize him."

23. Likewise, the allegations/counter allegations in the Eviction Petition qua the adjacent shop on the ground floor of the building in question, have no bearing on the present matter. The assertions/allegations made by the tenant of the adjacent shop cannot create any right/s in favour of the petitioner in the present proceedings which have been rightly adjudicated by the learned ARC based on the pleadings and material available on record.

24. This Court is mindful of the legal position that the powers of the High Court under the revisional jurisdiction are very restrictive, and should only interfere if there is an error apparent on the face of the record as stated by the Supreme Court in *Abid-Ul-Islam v. Inder Sain Dua*, (2022) 6 SCC 30. In the said case, the Supreme Court has held as under:

“Scope of revision

22. We are, in fact, more concerned with the scope and ambit of the proviso to Section 25-B(8). The proviso creates a distinct and unequivocal embargo by not providing an appeal against the order passed by the learned Rent Controller over an application filed under sub-section (5). The intendment of the legislature is very clear, which is to remove the appellate remedy and thereafter, a further second appeal. It is a clear omission that is done by the legislature consciously through a covenant removing the right of two stages of appeal

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. In the facts of the present case, no infirmity whatsoever is found in the impugned judgement.

26. In view of the aforesaid, there is no merit in the present petition and the same, along with pending application, is accordingly dismissed, however, with no orders as to costs.

SACHIN DATTA, J.

JANUARY 06, 2023

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