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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **RC.REV. 257/2022**
BHASKAR REFRACTORIES AND STONEWARE PIPES
PVT. LTD. Petitioners

Through: Mr. Neeraj Sharma and Mr.
 AdhishRajvanshi, Advocate.

versus

ISHWAR INDUSTRIES LTD Respondent

Through: Ms. Ekta Mehta and Ms.
 Akanksha Agarwal, Advocates.

Reserved on: 21.02.2023

Date of Decision: 02.06.2023

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. This petition has been filed assailing the eviction order dated 01.12.2021, passed by the Rent Controller, South East District, Saket Courts, New Delhi ('Trial Court') in RC ARC No. 50 of 2019, as well as the order dated 28.07.2022 passed by the Trial Court, dismissing the review application filed against the said eviction order dated 01.12.2021.
2. The Trial Court while allowing the eviction petition *vide* order dated 01.12.2021, dismissed the application of the Petitioner seeking condonation of delay in filing the leave to defend application as the same had been filed after delay of thirteen (13) days.
3. The eviction petition was instituted by the Respondent herein under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act'), seeking



eviction of the Petitioner herein from tenanted premises i.e., ground floor, Block No. 6 in Khasra No. 264, Tribhuvan Complex, Ishwar Nagar, New Delhi – 65 ('tenanted premises'), ad-measuring 5000 sq. ft. approximately.

4. The notice of the eviction petition was issued to the Petitioner herein *vide* order dated 02.08.2019, under Section 25B(2) of the DRC Act, calling upon him to obtain the leave to contest within a period of fifteen (15) days of service. It is a matter of record that the notice was served on the Petitioner on 20.08.2019. The Petitioner was thus, obliged to file the application seeking leave to defend within fifteen (15) days i.e., on or before 04.09.2019. However, the same was admittedly filed by the Petitioner herein on 17.09.2019 i.e., after a delay of about thirteen (13) days.

5. The Petitioner, tenant, filed an application seeking condonation of delay in filing the application seeking leave to defend, explaining that the non-filing was on account of the mistake of the clerk of the counsel. The Trial Court relying upon the decision of the Supreme Court in ***Prithipal Singh v. Satpal Singh (dead) through LRs., (2010) 2 SCC 15*** and ***Om Prakash v. Ashwani Kumar Bassi, (2010) 9 SCC 183***, held that the Rent Controller does not have the power to condone even a single day's delay and accordingly, dismissed the application seeking condonation of delay in filling leave to defend application *vide* order dated 01.12.2021. The Trial Court thereafter proceeded to examine the averments made in the eviction petition and after satisfying itself that all the ingredient of Section 14(1)(e) of the DRC Act, are satisfied, it allowed the eviction petition filed on behalf of the Respondent, *vide* order dated 01.12.2021.



6. The Petitioner herein had originally approached this Court by way of revision petition bearing RC. REV. No. 178/2021, challenging the eviction order dated 01.12.2021, however, the same was withdrawn by the Petitioner on 03.06.2022 with liberty to approach the Trial Court seeking a review of order dated 01.12.2021. As noted hereinbefore, the review application filed by the Petitioner herein stands dismissed *vide* impugned judgment and order dated 28.07.2022.

7. The Trial Court after perusing the averments made in the review application held that the grounds on which the review was sought were not even raised in the application seeking leave to defend and had been raised for the first time in the review petition. The Trial Court observed that the grounds raised were beyond the purview of Order 47 Rule 1 of CPC. The Trial Court opined that it has no inherent power to condone the delay and affirmed the view taken on 01.12.2021 while dismissing the review petition.

8. Brief facts as stated by the Respondent in its eviction petition are as under:

8.1. It is stated that the property wherein the tenanted premises are situated was sold to the Respondent by Pandit Amarnath Bhaskar, *vide* an oral sale in the month of November, 1943. It is stated upon death of Pandit Amarnath Bhaskar, his surviving legal heirs i.e., his wife and four sons relinquished their rights, title and claim in the property *vide* a Registered Deed of Release dated 03.07.1962 ('Release deed').

8.2. It is stated that the *Jamabandi* and Revenue records reflect the name of the Respondent as the owner of the property.



8.3. It is also evident from the documents on record that the Respondent entered into a Development Agreement dated 08.01.1985 and 04.02.1986 with a Developer namely M/s Growth Techno Project Ltd., which undertook development of the land and agreed to allot 50% of the super built up area to the Respondent by way of 'owner's allocation'. The Developer duly completed the construction of the building known as 'Tribhuvan Complex' ('building') and handed over the possession to the Respondent towards the 'owner's allocation'. The tenanted premises are located in this building on the ground floor.

8.4. The first floor of the building is being used for residential purposes and is occupied by the Director of the Respondent, Sh. Bharat Bhaskar and his family members.

8.5. It is stated in the eviction petition that the ground floor portion of the building, ad-measures approximately 9092 sq. ft. out of which 5000 sq. ft. area is the tenanted premises, 2860 sq. ft. area has been sold by the Respondent to Mr. Sanjay Bhaskar and Mrs. Adita Bhaskar *vide* separate sale deed(s) dated 13.05.2003 and a small portion is in possession of M/s TNB Investments Pvt. Ltd., a sister concern of the Respondent.

8.6. It is stated that the Petitioner and Respondent being family run companies, no specific written agreement of tenancy was executed between them. It is stated that *vide* a Board Resolution dated 31.03.1977 and 02.05.1980, the rent for the tenanted premises was fixed at Rs. 1,500/- per month. It is stated that the monthly rent of the suit premises was subsequently enhanced to Rs. 1750/- per month and the rent was being paid directly to Late Mr. Vinay Bhaskar, the then Director of Respondent



Company. It is stated that however, after the demise of Mr. Vinay Bhaskar on 20.10.2006, the Petitioner failed to pay the rent for the tenanted premises.

8.7. The eviction petition was filed on 01.08.2019 for the *bona fide* need of Respondent herein for office space for itself, for the business of its Director, Mr. Ashish Bhaskar, and for the business of Mr. Abhinav Bhaskar i.e., the son of another Director, Sh. Bharat Bhaskar. It is stated in the eviction petition that the Respondent herein has no other alternate suitable accommodation available with him and has affirmed that the tenanted premises is ideally located in a well-known commercial area and are more suitable for the requirement of the Respondent and its Directors.

8.8. It is stated that the Petitioner (tenant) stopped carrying out any business in these tenanted premises since about 7-8 years prior to filing of the eviction petition. It is stated that premises have been occupied by a Director of the Petitioner (tenant) i.e., Sh. Vidur Bhaskar for a short while; however, after the service of a termination notice dated 01.04.2019, said Sh. Vidur Bhaskar also discontinued his use and the tenanted premises are currently lying locked and unused.

Arguments of the Petitioner

9. Mr. Neeraj Sharma, the learned counsel for the Petitioner made the following submissions:

9.1. He stated that the Respondent has been denied consideration of the merits of the application seeking leave to defend by the Trial Court on account of the delay in filing the said application. He states that in view of the judgment of *Tharia Ram v. Chitra Devi, 1983 SCC OnLine Del 94*, the



Petitioner herein cannot be made to suffer on account of the default committed by the counsel's clerk. He states that the Director of the Petitioner had acted diligently and attested and affirmed on oath the contents of the affidavit accompanying the application seeking leave to defend before the oath commission on 29.08.2019. He states that however, due to the mistake of the clerk of the counsel, the said application and the affidavit was filed belatedly on 17.09.2019.

9.2. He states that applying the dual test laid down by the Division Bench of this Court in ***Director Directorate of Education & Anr. v. Mohd. Shamim & Ors., (2019) SCC OnLine Del 11490***, this Court may take note of the fact that the Petitioner herein is not at fault and therefore, this Court may exercise its power to condone the delay of thirteen (13) days in filing the application seeking leave to defend and remand the matter back to Trial Court for considering the application seeking leave to defend.

9.3. He states that the Petitioner herein relies upon its leave to defend application dated 29.08.2019 and is not relying upon the amended leave to defend application dated 16.09.2020 ('amended leave to defend'); in view of the settled law that no amendment can be made to the leave to defend application after fifteen (15) days to raise facts which were already known to the tenant.

9.4. He states that the Petitioner herein has raised triable issues in the leave to defend application dated 29.08.2019. He states that an eviction petition alleging *bona fide* need of the Director of the Respondent or the son of the Director of the Respondent, which is a juristic entity, is not maintainable in law. He states that the *bona fide* need can only be of the



Respondent (i.e., the corporate entity) itself and not its Director's or their family members.

9.5. He states that the Respondent is a corporate entity and the legal issue with respect to the maintainability of an eviction petition under Section 14(1)(e) of the DRC Act by a juristic person is subject matter of a reference *vide* order dated 22.12.2017 in RC. REV. 18/2016 titled as '**K.S. Bhandari v. M/s International Security Printers Pvt. Ltd**'.

9.6. In the leave to defend application, the Petitioner had alleged that the title of the tenanted premises vests in the Petitioner and has denied the ownership of the Respondent. No documents were filed in support of the said plea of ownership.

However, during the course of arguments, learned counsel for the Petitioner fairly conceded that the Respondent herein is the recorded owner of the tenanted premises.

9.7. He stated that there is a dispute with respect to the existence of the relationship of landlord and tenant between the parties. He stated that the Petitioner herein admits making payment of Rs. 1,750 per month; however, he states that the said amount was paid towards 'maintenance charges' and not towards rent.

9.8. He stated that the eviction petition itself refers to existence of a family settlement agreement between the parties hereto and therefore, no eviction petition can be maintained. He fairly admitted that this contention has not been raised in the leave to defend application.

9.9. He stated that the eviction petition has been instituted by the Respondent through its Director, Sh. Bharat Bhaskar, however there was an



injunction issued by the erstwhile Company Law Board restraining the said person from acting on behalf the Respondent. He, however, submitted that the injunction order has since been vacated on 29.09.2021 and the said legal proceedings have come to an end. He also fairly admitted that this issue has not been raised in the leave to defend application dated 29.08.2019. He also admitted that the Respondent has relied upon a board resolution dated 09.11.2022 authorising Sh. Bharat Bhaskar to file pleadings in this revision petition.

9.10. He states that as per the minutes of meeting dated 05.10.2011 filed on record by the Respondent with the eviction petition, the tenanted premises or part thereof has been agreed to be transferred in favour of Madhu Bhaskar Group in pursuance to a family understanding. He states that thus, the Respondent is left with no right or title in the tenanted premises and therefore, cannot maintain the eviction petition. He however, fairly admits that this issue as well has not been raised in the leave to defend application.

9.11. No objection as regards availability of alternate accommodation was raised during the arguments.

Arguments of the Respondent

10. Ms. Ekta Mehta, learned counsel for the Respondent, has made the following submissions:

10.1. She states that the explanation offered by the Petitioner for not filing the leave to defend application within the statutory period of fifteen (15) days is a mere pretext and the Trial Court has rightly applied and followed the law laid down by the Supreme Court in ***Prithipal Singh*** (Supra). She



states that the dual test laid down in *Director Directorate of Education* (Supra) is not fulfilled in the facts of this case.

10.2. She states that no triable issues have been raised by the Petitioner herein in its leave to defend application. She states that there is a presumption *qua* the *bona fide* need under Section 14(1)(e) of the DRC Act in favour of the landlord. She states that the Respondent has sufficiently set out its *bona fide* need at paragraph 18(a) (1 to 6) of the eviction petition. She states that on the other hand, the Petitioner herein is not even using the tenanted premises, ad-measuring 5,000 sq. ft. and is keeping them locked and unused.

10.3. She states that the pendency of the reference before the Division Bench in *K.S. Bhandari* (Supra), cannot be a consideration for not proceeding with these eviction proceedings. She states that during the pendency of the reference, the Courts should continue to decide the cases and apply the law as it then prevails. She relies upon the judgment a Coordinate Bench of this Court in *WhatsApp LLC. v. Competition Commission of India & Anr., 2021 SCC OnLine Del 2308* in support of this proposition.

10.4. She states that the three (3) essential ingredients for maintaining an application under Section 14(1)(e) of the DRC Act have been fulfilled by the Respondent herein. She states that the title of the Respondent to the tenanted premises stands admitted and is also a matter of record. She states that the *bona fide* need has been sufficiently set out in the eviction petition. She states that it is not denied by the Petitioner that the Respondent has no alternate suitable accommodation.



10.5. She states that the contention of the Petitioner that there is reference to a family settlement between the Petitioner and the Respondent in the eviction petition at paragraph 18(a)(5) is *ex-facie* incorrect. She states that the family settlement/compromise referred to therein is with respect to Mrs. Madhu Bhaskar. She relies upon the contents of the settlement dated 05.10.2011 filed with the eviction petition. She states that therefore, the said plea of the Petitioner alleging that there is a family settlement between the parties is incorrect and does not give rise to any triable issue.

10.6. She states that the conduct of the Petitioner merits award of costs in favour of the Respondent herein. She states that the first revision petition challenging the eviction order dated 01.12.2021, was withdrawn on 03.06.2022, after exhausting its full time of statutory protection of six (6) months. She states that the Respondent herein filed an execution petition after the dismissal of the review application. She states that, warrants of possession were issued by the executing Court *vide* order dated 24.09.2022; however, the warrants could not be executed by the bailiff due to the resistance offered by the Petitioner which amounts to obstruction. She states that pursuant to the aforesaid, the execution petition was listed on 03.11.2022, however, two days before the returnable date in the execution proceedings, the present revision petition was filed and listed on 01.11.2022.

10.7. She states that the Petitioner herein is enjoying the tenanted premises without making any payment of use and occupation charges, even though an eviction order was passed against the Petitioner on 01.12.2021.



10.8. She states that the pleas raised in the amended leave to defend dated 16.09.2020 and new pleas raised before this Court cannot be considered as it would be against the mandate of the law laid down by the Supreme Court in *Prithipal Singh* (Supra).

Analysis and Finding

11. This Court has considered the submissions of the learned counsel for the parties and perused the paper book.

12. In the first instance, this Court would like to examine the judgment of the Supreme Court in *Prithipal Singh* (Supra) considering the argument of the learned counsel for the Petitioner that in *Prithipal Singh* (Supra), no leave to defend application had been filed by the tenant before the Rent Controller and therefore, the said judgment turned on the said peculiar fact.

12.1. Firstly, the Supreme Court in the judgment of *Prithipal Singh* (Supra), authoritatively laid down that the Rent Controller has no power under Section 25B of the DRC Act to entertain an application for setting aside the order of eviction and/or entertain an application for condoning the delay in filing a leave to defend application.

12.2. Secondly, in the facts of the said case, the Rent Controller *vide* order dated 28.02.2001 had dismissed the tenant's application seeking leave to defend on the ground that it was filed 08 days beyond the date mentioned in the summons. The Rent Controller held that it had no power to condone the delay in filing such an affidavit and as a follow up action, passed an eviction order in favour of the landlord. The tenant, thereafter filed an application under Order 9 Rule 13 read with Order 37 Rule 4 and Section 151 of CPC for setting aside the eviction order dated 28.02.2001. The said



application was allowed by the Rent Controller *vide* order dated 07.12.2001. The said order of the Rent Controller was upheld by this Court *vide* judgment dated 30.10.2006. The Supreme Court in its judgment of ***Prithipal Singh*** (Supra) set aside the High Court's order dated 30.10.2006 and Rent Controller order dated 07.12.2001; and restored the Rent Controller's eviction order dated 28.02.2001. The Supreme Court categorically held that no application for condonation of delay can be entertained by the Rent Controller. The relevant extract of the said judgment reads as under:

“30. For the reasons aforesaid, we are therefore of the view that the High Court has acted illegally and with material irregularity in the exercise of its jurisdiction in affirming the order of the Additional Rent Controller whereby the Additional Rent Controller had allowed the application for setting aside the order of eviction and restored the application for leave to contest the eviction proceedings when such power, in our view, was not conferred on the Rent Controller to entertain such an application filed by the respondent tenant.

31. There is another aspect of this matter. It is difficult to understand how an application for leave to contest having been rejected, may be on the ground of delay, could be allowed when it is not disputed by the respondent tenant that no application for condonation of delay could be entertained by the Rent Controller as the provisions of the Limitation Act, 1963 could not be attracted. That apart, we have also carefully examined the special reason given by the respondent tenant in the original application for leave to contest and the present application after order of eviction was passed. On a reading of these two applications, we find that the same defence was taken by the tenant after the order of eviction was passed and therefore, we do not think that such reason can be considered to be a special reason within the meaning of Order 37 Rule 4 of the Code for allowing the tenant to defend the proceedings if Order 37 Rule 4 of the Code applies to a special Act.

32. For all the reasons aforesaid, the order of eviction passed by the Additional Rent Controller on 28-2-2001 stands restored, the impugned order of the High Court as well as the order of the Additional Rent Controller, Delhi, are set aside and the application filed by the landlord under Section 14(1)(e) of the Rent Act stands allowed.”



12.3. A perusal of the judgment therefore shows that a leave to defend application was filed by the tenant therein however, the Supreme Court held that the delay of 08 days in filing the said leave to defend by the tenant cannot be condoned by the Trial Court and it therefore also set aside the order of the High Court, which had the effect of condoning the delay.

12.4. The law settled by this judgment has been consistently applied by this Court and therefore, no error has been committed by the Trial Court in not condoning the delay *vide* the impugned orders. In this regard, the judgment of a Coordinate Bench of this Court in ***Shri Prabhudayal Batra v. M/s Shreyans Buildwell Pvt. Ltd., 2015 SCC OnLine Del 7891*** is apposite and reads as under:

“9. Thus the Supreme Court in Prithpal Singh (Supra) noted the dominant object of the amending Act so as to provide a speedy, expeditious and effective remedy for a class of landlords contemplated by Sections 14(1)(e) and 14A of the DRC Act and for avoiding unusual dilatory process. Section 25-B(1) being a special provision and every application on the ground of Section 14(1)(e) of the DRC Act is required to be dealt with in accordance with the procedure specified under Section 25-B(1) of the DRC Act. Since no power has been conferred on the Controller apart from Rule 23 which is a general rule, the Controller is required to be guided with the provisions of Section 25-B DRC Act and thus there was no power with the Controller to condone the delay in filing the leave to defend application. In view of this decision of the Supreme Court it cannot be said that this Court in its inherent jurisdiction has power to condone the delay. This Court exercising jurisdiction under Section 25-B(8) of the DRC Act, acts in a supervisory capacity to see whether any illegality has been committed by the learned ARC. Thus in view of the decision in Prithpal Singh (Supra) it cannot be said that the learned ARC committed any illegality in not condoning the delay or this Court has the power to condone the delay in filing the leave to defend application.”

(Emphasis Supplied)

12.5. The Petitioner in its application dated 17.09.2019 while seeking condonation of delay of thirteen (13) days has foisted the lapse, in filing the



application for leave to defend, on the clerk of the counsel entrusted with the responsibility for filing the said application. In fact, the explanation offered has been literally lifted from the facts of the judgment in **Tharia Ram** (Supra) and fails to persuade this Court with respect to its truthfulness. The judgment of **Tharia Ram** (Supra) was passed on 28.03.1983 i.e., much prior to the law settled by the Supreme Court in **Prithipal Singh** (Supra). The explanation offered by the Petitioner in the application dated 17.09.2019 whilst seeking condonation of delay is a mere pretext and ruse, which if accepted would set at naught, the sanctity of the mandate of filing the leave to defend within fifteen (15) days as upheld by the Supreme Court in **Prithipal Singh** (Supra) and **Om Prakash** (Supra). This Court is therefore, of the opinion that the Petitioner has failed to satisfy this Court that he was prevented by reason beyond its control from applying leave to defend within the prescribed time; and for this reason, the Petitioner cannot rely upon the judgment of the Division bench in **Director Directorate of Education** (Supra).

13. The Petitioner herein filed his application for seeking leave to defend on 17.09.2019 and thereafter, filed an application dated 21.10.2020 seeking leave to amend the leave to defend. This Court has consistently held that the purpose and intent of the provision of Section 25(B)(4) of the DRC Act, would be defeated if leave to defend is permitted to be amended, unless the facts which are sought to be pleaded have come into an existence after the filing of the application seeking leave to defend. In this regard, it would be instructive to refer the judgment of the Coordinate Bench in **Ms. Madhu**



Gupta v. M/s Gardenia Estates (P) Ltd., 2011 SCC OnLine Del 4500,
wherein the Para 11 reads as under:

“11. Contention of the petitioner before this Court is that the procedure contained in Section 25B is silent as to whether an amendment is permissible or not and in the absence of which Rule 23 of the Delhi Rent Control Rules, 1959 can be adhered to. Reliance has also been placed upon the judgment of Ved Prakash (supra). The said judgment had been pronounced on 07.8.2009 which is admittedly prior in time to the judgment of Prithipal Singh (supra) which was pronounced on 18.12.2009. The judgment of Prithipal Singh is clear and categorical on the point that the procedure contained in Section 25B of the DRCA has to be strictly adhered to for dealing with a petition under Section 14(1)(e) of the DRCA. This ratio of Prithipal Singh precludes the applicability of the provisions of the Code of Civil Procedure; further the amendments sought for even otherwise were of facts which were already known to the petitioner. The facts which were sought to be incorporated i.e. that the landlord company was a part of a huge Real Estate Group of companies having several properties in their name were all facts known to the tenant; even otherwise they would not have a bearing on the bonafide requirement of the Director of the company namely Amit Deep Singh who is seeking this eviction order for the personal residence for his wife and two children. These facts were all pre-existing i.e. existing at the time when the application for leave to defend was filed; if such an application is permitted the whole purpose and intent of the provisions of Section 25B(4) would be defeated as the specifically stipulated period for filing an application for leave to defend within 15 days would be given a go by and by permitting the amendment there would be an automatic extension of time for filing the application for leave to defend. This could not and was not the intent of the statute. In Ved Prakash (Supra) also the amendments sought for although being of subsequent events were disallowed, as having been filed belatedly.”

(Emphasis Supplied)

13.1. In the facts of this case, the Petitioner herein in its amendment leave to defend application has sought to raise contentions which were within in its knowledge at the time of filing the initial leave to defend application and therefore, the said application is not maintainable. The said new pleas raised before the Trial Court at the time of the hearing in the review



application were rightly rejected by the Trial Court *vide* order dated 28.07.2022, for additionally being beyond the scope of review.

13.2. However, as noted above learned counsel for the Petitioner has duly conceded during the course of arguments that the Petitioner cannot maintain the application seeking amendment of the leave to defend in the facts of this case. Therefore, the plea raised with respect to transfer of ownership of the tenanted premises in favour of the Madhu Bhaskar Group, relying upon the minutes of meeting dated 05.10.2011 is clearly not maintainable. Even otherwise, this Court is not persuaded that there has been any transfer of title in favour of Ms. Madhu Bhaskar on the basis of the minutes of meeting dated 05.10.2011. The Respondent herein continues to remain the recorded owner of the tenanted premises.

14. Similarly, the plea raised challenging the authority of Sh. Bharat Bhaskar to institute and maintain the eviction petition having been raised for the first time in the amended leave to defend application, the same is not maintainable. Even otherwise the Respondent has placed on record the board resolution dated 09.11.2022 authorising Sh. Bharat Bhaskar and placed on record the Master Data of the Respondent as available on the website of Ministry of Corporate Affairs, which duly records, Sh. Bharat Bhaskar as the Director. In these circumstances, the challenge raised to the authority of Sh. Bharat Bhaskar to maintain the eviction petition is untenable and does not give rise to a triable issue. The Petitioner does not dispute that Sh. Bharat Bhaskar is the Director of Respondent.

14.1. The plea raised by the Petitioner that there exists a family settlement between the Petitioner and the Respondent which finds mention in the



eviction petition at paragraph 18(a)(4) is *ex facie* incorrect. The contents of paragraph 18(a)(4) refer to a family settlement between Ms. Madhu Bhaskar and the Respondent. It contains no reference to the Petitioner and therefore, this plea is without any merit. Even otherwise as admitted by the learned counsel for the Petitioner, no such plea has been raised in the original leave to defend application.

15. The Petitioner's contention that since the Respondent is a corporate entity and the issue whether a corporate entity can maintain an eviction petition under Section 14(1)(e) of the DRC Act, is a subject matter of reference in ***K.S. Bhandari*** (Supra) and therefore, the eviction proceedings should not be proceeded with is also without merit.

15.1. Firstly, this Court is in agreement with the contention of the learned counsel for the Respondent that pendency of a similar matter in reference to a larger Bench, would not preclude the Court from dealing with the issue on merit. The observations made in the judgment of Coordinate bench in ***WhatsApp LLC*** (Supra) is clear on the said issue. The relevant extract of the said judgment reads as under:

31. Similarly, in *P. Sudhakar Rao v. U. Govinda Rao* [*P. Sudhakar Rao v. U. Govinda Rao*(2013) 8 SCC 693] , the Supreme Court observed that the pendency of a similar matter before a larger Bench did not prevent the Supreme Court from dealing with the issue on merit.

32. The Division Bench of this Court in *Union of India v. V.K. Vashisht* [*Union of India v. V.K. Vashisht*2012 SCC OnLine Del 6312] has also observed on the question of effect of a reference to the larger Bench as under:

“14. With regard to the contention that a similar matter is pending before a larger Bench of the Supreme Court, it would suffice to state that reference to larger Bench does not lead to an inescapable conclusion that such matters be kept in abeyance. In a recent case *Ashok Sadarangani v. Union of India* [*Ashok*



Sadarangani v. Union of India(2012) 11 SCC 321 : AIR 2012 SC 1563], the Supreme Court has observed:

‘19. As was indicated in Harbhajan Singh v. State of Punjab [Harbhajan Singh v. State of Punjab(2009) 13 SCC 608] , the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh v. State of Punjab [Gian Singh v. State of Punjab(2010) 15 SCC 118] need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field’.”

33. Though the abovementioned judgments are in relation to issues pending before the larger Bench of the Supreme Court, in my opinion, they show that even during such pendency, the other courts may and should continue to decide the cases and applying the law as it then prevails. This is so, as mere pendency of a reference before the larger bench does not denude the other courts of their jurisdiction to decide on the lis before them. Similarly, merely because of the pendency of the above proceedings before the Supreme Court and before this Court, Respondent 1 cannot be said to be bound to necessarily hold its hands and not exercise the jurisdiction otherwise vested in it under the statute. Maybe, it would have been prudent for Respondent 1 to have awaited the outcome of the abovereferred petitions before the Supreme Court and before this Court, however, merely for its decision not to wait, the impugned order cannot be said to be without jurisdiction or so perverse so as to warrant to be quashed by this Court in exercise of its extraordinary jurisdiction.

15.2. The law as it stands today recognises the right of a corporate entity to maintain a petition under Section 14(1)(e) of the DRC Act, for its *bona fide* need. In this regard, it would be relevant to refer to the decision of the Coordinate Bench of this Court in ***Ravinder Kumar Verma v. Laxmi Narayan Mandir Nirman Sabha & Anr., 2016 SCC OnLine 6024***. The relevant extract of the said judgment reads as under:

16. A conjoint reading of two Sections i.e. Section 14(1)(e) and Section 22 of the DRC Act does not show that a society registered under the Societies Registration Act or a public institution cannot apply for eviction under Section 14(1)(e) of the DRC Act. Reference may be had to the judgment of this court in the case of Bhim Sen Batra v. Shreyans Buildwell Pvt. Ltd.. That was a case in which a petition was filed under Section 14(1)(e) of the



DRC Act by the landlord stating that the landlord Company was incurring losses and is seeking to revamp its business and requires the place occupied by the tenant for building proper infrastructure and office to be used by its employees. An objection was raised that if a company or body corporate requires the premises for the use of its employees, Section 22 of the DRC Act would apply and not Section 14(1)(e) of the DRC Act. This court rejected the contention. The court was of the view that the earlier judgments rendered prior to the judgment of the Supreme Court in the case of Satyawati Sharma (dead) by LRs v. Union of India, (2008) 5 SCC 287 which made Section 14(1)(e) of the DRC Act applicable to commercial tenancies also would not help the tenant presently.

17. Similarly, in the case of Satnam Kaur v. Ashlar Stores P. Ltd., this court held as follows:-

“9. This Court in the case of Chunni Lal v. University of Delhi reported in 1970 RCR 742 drew a distinction between Sections 14 and 22 of DRC Act in the following terms:

...The relationship of Sections 14 and 22, therefore, is that all landlords are able to apply under Section 14 but only the landlords who are corporate bodies or public Institution are entitled to apply under Section 22. This necessarily means that such corporate and public institution landlords have been given the ordinary grounds under Section 14 and additional grounds under Section 22. This accords with their position of being primarily similar to natural persons and sometimes being different from them. I therefore, find that the corporate and public institution landlords are entitled to the ordinary grounds of eviction under Section 14 like other landlords and also to the special grounds of eviction under Section 22 which are peculiar to the corporate and public institution landlords and that Section 22 does not deprive the corporate and the public institution landlords from the benefit of Section 14.

*10. **Consequently, in my view, an eviction petition can be filed by a Private Limited Company under Section 14(1)(e) of DRC Act for residence of its Chairman and Directors.**”*

18. The above view was reiterated by this court in the case of Canara Bank v. T.T. Ltd. (2014) 214 DLT 526.”

(Emphasis Supplied)

16. The contention of the Petitioner that the Respondent has no *bona fide* need for the tenanted premises and the pleading to the effect that the premises are required for the personal use of the Director of the



Respondent does not fall within the ambit of Section 14(1)(e) of the DRC Act is contrary to the settled law.

16.1. Firstly, the dispute in pleadings raised by the Petitioner herein with respect to the *bona fide* need of the Respondent, in the leave to defend application is devoid of any details and constitutes a bare denial. The relevant pleading in the leave to defend application reads as under:

“7. I say that apart from these substantial question in law there are various issues in facts as well viz., the petitioner never needed that property and does not need it; that the petitioner can not make the need of family its directed as need of the petitioner etc. are also the matter that need to be adjudicated by this Ld. Tribunal before passing any order in favour of the petitioner”

16.2. On the other hand, the Respondent in the eviction petition has set out the *bona fide* in detail at paragraphs 18(a) (1 to 6) which reads as under:

“1. That the suit premises are bonafide required by the petitioner for its own use as also for the use of the sons of Shri Bharat Bhaskar, Director of the petitioner company. One son of: Shri Bharat Bhaskar, Ashish Bhaskar who is also Director of the petitioner company, is also engaged in the retail of ready-made-garments, children garments and in horticulture exotic plants. He is carrying on this retail from his residential premises in Noida being Sector, 39, Noida, for lack of commercial space available. His clientele is limited and he is unable to expand and increase the volume of sale and attract more customers. The suit premises are required to augment the sale of the aforesaid garments as the same is presently not lucrative from the residential premises.

2. The second son of Shri Bharat Bhaskar, Shri Abhinav Bhaskar, is engaged in the import and sale of electronic and allied items in the name of AVC Distributions Pvt. Ltd, and is also engaged in Real Estate development. He is presently carrying on his business from rented premises in Okhla Industrial Area at a monthly rent of Rs. 55,000/-. Besides, the petitioner company does not have an office space for itself.

3. The petitioner company or the Directors thereof own no other suitable property or accommodation. The suit premises being about 5000 sq. ft. area in Ishwar Nagar, located on the ground floor, about 100 mts. from the main Mathura road, South Delhi with surrounding markets and several national and private banks in and around the premises and across



the road, is a popular commercial area fetching vast footfall of people. It is the most suitable for the aforesaid purpose.

4. *It is stated that, the premises are also required to give some areas of the premises to Smt. Madhu Bhaskar, sister-in-law of Shri Bharat Bhaskar, in terms of a family settlement/compromise entered into between the parties as a full and final settlement of her claim for partition of the properties of the family. The said partition suit being C.S (OS) No. 2090. of 2008 is pending in the Hon'ble High Court of Delhi where the said settlement is on record. As per the settlement 50% of the land and building of Block 6 is in the share of Smt. Madhu Bhaskar. She is in possession of some area as shown in yellow in Annexure-1. The additional area to complete her 50% portion is in possession of the respondent tenant. A copy of the settlement dated 05.10.2011 is filed herewith as **Annexure-5**.*

5. *It is stated that about 5,000 sq ft. area is in possession of the respondent tenant (shaded in green colour in Annexure-1). About 2860 sq. ft. is in possession of one Mr. Sanjay Bhaskar and- Mrs. Adita Bhaskar: by way of sale: on 13.05.2003 (shaded in blue colour in Annexure-1). A copy of the sale deed in favour of Sanjay Bhaskar is annexed herewith as **Annexure-6**. A small portion (un-shaded area) is in possession of M/s TNB Investments Pvt. Ltd, a sister concern of the petitioner company. The first floor of the suit premises is residential, occupied by Shri Bharat Bhaskar and his family members.*

6. *The need of the suit premises is bonafide, honest, just and genuine and the respondent tenant ought to be evicted therefrom under section 14(1)(e) or the Delhi Rent, Control Act 1958"*

(Emphasis Supplied)

16.3. As is apparent, the Respondent has pleaded its personal requirement for office space at paragraph 18(a)(2), which has not been controverted in the leave to defend application. With respect to the *bona fide* need of the Director(s) of Respondent, it is admitted that it is a private family run company. It is settled law that in case of a family run company, this Court has held in ***Ram Saroop Gupta v. Major S.P. Marwah, 2012 SCC OnLine Del 2584***, that the possession of the tenanted premises can be recovered by an individual for the *bona fide* need of the juristic entity, which is owned and controlled by the said individual and his family members. The Court recognised that in case of a family run company, the identity of a juristic



company and his directors and shareholders can be examined for the purpose of *bona fide need* of the said persons. The ratio of the said judgment would also be attracted in the fact of this case in so far as the Respondent additionally seeks to recover the premises for the need of its Director(s). The relevant portion of the judgment reads as under:

”6. In the instant case, there is no dispute to the factum that ‘A & T Jewels Pvt. Ltd’ is a private limited company comprising of the petitioner, his wife and his son; contention of the petitioner that the business which was earlier being run by the petitioner and his wife on a small scale from their residence could not be expanded and outside and unknown customers could not come to purchase their jewellery as they were running it on a small scale from the residence and this was because of the compulsion that they did not have any other commercial establishment to carry out this business; in these circumstance, it can, in no manner, be said that the need of the petitioner cannot be considered as his personal and bonafide need for the premises. Even assuming that the need of the company (which is a company of no other persons but the petitioner, his wife and his son), the doctrine of the lifting of corporate veil in relation to this company would be fully applicable to reveal the true identity of the company; by lifting the corporate veil, it is an undisputed factum that the company is no other person than the petitioner, his wife and his son; the registered office of the company is also the residence of the parties from where they had initially started this business i.e. 297, Forest Land, Neb Sarai, New Delhi; their bonafide need for requiring a working space i.e. commercial establishment to run the aforementioned business has been established.”

(Emphasis Supplied)

16.4. In view of the aforesaid judgment, applying the dicta laid down in paragraph 8, this Court is of the opinion that the need pleaded by the Respondent is *bona fide*. This is also for the reason that the Petitioner herein has not denied that the tenanted premises are lying unused and locked for last many years. This Court therefore, of the opinion that the pleading of the Petitioner fails to place adequate and/or reasonable material which may give rise to a triable issue. The pleadings in the leave to defend



application fail to rebut the strong presumption *qua bona fide* need raised in favour of the landlord, Respondent.

17. The Respondent herein has in the eviction petition duly set out at paragraph 19 (1 to 3) the facts pertaining to its title in the tenanted premises. The documents filed in support of the pleadings i.e., the Release Deed and the sale deeds dated 13.05.2003 duly trace the title of the Respondent. The Respondent has also averred that its title is duly recorded in the *Jamabandi* obtained on 09.04.2018.

17.1. In the application seeking leave to defend, no dispute has been raised to the said title documents by the Petitioner herein. Pertinently, in fact, it is stated in the eviction petition that the Release deed was executed by Late Bali Nath Bhaskar, who is the father of Sh. Vidur Bhaskar i.e., the director of the Petitioner. The Petitioner therefore, has due notice of the said Release deed.

17.2. In light of the aforesaid registered documents and the public record maintained by statutory authorities, there is no dispute that the Respondent is the recorded owner of the tenanted premises.

17.3. As noted hereinabove, learned counsel for the Petitioner has fairly conceded during the course of arguments that the Respondent herein is the owner of the tenanted premises.

17.4. In the leave to defend, the pleading raised by the Petitioner was to the effect that the Petitioner herein has become the owner of the tenanted premises by operation of law. The Petitioner was unable to substantiate the said plea during the course of the arguments and no document has been placed on record to substantiate the said plea. In fact, the plea is bald and



there is no elaboration as regards the basis of making such a claim. Therefore, in the opinion of this Court, the Petitioner has failed to raise any triable issue with respect to the said issue.

17.5. The Petitioner has sought to raise a feeble plea, denying the relationship of landlord-tenant on the ground that no rent has been paid to the Respondent. As noted hereinabove, the Respondent has placed on record its minutes of meeting dated 31.03.1977 and 02.03.1980, whereby the Respondent had resolved to let out the premises to the Petitioner. In the leave to defend application, the Petitioner has not disputed the veracity of the said minutes. The Petitioner conceded that it was making a payment of Rs. 1750/- per month to late Sh. Vinay Bhaskar till the year 2006, however, the same was towards the maintenance charges. No document has been filed on record to substantiate the said plea that the payment was towards maintenance charges. Thus, on an appraisal of the documents and the pleadings of the parties, this Court is of the opinion that the denial of the relationship of landlord and tenant is mere moonshine.

18. The Petitioner in its application seeking leave to defend sought to primarily resist the eviction petition on the plea that the ownership of the tenanted premises vests in the Petitioner. On an examination of the record, this Court is of the opinion that the said plea raised by the Petitioner is frivolous and without any basis. Similarly, the denial of the relationship of landlord and tenant despite admitting to monthly payment of Rs. 1,750/- is again made with an intent to protract the proceedings. The resistance to the eviction petition viewed from the fact that the Petitioner itself is not using the tenanted premises (for last 7-8 years) and is keeping them locked,



evidence an abuse of the intent of the legal procedure permitting a tenant to apply for leave to defend and finds merit in the submission of the Respondent that these proceedings are an abuse of process by the Petitioner.

19. In the aforesaid facts and circumstances, this Court is satisfied that the order dated 01.12.2021 and 28.07.2022 passed by the Trial Court do not suffer from any infirmity and accordingly, the present revision petition is dismissed and the eviction order dated 01.12.2021 is upheld. The Respondent is at liberty to forthwith execute the eviction order dated 01.12.2021. Pending applications, if any, stand disposed of.

20. The Petitioner is directed to pay costs of Rs. 1,00,000/- to the Respondent within two (2) weeks. In case the Petitioner fails to pay the cost, the Respondent will be entitled to recover the same in the execution proceedings.

MANMEET PRITAM SINGH ARORA, J

JUNE 2, 2023/aa/asb

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