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

+ RC.REV. 653/2019 & CM APPL. 49520/2019, CM APPL. 53148/2022

VIMALJEET KAUR @ GAINDO Petitioner

Through: Mr. S.M. Gupta, Advocate

versus

SHINE JAIN Respondent

Through: Mr. Prithvi Sabharwal and Mr. Sharad Pandey, Advocates.

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Reserved on: 20th April, 2023

Date of Decision: 03rd July, 2023

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 16.07.2019 passed by Additional Rent Controller, Central District, Tis Hazari Courts, Delhi ('Trial Court') in eviction petition bearing no. E-72/15, whereby, the Petitioner, tenant's, application seeking leave to defend was dismissed and the eviction order was passed in favour of the Respondent, landlady, in respect of portion of property no. 826, ground floor, Block – F, Rai Bahadur Beishakha Singh Building, Joshi Road, New Delhi ('**subject property**').



2. The tenanted premises, which was let out to the (now deceased) father of the Petitioner herein comprises of four (4) rooms, bathroom and a kitchen on the ground floor, as shown in the **red colour** in the site plan annexed with the eviction petition ('tenanted premises'). The Petitioner, tenant, as well has filed a site plan with her leave to defend application, enlisting the user of the various rooms forming part of the tenanted premises. There is no contradiction in the site plans filed by either party as regards the location and number of the rooms on the ground floor.

3. The eviction petition was filed by the Respondent, landlady, under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act') on the plea that she *bona fide* requires the tenanted premises for her personal residence and the residence of her family members. It was stated in the eviction petition that the landlady's family comprises of herself, her spouse and her then two school going children (a son and a daughter). It was disclosed that neither the landlady nor her husband has any other suitable alternate accommodation available to them in Delhi.

3.1. It was stated in the eviction petition that the landlady is currently residing with her family at her paternal home and she does not wish to reside there any further and thus, requires the tenanted premises for her immediate family's residence.

3.2. The landlady in her eviction petition had categorically asserted that the Petitioner herein i.e., the tenant, is not residing in the tenanted premises and the premises are lying vacant and unused.

3.3. The tenant in her rejoinder filed to the leave to defend application admitted that the premises are lying locked and unused; she pleaded that she



is unable to use the tenanted premises since there was no electricity connection in the subject property since the year 2014.

4. The Petitioner, tenant filed her application seeking leave to defend, wherein, it was stated that the tenanted premises were originally let out to the Petitioner's father, Sh. N.S. Hoon, who passed away in 1960. It is stated that thereafter, the tenancy was inherited by Petitioner's mother, Smt. Surjit Kaur, who as well passed away on 17.05.2009. It is stated that thus, in the year 2009 the tenancy devolved upon the Petitioner herein being the sole legal heir of her parents.

4.1. The Petitioner, tenant, resisted the eviction petition on the ground that the landlady has available to her sufficient alternate accommodations, details whereof are as under:

- (i) J-130, Reserve Bank Enclave, Block-J Paschim Vihar, Delhi ('matrimonial home');
- (ii) 16/316 Khajor Road, Dr. Joshi Road, Karol Bagh, New Delhi ('paternal home'); and
- (iii) the other one-half (1/2) of the **subject property** on the ground floor consisting of four (4) rooms, toilet, open courtyard and lobby which is lying vacant.

4.2. The tenant contended that the landlady does not have a *bona fide* need for the tenanted premises, recovery whereof is sought only for the purpose of re-development.

Arguments of the parties

5. Mr. S.M. Gupta, the learned counsel for the Petitioner submitted that after passing of the eviction order, the Petitioner, tenant, has learnt that the



landlady had purchased a property bearing no. XIV/415-416, Joshi Road, Karol Bagh, New Delhi on 15.11.2011 ('Property No. 415-416 at Joshi Road') jointly with a third-party namely Mrs. Anuradha Jain and has sold the said property on 21.06.2019 to two different individuals. In support of the said submission, he relies upon the information downloaded from the website of the Delhi Government.

5.1. No other arguments were raised by the counsel for Petitioner.

6. In response, Mr. Prithvi Sabharwal, the learned counsel for the Respondent stated that the Respondent, landlady, has no concern with Property no. 415-416 at Joshi Road. He further submitted that there is no alternate accommodation available with the landlady for her personal residence. He states that the matrimonial home and the paternal home are not owned by the Respondent, landlady and therefore, the same cannot be considered as alternate accommodation.

6.1. He stated that the tenanted premises are lying vacant and unused as the Petitioner, tenant, is permanently residing with her daughter at Vikaspuri and the present proceedings are being perpetuated at the behest of her son-in-law, Mr. Prashant Sharma, for oblique motives. He relied upon the proceedings dated 04.01.2023 and the report of the Local Commissioner dated 23.01.2023 to contend that the premises are lying abandoned and unutilized by the Petitioner, tenant. He states that there is no equity in favour of the Petitioner, who is not using the tenanted premises as per her own pleadings since the year 2014.

6.2. He has placed reliance on the report dated 23.01.2023, filed by the Local Commissioner, to the extent that the said report records that though there was an electric meter installed in the tenanted premises, however, the



said electric meter was not reflecting any reading of electricity consumed, though there was a light glowing in the electric meter. He states that this conclusively proves that the Petitioner is not using the tenanted premises.

6.3. He has also prayed that use and occupation charges be fixed for the tenanted premises at Rs. 20,000/- per month in terms of the judgment of the Supreme Court in *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*, (2205) 1 SCC 705.

7. No other arguments were raised by the counsel for the Respondent.

Analysis and findings

8. This Court has perused the paper book and considered the submissions of the parties.

9. It is stated in the application seeking leave to defend that the monthly rent of the tenanted premises was fixed at Rs. 55/- per month and the Petitioner admits tendering the said rent to the Respondent. The relationship of landlord, tenant was thus, admitted between the parties.

10. The only contention raised by the counsel for the Petitioner, tenant, in his oral arguments, is with respect to the availability of property no. 415-416 at Joshi Road, which is stated to have been discovered by the tenant after passing of the eviction order. The Petitioner has relied upon the screenshot of the website of Delhi Government to substantiate the plea of purchase of the said property by Respondent on 15.11.2011.

10.1. The said facts and events admittedly existed prior to the filing of the leave to defend application but were not raised by the tenant before the Trial Court.



11. Firstly, considering that this plea was not raised in the application seeking leave to defend, the Petitioner is precluded from raising the said plea for the first time in this revision petition as held by a Coordinate Bench of this Court in *Ms. Madhu Gupta v. M/s Gardenia Estates (P) Ltd., 2011 SCC OnLine Del 4500* relying upon the ratio of the judgment of the Supreme Court in the case of *Prithipal Singh v. Satpal Singh, (2010) 2 SCC 15*. The pleading with respect to date and manner of discovery of this fact in the revision petition is vague.

11.1. Notwithstanding the above, this Court is unable to appreciate the said submission in view of the admitted stand of the Respondent that said property was co-owned by the Respondent with a third party and further, it already stands sold as on 21.06.2019. The Respondent in her reply to this revision petition has explained that since the said property was co-owned with a third person, the said property was not available for her personal use. She has also explained that the said property was bought as a stock-in-trade for her business and was disposed of in furtherance thereof.

11.2. In view of the explanation given by the Respondent in her reply to the revision petition, this Court is satisfied that property no. 415-416 at Joshi Road cannot be considered as an alternate accommodation, available to the Respondent for her family's residence.

12. With respect to the other properties i.e., the matrimonial home and the paternal home, no arguments were raised by the counsel for the Petitioner before this Court. However, this Court has perused the record in regard to the said properties. It is an admitted fact that neither of the said properties are owned by the Respondent, landlady or her husband. It is trite law that the landlord/landlady cannot be compelled to explore the possibility of residing



from premises which may be owned by another family member. Thus, the said properties as well cannot be considered to be alternate accommodation available with the landlady.

12.1. The Supreme Court in the case of ***Sarla Ahuja v. United India Insurance Company Ltd., (1998) 8 SCC 119***, has observed that it is settled law that the tenant cannot dictate to the landlord as to how he can accommodate himself without getting possession of the tenanted premises. The relevant extract of ***Sarla Ahuja*** (Supra) reads 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)

12.2. In view of the aforesaid, this Court is of the opinion that the Trial Court has accurately dealt with the said properties and correctly opined that the Respondent herein cannot be denied her right to reside independently with her immediate family, separately from her extended family i.e., in-laws or parents. The relevant findings of the Trial Court with respect to the said properties reads as under: -

*“16..... The respondent has further stated that the petitioner is residing at **J-130, Reserve Bank Enclave, Block J Paschim Vihar, Delhi** which is built up*

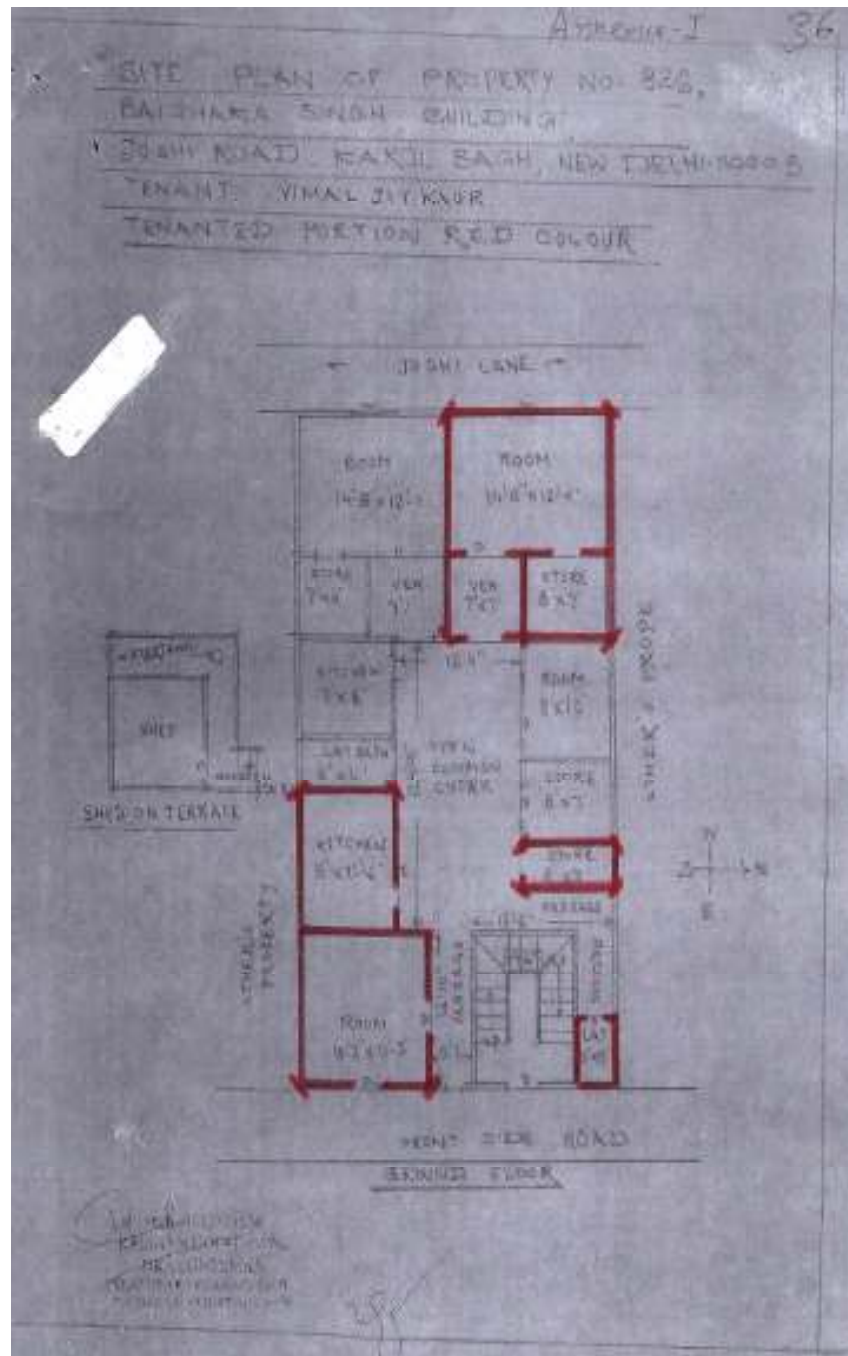


200 sq. yds, however, as per her own submission, the said property is the matrimonial home of the petitioner. As per petitioner, some disputes are going on between her and her in laws, therefore, the petitioner alongwith her husband and two children are residing in the parental home of the petitioner. Since, the said property is not owned by the petitioner, the same cannot be said to be suitable alternative accommodation. Whether there is any dispute or not with her in laws the petitioner is still entitled to live separately in a property owned by her and the respondent is no one to dictate terms regarding her choice of accommodation. Similarly, the property no. 16/316, Khajoor Road, Karol Bagh, New Delhi also cannot be said to be suitable alternative accommodation as the same is owned and occupied by the parents of the petitioner. As per respondent's own case the said property is being owned and occupied by the parents of the petitioner and therefore, the same also cannot be said to be an alternative accommodation suitable for the bona-fide needs of the petitioner as stated by her in her petition. The fact that the petitioner, her husband and their children have been residing at the parental home of the petitioner itself makes the need of the petitioner all the more bona-fide."

(Emphasis Supplied)

13. With respect to the other half (1/2) portion on the ground floor of the **subject property**, which was earlier in possession of late Sh. O.S. Hoon i.e., the uncle of the Petitioner herein, the Petitioner has contended that the said portion can be used by the Respondent, landlady for her family's personal residence and there is no requirement to recover the possession of the tenanted premises.

13.1. In this regard, it would be relevant to examine the site plan of the entire ground floor of **subject property**, wherein, the tenanted premises are delineated in **red colour** and the use of the room has been marked. The site plan filed by the Petitioner, tenant, is being examined for this purpose and is being reproduced hereinunder for ease of reference.



13.2. As is evident from the bare perusal of the tenant's site plan, the portion which was let out to erstwhile tenant, late Sh. O.S. Hoon and is now

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lying vacant is not sufficient to accommodate a family of four individuals. The vacant portion only consists of one big room (ad measuring 14'5'' x 12'), and one small room (ad measuring 8' x 10'), whereas, the Respondent, landlady, and her family members includes her husband and two children (a son and a daughter). The said family members between them would require atleast three bed rooms, one for the couple and one each for the children.

13.3. As per the site plan, the remaining vacant portion comprises of two stores, a kitchen and a single bathroom. This Court is satisfied that the one-half portion would not be sufficient for the *bona fide* need of residence of the Respondent, landlady, and her family members.

13.4. Further, as is evident from the tenant's site plan, the vacant portion (which was with late Sh. O.S. Hoon) is scattered all over the ground floor of the subject property. As is evident from the record, late Sh. O.S. Hoon and the Petitioner's father, late Sh. N.S. Hoon were brothers and probably were living together with their families on the ground floor.

13.5. The nature of the ground floor as seen in the site plan and the area under the occupation of the Petitioner shows that the vacant portion cannot be peacefully occupied by a separate family. Both the areas are visibly connected by common walls, common passages and common 'chowk'. The landlady and her family have the right to enjoy the peaceful possession of the premises without their privacy being affected by the presence of tenant in same area.

13.6. In any event, it is an admitted case of the parties that the tenant, who is a widow, is residing with her married daughter at Vikaspuri, Delhi, at least since the year 2014 and the tenanted premises is lying locked and



unused. The memo of parties filed by the tenant herself in this revision petition duly enlists the Vikaspuri address.

13.7. This Court is therefore of the opinion that for a meaningful enjoyment of the **subject property** and for the need of each of the four (4) family members, the Respondent would require the entire ground floor for occupation of her premises. As stated earlier, the Supreme Court in *Sarla Ahuja* (Supra) has observed that it is trite law that the tenant cannot dictate to the landlord as to how he can accommodate himself without getting possession of the tenanted premises.

14. This Court is, therefore, satisfied that the finding of the Trial Court that there is no alternate accommodation available with the Respondent is correct and does not suffer from any infirmity. In this regard, 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 the landlord, who has filed the petition for *bona fide* need, the recovery of the possession of the premises. 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)

14.1. In the present case as well the Petitioner, tenant, has been unable to bring on record any material facts which establish existence of other properties which are reasonably suitable for residence of the landlady.

15. With respect to the *bona fide* need of the Respondent, landlady, this Court is in agreement with the finding of the trial Court that the need of the Respondent to have a separate residence with her immediate family, separate from her extended family, satisfies the test of a *bona fide* need. There is no dispute that the Respondent is residing at her paternal home with her parents and her need to reside separately with her immediate family cannot be considered to be moonshine. The Supreme Court in *Abid-ul-Islam* (Supra) after reviewing the law, has pithily held that for grant of leave to defend under Section 25(B)(5) of the Act, a mere assertion would not suffice as Section 14(1)(e) of DRC Act, creates a presumption *qua bona fide* need, in favour of the landlord/landlady. The relevant extract of the said judgment reads as under:

“18. For availing the leave to defend as envisaged under Section 25-B(5), a mere assertion per se would not suffice as Section 14(1)(e) creates a presumption subject to the satisfaction of the learned Rent Controller qua bona fide need in favour of the landlord which is obviously rebuttable with some material of substance to the extent of raising a triable issue. The satisfaction of the Rent Controller in deciding on an application seeking leave to defend is obviously subjective. The degree of probability is one of preponderance forming the subjective satisfaction of the Rent Controller. Thus, the quality of adjudication is between a mere moonshine and adequate material and evidence meant for the rejection of a normal application for eviction.”

(Emphasis Supplied)



15.1. The Petitioner, tenant, in this revision petition has made a bald averment disputing the *bona fide* need. Admittedly, nothing has been placed on record to substantiate the said bald plea and therefore, the Petitioner has failed to make any ground for interfering with the finding of the Trial Court.

16. Further, the Supreme Court at para 23 of *Abid-ul-Islam* (Supra), after discussing the law held that the scope of the revisional jurisdiction under Section 25B (8) of the DRC Act is limited. The relevant para 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)

17. In the aforesaid facts and circumstances and keeping in view the dicta of the Supreme Court, this Court is of the view that the Petitioner has failed to raise any triable issues and the findings of the Trial Court in the eviction order dated 16.07.2019 do not suffer from any infirmity and are hereby upheld.



Use and Occupation charges

18. The eviction petition was filed by the Respondent, landlady, on 12.03.2015 and the impugned eviction order was passed by the Trial Court on 16.07.2019. Thereafter, this revision petition was filed, which as well has remained pending for about 04 years.

18.1. As noted hereinabove, the Petitioner, tenant, was liable to vacate the tenanted premises on or before 16.01.2020 i.e., upon expiry of the statutory period of six (6) months, however, the tenant has successfully continued to retain possession of the tenanted premises without making any payment of use and occupation charges at market rate as per the dicta of the Supreme Court in *Atma Ram* (Supra) and *Martin and Harris Private Limited and Another v. Rajendra Mehta and Others*, (2022) 8 SCC 27.

18.2. The learned counsel for the Respondent has submitted that the minimum use and occupation charges for the tenanted premises are Rs. 20,000/- per month, to which no denial was offered by the Petitioner.

18.3. It is accordingly directed that the Petitioner herein shall vacate and handover peaceful possession of the premises to the Respondent forthwith and not later than 15 days i.e., 18.07.2023.

18.4. However, it is directed that if the Petitioner fails to handover the vacant and peaceful possession to the Respondent on or before 18.07.2023, the Petitioner shall become liable to pay use and occupation charges at Rs. 10,000 per month retrospectively w.e.f. 16.01.2020, the date on which the statutory period of 6 months expired.

18.5. It is further directed that if the Petitioner fails to vacate the premises within 15 days, the Respondent will be at liberty to recover the possession of



the tenanted premises and the use and occupation charges determined hereinabove in the execution proceedings.

19. With the aforesaid directions, the present petition is dismissed. Pending applications, if any, are also disposed of.

MANMEET PRITAM SINGH ARORA, J

JULY 03, 2023/hp/aa/asb

