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

+ RC.REV. 287/2022, CAV 449/2022 and CM APPLs. 54314-15/2022

**SHRI RAKESH TIWARI**

..... Petitioner

Through: Mr. Gaurav Seth and Mr. Vishwas Ahuja, Advocates.  
Mr. Deepak Arora and Mr. Ruchi Jain, Advocates.

versus

**SHRI RAM BANS GUPTA**

..... Respondent

Through: Mr. K.K. Gambhir, Advocate.

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Reserved on: 15<sup>th</sup> December, 2022

Date of Decision: 11<sup>th</sup> January, 2023

**CORAM:**

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

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

**MANMEET PRITAM SINGH ARORA, J:**

**CAV 449/2022**

Mr. K.K. Gambhir, Advocate enters appearance on behalf of the Respondent.

Accordingly, the present caveat stands disposed of.

**CM APPL. 54315/2022 (for exemption)**

Allowed, subject to all just exceptions.

Accordingly, the application is disposed of.

**RC.REV. 287/2022 and CM APPL. 54314/2022 (for stay)**

1. The present revision petition has been filed by the Petitioner

(‘Tenant’) assailing the order dated 08.08.2022 passed by the Rent Controller (‘the Trial Court’) whereby the eviction order was granted in favour of the Respondent (‘Landlord’) and the application seeking leave to defend filed by the Tenant was dismissed, with respect to ‘one shop’ on ground floor at property bearing No. A-4/8 Krishna Nagar, Delhi 110051 (‘tenanted premises’).

2. The eviction petition was instituted by the Landlord before the Trial Court, seeking possession of the tenanted premises on the ground of his *bona fide* need to start a retail shop of disposable crockery i.e., paper crockery and other related items to support his family. In the eviction petition, the Landlord made the following averments:

2.1. He acquired the ownership of the tenanted premises in 1996 and at the time of purchase there were six (6) shops in the said property bearing No. A-4/8 Krishna Nagar, Delhi 110051.

2.2. The Shop nos. 1 and 6 were sold by the Landlord to meet the financial needs.

2.3. The Shop nos. 2 and 3 were in possession of the Landlord and he was carrying on business of *kiryana* (rations shop) from the said two shops. However, due to losses suffered in the said business, the Landlord discontinued the said business and now his son Sh. Pankaj Gupta carries on his independent business of a gift shop in the said two shops.

2.4. The Shop no. 4 was in possession with another tenant, Smt. Chand Rani. The possession of the said shop was recovered and it is now being used as a godown by the Landlord’s son Sh. Pankaj Gupta.

2.5. The tenanted premises also identified as Shop no. 5 are in occupation of the Tenant, who has been enjoying the use of the tenanted premises

without payment of any rent from the month of January, 2015. The premises were originally let out to late Mr. Jawahar Lal Tiwari, the father of the Petitioner herein who as well had stopped tendering rent. Mr. Jawahar Lal Tiwari expired prior to filing of the eviction petition before the Trial Court.

2.6. Post the Covid-19 pandemic, the retail business of the gift shop run by the landlord's son has suffered a slump and the family is in a financial crisis. Therefore, the Landlord wanted to start a separate business of a retail shop from the tenanted premises for sale of disposable crockery i.e., paper plates, paper glass, paper cups and other related items so as to support his family financially.

2.7. The tenanted premises are located in an appropriate commercial area for carrying on the said business are thus required for his own use and occupation.

2.8. His wife is the owner of 15 sq. yds. out of property No. X/1918, Gali No. 9, Rajgarh Colony, Delhi ('Rajgarh Colony'), which consists of two shops and are already let out. Further, the said two shops are located at a considerable distance and the Landlord does not consider the same as a suitable alternative accommodation.

3. The eviction petition was objected to by the Tenant on the grounds that the requirement of the tenanted premises by the Landlord is not *bona fide* and that he has other reasonable, alternate and suitable accommodation. The objections raised in the application seeking leave to defend were as follows:

3.1. The requirement of the tenanted premises is not *bona fide* as the Landlord is already carrying on business of 'planter' and other gift items from Shop nos. 2 and 3 with his son Sh. Pankaj Gupta.

3.2. The Shop no. 4 which is adjoining Shop nos. 2 and 3 is lying vacant and is not being used as a godown by the Landlord's son.

3.3. The Landlord's wife is the owner of two shops situated at Rajgarh Colony are situated at a good location as the property is situated in a commercial market and is therefore suitable alternative accommodation.

4. The Trial Court has recorded its satisfaction with respect to the *bona fide* need of the Landlord to commence disposable crockery business from the tenanted premises to augment his income and after examining the rival pleas of the parties, also returned a finding that the Trial Court is satisfied that there is no other suitable alternative accommodation available with the Landlord. The Trial Court in light of the said facts has proceeded to deny granting leave to defend and allowed the eviction petition.

5. In the course of arguments before this Court, learned counsel for the Petitioner stated that the Trial Court failed to consider that Shop no. 4 is not being used by the Landlord's son as a godown and that the same is lying vacant. He further stated that the two (2) shops owned by the wife of the Landlord at Rajgarh Colony is a suitable alternative accommodation available to carry on the business of disposable crockery.

5.1 He stated that the Landlord is already gainfully working at Shop nos. 2 and 3 along with his son and therefore there is no requirement for him to start a separate business of disposable crockery.

5.2 No other plea was urged by the learned counsel for the Petitioner during his arguments.

6. In reply, learned counsel for the Respondent states that no documentary evidence has been produced by the Petitioner with respect to the allegation that Shop no. 4 is lying vacant. He states that it is a bald

averment. He reiterates that Shop no. 4 is being used by Landlord's son as a godown and that the same is therefore not available to the Landlord to start the retail business of disposable crockery.

6.1 With respect to the two shops owned by the wife of the Landlord in Rajgarh Colony, he stated that the same are located 3.4 kms from the tenanted premises and the Landlord does not find them suitable to start the business of disposable crockery. He states that even otherwise, the said shops were already let out.

7. This Court has heard the counsel for the parties and the perused the paper-book.

8. The counsel limited their arguments before this Court to the findings of the Trial court with respect to suitability of the alternate accommodation of Shop no. 4 in the same property owned by the Landlord and the two shops owned by the wife of the Landlord at Rajgarh Colony.

9. There is no dispute raised with respect to the relationship of landlord and tenant between the parties.

10. With respect to the plea raised by the Tenant that Shop no. 4 in the same property is lying vacant, the Trial Court has returned a finding that the said plea of the Tenant is unsubstantiated, as no proof has been placed on record in this regard, whereas the Landlord has categorically stated that Shop no. 4 is being used as a godown by his son Sh. Pankaj Gupta. The relevant portion of the impugned order dated 08.08.2022 reads as follows:

*"8. Respondents have further stated that shop no. 4 which was got vacated from Smt. Chand Rani is lying vacant **but no proof in this respect has been placed on record** whereas thew Petitioner has clearly states that shop no. 4 is being used as godown by his son. ...."*

(Emphasis supplied)

11. During the course of arguments, learned counsel for the Petitioner, Tenant conceded that there is no document or evidence on record to substantiate the Tenant's plea that Shop no. 4 is lying vacant. The Courts have repeatedly held that defence of negative character which are intended to put the Landlord to proof are not the kind which will entitle the Tenant to grant of leave. There is no dispute that Shop no. 2 and 3 are being used as a gift shop. The Landlord's contention that his son Sh. Pankaj Gupta uses Shop no. 4 as a godown appears to be reasonable and logical considering the said son is carrying on retail business of a gift shop in the adjoining Shop no. 2 and 3. This Court is therefore of the view that a mere bald averment that Shop no. 4 is vacant in the absence of any tangible proof cannot give rise to a triable issue. The plea of the Landlord that his son carries on retail business in Shop nos. 2 and 3 and uses Shop no. 4 as a godown is a reasonable fact which can be presumed to exist in the absence of any contrary tangible material placed on record by the Tenant.

12. With respect to the two shops owned by the Landlord's wife in Rajgarh Colony, the Landlord has disclosed that the same are already let out by his wife and he does not consider the location of the said shops suitable for commencing the business of disposable crockery. The Tenant has not disputed the fact that the said shops are already let out or that the same are owned by his Landlord's wife. The Tenant has only disputed the Landlord's contention on the unsuitability of the location of the said shops.

13. Further, there is no dispute that the tenanted premises and the shops owned by the wife of the Landlord are located in different commercial markets namely, Rajgarh Colony, Delhi and Krishna Nagar, Delhi. The need

expressed by the Landlord for the tenanted premises cannot be negated on the ground that he can commence business from the other commercial market. Determination that the shops owned by the wife are suitable or not is the domain of the Landlord. Hence, the tenant cannot be made an arbiter of such determination as laid down by the Apex Court in ***M/S Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal & Ors., (2005) 8 SCC 252***, in the following terms:

*“4. It is not the tenant who can dictate the terms to the landlords 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.”*

14. It is common knowledge that the decision to commence a business is also driven by the location of the commercial market. If a Landlord owns shops in two different commercial markets, suitability of a vacant shop in a commercial market distinct from the tenanted premises cannot be determined either by the Court or the tenant. The commercial decision of the Landlord to start the business from the tenanted premises is not justiciable, if the Court is satisfied that the decision of the Landlord to commence business itself is not in doubt.

15. This Court has held in ***Shashi Bala Gupta v. Manish Gupta, RC.REV. 208/2022 dated 07.09.2022*** that if the landlord seeks possession of the premises owned by him, the said prayer of the landlord cannot be denied on the ground that another family member of the landlord owns alternate accommodation. The relevant portion of the order dated 07.09.2022 reads as follows:

*“...It is also necessary to note that where the landlord is seeking release of premises which are exclusively owned by him, in such circumstances he cannot be forced to explore the possibility of*

*carrying on his business from premises which may be owned by some other family member. In any case, such a defence, if set up by a tenant cannot be countenanced at all.”*

In the facts of the present case, the Landlord has duly disclosed the existence of shops owned by his wife and has very well explained their unsuitability and their unavailability to carry out the business of crockery.

16. The Courts have repeatedly held that landlord cannot be dictated on the use of his premises (***Prativa Devi v. T.V. Krishnan, (1996) 5 SCC 353***). In this regard, it would be instructive to refer to the decision of Supreme Court in ***Anil Bajaj and Anr. v. Vinod Ahuja, (2014) 15 SCC 610***, wherein it was held as under: -

*“6. .... What the tenant contends is that the landlord has several other shop houses from which he is carrying on different businesses and further that landlord has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilised by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business.”*

(Emphasis Supplied)

17. With respect to the *bona fide* need of the Landlord, this Court observes that the Tenant in the eviction proceedings have pleaded that the Landlord carries on business with his son at Shop nos. 2 and 3. The Landlord had clarified that he assists his son in the said business and does not own the said business. The aforesaid pleading of the parties’ establishes that the Landlord indeed on the date of filing of the eviction petition was carrying on business, whether on behalf of his son or otherwise. Therefore, the Landlord’s statement that he intends to commence disposable crockery

business from adjoining Shop no. 5 raises a presumption that his need is *bona fide* and the same cannot be doubted.

18. The Tenant does not dispute the intention of the Landlord in starting a crockery business. It is not upto the Tenant or this Court to dictate a Landlord as to the market place in which he must undertake his business activity. A landlord is the best judge of this requirement. As much as the intention of the Landlord to start a crockery business is not disputed in the instant case, the *bona fide* requirement of the Landlord stands established. It is pertinent to mention that the requirement of alternative accommodation is only incidental one as laid down in *Abid-Ul-Islam v. Inder Sain Dua, (2022) 6 SCC 30*. As held above, the landlady has sufficiently explained the unsuitability of the two shops at Rajgarh Colony and this plea does not give rise to a triable issue so as to deprive the landlord to recover the possession of the tenanted premises.

*“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(8).”*

19. Further, the Landlord has stated that the tenanted premises are commercially viable for starting the disposable crockery business, which fact has not been disputed by the Petitioner.

20. The scope of jurisdiction of this Court is merely supervisory and one of superintendence as held by the Supreme Court in *Abid-Ul-Islam (supra)*. This has been reiterated in the following terms:

*“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.”*

21. The Respondent herein has established that he is the owner and Landlord of the the tenanted premises; he requires the premises *bona fide* for himself and he has no other reasonable alternate suitable accommodation. Accordingly, this Court is of the view that the order dated 08.08.2022 of the Trial Court does not suffer from any error and therefore, does not merit any interference.

22. The pleas raised by the Petitioner do not give rise to any triable issue, therefore, this Court does not find any merit in present revision petition. Accordingly, the present revision petition along with all the pending applications stands dismissed.

**MANMEET PRITAM SINGH ARORA, J**

**JANUARY, 2023/msh/asb/kv**