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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 10.07.2023

Judgment pronounced on: 12.10.2023

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RC.REV. 341/2018

RAJIV MEHRA & ANR

..... Petitioner

Through: Mr. Jai Sahai Endlaw, Ms.
Shambhavi Kala, Mr. Zubin John,
Advs.

Versus

RAVI BHUSHAN

..... Respondent

Through: Mr. Harshbir Singh Kohli,
Adv

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

: JASMEET SINGH, J

1. The instant revision petition has been filed under Section 25-B(8) of the Delhi Rent Control Act, 1958 (*hereinafter referred as 'DRC Act'*) seeking setting aside of the order dated 17.03.2018 passed by the learned CCJ-cum-ARC, Pilot Court (Central), Tis Hazari Courts, Delhi in Case No. E-211/17 and Regd. ID No. 231/17 titled as "*Sh. Rajiv Mehra & Another vs. Sh. Ravi Bhushan*".
2. As per the impugned order, the eviction petition filed by the petitioners/landlord against their respondent/tenant under Section



14(1)(e) of the DRC Act was dismissed on the ground of available suitable alternative accommodation.

**BREIF FACTS LEADING TO THE INSTANT REVISION
PETITION**

3. The eviction petition was filed by the petitioners against the respondent under Section 14(1) (e) of the DRC Act for vacation of premises being First Floor portion of property bearing Municipal No. 4680, Mahavir Bazar, Cloth Market, Fatehpuri, Church Mission Road, Delhi-110006 (*hereinafter referred as 'demised premises'*).
4. Petitioner no. 1 and petitioner no. 2 are siblings and have acquired the demised premises from their father Shri. Devi Swarup Mehrotra. The case of the petitioners is that the petitioner no. 1 and petitioner no. 2 are the co-owners/landlords of the property bearing Municipal no. 4680, First Floor and Second floor situated at Mahavir Bazar, Cloth Market, Fatehpuri, Church Mission Road, Delhi.
5. The respondent is a tenant in the demised premises. The bonafide requirement has been described that the petitioner No.2 has a grown up son namely Rahul aged about 26 years (at the time of filing the eviction petition in the year 2017). He is educated and has completed his MBA course. The petitioner no. 2 requires the demised premises bonafidely for her son namely Rahul who intends to start his cloth business in the demised premises to establish his career. It has further been stated that the demised premises is situated in a well-known cloth market and is most suitable for the son of the petitioner No.2 to start his own business. The petitioner No.2 has no other reasonable, suitable alternate



accommodation except the demised premises.

6. As regards with the other accommodations are concerned, the petitioners have mentioned them in the eviction petition with their status as under:-
 - a) Petitioners are the co-owners/joint owners of the property bearing shop no. 826/20, Ground floor, New Krishna Market, Chandni Chowk, Delhi – 110006 where the wife of the petitioner No.1 i.e. Smt. Rashmi Mehra and the petitioner No.2 are jointly doing business of cloth merchant in partnership with each other.
 - b) Petitioners are also the co-owners of the property bearing no. 1523 to 1530, Ballimaran, Gali Qasim Jaan, Delhi – 110006 which is fully occupied by old tenants, not even a single inch of space/area in the said property is vacant or is available at the disposal of the petitioners and anyways is not suitable for the purpose of running a cloth business.
 - c) Property bearing no. 4683 (East) situated at Mahavir Bazar, Cloth Market, Fatehpuri, Church Mission Road, Delhi.
7. Based on this bonafide requirement and no other reasonable, alternative, suitable accommodation except the demised premises, prayer was made for eviction from the demised premises.
8. Pursuant to issuance of summons, the respondent filed leave to defend application which was allowed vide order dated 09.06.2017 and the respondent was granted unconditional leave to contest the eviction petition.
9. The respondent filed a written statement, wherein the respondent



disputed the site plan filed by the petitioners. Further it was admitted that respondent had taken the demised premises on rent.

10. It was further stated that the petitioners had earlier filed a petition under Section 14(1)(a) and 14(1)(j) of the DRC Act and therein the respondent had filed a correct site plan in those proceedings where petitioners themselves admitted the said site plan.
11. It has also been stated that the premises were let out to the respondent in the year 1982 by Shri. Devi Swarup Mehrotra. The petitioners claim themselves to be the legal heirs of Shri. Devi Swarup Mehrotra and the respondent had paid rent to them.
12. In addition, it is also stated in the written statement that the need of the petitioners is not genuine and bonafide, and petitioners want to somehow get the demised premises vacated and thereafter to sell at a higher market price or re-let at a higher rent.
13. It is further stated that the petitioners are in possession of premises at property bearing shop no. 826/20, Ground floor, New Krishna Market, Chandni Chowk, Delhi – 110006 which is lying vacant and can be used as alternative accommodation. The partnership deed on which the petitioners are relying upon is sham and fabricated and further it does not disclose that the petitioner no. 2 and wife of the petitioner no. 1 are doing any business.
14. Furthermore, it is urged that petitioners are also the co-owners of the second floor in the demised premises wherein the petitioners had filed a copy of lease deed which shows that it was let out only for a period of 3 years from 20.04.2013 to 19.04.2016. This clearly shows that the petitioners after getting the demised premises vacated wants to let out



at higher rent or sell the same at higher value.

15. It is further stated that petitioners admits that they are the co-owners / landlords of the property no. 4683 (East) situated at Mahavir Bazar, Cloth Market, Fatehpuri, Church Mission Road, Delhi but in the entire eviction petition, petitioners have not mentioned whether the above property is not in power and possession of the petitioners.
16. Respondent further urges that petitioners have concealed that they are in possession of portion of the property No. 4679, Mahavir Bazar, Cloth Market, Fatehpuri, Delhi – 110006. Along with the two sale deeds, plan filed by the petitioners clearly shows that the “two shops towards gali at the stairs has been owners property.” Thus, the status of these two shops are not clear.
17. It is claimed by the petitioners that they are also the co-owners of the property bearing no. 1523 to 1530, Ballimaran, Gali Qasim Jan, Delhi. Respondent contends that petitioners have falsely said that not even a single inch of space is available with them. It was further urged by the respondent that no site plan and details of the tenants have been filed in respect to the above property.
18. Respondent also came to know that the petitioners also own the property bearing no. 575, Katra Neel, Chandni Chowk, Delhi which is prime market of cloth business and big chunks of shop are in power and possession of the petitioners. Petitioners have intentionally and deliberately not given any details of the said property in the entire eviction petition and have suppressed the material facts in order to make out a false ground for eviction.
19. Petitioners filed replication to the written statement in which they



refuted all the averments made by the respondent in it and restated what was averred by them in the eviction petition.

20. Petitioners further stated in their replication that property No. 4679, Mahavir Bazar, Cloth Market, Fatehpuri, Delhi – 110006 was sold way back in 2004 and 2006 much before filing the eviction petition and after the passage of time, the circumstances have changed and now the son of the petitioner no. 2 has become major and he wants to become a helping hand to the petitioners in their old age by starting his own business from the demised premises.
21. With respect to the property bearing no. 575, Katra Neel, Chandni Chowk, Delhi, it was stated by the petitioners that the property was sold way back on 19.03.1999 much prior to the filing of the eviction petition.
22. At the evidence stage, petitioner No.1 examined himself as PW-1 and also one Mr. Balpreet Singh was examined as PW-2. The respondent examined himself as RW-1 and Mr. Dinesh Kumar, Assistant Ahlmad was examined as RW-A.

FINDINGS RECORDED BY LD. ARC

23. The learned ARC after perusing the evidences and materials on record, dismissed the eviction petition vide impugned order dated 17.03.2018 by observing as under:-
 - a) The petitioners failed to prove the essential ingredients of Section 14(1)(e) of the DRC Act and bonafide requirement of the petitioner has not been made out as various other properties are in power and possession of the petitioners



which can be used by the son of the petitioner no. 2.

- b) The learned ARC with respect to the property bearing shop no. 826/20, Ground floor, New Krishna Market, Chandni Chowk, Delhi – 110006 was of the view that only relying upon a partnership deed to hold that the wife of the petitioner no. 1 and petitioner no. 2 were in a partnership business, is not proved.
- c) Petitioners have filed two sale deeds of property bearing Municipal no. 4679, situated at Mahavir Bazaar, Cloth Market, Fatehpuri, Delhi but the perusal of the sale deeds shows that the shops have been sold excluding the roof rights. Hence, the learned ARC was of the view that whether the entire property has been sold or not is not proved.
- d) In addition, it is also not proved whether the property No. 575, Katra Neel, Delhi (which is an alternative accommodation) is available with the petitioner or not.
- e) The fact that status of different portions in respect to the property no. 1523 – 1530, Ballimaran, Gali Qasim Jan, Delhi is not clear from the site plan and rent receipts placed on record. Hence the contention of the respondent that some shops are laying vacant can be utilized as alternative suitable accommodation is found tenable.
- f) Further in regard to the second floor of the demised premises, it was observed that the petitioners failed to show that the tenant is still in occupation and presumed that it is lying vacant in possession of the petitioner after expiry of the lease



on 19.04.2016.

g) Learned ARC was also of the view that nothing has been mentioned or proved by the petitioners vis a vis property bearing no. 4683 (East) situated at Mahavir Bazar, Cloth Market, Fatehpuri, Church Mission Road, Delhi.

24. Assailing the aforesaid order rendered by the learned ARC, the instant revision petition is preferred at the instance of the petitioners.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

25. Mr. Endlaw, learned counsel appearing for petitioners, at the outset submits that there is no dispute in regard to the ownership of the petitioners over the demised premises as well as the existence of landlord-tenant relationship between the parties.
26. He further argues that the additional properties brought by the respondent in his written statement were sold prior to the filing of the eviction petition. Now petitioners are left with only two properties. It was further submitted that learned ARC has made assumptions and arrived at prima facie view while dismissing the eviction petition filed by the petitioners.
27. It was argued that in respect to the property bearing shop no. 826/20, New Krishna Market, Chandni Chowk, Delhi, petitioners have place the partnership deed between the wife of the Petitioner No. 1 and Petitioner No. 2 running the business and merely because the petitioners are not filing taxes and the business is running into losses, it cannot be the ground for arriving at a conclusion that the partnership business is a sham. Further, the learned ARC totally ignored the fact



that PW-2 was himself a partner in the business and not only identified his signatures on the partnership deed dated 14.01.2016 but also denied the suggestions put to him by the Respondent.

28. As regards to the property bearing Municipal no. 4679, situated at Mahavir Bazaar, Cloth Market, Fatehpuri, Delhi, he submits that the learned ARC erroneously held that since the site plans annexed along with the two sale deeds states “owners’ property”, the sale of the premises remains unproven. He further states that once the sale deed is place on record, it is conclusive proof of the sale of the property. Further he submits that the burden to demonstrate that the property was available to the petitioners falls on the respondent, and the respondent has failed to conclusively prove that the property was in fact lying vacant which can be used as an alternative suitable accommodation.
29. In respect to the property bearing no. 575 Katra Neel, Delhi, it was argued that the said property has been sold by the petitioners way back on 19.03.1999 i.e. much prior to the filing of the eviction petition. Learned ARC failed to take cognizance of the sale deeds with respect to the above stated property.
30. With respect to the second floor of the demised premises, it was submitted that the second floor is occupied by one Gurmeet Singh and he is still in the possession of the second floor of the demised premises. Merely expiry of the period of lease does not mean that the possession of the premises has been handed over. It was further submitted that learned ARC has not considered that it was incumbent upon the respondent to prove beyond reasonable doubt that the availability of vacant accommodation with the petitioners and not for the petitioner to



prove the negative.

31. In regard to the property no. 1523 – 1530, Ballimaran, Gali Qasim Jan, Delhi, he points out from the cross examination of respondent that the entire evidence is hearsay evidence and hence, it cannot be relied upon. Further he states that the respondent has failed to disclose the numbers and location of the shops which are alleged to be in possession of the petitioners.
32. Lastly with respect to the property no.4683 (East) situated at Mahavir Bazar, Cloth Market, Fatehpuri, Church Mission Road, Delhi, it is submitted that no question has been put to the petitioners in the cross examination and also respondent has not lead any evidence to substantiate, therefore it cannot be the basis for dismissal of the eviction petition.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

33. *Per Contra*, Mr. Kohli, learned counsel appearing on behalf of the respondent argues that the order passed by the Ld. Trial Court is clear with regard to concealment by the petitioners and also the fact that the petitioners have sufficient suitable accommodation available with them.
34. He further argues that this is a case of additional accommodation not of a bonafide requirement.
35. Mr. Kohli further submits that the petitioners failed to explain why and how four shops have been given the same numbers as 1527 and five different shops as 1527/1 in the site plan of the property no. 1523 – 1530, Ballimaran, Gali Qasim Jan, Delhi. He points out from the impugned judgement that the learned ARC was also of the opinion that



portions at first as well as on second floors were given as same numbers. Hence the properties bearing No.1523-1530 can be utilized as alternative suitable accommodation as Ballimaran is total commercial area where the businesses are flourishing.

36. He further argues that in the entire proceedings before the learned ARC, Petitioner No. 2 who is seeking the eviction of the demised premises for his son Mr. Rahul purposely never came in the witness box to give her deposition to the said effect as she was afraid to lie before the Court and was aware of the consequences.
37. It is respectfully submitted that neither in the petition nor in their counter affidavit there is word and whisper about the name of Sh. Balpreet Singh as a partner along with wife of the petitioner No.1 and petitioner No.2 doing business in property bearing No. 826/20, Ground Floor, New Krishna Market, Chandni Chowk, Delhi-110006 and the name of Sh. Balpreet Singh came into picture only after grant of leave to defend in Replication filed by petitioners. Therefore, petitioners are trying to create a scenario on the basis of forged and fabricated partnership deed only with the intention to show that the said premises is already occupied and is not vacant for the bonafide requirement for the son of the petitioner no. 2.
38. It is further submitted that the original partnership deed was never produced in the court as it was forged and ante dated and to evade enquiry qua its authenticity.

ANALYSIS, REASONING AND CONCLUSION

39. I have heard learned counsel for the parties at length.



40. In order to succeed in the eviction petition filed under Section 14(1) (e) of the DRC Act, the landlord has to satisfy the three essential ingredients which are reproduced below:-
- a) *Landlord – tenant relationship*
 - b) *Landlord requires the premises bonafidely for use for themselves or for family members dependent upon them;*
 - c) *They have no other reasonable suitable accommodation.*
41. In regard to the first requirement, the learned ARC has already given a finding that the ownership of the petitioners over the premises in question as well as the existence of the landlord-tenant relationship between the parties stands proved.
42. For second requirement, whether the premises is bonafidely required by the petitioners for themselves or family members dependent on them needs to be examined.
43. The Hon'ble Supreme Court in the judgement of **Baldev Singh Bajwa vs. Monish Saini, (2005) 12 SCC 778** has held that whenever a landlord seeks eviction of the tenant for bonafide need, Controller shall presume the need as genuine and bona fide. Additionally, the burden to refute the said presumption squarely lies on the tenant and the mere assertion on part of the tenant is insufficient.

“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 added)

44. Admittedly, the son of the petitioner No.2 has an M.B.A. degree. In this regard, certificate is exhibited before the trial court as EX. PW 1/4 which clearly shows that he has completed his M.B.A. course from Guru Gobind Singh Indraprastha University in the year 2014 and is desirous of establishing his own business. The statement of PW-1 in this regard is reproduced as below:

“4. That the deponent states that the petitioner no.2 has a grown-up son namely Rahul who is aged about 26years. Mr. Rahul is unmarried and unemployed. He is educated and has



studied upto MBA.

5. That the deponent states that the deponent requires the suit premises bonafidely for Rahul, son, of the petitioner no.2, who intends to start his cloth business in the suit property in order to establish his life career. Even the marriage of Rahul is being postponed for want of place for his business.”

45. The impugned order nowhere records a finding that the need of the petitioners is not genuine or bonafide.
46. Hence, the second requirement i.e. the need of the petitioners being genuine and bonafide is proved. The son of petitioner no. 2 is dependent on petitioner no. 2 for the accommodation.
47. The third requirement on the basis of which the impugned order has been passed is that the petitioners have other alternative suitable accommodation.
48. The Hon’ble Supreme Court in ***Shiv Sarup Gupta v. Mahesh Chand Gupta (Dr)***, (1999) 6 SCC 222 has observed as under:-

“18. In M.M. Quasim v. Manohar Lal Sharma [(1981) 3 SCC 36: AIR 1981 SC 1113] this Court has held (vide para 18) that the landlord does not have an unfettered right to choose the premises but merely showing that the landlord has some other vacant premises in his possession may not be sufficient to negative the landlord's claim if the vacant premises were not suitable for the purpose for which he required the premises. This Court cautioned that the court must understand and appreciate the relationship between the legal rules and necessities of life.”



49. In the landmark judgment passed by the Hon'ble Supreme Court in **Sarla Ahuja vs. United India Insurance Co. Ltd., (1998) 8 SCC 119**, holds as under:-

“13.To deprive a landlord of the benefit of the ground mentioned in Section 14(1)(e) on account of availability of alternative residential accommodation, it is not enough that such alternative accommodation is in a far different State. Such accommodation must be available in the same city or town, or at least within reasonable proximity thereof if it is outside the limits of the city. The said limb of clause (e) cannot be interpreted as to mean that if the landlord has another house anywhere in the world, he cannot seek recovery of possession of his building under clause (e). The High Court therefore went wrong in observing that since the landlord has possession of another flat at Calcutta she is disentitled to seek recovery of possession of the tenanted premises situated at Delhi.

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 added)

50. The present eviction petition has been adjudicated by the learned ARC after the parties have led their evidence and the principles applicable for adjudication of “leave to defend” are not applicable. It is not sufficient for the respondent to raise triable issues but the respondent has to prove with documentary evidence to show that the petitioners are having accommodation which is both alternative and suitable.
51. The Hon’ble Supreme Court in the case of **Smt. Prativa Devi vs. T.V. Krishnan, (1996) 5 SCC 353**, has observed as under:-

“2.....The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court is rather solicitous about the age of the appellant and thinks that because of her age she needs to be looked after. Now, that is a lookout of the appellant and not of the High Court. We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. There is no law which



deprives the landlord of the beneficial enjoyment of his property.....”

52. Learned counsel for the petitioners strongly relied upon the judgment passed by this court in **Kailash Kumari vs. Shakuntla, 2018 SCC OnLine Del 6930** and more particularly para 16 which reads as under:-

“16. Again, in judgment dated 2nd August, 2017 in RCR No. 352/2017 titled Lalta Prasad Gupta v. Sita Ram it was held as under:

“17.

18. Thus, if the tenant seeks leave to defend controverting the requirement pleaded by landlord on the ground of the landlord, though at the time of requirement having alternate premises, having not used the same and instead having commercially exploited the same, the tenant must plead (a) the particulars of such premises; (b) the right/title of the landlord to the same; (c) that the said premises were vacant and available for use at the time of the pleaded requirement of landlord; (d) how the said premises were suitable for the pleaded requirement; and, (e) how the landlord has deprived himself thereof i.e. by sale or letting and support the said pleas with material on the basis whereof such pleas will be proved. I say that it is essential to place such material before the Rent Controller because the purpose of trial, resulting



from grant of leave to defend, is to prove the said pleas and if the tenant has nothing from which he can possibly prove the said pleas, the trial also will not result in the landlord being “disentitled from obtaining an order for recovery of possession of premises on the ground specified in Clause (e) of proviso to sub Section (1) of Section 14” of the Act, within the meaning of Section 25B(5) supra. This is not to say that the tenant should file foolproof documentary evidence at the stage of leave to defend. However there must be placed on record all the requisite particulars. The onus on the tenant, at the stage of seeking leave to defend, is thus somewhere in between foolproof documentary evidence and a totally vague, bereft of any particulars plea. Where, in between the said onus lies, depends on facts of each case.””

53. A perusal of this judgment shows that the onus upon the respondent regarding showing availability of alternative suitable accommodation at the time of leave to defend and at the time of final arguments after leave has been granted, are substantially different. At the time of final argument, the onus on the respondent is to show with evidence (both documentary and oral) that the petitioners are in power and possession of the alternative accommodation which is suitable.
54. Recently, the Hon’ble Supreme Court in **Abid-Ul-Islam vs. Inder Sain Dua, (2022) 6 SCC 30** has held 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(8). 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.”

55. A perusal of this judgement shows that the bonafide need of the petitioners is the primary requirement as per Section 14(1)(e) of the DRC Act and availability of the alternative accommodation is only incidental one.
56. In regard to the property bearing shop no. 826/20, New Krishna Market, Chandni Chowk, Delhi – 110006 is where the wife of the petitioner No.1 i.e. Smt. Rashmi Mehra and the petitioner No.2 are jointly doing business of cloth merchant in partnership with each other, the partnership deed was marked as Mark ‘E’. In his cross examination,



PW1 with respect to the above property has deposed as under:-

“It is wrong to suggest that the petitioner No. 2 and my wife are not running at business of fabric in partnership in property No. 826/20, Ground Floor, Krishna Market, Delhi. No registration under the GST has been made in respect of the said partnership business. No income tax return has been filed in respect of the said partnership business. Vol. Since the business incurring losses so there is no question of filing ITR. No PAN No. has been obtained in respect of the aforesaid partnership. The said, business is not registered before the Registrar of Firms under the Partnership Act. Since there is no sale, therefore no books of accounts are being prepared. I cannot tell who was earlier tenant in shop No. 826/20, Ground Floor, Krishna Market, Delhi prior to our occupation in the same. It is wrong to suggest that Mark E is forged and fabricated document.”

57. Ld. ARC took a view that running of business based solely on the partnership deed is not proved. In best case scenario, even assuming that the partnership business is not being run from the said shop, it is not for the respondent to dictate in what manner the properties of the petitioners are to be adjusted for meeting his bonafide requirement. Further the respondent has not led any evidence to the contrary as the onus to prove was on the respondent to show that the above stated property is vacant and available to the petitioners for meeting their bonafide requirement. If the petitioners are of the opinion that property bearing shop no. 826/20, New Krishna Market, Chandni Chowk, Delhi



– 110006 is not suitable for the son of the petitioner no. 2 that is where the assumption and presumptions would and should rest.

- 58.** Property bearing no. 4679, situated at Mahavir Bazar, Cloth Market, Fatehpuri Delhi, the learned ARC was of the view that the two sale deeds filed by the petitioners shows that the shops have been sold excluding the roof rights. Perusing the two sale deeds marked as Mark 'B' and Mark 'C' and the site plans attached to it clearly shows that the said shops have been sold much prior to the filing of the eviction petition way back in 2004 and 2006 which establishes that the petitioners are not in power and possession of the above stated property. Further the respondent failed to led any evidence to show that the roof over the said shops is available with the petitioners and are in his power and possession of the petitioners. Once the sale deed is on record and in the absence of any evidence to the contrary, it is clear that the above stated property has been sold and is not in power and possession of the petitioners. Even if the view of the learned ARC is accepted, roof cannot be the alternative suitable accommodation to run a cloth business which requires maximum visual exposure. The visual exposure on the first floor is considerably higher than the visual exposure on the second floor.
- 59.** In regard to the property bearing no. 575 Katra Neel, Delhi, which is stated to be a prime market of cloth business, learned ARC failed to peruse the sale deed filed by the petitioners. By perusing the sale deed marked as Mark 'D', it is clear that the above stated property was sold to Mrs. Inderjeet Kaur in the year 1999 through the registered sale deed. Hence, petitioners are not in power and possession of the above



stated property and the same cannot be available as alternative suitable accommodation.

60. Further it was also contended that petitioners are the owners of the second floor of the property no. 4680, Mahabir Bazar Cloth Market, Fatehpuri, Church Mission Road, Delhi. Petitioners relied upon a lease deed dated 23.05.2013 exhibited as Ex. PW1/10 to prove that the second floor is occupied by Gurmeet Singh. It was held by learned ARC that since the lease deed was dated from 20.04.2013 to 19.04.2016, after expiry of the period of lease, it is to be presumed that the petitioner got the possession of the above property.
61. Learned ARC erred in coming to this conclusion as the onus was on the respondent to prove that the possession of the second floor of the demised premises is with the petitioners, but there is no evidence on record or led to show that the second floor of the demised premises was in occupation of the petitioners. Assuming for the sake of argument that the property is available with the petitioners then also the petitioners are the best judge of their requirement. The court is not to sit in the armchair of the petitioners as to which property is to be utilized in what way.
62. As regards the property bearing no. 1523-1530, Ballimaran, Gali Qasim Jan, Delhi-110006 is concerned, the learned ARC has gone on the statement of the respondent that he made inquiry. At this stage, it is necessary to reproduce the relevant cross-examination of the respondent in this regard which is as under:-

"I cannot tell the date/day when I visited the property no. 1523-1530, Ballimaran, Gali Qasim Jaan, Delhi-06, but it



was about 3-4 months ago. One Mr. Rakesh Rathi also accompanied me on the said day of my visit. The said property was having 10-15 shops. I had not counted how many shops were closed and how many were opened in the aforesaid property on the day of my visit. Vol. Maximum were closed. I had not taken the photographs of any such closed shops in the aforesaid property on that day. I have been told by the occupier of the opened shops that all the closed shops are in power & possession of the petitioners. I cannot tell the name of such person who had told me the aforesaid fact regarding closed shops. I cannot produce any document to show that all the closed shops in the aforesaid property are in power and possession of the petitioners. It is wrong to suggest that the petitioners are not in possession of any shop in property no. 1523-1530, Ballimaran, Gali Qasim Jaan, Delhi-06 and all the shops are, in possession of old tenants. I was told by one Mohd. Zubair that one shop was let out to him by the petitioners at a monthly rent of Rs. 5,000/- after getting the same vacated from the earlier tenant. The said Mohd. Zubair had not shown any document in this regard to me. It is wrong to suggest that the said shop was in possession of Mohd. Zubair and still in possession of Mohd. Zubair as tenant at monthly rent of Rs. 1,450/-.

(emphasis added)



63. Respondent acknowledges in his cross examination that when he made inquiry, occupiers informed him that some of the closed shops are in power and possession of the petitioners. Further he admits that there are no documents to show that the petitioners are in power and possession of the aforementioned property.
64. It will also be relevant reproduce the cross examination of the petitioner no.1 with respect to the above property which reads as under:-

“The list of tenants on the ground floor in the property No. 1523 to 1530, Gali Qasim Jan, Ballimaran, Chandni Chowk Delhi, is Ex. PW1/R1. It is correct that there are nine tenants on the ground floor of this property. It is wrong to suggest that there are various portions A to G in my possession in the property bearing No. 1523 to 1530, Gali Qasim Jan, Balliimaran, Chandni Chowk Delhi as now marked in site plan Ex. PW1/13 (Colly.).

The comprehensive list of tenants of ground, first, and second floor in the property No.1523 to 1530, Gali Qasim Jan, Ballimaran, Chandni Chowk Delhi is Ex.PW1/R2. It is wrong to suggest that the portion Hof first floor is in my possession in the property bearing No. 1523 to 1530, Gali Qasim Jan, Ballimaran, Chandni Chowk, Delhi as now marked in site-plan Ex. PW1/13 (Colly). It Is wrong to suggest that the portions I to M of second floor are in my possession in the property bearing No. 1523 to 1530, Gali Qasim Jan, Ballimaran, Chandni Chowk, Delhi as now



marked in site plan Ex. PW1/13(Colly). ”

65. It is clear that the suggestion put forth by the respondent was categorically denied by petitioner no. 1. Also by perusing the list of tenants along with rent receipts exhibits as *Ex. PW1/R1 and Ex. PW1/R2* and site plan of the above stated property exhibits as *Ex. PW1/13 (Colly)* clearly shows that the all the shops are occupied by the tenants for their residential and commercial purposes.
66. At the stage of deciding an eviction petition, the onus is on the respondent to show that the petitioners have other suitable alternative accommodation. By perusing the present cross examinations quoted above, it only suggests bald averments made by the respondent, based upon the hearsay evidence without their being any documentary evidence led by the respondent.
67. In an eviction petition, to show that the petitioners are having other suitable accommodation, it is for the respondent to prove with sterling evidence that there is suitable and alternative accommodation available with the petitioners. Reliance is placed on **Baldev Bajwa** (*supra*). Merely stating that the shops are in power and possession of the petitioners will not suffice.
68. Learned ARC in the absence of their being a cross-examination cannot come to a finding that no explanations have been given by the petitioners. It was incumbent on the respondent to ask a question to elicit a response and thereafter the ARC could have arrived at the conclusion that he arrived at. On the availability of the property bearing no. 1523-1530, Ballimaran, Gali Qasim Jan, Delhi-110006, no question had been put to the petitioners by the respondent.



69. In the absence of any evidence, respondent has failed to prove that any of the shops are vacant and available which can be used as an alternative suitable accommodation.
70. It is apparent that this court while exercising revisional jurisdiction is not required to interfere with the impugned order unless it suffers from any illegality and is contrary to the law laid down.
71. I am of the view that learned ARC failed to analyse the evidences and materials placed on record. It is thus clear that the impugned order has been passed believing the statement of the respondent as a gospel truth and without even touching upon the evidences led by the parties.
72. For the reasons and findings given above, the impugned order suffers from various illegalities as per the law laid down by the Hon'ble Supreme Court and is liable to be set aside. Accordingly, the same is set aside and the revision petition filed by the petitioners is allowed.
73. The eviction order is passed with respect to the First Floor portion of property bearing Municipal No. 4680, Mahavir Bazar, Cloth Market, Fatehpuri, Church Mission Road, Delhi-110006 in favour of the petitioners and against the respondent.
74. In view of section 14(7) of the DRC Act, the order passed shall be executed after expiration of the six months from today.
75. Pending applications, if any, are disposed of accordingly.

JASMEET SINGH, J

OCTOBER 12th, 2023 / (MSQ)

Click here to check corrigendum, if any