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

+ **RC.REV. 299/2016 & CM APPL. 20518/2016**

KHANNA & ANNADHANAM

..... Petitioner

Through: Mr. Dhruv Pande and Mr. Siddharth Aggarwal, Advocates

versus

S C KHANEJA & SON (HUF)

..... Respondent

Through: Mr. Devanand Ray, Advocate

+ **RC.REV. 308/2016, CM APPL. 22001/2016, 22004/2016, 42650/2016, 23682/2017, 4256/2018, 29588/2018 & 42851/2022**

WHEEL FINANCE INDIA (P) LTD

..... Petitioner

Through: Mr. Siddharth Aggarwal, Advocates

versus

S C KHANEJA & SON (HUF)

..... Respondent

Through: Mr. Devanand Ray, Advocate

+ **RC.REV. 316/2016, CM APPL. 22616/2016, 22619/2016, 42648/2016, 23683/2017, 4252/2018, 29590/2018, 37774/2018, 43052/2022 & 56216/2022**

B K SHROFF & CO

..... Petitioner

Through: Mr. Siddharth Aggarwal, Advocates

versus

S C KHANEJA & SONS (HUF)

..... Respondent

Through: Mr. Devanand Ray, Advocate

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Reserved on: 03rd March, 2023

Date of Decision: 24th May, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

Signature Not Verified

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By: MAHIMA SHARMA
Signing Date: 24.05.2023
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1. These revision petition(s) have been filed impugning the common order and judgment dated 11.02.2016, passed by the Additional Rent Controller, Central District, Tis Hazari Courts in eviction petition bearing nos. E-415/14, E-417/14 and E-419/14, whereby the leave to defend application(s) filed by the Petitioner(s) herein were dismissed and the eviction order was passed in favour of the Respondent.

2. The eviction petition No. E-417/14/ (in RC. REV. No. 299/2016) was filed with respect to property No. 3/7 B, 2nd floor, Asaf Ali Road, New Delhi – 110002 and the portion is marked as point ‘C’ in the site plan filed before this Court on 03.02.2023 (‘site plan’). The name of the tenant is Khanna and Annadhanam and the premises was let out at statutory rent of Rs. 400/- per month.

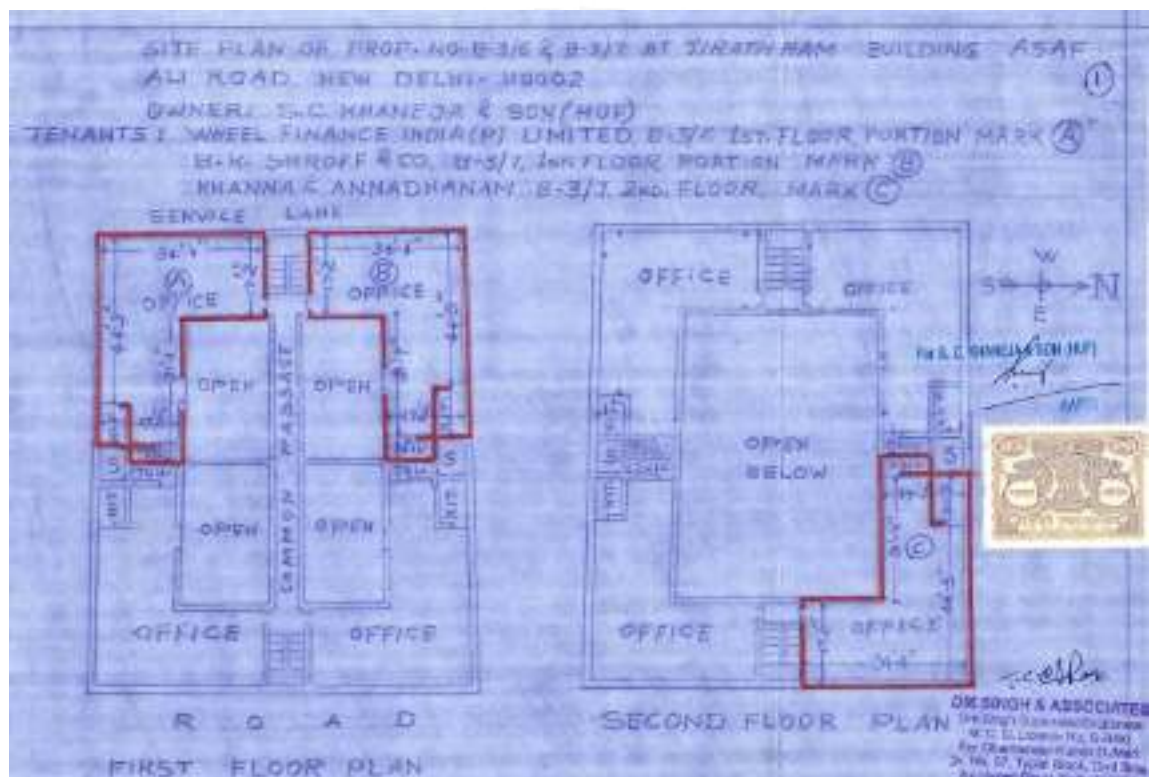
2.1. The eviction petition No. E-415/14 (in RC. REV. No. 308/2016) was filed with respect to property No. 3/6 B, 1st Floor, Rear Flat, Asaf Ali Road, New Delhi and the portion is marked as point ‘A’ in the site plan. The name of the tenant is Wheel Finance India Pvt. Ltd. and the premises was let out at statutory rent of Rs. 550/- per month.

2.2. The eviction petition No. E-419/14 (in RC. REV. No. 316/2016) was filed with respect to property No. 3/7 B, 1st Floor, Asaf Ali Road, New Delhi and the portion is and is marked as point ‘B’ in the site plan. The name of the tenant is B.K. Shroff and Co. and the premises was let out at statutory rent of Rs. 500/- per month.

2.3. The aforesaid premises are collectively referred to as ‘tenanted premises’ in this judgment.

2.4. The parties are represented by common counsel and they have addressed common submissions in the matter.

2.5. The site plan of the property bearing No. B-3/6 and B-3/7 at Tirath Ram Building, Asaf Ali Road, New Delhi – 110002 ('subject property'), delineating the tenanted premises is reproduced hereinunder for ease of reference:



3. Brief facts as averred by the Respondent in the eviction petition(s) are as under:

3.1. It is stated that the Respondent herein is a Hindu Undivided Family ('HUF') and is the owner of the subject property Nos. B-3/6 and B-3/7, Asaf Ali Road, New Delhi, having purchased the same *vide* a registered sale deed dated 10.02.2006.

3.2. It is stated that the eviction petition(s) have been filed for the *bona fide* need of the Ms. Divya Khaneja ('Ms. Diya'), who is the daughter-in-law of the Karta, Sh. S.C. Khaneja and she is a member of the HUF. It is stated that the tenanted premises are required for the purpose of opening a coaching centre for running coaching classes. The premises at 1st floor shown as point 'A' and 'B' in the site plan are required for conducting the classes and the premises at 2nd floor shown as point 'C' in the site plan is required for the purpose of office.

3.3. It is stated that the tenanted premises, admeasures approximately 3,800/4,000 sq. ft. i.e., 1250 sq. ft. each, comprising of point 'A', 'B' and 'C'. It is stated that if Ms. Divya was to hire similar accommodation on rent, as on date, the rent of similar size area itself would be around Rs. 3 lakhs per month and commencing a business of coaching classes would not be a financially viable venture with such a high cost.

3.4. It is stated that neither Ms. Divya, nor any other family members nor the Respondent HUF itself is in possession of any other alternate accommodation admeasuring similar in size.

3.5. It is stated that therefore, in these circumstances, the tenanted premises is *bona fide* required.

Arguments of the Petitioner(s)

4. Mr. Sanjeev Sindhwani, Senior Advocate appearing for the Petitioner(s), tenants, in R.C. REV. 308/2016 and R.C. REV. 316/2016 made the following submissions:

4.1. He states that in the site plan filed by the Respondent in the eviction petition with respect to Wheel Finance India Ltd. i.e., the tenant in R.C.REV. 308/2016, the open area in front of the said premises has not been shown as a part of the tenanted premises. He states that the open area as well forms part of the tenanted premises. He states that therefore, there is a dispute with respect to the site plan.

4.2. He states that in the site plan filed by the Respondent in the eviction petition with respect to B.K. Shroff and Co. i.e., the tenant in R.C.REV. 316/2016, the location of the tenanted premises has been incorrectly identified as point 'C' on the 2nd Floor. He states that the correct location of the tenanted premises is at point 'B' on the 1st Floor of the same site plan. He states that therefore, the site plan annexed with the eviction petition is erroneous. He states that this is evident from the site plan now filed by the Respondent on 03.02.2023 in this petition, which shows the correct location of the tenanted premises.

4.3. He states that similarly, in the site plan filed by the Respondent in the eviction petition with respect to Khanna and Annadhanam i.e., the tenant in R.C.REV. 299/2016, the location of the tenanted premises is erroneous. He states this is in fact, self-evident from the site plan now filed by the Respondent on 03.02.2023 in this petition, which shows the correct location of the tenanted premises.

5. He states that in the eviction petition, it has been alleged that Ms. Divya, has resigned from her service and is currently unemployed. He states that the Petitioner(s) herein have categorically disputed the said fact and pleaded that Ms. Divya continues to remain employed with the Bhartiya

Vidyapeeth University ('University'). He also relies upon the information culled out with respect to her income tax transactions to allege that she had regular professional income. He states that, therefore, she is gainfully employed and has no *bona fide* need to start a coaching centre.

6. He contended that the Respondent has in his possession suitable alternate accommodation in the same subject property, which is available for starting the coaching centre. He states that the Respondent HUF and its coparceners as well as its members own sufficient properties in the city of Delhi which can be used for starting the coaching centre.

6.1. He relies upon the tabulated list of alternate properties, filed on 18.02.2023, to substantiate the said submissions. He further relies upon a map of the 2nd floor annexed to the said tabulation to contend that different portions of the said floor became available at different times for occupation to the Respondent for starting the coaching centre; however, the Respondent's action of not using the said portions shows that the Respondent has no *bona fide* need and is only seeking to evict the statutory tenants [i.e., the Petitioner(s) herein].

6.2. He states that during the pendency of the eviction petition before the Trial Court, certain portions in the same subject property were vacated by the existing tenants and the said portions became available to the Respondent. He states that however, the Respondent re-let the said portions instead of using the same for the *bonafide* need of Ms. Divya. He states that the said facts belie the submissions of the Respondent with respect to the *bonafide* need.

7. He relied upon the judgment of the Supreme Court in *Abid-Ul-Islam Vs. Inder Sain Dua*, (2022) 6 SCC 30, at paragraph 11, 18, 19, 29 and 30 and the judgment of *M.M. Quasim Vs. Manohar Lal Sharma and Ors.* (1981) 3 SCC 36, at paragraph 14 and 18 to contend that in view of the record of these proceedings which shows availability of vacant commercial premises available to the Respondent, the plea of alternate accommodation raised by the tenants in the facts of this case gives rise to a triable issue.

7.1. He also placed reliance on the judgment of *Deepak Bajaj Vs. State of Maharashtra and Ors.* (2008) 16 SCC 14, at paragraph 16 to contend that facts of each case would decide its precedential value while applying the same.

7.2. He relied upon the judgment of this Court in *Davinder Pal Singh and Ors. Vs. M/s Pritam Prakash Dawar & Sons*, 2013 SCC OnLine Del 4425 at paragraph 16 to contend that the issue of alternate accommodation should be tested at trial in the facts of this case.

8. Mr. Dhruv Pandey, Advocate, appearing for the Petitioner in R.C. REV. 299/2016 stated that he adopts the submissions made by the senior counsel for the other revisionists. He did not address any arguments separately.

Arguments of the Respondent

9. Mr. Devanand Ray, Advocate, addressed the following submissions on behalf of the Respondent:

10. With respect to the site plan, the learned counsel for the Respondent placed on record an updated site plan on 03.02.2023, wherein the tenanted

premises were duly marked and identified as point 'A' and 'B' on the 1st floor and point 'C' on the 2nd floor respectively.

11. He states that the Respondent had filed with the eviction petition a business proposal duly explaining the requirement of the tenanted premises located on the 1st floor and 2nd floor of the subject property. He states that in this proposal the proposed use of the tenanted premises was also elucidated.

11.1. He states that the access to the 1st floor and front portion in 2nd floor of this building is directly from the main Asaf Ali road and, therefore, the tenanted premises are suitable and ideal for starting a coaching centre. He states that the requirement of 'large size' can be well accommodated in the tenanted premises.

11.2. He states that the allegations of the Petitioner(s) that Ms. Divya continues to work at the University is false. He states that she has resigned from the University and is not working there. He states that Ms. Divya is well qualified and aspires to start a coaching centre for her personal needs.

12. He has placed on record a tabulation on 03.02.2023 responding to the allegations of the Petitioner(s) with respect to the suitability of the alternate accommodation owned by the Respondent HUF, and the properties owned by Mr. Kunal Khaneja, who is the husband of Ms. Divya.

12.1. He states that the re-letting of a portion on the 1st floor in the same subject property, which fell vacant prior to the filing of the eviction petition, does not mitigate against the plea of *bona fide* requirement. He states that the HDFC Bank was a pre-existing tenant and the lease was renewed in favour of the said tenant.

12.2. With respect to the Petitioner(s)' plea of letting out distinct portions on the 2nd floor in the same property to a new tenant, he states that the said portions are not suitable for the purpose required i.e., for running a coaching centre. He states that the rear portion of the 2nd floor of the subject property does not have direct access from the main Asaf Ali road and has to be accessed from the rear side of the building.

12.3. He further states that the Respondent is dependent on the rental income earned by letting out the different portions of the subject property. He states that re-letting of the portion of the 2nd floor which fell vacant was to support the income of the Respondent and required for maintaining this building. He states that the Respondent requires the tenanted premises located on the 1st floor for running the coaching classes and the portions of the 2nd floor are not suitable for this purpose.

12.4. He states that without prejudice to the fact that the portion of the 2nd floor which fell vacant are not suitable for starting coaching classes, the submissions of the Petitioner(s) that the Respondent herein should forfeit his rental income (at market rent) from other portions of the property located on 2nd floor, but not seek eviction of the statutory tenants, who are paying paltry amount, is unreasonable and does not stand to reason.

12.5. He states that therefore, re-letting the said portions on 2nd floor does not give rise to a triable issue.

12.6. He has placed reliance on judgments of this Court in *Shanti Devi and Ors. Vs. Raksha Ahluwalia, 2017 SCC OnLine Del 7165*, at paragraph 4 and 5; *Satish Kumar & Anr. Vs. Kanwar Raj Singh, 2020 SCC OnLine Del*

2567, at paragraph 22 and *Raj Kumar Khanna Vs. Parduman Singh, 2013 SCC OnLine Del 4013* at paragraph 7.

12.7. He has also placed reliance on the judgments of Supreme Court in *Balwant Singh Vs. Sudarshan Kumar (2021) 15 SCC 75* at paragraph 12 and 14 and *Anil Bajaj & Anr. Vs. Vinod Ahuja, (2014) 15 SCC 610* at paragraph 5.

Analysis and Finding

13. This Court has heard the learned counsel for the parties and perused the paper book.

14. The eviction petition(s) were instituted in the month of September, 2013, by the Respondent under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act'), invoking the special provisions of Section 25B of the said Act, seeking speedy possession of the tenanted premises for starting a coaching centre.

14.1. The applications seeking leave to defend filed by the Petitioner(s) were dismissed *vide* impugned judgment dated 11.02.2016. The operation of the judgment was first stayed *vide* interim order dated 31.05.2016 in R.C.REV. 308/2016 and thereafter, the stay was also extended in R.C.REV. 316/2016 *vide* order dated 02.06.2016 and in R.C.REV 299/2016 *vide* order dated 10.08.2016.

14.2. No use and occupation charges have been fixed in these matters and the Petitioner(s) herein have continued to occupy the tenanted premises even after the passing of the eviction order dated 11.02.2016, on payment of the statutory rent. The Respondent herein, has filed application(s) for fixation of

use and occupation charges in the year 2018, however, the same have remained pending adjudication. Arguments have been heard on the revision petition as well as the said applications seeking fixation of use and occupation charges.

14.3. The Supreme Court in *Abid-Ul-Islam Vs. Inder Sain Dua* (supra) has highlighted that the intended object of Section 14(1)(e) and 25 B of the DRC Act is to facilitate speedy possession of the tenanted premises after taking note that the safeguard against its abuse is duly provisioned under Section 19 of the DRC Act. The relevant observations of the Court at paragraph 18 and 19 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.

19. Before a presumption is drawn, the landlord is duty-bound to place prima facie material supported by the adequate averments. It is only thereafter, the presumption gets attracted and the onus shifts on the tenant. The object of Section 14(1)(e) vis-a-vis Section 25-B has to be seen in the light of yet another provision contained under Section 19. Section 19 gives a right to the dispossessed tenant for repossession if there is a non-compliance on the part of the landlord albeit after eviction, to put the premises to use for the intended purpose. Such a right is available only to a tenant who stood dispossessed on the application filed by the landlord invoking Section 14(1)(e) being allowed. Thus, Section 19 inter alia throws more light on the legislative objective facilitating a speedy possession. The object is also reflected in the proviso to Section 25-B(S), denying a right of appeal.”

14.4. Further, the Supreme Court in ***D. Sasi Kumar Vs. Soundararajan, (2019) 9 SCC 282***, has authoritatively held that the crucial date for deciding the *bona fide* requirement of the landlord/landlady is the date of the filing of the eviction petition and not the period during which the proceedings remained pending in the legal system. The Supreme Court held that the pendency of the litigation before the Trial Court and the High Court cannot be relied upon by the tenant to contend that the said requirement of the landlord/landlady has ceased to exist. The relevant observations of the Court at paragraph 12 and 13 reads as under:

“12. Further, the High Court has also erroneously arrived at the conclusion that the bona fide occupation as sought should be not only on the date of the petition but it should continue to be there on the date of final adjudication of rights. Firstly, there is no material on record to indicate that the need as pleaded at the time of filing the petition does not subsist at this point. Even otherwise such conclusion cannot be reached, when it cannot be lost sight that the very judicial process consumes a long period and because of the delay in the process if the benefit is declined it would only encourage the tenants to protract the litigation so as to defeat the right. In the instant case, it is noticed that the petition filed by the landlord is of the year 2004 which was disposed of by the Rent Controller only in the year 2011. The appeal was thereafter disposed of by the appellate authority in the year 2013. The High Court had itself taken time to dispose of the revision petition, only on 6-3-2017 [Soundara Rajan v. D. Sasikumar, 2017 SCC OnLine Mad 37589] . The entire delay cannot be attributed to the landlord and deny the relief. If as on the date of filing the petition the requirement subsists and it is proved, the same would be sufficient irrespective of the time lapse in the judicial process coming to an end. This Court in Gaya Prasad v. Pradeep Srivastava [Gaya Prasad v. Pradeep Srivastava, (2001) 2 SCC 604] has held that the landlord should not be penalised for the slowness of the legal system and the crucial date for deciding the bona fide requirement of landlord is the date of application for eviction, which we hereby reiterate.

13. Therefore, in the present facts, the bona fide requirement as claimed by the landlord stands established. The learned counsel for the tenant as an alternative submission had sought for sufficient time to vacate and hand over the vacant possession if the tenant was required to vacate the premises, which also needs to be addressed in the order.”

(Emphasis supplied)

14.5. In the present revision petitions, the main ground of the arguments of the Petitioner(s) is the availability of the alternate accommodation (s), which fell vacant in the subject property during the pendency of the revision petition before this Court i.e., (High Court) and were re-let by the Respondent to new tenants at current market rental. The said contention will be discussed while dealing with the Petitioner(s)' argument of alternate accommodation.

Site Plan

15. The Petitioner(s) have contended that the site plan of the tenanted premises annexed with the eviction petitions which are subject matter of R.C. REV. 299/2016 and R.C. REV. 316/2016 are erroneous. The Petitioner(s) contend that in view of the erroneous site plan annexed to the eviction petition, the identity of the tenanted premises is in dispute and thus, gives rise to a triable issue.

15.1. The Respondent herein has not disputed the said fact, and as noted above has filed an updated site plan on 03.02.2023 in these revision petitions, wherein each of the three (3) tenanted premises are correctly delineated.

15.2. The Petitioner(s) have not disputed the accuracy of the said site plan dated 03.02.2023 and have in fact relied upon the same to point out the error in the site plan filed earlier before the Trial Court.

15.3. In the opinion of this Court, the contentions of the Petitioner(s) in R.C. REV. 299/2016 and 316/2016 are misconceived.

15.4. In the petition no. 417/14/13, filed for the eviction of Khanna and Annadhanam, at row no. 1 and 2, the description of the tenanted premises is correctly disclosed as property No. 3/7 B, 2nd floor, Asaf Ali Road, New Delhi – 110002.

15.5. The object of providing description of an immovable property in ejectment proceedings finds its basis in Order 7 Rule 3 of CPC and Order 20 Rule 9 of CPC. The purpose of giving an accurate description is to enable identification of the tenanted premises. In this regard, it would be instructive to refer to the decision of Supreme Court in ***Zarif Ahmad (dead) through legal representatives and Anr. v. Mohd. Farooq, (2015) 13 SCC 673***, wherein the Supreme Court has observed as under:

“11. Order 7 Rule 3 of Code of Civil Procedure, 1908 (for short “CPC”), which pertains to the requirement of description of immovable property, reads as under:

“3. Where the subject-matter of the suit is immovable property. –

Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or number.”

The object of the above provision is that the description of the property must be sufficient to identify it. *The property can be identifiable by boundaries, or by number in a public record of settlement or survey. Even by plaint map showing the location of the disputed immovable property, it can be described. Since in the present case, the suit property has been described by the plaintiff in the plaint not only by the boundaries but also by the municipal number, and by giving its description in the plain map, by no stretch of imagination, can it be said that the suit property was not identifiable in the present case.”*

(Emphasis Supplied)

15.6. The tenanted premises under the occupation of Khanna and Annadhanam are admittedly located on 2nd floor; however, erroneously in

the site plan annexed with the eviction petition the tenanted premises were marked on the 1st floor.

15.7. In the opinion of this Court, the description of the tenanted premises given in the eviction petition at row no. 1 and 2, itself was sufficient to identify that the tenanted premises under the occupation of Khanna and Annadhanam. As stated above the premises is correctly described in the eviction petition as property No. 3/7 B, 2nd floor, Asaf Ali Road, New Delhi – 110002. The parties were *ad idem* on the location of the premises in the subject property.

15.8. Further, the Petitioner herein (i.e., the tenant) in R.C. REV. 299/2016 had filed a counter site plan of the premises under his occupation before the Trial Court, with the application seeking leave to defend. The Respondent, landlord, in the reply filed to the leave to defend, at paragraph 3(o), admitted to the correctness of the site plan filed by the tenant (Petitioner herein). The tenanted premises, therefore, stood identified. This admission of the Respondent, landlord, in the opinion of this Court was sufficient to put a quietus to this issue of defective site plan, filed with the eviction petition.

15.9. Be that as it may, in the updated site plan filed by the Respondent on 03.02.2023, the Respondent as well corrected the error and accepted the location of the tenanted premises as marked by the Petitioner. Therefore, the identity of the tenanted premises, which is a subject matter of R.C. REV. 299/2016 is not in dispute between the parties; it stands admitted and therefore, does not give rise to the triable issue.

16. Similarly, in petition no. 415/14/13 filed for the eviction of B.K. Shroff and Co., at row no. 1 and 2, the tenanted premises is correctly

described in the eviction petition as property No. 3/7 B, 1st floor, Asaf Ali Road, New Delhi – 110002.

16.1. The tenanted premises under the occupation of B.K. Shroff and Co. are admittedly located on 1st floor; however, erroneously in the site plan annexed with the eviction petition the tenanted premises were marked on the 2nd Floor.

16.2. This Petitioner (tenant) in (R.C. REV. 316/2016) disputed the site plan filed with the eviction petition; however, no counter site plan was filed as per the LCR. The Respondent, landlord, in reply at paragraph 2 to the said leave to defend admitted the error. In the eviction proceedings against the tenant (Khanna and Annadhanam), a site plan was filed by the tenant correctly depicting the location of the premises in possession of B.K. Shroff and Co. on the 1st floor. The Respondent herein admitted the correctness of the said site plan filed by the tenant, Khanna and Annadhanam. With the said admission, the issue with respect to location of B.K. Shroff and Co. also stood resolved.

16.3. In any event, the Petitioner, B.K. Shroff and Co. has not disputed the updated site plan dated 03.02.2023 filed by the Respondent, wherein the tenanted premises in its occupation have been duly delineated.

16.4. Similarly, in petition no. 415/14, filed for the eviction of B.K. Shroff and Co., at row no. 1 and 2, the tenanted premises is correctly described in the eviction petition as property No. 3/6 B, 1st floor, Asaf Ali Road, New Delhi – 110002. There is thus no dispute with respect to the identity of the tenanted premises. The issue therefore, stands resolved and does not give rise to any triable issue.

17. The Petitioner, M/s Wheel Finance India Ltd., in R.C. REV. 308/2016 has disputed the site plan filed with the eviction petition only to the limited extent that the 'open area' available in front of the tenanted premises has not been marked in red ink on the site plan. Pertinently, the description of the property in the eviction petition is not in dispute and location of the property as marked on the site plan filed with the eviction petition is also not in dispute.

17.1. However, it was sought to be contended by the learned senior counsel for the said Petitioner that this error, in not marking the open area, would lead to splitting up of the tenancy.

17.2. This Court is unable to accept the contention of the Petitioner that there is any splitting up of tenancy as alleged. The Respondent has filed the eviction petition for recovery of entire tenanted premises under the control and occupation of the tenant and there is admittedly a single tenancy of the premises under the control of the said tenant. The purpose of the site plan is to identify the tenanted premises and is evident from the record, there is no dispute on the identity of the tenanted premises under the control of this Petitioner. The objection raised by the Petitioner is without any merit and does not give rise to triable issue.

17.3. The updated site plan filed by the Respondent on 03.02.2023 has not been disputed by this Petitioner(s) and the premises are duly identified in the same.

18. The Trial Court's finding on this issue reads as under:

"WHEN the identity of the Property in question and, the relation of Landlord-Tenant between the parties is clear to both the contesting parties, the Court is

of the firm view that the said objections being raised by the Respondent cannot be made a basis for the grant of leave to defend as the same cannot be a triable issue when the parties are admitting the relation and the Property under tenancy.”

(Emphasis Supplied)

18.1. The aforesaid finding of the Trial Court on the issue of site plan is correct and does not suffer from any infirmity.

Bonafide need

19. The tenanted premises are required to enable Ms. Divya to start a coaching centre and for the said purpose contiguous area was required on the 1st floor for running the coaching classes and the area on the 2nd floor was required for the administrative set up for managing the said coaching centre. The layout plan of the proposed coaching centre has been duly placed before the Trial Court. Further the commercial viability of the subject property which is facing the main road i.e., Asaf Ali Road is not disputed by the parties. The subject property is located in Central Delhi and its accessibility and commercial viability for starting a coaching centre is admitted.

19.1. Further, it would be relevant to note that Ms. Divya, holds a post graduate degree in M.Sc. in Computer Science from New York Institute of Technology, USA, and was earlier working as an Associate Professor at Bhartiya Vidyapeeth University from where she has left her job in the year 2012.

19.2. It is also come on record that Ms. Divya was blessed with a baby girl just prior to the filing of the eviction petition and intended to pursue her career by running a coaching centre as an entrepreneur.

19.3. The only challenge raised to the *bona fide* need during the oral arguments was that Ms. Divya is not unemployed and has independent source of income. In this regard, the Petitioner (s) along with the documents filed on 18.02.2023, the Petitioner(s) placed on record details of TDS transactions (for F.Y. 2014-15) which show that Ms. Divya has a monthly income of Rs. 38,000/-.

19.4. There was no dispute raised during oral arguments as regards Ms. Divya's capacity to run and operate a coaching centre.

19.5. In the pleadings, there are some retrograde submissions made with respect to the incapacity of Ms. Divya to run a coaching centre in view of the fact that she is a mother to a newly born, which rightly have not been pressed in oral arguments and have therefore, not been dealt with.

20. In the opinion of this Court, Ms. Divya, who holds a master's degree is a qualified individual and is well within her rights to seek and aspire to start a coaching centre and the Petitioner(s) have not brought on record any material which would cast a doubt on the merits of the plea of *bona fide* need raised by the Respondent.

20.1. With respect to the submissions that Ms. Divya has a monthly income of Rs.38,000/-, the Respondent has sufficiently explained that the said payment is being made to her as a 'Director' appointed in the family company under the name and style of 'Integrated Master Securities Pvt. Ltd.'

20.2. In the opinion of this Court, the said directorship does not disentitle Ms. Divya from seeking to pursue her right to set up a coaching centre for running an independent business. So also, the income of Rs. 38,000/- per

month earned by her on account of the directorship does not cast any doubt on her *bona fide* need. The Supreme Court *vide* order dated 07.01.2022 in Civil Appeal No. 253/2022 titled as '**Harish Kumar Vs. Pankaj Kumar Garg**' had similarly observed that the fact that the dependent has some income would not disentitle the landlord for claiming release of the tenanted premises on the ground of *bona fide* need.

20.3. The Petitioner(s) during the course of oral arguments did not press the submissions that Ms. Divya continues to be employed with the University. The Petitioner(s) has not drawn this Court's attention to any document which would substantiate the said plea. The Respondent has in any event asserted that Ms. Divya is not employed with the University and the Respondent cannot prove the negative. This Court is satisfied that there is no material placed on record by the Petitioner(s) which would give rise to a triable issue in this regard.

21. The Respondent's contention that rental cost of a premises similar to that of tenanted premises, ad-measuring 3800 sq. ft. to 4,000 sq. ft., would be around Rs. 3 lakhs per month has not been contested by the Petitioner(s). The Respondent's contention that the said cost of Rs. 3 lakhs would be onerous for Ms. Divya, when starting a new business of coaching centre is reasonable. In these circumstances, the requirement of the Respondent to provide the tenanted premises to Ms. Divya for starting her coaching centre is *bona fide* and the Trial Court has rightly held in favour of the Respondent.

22. In these facts and circumstances, this Court is of the opinion that the finding of the Trial Court that the Respondent's need of the tenanted

premises for fulfilling Ms. Divya's entrepreneurial aspirations is *bona fide* does not suffer from any infirmity.

Alternate accommodation

23. The learned counsel for the Respondent has filed a tabulated stand on the unsuitability of the alternate accommodation owned by the Respondent and his family members, on 03.02.2023.

23.1. In reply, the Petitioner(s) have also tabulated their submissions on the suitability and availability of alternate accommodations in a note filed in these proceedings on 18.02.2023, which as per the Petitioners is suitable and available.

24. During the course of submission, the Petitioner(s) laid great emphasis on the portions of the subject property which fell vacant on the 2nd floor, on different dates in different years, during the pendency of the eviction proceedings and the revision petition.

24.1. The Petitioner(s) contended that though during the pendency of the eviction petition, portions of the subject property on the ground floor, 2nd floor and the basement became vacant; however, the Respondent instead of occupying the said premises, re-let the same to the tenants and not used for the coaching centre proposed by Ms. Divya.

24.2. The Petitioner(s) have also filed applications, *inter alia*, to bring on record the fact that the Respondent and other members of HUF own commercial offices in several location on Kasturba Gandhi Marg (K.G. Marg), near Connaught Place, which as well have been re-let during the

pendency of the revision petition. It is stated that the said premises would have been suitable for starting a coaching centre by Ms. Divya.

24.3. The Petitioner(s) contend that the aforesaid properties are suitable alternate accommodation, which are available to the Respondent for starting the coaching centre; however, since the Respondent failed to use the said premises for the stated purpose; the said omission belies the plea of the *bona fide* need.

25. This Court has perused the tabulated charts filed by the Petitioner(s) on 18.02.2023 and the Respondent on 03.02.2023.

Properties at Kasturba Marg

26. With respect to the office premises owned by the Respondent and the other members of the HUF in buildings located on K.G. Marg, though oral arguments were not addressed by the Petitioner however, in the tabulated list filed on 18.02.2023, the said offices are enlisted, which are as under:

Sl. No.	Property Address	Area
1.	712, Kailash Building, KG Marg, New Delhi	1015 Sq. ft
2.	408, Kailash Building, KG Marg, New Delhi	707 Sq. ft
3.	407, Kailash Building, KG Marg, New Delhi	1211 Sq. ft
4.	310, Naurang, House, KG Marg, New Delhi	486 Sq. ft
5.	309, Naurang House, KG Marg, New Delhi	486 Sq. ft

26.1. In the tabulation filed on 03.02.2023, the Respondent has explained that the commercial offices located on K.G. Marg are neither available nor suitable for the reasons set out therein.

26.2. The Respondent has explained the unsuitability and unavailability of each of the premises specifically. It has been pointed out that the area of each of the said premises is in the range of 486 sq. ft. to 1211 sq. ft. It is stated that there is no contiguous area of 3800-4000 sq. ft. owned by the Respondent (and his family members) in any one building and therefore it is not suitable for starting the coaching centre. The Respondent has also explained that the said office premises have been let out along with other co-owners of adjoining spaces, to corporate tenants, as per the market practice prevalent in such buildings located on K.G. Marg.

26.3. In the opinion of this Court, the aforesaid premises in the buildings on K.G. Marg are firstly, not available to the Respondent since they have already been let out to corporate tenants. The Respondent herein in the eviction petition(s) as well as the present revision petition(s) has laid great emphasis on the fact that a contiguous area of 3800 sq. ft. to 4000 sq. ft. area is required to run and operate the coaching centre. In contrast, the premises situated on Kasturba Gandhi Marg, admeasure within the range of 486 sq. ft. to 1211 sq. ft. and therefore, as well the said premises cannot be considered as suitable alternate accommodation.

Portions in subject property

Basement portion

27. The Petitioner(s) have contended that the basement in the subject property which admeasures, 7500 sq. ft., was vacated by the tenant in December 2014, however, the said portion is presently, lying vacant and is under the possession of the Respondent.

27.1. With respect to the availability of the basement in the subject property, the Respondents have stated that the said portion of the building has been adversely affected by serious seepage issues and is gutted with sewage water making it unfeasible for use and occupation.

27.2. This Court is of the opinion that in view of the aforesaid facts, the basement (which is affected with seepage) cannot be considered to be an alternate accommodation available to the Respondents. Further, it is trite that a 1st floor premises would be a preferential location in terms of sunlight, fresh air, and less traffic noise pollution, which would be conclusive for running a coaching centre; and if the landlord has the option to operate from the 1st floor, this Court fails to find any lack of *bona fide* in the said preference of the landlord.

First floor portion

28. The Petitioner(s) have averred that one portion (admeasuring 1250 sq. ft.) on the 1st floor was let out to HDFC Bank. The Respondent has clarified that the said portion was let out the HDFC Bank two (2) years prior to the filing of the eviction petition and the same is not vacant and therefore not available. The Petitioner(s) have not disputed the said submission and therefore, this Court finds the said submission without any merit.

Second floor portion (s)

29. The Petitioner(s) have contended that the eviction order was passed on 11.02.2016, however, by then one (1) portion admeasuring 1250 sq. ft., on the 2nd floor (on the front side) had fallen vacant in the year 2013; however, the said portion was let out by the Respondent in 2017 and not used for starting the coaching centre.

29.1. In reply, the Respondent has stated that the Respondent is dependent upon the rental income earned from the said portion and for the said purpose, the portion was re-let upon vacation. It is also stated that since the need was for a contiguous area of 3800 – 4000 sq. ft., the coaching centre could not have been made operational from the said 1250 sq. ft. He states that therefore the said portion by itself was not suitable/sufficient for starting a coaching centre.

30. The Petitioner(s) has relied upon the fact that another distinct portion on the rear side (ad measuring 1250 sq. ft.) on the 2nd floor fell vacant in the month of October, 2016, i.e., after the passing of the eviction order.

30.1. In reply, the Respondent has clarified that the said portion is being used by him for personal use as well as for a record room. He states that therefore the said portion is neither vacant nor available.

31. The Petitioner has relied upon the fact that a third distinct portion (ad measuring 1250 sq. ft.) on the rear side of 2nd floor fell vacant in the year 2015 i.e., during the pendency of the eviction petition and it was let out by the Respondent to a new tenant in the year 2018.

31.1. In reply, the counsel for the Respondent had submitted that the rear portion on the 2nd floor is not suitable for the coaching centre. He states that the entry to the rear portions of the 2nd floor is only from the backside of the building, through a separate staircase. He states that in contrast the tenanted premises which are sought to be recovered for starting the coaching centre are all accessible from the front staircase of the building and from the main Asaf Ali Road.

32. This Court has considered the submissions of the parties with respect to the availability of the distinct portions, which fell vacant on the second floor at different times. Keeping in mind, the dicta of the Supreme Court in **D. Sasi Kumar** (Supra) wherein the Court has directed that the crucial date for deciding the *bona fide* requirement of the landlord is the date of application for eviction, the averments of the Petitioner(s) with respect to portions on the second floor, either during the pendency of proceedings before the Trial Court or before this Court has to be evaluated accordingly.

32.1. Firstly, the front portions on the 2nd floor are not connected with the rear portions of the 2nd floor, through a common passage as compared to the 1st floor. And in fact, as per the site plan, the front portion and the rear portion of the 2nd floor are not accessible across the same floor. The access to the rear portions of the 2nd floor is from the back staircase of the building from the back lane, whereas the access to the front portion of the 2nd floor is from the front staircase of the building and the main Asaf Ali road. This fact itself is sufficient to hold that the said portions are not suitable alternate accommodation. Therefore, the said three (3) portions are not contiguous. In this regard, the Supreme Court in the judgment of **Anil Bajaj v. Vinod Ahuja, (2014) 4 SCC (Civ) 469**, has held as under:

“6. In the present case it is clear that while the landlord (Appellant 1) is carrying on his business from a shop premise located in a narrow lane, the tenant is in occupation of the premises located on the main road which the landlord considers to be more suitable for his own business. The materials on record, in fact, disclose that the landlord had offered to the tenant the premises located in the narrow lane in exchange for the tenanted premises which offer was declined by the tenant. It is not the tenant's case that the landlord, Appellant 1, does not propose to utilise the tenanted premises from which eviction is sought for the purposes of his business. It is also not the tenant's case that the landlord proposes to rent out/keep vacant the tenanted premises after obtaining possession thereof or to use the same in any way inconsistent with the need of the landlord. What the tenant contends is that the

landlord has several other shop houses from which he is carrying on different businesses and further that the 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)

32.2. Secondly, there is no elevator in this building and for this additional reason, the 1st floor would be more suitable for starting the coaching centre. The area surrounding the Asaf Ali road is a mixed-use area, combining the commercial and residential neighbourhood, which would be suitable for starting coaching centre for students.

32.3. Thirdly, the aforesaid three (3) distinct portions of the subject property located on 2nd floor fell vacant at different periods on the timeline i.e., in the year 2013, 2015 and 2016. The said portions did not become available for occupation in the same year; and therefore, there is no lack of *bona fide* if the Respondent let out two of the portions from time to time.

32.4. Fourthly, the Respondent had at the outset along with his eviction petitions enclosed the layout plan of the proposed coaching centre and stated that the coaching classes are proposed to be set up on the 1st floor and the administrative office for the coaching centre is proposed to be set up on the 2nd floor. The said portions identified by the respondents are all accessible from the front staircase in the building which faces the main Asaf Ali Road.

32.5. It is also admitted on record that the said portions on the 2nd floor had always been let out by the Respondent and therefore, the act of reletting the said premises was consistent with the past conduct of the Respondent. The

Respondent being dependant on the income rental earned from the said portions cannot be faulted for reletting the premises which were always let out and is his source of income. It is admitted on record that the Respondent is 68 years old and therefore, his dependency on the said income stands to reason.

32.6. The portion which, fell vacant in the year 2016 after the passing of the eviction order has been retained by the Respondent for his personal office and record room and therefore, the said portion cannot be said to be vacant.

32.7. The Petitioner(s) have consistently ignored the categorical submission that the Respondent has proposed that it requires contiguous area of 2500 sq. ft. plus more for setting up a coaching centre on the 1st floor and simultaneously 1250 sq. ft. area on the 2nd floor for the office. The Supreme Court in the judgment of *Hari Shankar v. Rao Girdhari Lal Chowdhury, 1962 Supp (1) SCR 933*, has reiterated in its judgments that it is the prerogative of the landlord to choose the premises from which he/she would prefer to start the business and the tenant cannot dictate terms to the landlord as to how he should adjust himself without getting possession of the tenanted premises.

32.8. The Respondent has specifically pleaded that it requires 3800-4000 sq. ft. area simultaneously for setting up the coaching centre and the administrative office. The availability of different portions in the same property in different years 2013, 2015 and 2016 would therefore not be suitable for satisfying the need of the Respondent.

33. In view of the aforesaid findings this Court is satisfied that the Respondent does not have in his possession any suitable alternate

accommodation either in the subject property or in the other premises pointed out by the Petitioner(s). Therefore the *bona fide* need alleged by the Respondent for the tenanted premises is made out.

34. The Supreme Court in the case of *Abid-ul-Islam* (Supra) has 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)

35. In view of the dicta of the Supreme Court, this Court is of the view that the Petitioner(s) have failed to raise any triable issues and the finding of the Trial Court do not suffer from any infirmity.

36. Accordingly, in view of the aforesaid discussion, this Court finds no merit in these revision petitions, which are hereby dismissed and the common eviction order dated 11.02.2016 is upheld.

CM APPL. 4256/2018 in R.C. REV. 308/2016
CM APPL. 4252/2018 in R.C. REV. 316/2016

37. The tenanted premises which are subject matters of these revision petitions are located on the 1st floor and are adjoining premises. The

Respondent has sought fixation of use and occupation charges at Rs. 94,875/- per month from the date of the eviction order dated i.e., 11.02.2016. The Respondent has relied upon the rental recovered from the other tenants located on the 1st floor i.e., HDFC Bank, to substantiate the demand of Rs. 94,875/- per month.

38. In reply, learned senior counsel for the Petitioner(s) in R.C. REV. 308/2016 and 316/2016 has contended that the terms of the lease offered to HDFC Bank has value added services such as VSAT, generator and other special covenants. He states that in contrast the Petitioner(s) have only been provided a bare shell premises. He states that therefore, the monthly market rent for the tenanted premises should be fixed at Rs. 25,000/- per month and he prays that the statutory period of six (6) months be excluded and the liability to make payment be reckoned from 11.08.2016. He has further stated that the Court may consider fixing the use and occupation charges from 30.01.2018 i.e., date when the application were filed seeking fixation of use and occupation charges.

CM APPL. 4250/2018 in R.C. REV. 299/2016

39. The learned counsel for the Petitioner in R.C. REV. 299 of 2016 has adopted the submissions of the learned senior counsel for the Petitioner(s) in the other petitions. The tenanted premises which are subject matter of this revision petition is located on the front portion of the 2nd floor, which has direct access from the main Asaf Ali Road.

Use and occupation charges

40. This Court has considered the submissions of the parties. The Respondent has placed on record a copy of the registered lease deed dated

28.03.2012, executed with HDFC Bank for the 1st floor portion in the same building. The rate of rental mentioned therein is therefore reliable. The period for which the Petitioner(s) are liable to pay the use and occupation charges is from 01.02.2018 till the date of vacation from the premises.

41. However, taking into consideration the facilities and special covenants agreed between the Respondent and HDFC Bank as well as the fact that the Petitioner(s) herein are old tenants, this Court deems it appropriate to fix the use and occupation charges at Rs. 50,000/- per month, payable by each of the Petitioner(s), with effect from 01.02.2018 until the date of vacation from the premises (i.e., 64 months until 30.05.2023). The Petitioner(s) are directed to pay the said arrears of use and occupation charges in six (6) equal monthly instalments in the bank account of the Respondent herein. The monthly instalment shall be paid by the Petitioner(s) on or before 15th day of each English calendar month i.e., the first monthly instalment will be payable on 15.06.2023, the second monthly instalment will be payable on 15.07.2023 and so on.

42. It is directed that in case, the Petitioner(s) default in payment of the arrears and/or the use and occupation charges, the Respondent will be entitled to recover the use and occupation charges in the execution proceedings. As directed above, the Petitioner(s) will be liable to pay use and occupation charges of Rs. 50,000/- per month, until they handover the peaceful and vacant possession to the Respondent.

43. The stay of operation of the judgment granted *vide* interim order dated 31.05.2016 in R.C.REV. 308/2016 and thereafter, extended in R.C.REV. 316/2016 *vide* order dated 02.06.2016 and in R.C.REV 299/2016 *vide* order dated 10.08.2016, hereby stands vacated. The Respondent is at liberty to

proceed with the execution of the common eviction order since the revision petition stands dismissed.

44. No orders as to costs.

MANMEET PRITAM SINGH ARORA, J

MAY 24, 2023/aa/sk

