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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 24.08.2023

Judgment pronounced on: 06.12.2023

+ **RC.REV. 417/2016**
PRAVEEN & ANR

..... Petitioners

Through: Ms Shalini Kapoor, Ms Promil Mago,
Ms Sukriti Singh and Ms Divyanshi
Saxena, Advs.

versus

MULAK RAJ & ORS

..... Respondents

Through: Mr M. Salim, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, (J)**

1. This is a petition seeking setting aside of the order dated 10.03.2016 in E.No. 1098/14/11 passed by the learned ARC (Central), Tis Hazari Courts, Delhi titled as "*Sh. Mulak Raj and others v. Sh. Bishambar Dayal & Sons and Anr*" whereby the application of the petitioners for leave to defend was dismissed and the petition filed by the respondents under section 14(1)(e) of the Delhi Rent Control Act (hereinafter referred to as "DRC Act") was allowed.
2. The petitioners are the tenants and the respondents are the landlords of Property No. 1226, 1st Floor, Kacha Bagh, Chandni Chowk, Delhi-110006 (hereinafter referred to as "tenanted premises").
3. Respondent no.1 (Mr. Mulak Raj) is the son of Late Mr. Panna Lal. Respondent no.2 (Mr. Deepak Kumar), respondent no.3 (Mr. Mukesh Kumar) and respondent no.4 (Mr. Sunil Kumar Kamboj) are the sons of respondent no.1.



4. Mr. Amit Kamboj and Mr. Rohit Kamboj are the sons of respondent no.2; Mr. Gaurav Kamboj and Mr. Himanshu Kamboj are the sons of respondent no.3; Mr. Uday Kamboj and Mr. Akshay Kamboj are the sons of respondent no.4.

BRIEF FACTS GIVING RISE TO THE PRESENT PETITION

5. The tenanted premises was purchased by one Late. Mr. Panna Lal from the Government of India. *Vide* will dated 18.11.1986, the tenanted premises devolved in the favour of the respondents and Mr. Ashok Kumar (brother of the respondents). Subsequently, Mr. Ashok Kumar gave up all his rights, title and interest in the tenanted premises in favour of the respondents in the year 2000 and thus, the respondents become the joint owners of the tenanted premises.
6. The respondents filed an Eviction Petition u/s 14(1)(e) read with section 25-B of the DRC Act on the ground that the tenanted premises is *bonafidely* required by the respondents and their respective family members, i.e. their respective sons for carrying out their business/commercial activities. The *bona fide* need as stated in the Eviction Petition reads as under:-

“xvi) That the petitioner No.1 Shri Mulakh Raj is about 80 years of age and is residing on the second floor and third floor of the suit premises which is exclusively ment for residential purpose.

xvii) That the petitioner No.2 Shri Deepak Kumar is about 61 years of age and has two sons namely; Amit Kamboj and Rohit Kamboj both aged about 33 and 35 years respectively. Both sons of petitioner No.2 are married, having their respective families.

xviii) That the petitioner No.2 is carrying on his business in partnership along with Petitioner No.3 Shri Mukesh Kumar under



the name and style of M/s Panna Lai and Roshan Lal Jewellers from Shop No. 1223, Kacha Bagh, Chandni Chowk, Delhi-110006.

xix) That sons of the petitioner No.2 as of today are dependent on their father for business premises. They have no other suitable business accommodation with them Delhi.

xx) That the petitioner No.3 is aged about 58 years and is carrying on his business in partnership along with the petitioner No.2 Shri Deepak Kumar under the name and style of M/s Panna Lai Roshan Lal Jewellers from Shop No. No.1223, Kacha Bagh, Chandni Chowk, Delhi-110006.

xxi) That the petitioner No.3 has two sons namely; Gaurav Kamboj and Himanshu Kamboj aged about 32 & 28 respectively, both sons of petitioner No.3 are married having their respective families.

xxii) That sons of the petitioner No.3 as of today are dependent on their father for business premises. They have no other suitable business accommodation with them in Delhi.

xxiii) That the petitioner No.4 Sunil Kumar Kamboj is about 52 years of age and is presently in Australia. He has two sons namely; Uday Kamboj and Akshay Kamboj both aged about 26 and 21 years respectively. xxiv) That the petitioner No.4 along with his family wants to return back to India and settle down in Delhi. They have no other suitable business accommodation with them in Delhi.

xxv) That the petitioner requires bonafide the suit premises for themselves and for their respective family members dependant upon them i.e. their sons for carrying out business activities from the suit premises.

xxvi) That the petitioners and their respective family members dependant upon them, have no other suitable accommodation available to them in Delhi for carrying out their business activities,



except for petitioner No.2 and who are jointly carrying on business in partnership from premises No. 1223, Kacha Bagh, Chandni Chowk, Delhi- 110006.

xxvii) That the petitioners and their respective family members i.e. their respective sons require the suit premises bonafide for carrying out their business/commercial activities from the suit premises for their sustenance.”

7. It is further stated that the tenanted premises is *bonafidely* required by the respondents also because Respondent No.1 jointly with respondent No.4 and son of respondent No.2 namely Mr. Rohit Kamboj were carrying on a business under the name and style of M/S Panna Lal and Roshan Lal Jewellers Pvt Ltd, from premises bearing No. E-20, South Extension, Part-I, which had to be closed down since the said premises were a residential one and the Hon'ble Supreme Court had directed the MCD to close down all such commercial establishments being run from the residential premises or face permanent sealing. Hence, due to non-availability of a suitable alternative accommodation and a *bona fide* requirement to run business/commercial activities in the tenanted premises, the Eviction Petition was filed by the respondents.
8. Subsequently, the leave to defend application was filed by the petitioners stating that the respondent Nos.1 to 3 are not the owners of the tenanted premises and in fact, respondent No.4 and his son are claiming exclusive ownership over the entire tenanted premises. It was stated that the respondents have no locus-standi to file the Eviction Petition since the title of the suit property is disputed and the same has been filed just to pressurize the petitioners to pay the increased rent to the respondents. It was further stated that respondent No.2 is carrying on his jewellery business from the shop on the ground floor (bearing No. 1223, Kacha



Bagh, Chandni Chowk, Delhi), his sons were also assisting respondent No.2 in carrying out the jewellery business from the second and third floor of the tenanted premises. However, for the last two years, the sons of respondent No.2 separated from the business of their father and started carrying on a separate business under the name and style of “VICENZA” at Metropolitan Mall, MG Road, Gurgaon (Haryana) and hence, the second and third floor of the tenanted premises are now lying vacant.

9. *Vide* the impugned judgment dated 10.03.2016, the learned ARC was of the view that no triable issues were raised by the petitioners and hence, the leave to defend was dismissed. It was held that:-
- i. Existence of a landlord-tenant relationship between the parties- The learned ARC was of the view that since the petitioners have not disputed that they were not the tenants under the respondents, they have also not disputed that the respondents were not the landlords/owners of the tenanted premises and the fact that the rent was being paid, hence, the respondents were held to be the owners of the tenanted premises and the existence of a landlord-tenant relationship stood established between the parties.
 - ii. *Bona fide* requirement by the landlord- The learned ARC was of the view that in the absence of any substantial material brought before the Court by the petitioners and merely stating that the Eviction Petition was filed with a *mala fide* intention, it could not be said that a *bona fide* need was not made out.
 - iii. No other suitable alternate accommodation available with the respondents- The learned ARC was of the view that the respondents have already disclosed about the availability of the premises with them along with the details of the persons for whom the tenanted premises were required by the respondents for the *bona fide* needs. They have also disclosed that the previous business under the name



and style of M/S Panna Lal and Roshan Lal Pvt Ltd being run from South Extension, Part-I was closed due to the directions by the Supreme Court. The learned ARC observed that the petitioners have failed to show which were the properties available with the respondents to meet their requirements including those of the dependent sons and also that of respondent No. 4.

SUBMISSIONS ON BEHALF OF THE PETITIONERS/TENANTS

10. With regard to the contention of the respondents that the tenanted premises is required for *abona fide* need of carrying out business activities, it is stated by Ms. Kapoor, learned counsel for the petitioners that the respondents were already operating their business from the following premises (alternate accommodation available with the respondent):-
- i. A shop on the ground floor bearing no. 1223, Kacha Bagh, Chandni Chowk, Delhi.
 - ii. Two big showrooms situated on the first and second floor at the Metropolitan Mall, MG Road being property no. 188 -189, Sultanpur, M G Road, New Delhi-30, of area of more than 2000 sq. mts., each.
 - iii. Property bearing no. B-4/18, Safdarjung Enclave, New Delhi.
 - iv. Property bearing no. E-20, South Extension, Part-I, New Delhi.
 - v. Property bearing no. FF-35 at First and second floor of West Gate Mall, Raja Garden, New Delhi.
11. It is further stated that the learned ARC failed to appreciate that in a similar case titled as “*Shanti Devi v. Rajesh Kumar Jain*” [(2015) 2 SCC 158] where the landlord needed a commercial property to expand their business as the space currently available to them was allegedly insufficient, and the tenant had contended that there was no *bona fide*



requirement and landlords had an alternative accommodation, the Supreme Court held that the tenant had raised a triable issue, that there was a fair dispute to be tried in the Eviction Petition and the tenant was granted a conditional leave to defend.

12. She submits that as a matter of fact, the two sons of respondent No.2 are residing separately in Princeton Apartments at DLF Gurgaon and are also carrying their separate business under the name and style of “VICENZA” from two big showrooms situated on the 1st and 2nd floor at the Metropolitan Mall, MG Road, which are owned by the respondent No.2 and his sons.
13. She further submits that the learned ARC failed to appreciate that:-
 - i. The respondents had filed an Eviction Petition against two the other tenants and got the two other floors vacated.
 - ii. The petitioners had stated in their application for leave to defend that the respondents have more than two vacant floors i.e. second and third floors of the property bearing No. 1226, Kacha Bagh, Chandni Chowk, Delhi-110006 and as such their alleged need is not *bona fide* and the details of the same would be submitted before the Hon'ble Court at the time of trial.
 - iii. The contentions of the petitioners that the respondents are having sufficient accommodation in the premises bearing No. 1226, Kacha Bagh, Chandni Chowk, Delhi-110006 was to be ascertained after trial.
 - iv. The respondent No. 4 along with his family is well settled in Australia and is not even on speaking terms with the respondent no. 1 to 3 and their family members. Further, the respondent no. 4 and his family have well established business in Sydney, Australia and they have no plans either to return to India or to settle down in India. However, without prejudice to the fact that Respondent No.4 does



not wish to settle in India, it is submitted that the alleged *bona fide* need as stated by the Respondents/ Landlords is extremely vague.

- v. The projected need of the respondents is nothing but a desire for an additional accommodation. It is settled law that the projected requirement and the appropriateness of the additional accommodation is required to be considered in trial and not in a summary manner by believing the stand of the landlord only.
 - vi. The respondents have admitted that the entire building in which the tenanted premises is situated is commercial, since the same is situated in the busy commercial market of Chandni Chowk and they had kept the second and third floors vacant, which they could easily use for their alleged need.
 - vii. The respondents had failed to disclose all the accommodation available with them in their petition under Section 14(1) (e) of the DRC Act. That petition was liable to be dismissed for concealment.
 - viii. Triable issues were raised by the petitioners and the learned ARC erred in holding that no substantial material was brought before the Court or pointed by the petitioners. However, on a bare perusal of the leave to defend application, it will be clear that it is a case of concealment.
14. Learned counsel for the petitioners submits that the respondents have filed the petition with a *mala fide* intention only to evict the tenant for commercial benefits and not for any *bona fide* need. It is further submitted that as per the admissions made by the respondents about owning various properties, it is a case of additional accommodation and not a case of a *bona fide* requirement. It is also argued that the question whether the requirement of the respondents is genuine/*bona fide* or merely a desire to



evict the petitioners is a matter of trial, and cannot be considered at the stage of considering the application for leave to defend.

**SUBMISSIONS ON BEHALF OF THE RESPONDENTS/
LANDLORDS**

15. Mr. Salim, learned counsel for the respondents primarily submits that the petitioners have defaulted in the payment of user and occupation charges since 01.12.2021, which were fixed *vide* order of this Court dated 19.01.2018 with respect to the tenanted premises @Rs.5,000/- (Rupees Five Thousand) per month, w.e.f. the date of Eviction order, i.e. 10.03.2016.
16. It is submitted that the respondents and their sons are in *bona fide* need of the tenanted premises for carrying out their business activities.
17. The contentions of the petitioners are denied by the respondents on the following grounds:-
 - i. The shop bearing No. E-20, South Extension, Part-I is not available with the respondents since the said shop was closed by the MCD pursuant to the orders of the Supreme Court and the respondents have also placed on record the electricity bills showing “NIL” consumption, the judicial orders, the notice issued by MCD and the Survey Report in this regard.
 - ii. As regards the contention of the petitioners that the respondent No.1 is not residing on the upper floors of the tenanted premises, but is residing with respondent No.2 at 188-189, Village Sultanpur, MG Road, New Delhi, it is submitted that the respondents in their counter affidavit have categorically denied that the respondent No.1 is residing at 188-189, Village Sultanpur, MG Road, New Delhi, but is staying at the upper floors of the tenanted premises.



- iii. The claim of the petitioners that the respondents have six vacant shops on the Ground Floor of the tenanted premises, out of which four shops have been let-out on heavy rental is also denied by the respondents stating that this claim of the petitioners is vague and devoid of any material facts since no municipal number, no site-plan, no photographs of the alleged shops and no names of the tenants that are allegedly inducted on hefty rent are filed by the petitioners.
- iv. The respondents have filed a response reaffirming that the respondent No.4 along with his family members wish to return to India and settle down in Delhi.
- v. With respect to the argument of the petitioners that the respondents are in possession of shops in Metropolitan Mall, MG Road, Gurgaon (Haryana), it is submitted that the respondents have stated in their counter affidavit that they wish to set-up their business from their own premises (tenanted premises) which is in Delhi and not the shops which are situated in Gurgaon (Haryana).
- vi. As regards the concealment by the respondents at the time of filing the Eviction Petition about the business “VICENZA” which was being run by the two sons of the respondent No.2 is concerned, learned counsel for the respondents submits that the son of respondent No.2, who was aged about 35 years, started his personal business under the name and style of “VICENZA” only at the time of filing of the counter affidavit, in order to maintain his family consisting of his wife, his son and himself after the closure of shop No. E-20, South Extension, Part-I.
- vii. The respondents urge that they have categorically stated in their counter affidavit that the property bearing No. B-4/18, Safdarjung Enclave, New Delhi was a residential property was sold by them in the year 2009, much before the filing of the Eviction Petition. Hence,



the argument of the petitioners that the respondents have concealed that they are owners of the property bearing No. B-4/18, Safdarjung Enclave, New Delhi is devoid of any merit.

18. With respect to the argument of non-disclosure of alternative accommodation by the respondents, Mr. Salim, learned counsel has placed reliance upon the judgement of Supreme Court “**Meenal Eknath Kshirsagar (Mrs) v. Traders & Agencies**” [(1996) 5 SCC 344], and more particularly para 18 which reads as under:-

“18... It would have been better if she had referred to those facts but mere omission to state them in the plaint cannot be regarded as sufficient for disentitling her from claiming a decree for eviction, if otherwise she is able to prove that she requires reasonably the suit premises for her occupation. We are, therefore, of the opinion that the appellate bench and the High Court clearly went wrong in holding that the said omission was sufficient to disentitle her from getting a decree of eviction and it also disclosed that her claim was mala fide and not bona fide as required by law.”

19. He has also placed reliance on a judgement of this Court titled as “**Har Lal Gupta v. Anil Aggarwal**” [RC. REV. 153/2018], wherein it was opined that:-

“10. The tenant says that some of the properties owned by the landlord were not disclosed. Therefore, the petition ought to be dismissed on the ground of concealment of material facts. The learned Rent Controller rejected the said contention, he referred to the dicta of the Supreme Court in Ram Narayan Arora vs. Asha Rani (1999) 1 SCC 141, which held that non-disclosure of accommodation, which the court agrees cannot be alternate suitable accommodation, cannot be fatal to the eviction petition. This court too has held in Mumtaz Begum vs. Mohd. Khan RCR No.



78- 79/2005 dated 12.01.2009, that non-disclosure of other accommodation available to landlord is not always fatal. The tenant's contention that the son-Abhinav Agarwal is already running a business independently, even if it is accepted to be correct, would not disentitle him to start a new business. Reliance has been placed upon the dicta of the Supreme Court in *Sait Nagjee Purushottam & Co. Ltd. vs. Vimalabhai Prabhulal & Ors.*, 2005 (8) SCC 252, which held that when the dependent sons of the landlord desire to expand their business, it cannot be presumed that the landlord's need is a false pretence. It was further observed that it is a common experience that landlord-tenant disputes in our country take a lot of time, and one cannot wait indefinitely for resolution of such litigation.”

20. He further states that this Court in “**Mohd. Naseem v. Moizuddin**,” [2023 SCC OnLine Del 1571] opined that-

“37. The Supreme Court in the case of *Baldev Singh Bajwa v. Monish Saini*, (2005) 12 SCC 778, has held that in an eviction petition filed by landlord, the Court shall presume that the landlord's plea is genuine and bona fide and a heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. The Supreme Court further held that a mere assertion on the part of 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.”

21. Learned counsel for the respondents also relies upon the judgement passed by this Court titled as “**Kanwal Kishore Nagpal v. Brahm Dev Sharma**” [2023 SCC OnLine Del 1751] with respect to the argument of availability of alternate accommodation, which reads as under:-



"8.3. In this regard it would be relevant to refer to the decision of Supreme Court in the case of *Anil Bajaj v. Vinod Ahuja*, (2014) 4 SCC (Civ) 469, wherein the Supreme Court has held as under:—

....

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)"

22. It is submitted by Mr. Salim that the learned ARC has rightly considered the *bona fide* requirement of the respondents in the order dated 10.03.2016. He submits that in the present case, the landlords want the eviction of the tenants from the tenanted premises in order to start their own business as the same is suitable to them and hence it cannot be faulted. In this regard, he states that it would be relevant to mention the judgment of "***Ragavendra Kumar v. Prem Machinery & Co***" [(2000) 1 SCC 679] wherein the Supreme Court held that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter.



ANALYSIS AND FINDINGS

23. I have heard learned counsel for the parties.
24. The revisional jurisdiction of the High Court against an order of the learned ARC is very limited. In fact, it is limited to the touchstone of “whether the order of learned ARC is according to law”. This has been highlighted by the Hon’ble Supreme Court in “*Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta*” [(1999) 6 SCC 222] and “*Abid-Ul-Islam vs. Inder Sain Dua*” [(2022) 6 SCC 30]. In light of these judgments, it is clear that the jurisdiction of this Court can only be exercised if the impugned order suffers from any illegality.
25. The enactment of the DRC Act was prompted by the need to grant protection to the tenants who, due to the partition of the country, were compelled to migrate from Pakistan. A subset of these individuals moved to Delhi, facing urgent circumstances that warranted the provision for protection and safeguards against eviction. The tenants today have enjoyed this protection for more than 65 years. The Hon’ble Supreme Court in “*Satyawati Sharma v. Union of India*” [(2008) 5 SCC 287] observed that:-

“31. In H.C. Sharma v. LIC of India [ILR (1973) 1 Del 90] the Division Bench of the High Court, after taking cognizance of the acute problem of housing created due to partition of the country, upheld the classification by observing that the Government could legitimately restrict the right of the landlord to recover possession of only those premises which were let for residential purposes. The Court felt that if such restriction was not imposed, those uprooted from Pakistan may not get settled in their life. As of now a period of almost 50 years has elapsed from the enactment of the 1958 Act. During this long span of time much water has flown down the Ganges. Those who came from West Pakistan as refugees and even



their next generations have settled down in different parts of the country, more particularly in Punjab, Haryana, Delhi and surrounding areas. They are occupying prime positions in political and bureaucratic set-up of the Government and have earned huge wealth in different trades, occupation, business and similar ventures. Not only this, the availability of buildings and premises which can be let for non-residential or commercial purposes has substantially increased.”

26. A perusal of the above observations of the Hon’ble Supreme Court shows that the Rent Control Legislation has somewhat outlived its utility. I would also like to reiterate the observations of the Supreme Court made in “**Rattan Arya v. State of T.N**” [(1986) 3 SCC 385], wherein it was opined that:-

“4... As held by this court in Motor General Traders v. State of A.P. [(1984) 1 SCC 222 : AIR 1984 SC 121] a provision which was perfectly valid at the commencement of the Act could be challenged later on the ground of unconstitutionality and struck down on that basis. What was once a perfectly valid legislation, may in course of time become discriminatory and liable to challenge on the ground of its being violative of Article 14. After referring to some of the earlier cases Venkataramiah, J. observed:

“The garb of constitutionality which it may have possessed earlier has become worn out and its unconstitutionality is now brought to a successful challenge.””

27. However, I need not delve into this issue as it is not before me in the present Revision Petition and hence, nothing more needs to be said on this aspect.



28. Suffice it to say, the learned ARC is not required to take a magnifying glass and to minutely scrutinize the averments made in the Eviction Petition. Once the landlord has stated that he requires the tenanted property for a particular use, the Courts are required to believe the statement to be true and genuine, unless and until it is shown by the tenant through cogent material that the requirement is fanciful or whimsical. I am of the opinion that once a landlord initiates legal proceedings before the Court under the DRC Act and submits an affidavit asserting a genuine and *bona fide* need for the tenanted premises, coupled with a statement that no other suitable alternative accommodation is available to the landlord, then such averments should be deemed sufficient to warrant the Court to presume in favour of the landlord. The learned ARC is further required only to sift/comb through the averments made in the leave to defend application and see whether the tenant has established with cogent and material defence, facts which disentitle the landlord from an Eviction Order. This Court in “**Sarwan Dass Bange v. Ram Prakash**” [2010 SCC OnLine Del 351] has clearly held that:-

“7... The Controller is required to sift/comb through the application for leave to defend and the affidavit filed therewith and to see whether the tenant has given any facts/particulars which require to be established by evidence and which if established would disentitle the landlord from an order of eviction. The test is not of the tenant having controverted/denied the claim of the landlord and thus disputed questions of fact arising; the test is to examine the pleas of facts and then to determine the impact thereof.”

29. Having said that, in order to succeed in a petition under section 14(1)(e) of the DRC Act, the landlord is required to establish three conditions:-



- i. There must be a relationship between the parties as landlord and tenant
- ii. The tenanted premises must be *bonafidely* required by the landlord either for himself or for his family members
- iii. There is no other alternate suitable accommodation available with the landlord

LANDLORD-TENANT RELATIONSHIP

30. The learned ARC has held in para 8 that *"In the application for leave to contest, the respondents have not disputed the fact that they were not the tenants under the petitioners and also that the petitioners were not the landlord/Owner of the premises and the rent is being paid. Therefore, in the light of the pleadings of the parties and other material placed before this court, in so far as the purpose of clause (e) of sub-section (1) of section 14 of Act 59 of 1958 is concerned, the petitioners are found to be the owner of the premises and it is also found that there exists relationship of landlord and tenant between the parties."* There is no argument put up by the petitioners to the contrary and hence, the landlord-tenant relationship is found to be existent.

BONA FIDE REQUIREMENT

31. With respect to the second ingredient that the tenanted premises must be *bonafidely* required by the landlord either for himself or for his family members, it is submitted by the respondents that the tenanted premises is required by them and their sons to carry out business activities. On the other hand, the petitioners argue that the respondents do not have a *bona fide* requirement of the tenanted premises and the Eviction Petition has been filed with a *mala fide* intention only to evict the tenants.



32. It is a settled law that the Court must presume the *bona fide* requirement of the landlord. The Supreme Court in “**Sarla Ahuja v. United India Insurance Co. Ltd.,**”[(1998) 8 SCC 119] observed that:-

“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.”

33. The landlord is only required to show that the requirement of the tenanted premises is a *bona fide* requirement and not merely a whimsical or a fanciful desire by him. The Supreme Court in the landmark case of “**Deena Nath v. Pooran Lal**” [(2001) 5 SCC 705] observed that:-

“15...The statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be bona fide which is intended to avoid a mere whim or desire. The “bona fide requirement” must be in praesenti and must be manifested in actual need which would evidence the court that it is not a mere fanciful or whimsical desire.”



34. In the present case, there is no material on record which shows that the needs of the landlords are either *mala fide* or fanciful. The allegation that the need of the respondents is not *bona fide* and the Eviction Petition was filed with a *mala fide* intention is bald and vague.
35. The learned ARC has rightly observed that the landlord himself is the best person to explain as to what is his/ her bona-fide necessity. In the present case, the respondents have clearly stated that the tenanted premises is required for business purposes by the respondent no.1, sons of respondent no.2 and 3, and respondent no.4 along with his two sons who wish to return to India and settle down in Delhi.
36. The allegation that the respondent No.4 does not wish to return to India or is not on talking terms with his brothers, i.e. respondent Nos. 1-3, is not within the scope of landlord-tenant disputes under the DRC Act. Once the respondent No.2 has stated that the respondent No.4 wishes to come back and settle down in India, the same is enough to draw a presumption in the respondent's favour. It is not for the tenant to interfere in the personal life decisions of respondent no.4. It is also not within the purview of the tenant to determine or adjudicate upon the nature of respondent no. 4's relationships, specifically with regard to communication or lack thereof with his brothers, i.e. other respondents. I find no reason to disbelieve the averments made by the respondents regarding their *bona fide* need of the tenanted premises.
37. I am of the view that the respondent's assertions that they require the tenanted premises for themselves as well as their sons for carrying out business activities falls within the category of a *bona fide* requirement.
38. Keeping in view the settled law and the fact that the petitioners have brought nothing on record to show that the need of the respondents is not *bona fide*, the second ingredient also stands satisfied and correctly appreciated by the learned ARC.



39. Lastly, it is submitted by the petitioners that the projected requirement and the appropriateness of the additional accommodation is required to be considered in trial and not in a summary manner by believing the stand of the landlord only. It is a well settled law that at the time of deciding the leave to defend application, the learned Controller is only required to see whether a triable issue has been raised by the tenant or not. If the answer is yes, then the learned Controller is bound to grant the leave to defend and in the absence of a triable issue, the leave to defend/contest is liable to be rejected and a decree of eviction needs to be passed. It is also a settled law that the requirement of the landlord is presumed *bona fide*, unless the tenant through cogent material proves otherwise. Hence, this argument of the petitioners is devoid of any merit and is hereby rejected.

SUITABLE ALTERNATE ACCOMMODATION

40. Coming to the third ingredient, i.e. the landlord's requirement to show that he has no alternative and suitable accommodation available with him, learned counsel for the petitioners has submitted that the respondents have sufficient alternate accommodation and it is a case of additional accommodation.
41. In “**Ragavendra Kumar v. Prem Machinery & Co.**” [(2000) 1 SCC 679] the Supreme Court was of the view that:-

“10... It is true that the plaintiff landlord in his evidence stated that there were a number of other shops and houses belonging to him but he made a categorical statement that his said houses and shops were not vacant and that the suit premises is suitable for his business purpose. It is a settled position of law that the landlord is the best judge of his requirement for residential or business purpose and he has got complete freedom in the matter. (See Prativa Devi v. T.V. Krishnan [(1996) 5 SCC 353].) In the case in hand the



plaintiff landlord wanted eviction of the tenant from the suit premises for starting his business as it was suitable and it cannot be faulted.”

42. The Supreme Court in “**Balwant Singh v. Sudarshan Kumar**” [(2021) 15 SCC 75] held that:-

“12. On the above aspect, it is not for the tenant to dictate how much space is adequate for the proposed business venture or to suggest that the available space with the landlord will be adequate. Insofar as the earlier eviction proceeding, the vacant shops concerned under possession of the landlords were duly disclosed, but the case of the landlord is that the premises/space under their possession is insufficient for the proposed furniture business.

14. On consideration of the above aspects, the genuine need of the appellants to secure vacant possession of the premises for the proposed business is found to be established. According to us, the adequacy or otherwise of the space available with the landlord for the business in mind is not for the tenant to dictate.”

43. Similarly in the present case, it is not for the petitioners- tenant to dictate to the respondents- landlord whether other properties available with them are suitable to set up their business or not.
44. The unsuitability/non-availability of the alternate accommodation has been described by the respondents. It reads as under:-
- i. A shop on the ground floor bearing no. 1223, Kacha Bagh, Chandni Chowk, Delhi:- The claim of the petitioners that the respondents have six vacant shops on the Ground Floor of the tenanted premises, out of which four shops have been let-out on heavy rental is denied by the respondents stating that this claim of the petitioners is vague and devoid of any material facts since no municipal number, no site-plan, no photographs of the alleged



shops and no names of the tenants that are allegedly inducted on hefty rent are filed by the petitioners.

- ii. Second and third floor of the tenanted premises:- As per averments made by the respondents, the respondent No.1 is already residing on the second and third floor of the tenanted premises and the same is meant for residential purposes.
- iii. Two big showrooms situated on the first and second floor at the Metropolitan Mall, MG Road being property no. 188 -189, Sultanpur, M G Road, New Delhi-30, of area of more than 2000 sq. mts., each:-The respondents have stated that carrying out business from Gurgaon is not suitable to them given their residence is in Delhi. It is stated that an obvious preference exists against commuting to Gurgaon for business activities, particularly when a viable alternative to operate from Delhi is available. Hence, this property is not suitable to them.
- iv. Property bearing no. B-4/18, Safdarjung Enclave, New Delhi:-The respondents have clearly stated that they are no longer the owners of this property as it was sold by them in the year 2009. Due to the fact that this property is not available with them, the same cannot be an alternate accommodation.
- v. Property bearing no. E-20, South Extension, Part-I, New Delhi:- The respondents have claimed that this property is not available with the respondents since the said shop was closed by the MCD pursuant to the orders of the Supreme Court. They have also placed on record the electricity bills showing “NIL” consumption, the judicial orders, the notice issued by MCD and the Survey Report in this regard. Hence, even this property cannot be an alternate accommodation.



- vi. Property bearing no. FF-35 at First and second floor of West Gate Mall, Raja Garden, New Delhi:-The respondents have made an averment that the son of respondent no.2 has started his business under the name and style of “VICENZA” in the said property. Hence, keeping in view that this property is already occupied, it cannot be an alternate accommodation to the tenanted premises.
45. I am of the view that the respondents have given a reasonable and satisfactory justification as to why the abovementioned properties are not suitable to them. In addition, the petitioners have also failed to show the “suitability” aspect of the abovesaid alternate premises. Even if other properties are owned by the respondents and are also available with him, the same must also be a suitable accommodation to meet the requirements of the respondents.
46. The Hon’ble Supreme Court as well as this Court has repeatedly held that the Courts are not to sit in the armchair of the landlord and dictate as to how the available property of the landlord is to be best utilized by him. The landlord is the absolute owner of his property and is the best person to decide which property is to be utilized in what way. The respondent cannot dictate as to how the landlord is to utilize his property.
47. The landlord possesses the prerogative to determine their specific requirements, exercising full autonomy in this regard. It is not within the purview of the courts to impose directives on the landlord regarding the nature or quality of their chosen usage of the tenanted premises. Essentially, the courts refrain from prescribing any standard or guidelines for the landlord's choices (residential or commercial).
48. The learned ARC has correctly observed that the respondents had already disclosed about the non-availability of the alternative premises with them and why they were unsuitable to meet their needs. It was also



correctly held that the petitioners have failed to show which were the properties available with the respondents to meet their requirements for carrying out the business activities.

49. The respondents have successfully shown that the other alternate accommodation available with them are not suitable for meeting their *bona fide* requirement and tenanted premises is the only premises which is the best suitable accommodation for carrying out their business activities. As already noted above, the properties in Chandni Chowk and Gurgaon were not found suitable by respondents for meeting their needs; The Safdarjung Enclave property was already sold by the respondents in the year 2009; No commercial/business activities could be carried out from the South Extension property and the property situated in Raja Garden was already occupied by the son of respondent No.2. Hence, none of the aforementioned properties could be construed as an “alternate” and “suitable” accommodation available to the respondents for meeting their needs. Hence, the third ingredient that there is no other alternate suitable accommodation available with the landlord also stands satisfied.
50. As far as the argument of the petitioners that the respondents have failed to disclose all the accommodation available with them is concerned, I am in agreement with the submissions made by the respondents that all the alternate accommodation has been disclosed by the respondents. The accommodation which was not disclosed was not considered as an alternate accommodation by the respondents. The non-disclosure of the other alternate accommodation, if any, is of no consequence and does not make the tenant entitled to leave to defend. The learned counsel for the respondents has rightly placed reliance upon the judgments in this regard. This Court in “*Amolak Raj Singh v. Narender Kumar Dang*” [2017:DHC:6652] held that:-



“32. As far as the contention of the counsel for the petitioner / tenant, of the respondent / landlord in the petition for eviction having not disclosed the allotment at Holambi Kalan is concerned. Supreme Court in *Ram Narain Arora Vs. Asha Rani* (1999) 1 SCC 141 held that the non-disclosure of accommodation which the Court also agrees cannot be alternate suitable accommodation, cannot be fatal to the petition for eviction. I have also in judgment dated 12th January, 2009 in RC (R) No.78-79/2005 titled *Mumtaz Begum Vs. Mohd. Khan* held that non-disclosure of other accommodation available is not always fatal. To the same effect are *Surinder Singh Vs. Jasbir Singh* (2010) 172 DLT 611, *Sukhbir Singh Vs. Dr. I.P. Singh* (2012) 193 DLT 129, *Manju Devi Vs. Pratap Singh* (2015) 219 DLT 260 and *Hameeda Shahzad Vs. Shahjahan Khatoon* 2017 SCC OnLine Del. 7203. I have recently in *Sunil Kumar Goyal Vs. Harbans Singh* 2017 SCC OnLine Del. 9289, referring to earlier judgments, also held that once the facts have come before the Court and the Court has, after dealing therewith held in favour of landlord, the petition for eviction cannot be dismissed on ground of concealment.”

51. Similar is the view of ***Meenal Eknath Kshirsagar*** and ***Har Lal Gupta*** (supra).
52. Hence, keeping in view the position of law related to non-disclosure of alternate premises, the argument of the petitioners that there is concealment of alternate accommodation by the respondents and the Eviction Petition should be dismissed on this ground, is hereby rejected. Even otherwise, there is no alternate property which has been concealed by the respondents.



53. The reliance of the petitioners on the judgement *Shanti Devi* (supra) is also misplaced. In that case, the Court did not go into merits of the case and the same was also not a judgement but only an order in the peculiar facts of that case. The Hon'ble Supreme Court in para 4 of *Shanti Devi* (supra) has categorically stated that “*we are not inclined to go into the merits of the rival contentions, lest, it would amount to expression of views on the merits of the matter.*”
54. There is no triable issue raised by the petitioners in the present case.

CONCLUSION

55. I am of the view that the order dated 10.03.2016 does not suffer from any illegality or infirmity. The learned ARC has correctly held that the petitioners did not raise any triable issue and has also rightly appreciated the settled law and the facts of the case.
56. With these observations, the present petition is hereby dismissed and the order dated 10.03.2016 in E.No. 1098/14/11 passed by the learned ARC (Central), Tis Hazari Courts, Delhi titled as “*Sh. Mulak Raj and others v. Sh. Bishambar Dayal & Sons and Anr*” passing an eviction order in respect of premises, being Property No. 1226, 1st Floor, Kacha Bagh, Chandni Chowk, Delhi -110006, in favour of respondents and against the petitioners is upheld.
57. The respondents are at liberty to initiate appropriate proceedings for the recovery of unpaid user and occupation charges.
58. Petition dismissed.

JASMEET SINGH, J

DECEMBER 06th, 2023/st

Click here to check corrigendum, if any