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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment reserved on : 12.07.2023
Judgment pronounced on: 31.10.2023

+ **RC.REV. 63/2017, CM APPLs. 40266/2017, 2189/2020**

TILAK RAJ BHASIN & ANR. Petitioners
Through: Mr. Rajesh Bhatia, Mr.
Shivam, Advs.

Versus

DALIP KUMAR AHUJA Respondent
Through: Mr. Dilip Singh, Mr. Raj
Lakshmi, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

: **JASMEET SINGH, J**

1. The petitioners and respondent are referred as landlords and tenant respectively in the present judgment.
2. Landlords are aggrieved and dissatisfied by the order dated 12.08.2016 passed by the learned Additional Rent Controller (*in short "learned ARC"*) in Eviction Petition No. 308/2016 titled as "*Smt. Savitri Rani Bhasin through LR's vs. Dalip Kumar Ahuja*" wherein the eviction petition filed by the landlords under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (*in short "DRC Act"*) against their tenant was dismissed.



3. The primary reason for dismissing the eviction petition by the learned ARC was that the landlords were unable to prove their bonafide requirement under Section 14(1)(e) of the DRC Act.

FACTS/PLEADINGS

4. Smt. Savitri Rani Bhasin is the owner of the entire property bearing no. C-152, Rishi Nagar, Shakur Basti, Delhi and the tenant was inducted in one shop situated on the ground floor of property bearing No. C-152, Rishi Nagar, Shakur Basti, Delhi – 34 (*in short “tenanted premises”*) in the year 1980.
5. The tenanted premises were let out for commercial purpose and it is being used for commercial purpose. The tenant is running a business under the name of M/s Ahuja Decorators. The rate of rent of the tenanted premises at the time of filing the eviction petition was Rs. 360/- per month excluding other charges.
6. Smt. Bhasin had filed an eviction petition against their tenant under section 14(1)(e) of the DRC Act on the ground of bonafide requirement.
7. It was stated in the eviction petition that Smt. Savitri Bhasin is living at the first floor of the premises bearing no. C-152, Rishi Nagar, Shakur Basti, Delhi – 34 with her family members in a joint family. Family of Smt. Bhasin consists of her husband namely Sh. Tilak Raj Bhasin, her son Sh. Anil Bhasin, her daughter in law Smt. Kavita Bhasin, Sh. Yatin and Ms. Ananya being the grand children of the Smt. Bhasin.
8. Smt. Bhasin contends that the tenanted premises is required for her grandson namely Yatin Bhasin, who is pursuing B.Tech from Maharaja



Agrasen University as he wants to start his own business and is dependent on the landlords and the landlords have no other alternative accommodation.

9. During the pendency of the proceedings, Smt. Bhasin had expired and her LRs (Tilak Raj Bhasin “husband” and Anil Bhasin “son”) were substituted in the eviction petition.
10. As regards the accommodation is concerned, it is stated that there is one shop (yellow in site plan) which is run by Anil Bhasin who is running a business of electrical goods from the said shop. The other portion (shown in blue) is in occupation of another tenant namely Sh. Vijay Bahadur Saxena along with his family members for the residential purpose and the portion (shown in orange color) is being used by the landlords for the purpose of garage parking of vehicles for the last more than 21 years.
11. After receiving summons, tenant filed leave to defend application, the said application was dismissed vide order dated 08.07.2013. The said order was challenged before this Hon’ble Court and tenant was granted leave to defend vide order dated 27.11.2014.
12. Subsequently, written statement was filed by the tenant before the learned ARC contesting that there are several shops lying vacant in the ground floor of the property which are available at the disposal of the landlords. In support of this, tenant filed a site plan showing that there are six other shops lying vacant which are in possession of the landlords and those shops are commercially viable.
13. Tenant further submitted that landlords have no bona fide requirement as they want to let out the same to some big company for showroom



purpose.

14. On bonafide requirement, tenant vehemently opposes the ground taken by the landlords, as the need of the landlords is not in present but rather in the future as the grandson of the petitioner is still studying in the engineering college.
15. He further submits that the son of Smt. Bhasin i.e. Anil Bhasin is running a school at Alwar and is a man of means and the tenanted premises is not required for his son namely Yatin Bhasin.
16. Replication to the written statement was filed by the landlords, wherein they have denied all the averments made by the tenant and have also objected to the site plan filed by the tenant.
17. Thereafter both the parties led evidence, in which Anil Bhasin (son of Smt. Bhasin and father of Yatin Bhasin) was examined as PW1 and tenant was examined as RW1.

FINDINGS RECORDED BY THE LEARNED ARC

18. Learned ARC after hearing the final arguments and perusing the materials available before him, dismissed the eviction petition filed by the landlords. The learned ARC held:-
 - A. There is no dispute with regard to the relationship of landlords and the tenant.
 - B. Learned ARC further held that an eviction petition for the future need of the children is maintainable.
 - C. Learned ARC held that PW1 was unable to expressly spell out the proposed need of his son. Once, he was deposing on behalf of his son, he was expected to satisfactorily explain



the need of his son i.e. ultimate proposed user of the tenanted premises.

D. PW1 was even unable to tell regarding the nature of business his son will open from the tenanted premises. On one hand, PW1 is claiming that the shop is required for the bona fide need of his son, on the other hand, he is not sure rather he has not even spoken with his son as to the nature of proposed business. Hence the learned ARC was of the view that the testimony of PW1 is unreliable.

E. The non-appearance of Yatin Bhasin in the witness box is a serious lacuna in the landlords case as the tenant has been deprived of the right of cross-examination of Yatin Bhasin. The non-examination of Sh. Yatin Bhasin was found to be fatal to the case of the landlords.

F. There is no presumption in law that the bona fide need of the landlords is always genuine. The evidence of his father (PW1) is only an indirect piece of evidence and the landlords should have led the best evidence i.e. Yatin Bhasin. In addition, no reason has been assigned for non-examination of Yatin Bhasin.

G. Therefore, the learned ARC held that the landlords have failed to prove their bonafide need and hence, dismissed the eviction petition. Learned ARC also held that in view of the findings, the issue of alternative accommodation had become inconsequential.

19. Assailing the above order passed by the learned ARC, landlords



challenged the impugned order dated 12.08.2016 by way of filing this revision petition.

SUBMISSIONS ON BEHALF OF THE LANDLORDS

20. Mr. Bhatia, learned Counsel for the landlords has submitted that in the cross-examination PW-1 Anil Bhasin has admitted that "*at present my son is not in service*" and further stated that "*he will start consultancy business from the tenanted premises.*" Nothing adverse has come on record during the course of entire cross examination of PW-1.
21. He further argues that RW1 Dalip Kumar Ahuja has admitted in the cross examination that "*it is correct that entire first floor has been used by the petitioner and his family member for residential purpose*". He further admitted that "*it is correct that in front of shutter G in the site plan exhibit as PW-1/R-1 no shop is running, it is residence only.*" He further admitted the electric shop which is run by petitioner in one part of the shop shown in yellow colour in the site plan exhibit as PW-1/1 has been there for last 20 years. The other part of the shop Patanjali started two years back. It is correct prior to selling Patanjali products, in the part/portion the petitioner used to run his electric shop. He further admitted the photographs exhibit as RW-1/P-4 shown to the witness in which he correctly identified that the vehicle shown in the said photograph belongs to the petitioner which is parked inside. Hence, he submits that the tenanted premises is the only premises available to the landlords for their bonafide requirement.
22. Learned counsel for the landlords further states that the findings in paragraph 24 regarding the bonafide need could have only been proved



by Sh. Yatin Bhasin is misconceived. He states that father of Yatin Bhasin was duly competent to depose on his behalf and nothing adverse has come in the cross examination of PW1.

23. He further submits that it has been held in catena of judgements that non-examination of person for whose bonafide need the eviction petition is filed is not fatal and it is not necessary to examine the person for whose requirement the eviction petition is filed.

SUBMISSIONS ON BEHALF OF THE TENANT

24. The present revision petition is vehemently opposed by Mr. Dilip Singh, learned counsel for the tenant. He states that Sh. Yatin Bhasin did not enter the witness box, had he entered the witness box and he would have clearly stated that he did not want to start business from this small shop in the interior of a village because he was earning 10 times more than what he would have earned from the consultancy business proposed to be started from the tenanted premises. Only to prevent this kind of deposition, the landlords did not bring Sh. Yatin Bhasin in the witness box.
25. Learned counsel submits that the landlords did not examine Yatin Bhasin who was supposed to start separate business, instead only a bald statement was made for his bonafide requirement.
26. Therefore, it was imperative upon the landlords to have proved that Sh. Yatin Bhasin had an intention to relocate to Delhi for the purpose of opening his separate business. The said fact could have only been proved by Sh. Yatin Bhasin himself who could have come in the witness box and would have deposed about his intention to start his



own business. The non-appearance of Sh. Yatin Bhasin was deliberate on the part of landlords as they did not want to bring the truth. Hence, the tenant has been deprived of the right of cross examination of Sh. Yatin Bhasin. The evidence of his father (PWI) is only an indirect piece of evidence and of evasive nature.

27. It is the admitted case of the landlords that at the time of filing of the petition, Yatin Bhasin was studying in engineering college and at the time of final argument in the case, he was working in Multi National Company and drawing a very handsome salary.
28. Further he argued that there is no presumption in law that the bona fide need of the landlords is always genuine. The onus is upon the landlords which is required to be discharge by leading best evidence. In the facts of this case, no reason has been assigned for the non-examination of Sh. Yatin Bhasin and best evidence has been withheld.
29. It is well settled that a bona fide need is a state of mind and that state can only be manifested by the person who entertains a desire to use the premises for his occupation. The best person who could have deposed about his need was only Sh. Yatin Bhasin and his non-appearance as a witness demolishes the case of the landlords.

ANALYSIS, REASONING AND CONCLUSION

30. I have heard learned counsels for the parties at length and perused the case file.
31. Before I proceed to decide this petition on the merits, it would be appropriate to reiterate the various principles of law laid down by the Hon'ble Supreme Court and this court with regard to the bona fide



requirement and the tenant to rebut the said presumption.

32. In **Abid-Ul-Islam vs. Inder Sain Dua, (2022) 6 SCC 30**, the Hon'ble Supreme Court has held that Section 14(1)(e) of the DRC Act deals with the bonafide requirement only and alternative suitable accommodation is incidental one, the relevant extract reads as under:-

“29. Section 14(1)(e) deals with only the requirement of a bona fide purpose. The contention regarding alternative accommodation can at best be only an incidental one. Such a requirement has not been found to be incorrect by the High Court, though it is not even open to it to do so, in view of the limited jurisdiction which it was supposed to exercise. Therefore, the very basis upon which the revision was allowed is obviously wrong being contrary to the very provision contained in Section 14(1)(e) and Section 25-B(8). 30. We have already discussed the scope of Section 14(1)(e) vis-à-vis Section 25-B(8) of the Act. Therefore, the mere existence of the other properties which are, in fact, denied by the appellant would not enure to the benefit of the respondent in the absence of any pleadings and supporting material before the learned Rent Controller to the effect that they are reasonably suitable for accommodation.”

(emphasis added)

33. The Hon'ble Supreme Court in **Raghunath G. Panhale vs. Chaganlal Sundarji and Co., (1999) 8 SCC 1**, has held as under:-

“9. Next comes the decision of this Court in A.K. Veeraraghava Iyengar v. N.V. Prasad [AIR 1994 SC 2357].



In that case, this Court observed that the need was bona fide and that the tenant failed to adduce any evidence against the “experience of landlord, his financial capacity and his readiness and willingness to start jewellery shop”. In Vinay Kumar v. District Judge, Ghazipur [1995 Supp (2) SCC 586] it was contended for the tenant that the son of the landlord whose requirement was pleaded, was in government service and, therefore, he could not have any bona fide need to start a private practice as a doctor. This contention was rejected. In Rena Drego v. Lalchand Soni [(1998) 3 SCC 341] it was observed that in the light of the factual position in that case, “when the landlady says that she needs more accommodation for her family, there is no scope for doubting the reasonableness of the requirement”. It was held that the circumstances of the case raised a presumption that the requirement was bona fide and that “tenant has failed to show that the demand for eviction was made with any oblique motive”. It was held that in the absence of such evidence by the tenant, the presumption of the bona fide need stood unrebutted. In Sarla Ahuja v. United India Insurance Co. Ltd. [(1998) 8 SCC 119] it was again observed that the court should not proceed on the assumption that the requirement of the landlord was not bona fide and that the tenant could not dictate to the landlord as to how he should adjust himself without getting possession of the tenanted premises. It was



stated in Prativa Devi v. T.V. Krishnan [(1996) 5 SCC 353] and in Meenal Eknath Kshirsagar v. Traders and Agencies [(1996) 5 SCC344] that the landlord was the best judge of his requirement. In Sheela Chadha v. Dr Achharaj Ram Sehgal [1990 Supp SCC 736] it was held that the landlord had the discretion to determine his need. See also in this connection the judgment of this Court in Shiv Sarup Gupta v. Dr Mahesh Chand Gupta [(1999) 6 SCC 222] . In Raj Kumar Khaitan v. Bibi Zubaida Khatun [(1997) 11 SCC 411] this Court had even stated that it was not necessary for the landlord to state in the pleadings, the nature of the business he proposed to start.”

(emphasis added)

- 34.** Further in the case of **Mehmooda Gulshan vs. Javaid Hussain Mungloo, (2017) 5 SCC 683**, the Hon’ble Supreme Court has observed as under:-

“18. In C. Karunakaran v. T. Meenakshi [C. Karunakaran v. T. Meenakshi, (2005) 13 SCC 99], one issue which arose for consideration was whether non-examination of the person for whose need the building was required was fatal. It was held that “mere non-examination of the person for whose need the building was required by itself was no ground to non-suit the landlady”. To quote: (SCC p. 101, para 5)

“5. ... Mere non-examination of the person for whose need the building was required by itself



was no ground to non-suit the landlady. In a number of decisions (this fact is acknowledged by the first appellate court also), it has been held that it is not necessary to examine the person for whose need the premises are required. It depends on the facts and circumstances of each case.”

19. *In Gulraj Singh Grewal v. Harbans Singh [Gulraj Singh Grewal v. Harbans Singh, (1993) 2 SCC 68], this Court had an occasion to see whether a landlord can be non-suited on the ground of non-examination of the son for whose benefit the premises are sought to be vacated. This Court held that in case the need has otherwise been established in evidence, the non-examination is not material. At the best, it is only a matter of appreciation of evidence. To the extent relevant, para 8 reads as follows: (SCC p. 72)*

“8. The learned counsel for the appellant submitted that the personal need found proved is only of Respondent 2, son of Respondent 1, who did not enter the witness box and, as stated in an affidavit filed in this Court, even he is carrying on his profession at a place about 25 km away from Ludhiana, in our opinion, this finding of fact is unassailable. The High Court has clearly observed that no meaningful argument could be advanced on behalf of the appellant to challenge this finding of the appellate authority. Respondent



1 who is the father of Respondent 2, has supported and proved the need of Respondent 2, who also is a landlord. The fact that for want of suitable accommodation in the city of Ludhiana, Respondent 2 is at present carrying on his profession at some distance from Ludhiana is not sufficient to negative the landlord's need. In these circumstances, the non-examination of Respondent 2 also, when Respondent 1 has examined himself and proved the need of the landlord, is immaterial and, at best, a matter relating only to appreciation of evidence, on which ground this finding of fact cannot be reopened.”

20. Thus, the question is whether there is a reasonable requirement by the landlord of the premises. This would depend on whether the landlord has been able to establish a genuine element of need for the premises. What is a genuine need would depend on the facts and circumstances of each case. Merely because the landlord has not examined the member of the family who intends to do business in the premises, he cannot be non-suited in case he has otherwise established a genuine need. The need is a matter of appreciation of evidence, and once there is no perversity in the appreciation of evidence on the need, the said finding of fact cannot be reopened. It may be crucially relevant to note



that the eviction is not sought on the last limb of Section 11(1)(h) of the Act, namely, “for the occupation of any person for whose benefit the house or shop is held”. The premises sought to be evicted is not held for the benefit of the son alone, but the whole family.....”

(emphasis added)

35. This court in Harminster Singh Koghar vs. Ramnath Exports Private Ltd, 2015:DHC:7161 has held as under:-

“25. It is well settled that even if the landlord is able to establish a foreseeable need i.e. a need not in immediate but likely to arise in future he is entitled to maintain an eviction petition as held by this Court in P.S.Devgun Vs. S.P. Walia (1975) ILR 2Delhi 393.....

In P.S. Devgun (supra) this Court noted that it is not a rule of law that the landlord must find himself on street before he moves the Controller for eviction. The landlord cannot correctly estimate the time during which his petition is likely to be decided and so it is open to the landlord to institute the petition for eviction on the ground that his need is bonafide and is likely to arise in the foreseeable future. Similar view was expressed by the Division bench of Punjab and Haryana High Court in J.C. Kohli Vs. Financial Commissioner, Haryana Chandigarh and Anr. AIR 1976 Punjab & Haryana 107 (DB) holding that it is not the requirement of the law that the landlord's need must be immediate and an existing one on the very date of the



application for ejectment. Indeed he is entitled to anticipate his requirement in a reasonably foreseeable future.”

36. In view of the above principles, I shall now proceed to examine them with the facts narrated above.
37. To succeed in the eviction petition filed under section 14(1)(e) of the DRC Act, the landlords is required to prove:-
- i. Relationship of landlord and tenant.*
 - ii. The landlord required the premises bona fide for his needs/or for his family members.*
 - iii. Landlord must not have an alternate, suitable accommodation.*
38. Dealing with the first requirement, the learned ARC has already given a finding that the relationship of landlords and tenant between the parties is not in dispute. Accordingly the first requirement stands proved.
39. With regard to the second requirement i.e. to prove the bonafide need, landlords in the eviction petition have pleaded that at the time of filing the eviction petition, Yatin Bhasin was aged about 20 years and was pursuing his B.Tech/IIInd year course from Maharaja Agrasen Institute of Technology and wanted to start his own separate business from the tenanted premises. Yatin Bhasin was dependent upon his grandmother Smt. Savitri Bhasin and his father Anil Bhasin.
40. Further to prove the bonafide requirement, PW1 in his cross examination has deposed as under:-

“..... It is correct that my son has passed his engineering exam of final year and provisional certificate (shown by witness) and the same is EX.PW-1/X1. It is



correct that Maharaja Agarsen Institute of Technology of IP University is a very reputed institute. I cannot say whether my son was admitted in this institute by engineeringentrance exam or through management quota. I cannot say thatthere is a 100% placement assurance by the engineering collegewhere my son studied. My son did not appear in any campusinterview after passing of engineering course. I cannot say whetherhe appeared in any campus interview during his study. At present my son is not in service. He is in training at Bangalore in Mu Sigma company. I cannot say the period of training my son has to undergo in this company. It is incorrect that today the pay package of my son is of Rs.6,00,000/- per annum. I am not confirmed what is his actual pay package. I have not talked with my son about the pay package he is getting in his training period. It is incorrect to suggest that my son is employed with Mu Sigma company and getting a salary of Rs.6,00,000/- per annum. It is incorrect to suggest that I am not disclosing the correct amount of pay package and detail of the company for the purpose of getting benefit in this case. My son has passed his engineering course in mechanical engineering. I have not talked with my son about the nature of business he would open in the suit premises of area 8X10 s.q. feet approx. Rather, my son will decide what he wants to do in the suit premises. Vol.



He will start consultancy business. It is incorrect to suggest that he will not start any business in the suit premises and we will let out this suit premises again to someone at higher rent.....”

41. The above evidence shows that PW1 has categorically stated that his son is doing “training” in MU Sigma Company and is not employed. PW1 has further denied the suggestion that Yatin Bhasin will not start any business and the landlord would re-let the tenanted premises.
42. Learned ARC with reference to the above evidence has held that non examination of Yatin Bhasin is a serious lacuna to the case of the landlords as PW1 was not able to prove the bonafide requirement. The learned ARC has further observed that the evidence of PW1 is an indirect piece of evidence, on these grounds the eviction petition was dismissed. The operative portion of the impugned order reads as under:-

“23) PW1 was even unable to tell regarding the nature of business his son will open from the tenanted premises. Although, as a matter of general rule, the courts are not concerned with the nature of business which the landlord will open from the tenanted premises after eviction. However, in the present case, this question assumes significance as PW1 is the father of Sh. Yatin Bhasin. On one hand, he is claiming that the shop is required for the bona fide need of his son. Whereas, on the other hand, he is not sure rather he has not even spoken with his son as to the nature of business. This goes to show that his testimony is



not reliable.

24) Furthermore, during his cross-examination, it has come on record that Sh. Yatin Bhasin is presently working at Bangalore, therefore, it has become imperative upon the petitioner to have proved that Sh. Yatin Bhasin has an intention to relocate to Delhi for the purpose of opening his separate business. Though, I am conscious of the fact that merely because he is working in Bangalore after completion of his education is not a ground to infer that he cannot start his own business from the tenanted premises. However, the said fact could have only been proved by Sh.Yatin Bhasin himself who could have come in the witness box and would have deposed about his intention to start his own business. The non-appearance of Sh. Yatin Bhasin in the witness box is a serious lacuna in the petitioner's case as the respondents have been deprived of the right of cross-examination of Sh. Yatin Bhasin. The evidence of his father (PWL) is only a indirect piece of evidence.

25) There is no presumption in law that the bona fide need of the petitioner is always genuine. The onus is upon the petitioner which he is required to discharge by leading best evidence. Now, in the facts of this case, no reason has been assigned for the non-examination of Sh. Yatin Bhasin. It is well settled that a bona fide need is a state of mind and that state can only be manifested by the person who entertains



desire to use the premises for his occupation. The best person who could have deposed about his need was certainly Sh. Yatin Bhasin and his non-appearance as a witness is fatal to the case of the petitioner. Though, his father was examined as PW1, but in my considered opinion, his testimony at best can only be used for corroborative purpose. In my opinion, the non-examination of Sh. Yatin Bhasin is fatal to the case of the petitioner. In view of the foregoing discussion, the petitioner has failed to prove that the tenanted premises is required for the bonafide need of Sh. Yatin Bhasin.”

- 43.** The learned ARC has totally misconstrued the evidence of PW1. From the evidence of PW1, it is apparent that Sh. Yatin Bhasin is only doing his training in Bangalore. Hence, there is no evidence on record to come to a finding that Sh. Yatin Bhasin is working in Bangalore. Training is not equivalent to employment. Once the father of Yatin Bhasin has entered in the witness box and has deposed that Yatin Bhasin intends to start his separate business from Delhi, the learned ARC is under an obligation to presume that the need of tenanted premises by Yatin Bhasin is genuine and bonafide. Yatin Bhasin was not required to enter the witness box to prove that he intends to relocate in Delhi.
- 44.** As regards, the non-examination of Sh. Yatin Bhasin is concerned, the learned ARC has failed to appreciate the law laid down by the Hon’ble Supreme Court that non-examination of the person on whose the bonafide need the eviction petition is predicated, is not necessary to



enter the witness box, reliance is placed on **Mehmooda Gulshan (Supra)**. PW1 entering the witness box has been able to establish the genuine and bonafide need. In his cross examination, he has volunteered that his son Yatin Bhasin would start a consultancy business in the tenanted premises.

45. Hence, I am of the opinion that the second requirement also stands proved.
46. The only requirement which is now left to be considered is 'alternative suitable accommodation'. Even though learned ARC has not dealt with alternate suitable accommodation, the evidence of PW1 is clear in this regard which reads as under:-

“At this stage witness is shown the site plan filed by the respondent which is ExPW-1/R1 which is incorrect. It is correct that there is a shutter at point 'A' in the site plan. It is correct that there are shutters installed at the suit premises at points 'B', 'C', 'D', 'E', 'F' & 'G' in Ex. PW-1/R1. It is correct that there are shops as shown in the site plan Ex.PW-1/R1 at points X1, X2, X3 & X4. The witness is shown the photographs filed by the respondent Ex.PW-1/R2, to EX.PW-1/R9 and it is admitted as correct. The car shown in Ex.PW-1/R& and Ex.PW-1/R9 having no. DL2CAA8854 is not mine. The number of my car is DL8CP0838 which I purchased in the year 2007. It is wrong to suggest that I do not park my car inside my house shown as garage in orange colour of my site plan Ex.PW-1/1. It is wrong to suggest that I park my car on the road instead of my garage. It is wrong



to suggest that I have made a false statement that I have been parking my car inside the shop shown as garage for the last twenty-one years. It is correct that the two shops shown as having shutters at point B and point C are having wooden racks at the back side from point A1 to A2 and there is an entry at point P. It is correct that there is no wall from A1 to A2.”

47. Further the evidence of RW1 reads as under:-

“The suit premises is consisting of two floors i.e. ground floor and first floor. It is correct that the entire first floor has been used by the petitioner and his family members as a residential purpose. It is wrong to suggest that the some portion of the ground floor has been used for residential purpose. It is correct that in the site plan Ex. PW-1/R-1 shows some space/area as a room and kitchen. It is correct that two other side of the suit premises false on a street/gali of approximately 12 feet. It is correct that the site plan Ex. PW-1 is correct. Vol. In the front there are three shutters and on the other side of the suit premises there are three shutters and one gate and there is one shutter at the back side.

Q. *As you mentioned in para 3 of your affidavit that there are six shop, except the tenanted premises, please show in it in the site plan Ex. PW-1/1.*

A. *There are two shops as shown in the yellow colour of the site plan Ex. PW-1/1.Vol. One is the Patanjali and other is*



electric.

There is also one shop existed at point A in the site plan Ex. PW-1/1. The portion shown in B and C has been used as a go-down.

The portion shown in C color in the site plan Ex. PW-1/1 has no independent access except portion shown in D. There are two shops running in the portion shown in yellow color in site plan Ex. PW-1/1. That there are wooden partition between the two shops shown in yellow color in the site plan. It is correct that I have shown the said partition in my site plan Ex. PW-1/R-1”

- 48.** From the aforesaid evidences, it is clear that the tenant has failed to produce any documentary evidence to show that there is any other suitable alternative accommodation available with the landlords. The court cannot sit in the arm chair of the landlords to decide which premises is most suited for their need. Also, it is not for the tenant to dictate as to how the landlords should adjust the available premises for their bonafide requirement.
- 49.** The Hon’ble Supreme Court in *Abid-Ul-Islam (Supra)* has dealt with the revisional power of the High Court. The relevant portion 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.”

- 50.** This court exercising revisional jurisdiction is not to interfere unless the impugned order suffers from any infirmities. The learned ARC failed to appreciate the settled law.
- 51.** For the reasons and findings discussed above, I am of the view that the impugned order suffers various errors and cannot sustain in the eyes of law. Therefore, the impugned order dated 12.08.2016 is set aside and the revision petition is allowed in favour of the landlords.
- 52.** The eviction order is passed with respect to tenanted premises being one shop situated on the ground floor of property bearing No. C-152, Rishi Nagar, Shakur Basti, Delhi – 34 in favour of the landlords/petitioners and against the tenant/respondent.
- 53.** It is made clear that the landlords shall not be entitled to get possession of the tenanted premises before the expiry of six months from today as per section 14(7) of the DRC Act.



54. Pending applications, if any, are disposed of accordingly.
55. Copy of this judgment be uploaded on the website forthwith.

JASMEET SINGH, J

OCTOBER 31, 2023 / (MSQ)

Click here to check corrigendum, if any