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

Judgment reserved on: 29.08.2023

Judgment pronounced on: 22.11.2023

+ **RC.REV. 517/2018 & CM APPL. 34295/2023**

RAJNI BAHL (SINCE DECEASED) THR LRS Petitioner

Through: Mr. D.K. Rustagi, Adv.

versus

ARUN KUMAR NAYYAR

..... Respondent

Through: Mr Ravinder Sethi, Sr. Adv. with Mr
Puneet Sharma, Adv.

CORAM:

HON'BLE M`R. 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 and judgment dated 28.04.2018 passed by the learned ARC in Eviction Petition No. 6338/2016 under Section 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter "DRC Act"), whereby an eviction order has been passed in favor of the respondent-landlord in respect of property bearing Shop No. 1 (measuring 269 sq. ft.), Ground Floor, S-15, Green Park (Main), New Delhi - 110016 (hereinafter referred to as "tenanted premises/Shop No.1").



Background

2. In March 2012, the respondent preferred an eviction petition in respect of the tenanted premises under Section 14(1)(e) read with Section 25-B of the DRC Act for his *bonafide* need to start a consultancy for himself and a boutique for his wife, Mrs. Neelum Nayyar. It is stated in the eviction petition that the respondent is a qualified engineer and has been doing consultation work post retirement, and he wishes to start his own consultancy work. The respondent's wife is a homemaker but has experience in garment manufacturing and wants to open a boutique. It is further stated that the respondent does not have any other suitable place except for the tenanted premises and one other adjoining shop i.e. Shop No. 2 (measuring 272 sq. ft.), Ground Floor, S-15, Green Park (Main), New Delhi – 110016 (hereinafter referred to as "Shop No. 2") which also is in possession of another tenant against whom the respondent had filed a separate petition [E. No. 6337/2016 (erstwhile E. No. 18/12)] for getting it vacated.
3. Leave to defend application was filed by the petitioner-tenant, who was granted the leave to contest the petition vide order dated 27.11.2014.
4. The petitioner filed a written statement raising the following substantial grounds, *inter alia*: a) that the eviction petition is non-maintainable on the grounds that the respondent was not the exclusive owner of the tenanted premises, that there is a dispute between the respondent and other co-owners of the property, and thus the petition was bad for non-joinder of necessary parties; b) that the respondent



has not proved his ownership *qua* the tenanted premises; c) that the respondent wants to let out the tenanted premises at a higher rent after evicting the petitioner, and that no notice was sent to or refused by the respondent; d) that the respondent is not retired/drawing pension; e) that the necessary ingredients of Section 14(1)(e) of the DRC Act have not been complied with and the *bonafide* requirement of the respondent is false and without any substance; f) that the wife of the respondent does not have any past experience or qualification for running a business against her alleged *bonafide* requirement; g) that the respondent has three alternate premises available for commercial purposes.

5. The respondent filed a replication, denying the allegations made in the written statement and reiterating the contents of the eviction petition.
6. The respondent examined himself as PW1 and his wife, Mrs. Neelum Nayyar, as PW2. They were duly cross-examined. The petitioner examined herself as RW1 and was duly cross-examined. During the pendency of the proceedings, the petitioner-tenant Ms. Rajni Bahl expired and her LRs were brought on record. Witnesses, namely, Mr. Bhagirath Lal and Mr. Bhuvan Sharma were examined as RW2 and RW3 respectively and were duly cross-examined. Thereafter, final arguments were addressed on behalf of both parties.

ARC's Findings

7. On 28.04.2018, the impugned eviction order was passed post-trial, wherein the learned ARC iterated the essential ingredients for a petition to succeed under Section 14(1)(e) of the DRC Act, namely: a)



the existence of landlord-tenant relationship between the parties, including the ownership of the tenanted premises with the landlord; b) *bonafide* requirement of the owner/landlord for accommodation for himself or for any member of his family dependent upon him; and c) non-availability of any other reasonably suitable accommodation with the landlord for the said purpose.

8. On the question of landlord-tenant relationship between the parties, the learned ARC held that the respondent was indisputably the landlord *qua* the respondent, as it was admitted by the petitioner in her reply on merits as well as in her cross-examination that the rent was being paid to the respondent. Ex. PWI/8 was the counterfoil of the rent receipt. The petitioner also admitted that she had been sending money orders of the rent of subsequent period to none other than the respondent. On the question of ownership of the respondent over the tenanted premises, the learned ARC was of the view that since the petitioner had attorned the respondent as her landlord, the petitioner is estopped from disputing the ownership of the respondent.
9. On the question of *bonafide* need, the learned ARC was of the view that the need of the petitioner was *bonafide* as he was a qualified engineer and at an advanced age of his life, and could not be expected to travel to different places to provide consultancy services. The learned ARC was also pleased to hold that the need of the petitioner's wife to run a boutique was *bonafide* as well. The learned ARC further held that from her limited cross-examination, there was nothing substantial to suggest that she was not competent to start/run a boutique. Citing various authoritative pronouncements, the learned



ARC held that there was no requirement of any special skill or knowledge or even prior experience to start a new business.

10. On the question of non-availability of alternate suitable accommodation, the learned ARC was of the view that the suitability of an accommodation has to be looked from the eyes of a landlord, and the court cannot substitute its own wisdom upon the choice of accommodation made by the landlord. The learned ARC also gave separate findings on the three properties as alleged by the petitioner to be available as alternative accommodation:

- a. Regarding the 800 sq. ft. area on the rear side of the tenanted premises, the learned ARC held that the respondent was within his right to opt for a shop situated on the front lane in comparison to a premises opening towards the back lane. The learned ARC held that the rear portion of the tenanted premises cannot be considered to be suitable alternate accommodation.
- b. Regarding the property bearing no. G-46, 1st and 2nd floor, Green Park, New Delhi, the learned ARC was of the view that even though a consultancy business could be started from the said premises, it would not be viable for the respondent, who is an old-aged person, to climb stairs of the property on an everyday basis, and hence the first and second floor of the property is not suitable alternate accommodation.
- c. Regarding the property bearing no. T-15, Green Park Extension, New Delhi, the learned ARC held that the same was being used as a residential property by the respondent and not a



commercial one, and hence it could not be treated as an alternate suitable accommodation to start business.

11. The learned ARC was of the view that although the respondent did not disclose the above three premises in his eviction petition, no prejudice was caused to the petitioner from the alleged concealment as the respondent managed to prove that none of the aforesaid accommodations could be termed as suitable alternate accommodations.

12. In view of these findings, the eviction petition was allowed and an eviction order under Section 14(1)(e) of the DRC Act was passed.

Submissions (Petitioner)

13. The first argument of the learned counsel for the petitioner is that the eviction petition was not maintainable.

14. In the eviction petition, the respondent has mentioned his *bonafide* need as under:

“...The Petitioner has now retired from his job. He is drawing pension from the Department. His wife is a house maker but has experience in Garment manufacturing and wants to open a boutique. The Petitioner is a qualified Engineer and after retirement has been doing consultation work. The Petitioner now wish to start his own consultancy work/Profession and wants to get a boutique opened for his wife but does not have any other suitable place except for the shop in question and one other shop in possession of another tenant against who also the Petitioner is filing a separate petitioner for getting it vacated.



The shop in question is bonafide required by the Petitioner for his own purpose and as such the present petition.”

15. The respondent has filed another eviction petition with regard to the adjoining premises i.e. Shop No. 2 wherein the averments were identical. The averment in eviction No. 6337/2016 (erstwhile E. No. 18/12) for the property bearing Shop No. 2 reads as under:

“The Petitioner has now retired from his job. He is drawing pension from the Department. His wife is a house maker but has experience in Garment manufacturing and wants to open a boutique. The Petitioner is a qualified Engineer and after retirement has been doing consultation work. The Petitioner now wish to start his own consultancy work/Profession and wants to get a boutique opened for his wife but does not have any other suitable place except for the shop in question and one other shop in possession of another tenant against whom also the Petitioner is filing a separate petitioner for getting it vacated. The Petitioner with this view also served a legal notice dated 03.02.2012 upon the Respondent through his counsel Shri Ankur Goel, Advocate and called upon him to vacate the Shop in question. The notice was duly served upon the Respondent who with ulterior motives did not receive the same but also refused to receive it. The notice as such is deemed to have been served upon the Respondent. The shop in question is bonafide required by the Petitioner for his own purpose and as such the present petition.”



16. Hence, it is stated that the respondent has not mentioned which is the shop that is required for boutique and which is the shop required for the consultancy business. Mr. Rustagi argues that in the absence of segregation of requirements i.e. one shop for boutique and the other for consultancy, two eviction petitions having reference of each of them in the other eviction petition, is not maintainable.
17. It is further stated that in the other eviction petition bearing E. No. 6337/16, the respondent has already reached a settlement in December, 2021 during the hearing in RC Rev. No. 503/2018 which was duly recorded in the order dated 21.12.2022 in this Court. Hazari Lal Garg, tenant of the respondent therein has admitted to the *bonafide* requirement of the respondent and has agreed to hand over the vacant, peaceful, physical possession of the Shop No. 2, S-15, Green Park (Main) Market, New Delhi-110016 to the respondent on or before 30.06.2025. Mr. Rustagi argues that hence there is no urgency in the petitioner's requirement.
18. Thus, the demand of the petitioner was a joint requirement demand and once an agreement has been entered into with regard to the adjoining property, the *bonafide* requirement of the petitioner stood satisfied and thus the present eviction petition (in respect of Shop No. 1) ceases to be maintainable.
19. The second argument of the petitioner is that the respondent has alternative premises which can be utilized for the respondent's needs, and hence the eviction petition is liable to be dismissed.
20. It is stated that the respondent has 800 sq. ft. of premises which is on the rear side of the Ground Floor of the property bearing No. S-15,



Green Park (Main). The present eviction petition was filed on 20.03.2012 and the 800 sq. feet of the rear portion was vacated and let out on 03.04.2012. Hence, immediately after filing the eviction petition, the respondent let out 800 sq. feet of premises in the same floor to another tenant. Mr. Rustagi argues that the premises should have been occupied by the respondent and should have been utilized for starting the business.

21. He also points out that other premises were concealed by the respondent, namely: (i) G-46, First and Second Floor, Green Park Main (which is leased and shows the user as residential) and; (ii) T-15, First Floor, Green Park Extension (where the respondent is residing).
22. It is submitted that there is a difference between feasibility and suitability. It is stated that the test is not suitability, but genuineness of demand/requirement as such notwithstanding of unsuitability, if there is feasibility of occupying the premises, then alone, the genuineness of requirement can be assumed.
23. Mr. Rustagi states that the petitioner, in law, cannot comment on the suitability of the premises but the Court in its revisional jurisdiction is entitled to see the feasibility of the premises. 800 sq. feet of space was feasible for running of the consultancy and boutique business and should have been utilized by the respondent. In the absence of the respondent utilizing the same, the need of the respondent is not genuine.
24. For this, he relies upon the observations made in *Shiv Sarup Gupta v. Mahesh Chand Gupta (Dr)*, (1999) 6 SCC 222:



“14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available then the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking



eviction. Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.”

25. The third argument of the petitioner is that having let out the more suitable accommodation, the presumption of the tenanted premises being more suitable is taken away. He states that the only reason given by the respondent for not utilizing the 800 sq. feet area is that the premises were on the rear side of the property and the lane was broken and dirty.
26. He states that the learned ARC has failed to appreciate the controversy and failed to appreciate that there are commercial premises being run from every property having entrance from the rear side. The bylane is 15 feet wide and is neither broken nor dirty. He relies on the cross-examination of PW-1 and PW-2 in this regard.
27. He states that once it is proved on record that the rear lane is clean and not dirty, and that other commercial activities in the rear portion of the same lane are going on, the refusal to occupy such premises showcases lack of a *bonafide* requirement. He submits that the order passed by the learned ARC suffers from material irregularity as it fails to take into account the evidence on record.
28. Lastly, Mr. Rustagi submits that the revisional court is entitled to see whether that the evidence produced by the parties have been adverted to/appreciated by the ARC.



Submissions (Respondent)

29. Mr. Sethi, learned senior counsel for the respondent in response states that there was no requirement of the respondent to state which of the shops were to be used to run a boutique and which to be used to run the consultancy service. He states that the need of the respondent is that one shop is required for a boutique and one shop for consultancy business. Which shop would be used for boutique and which shop for the consultancy business is not relevant.
30. He argues that it is not the domain of the tenant to impose his own standards and dictate to the landlord as to how else he can adjust himself while protecting his tenancy. It is the choice of the landlord to choose the place of business most suitable to him, and he has complete freedom in the matter to which the tenant cannot object.
31. Mr. Sethi rebuts the petitioner's reliance on ***Shiv Sarup Gupta*** (supra), and refers to paragraph 13 of the judgment to state that once the court is objectively satisfied with the *bonafides* of the landlord, then the matter of choosing alternate accommodation is a matter of the landlord's subjective choice. The operative portion of ***Shiv Sarup Gupta*** (supra) reads as under:

“13...Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be



most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need... ”

32. He states that since the *bonafide* need is of two people, i.e., the respondent for a consultancy and his wife for a boutique, the petitioner cannot ask for both to be operated from the same space.
33. Mr. Sethi further states that the petitioner Ms. Rajni Bahl (RW1) herself in her cross-examination on 25.04.2017 has admitted that the rear portion of the suit premises is not fit to be used for commercial purposes.

*“...I cannot say whether the rear portion of the suit premises has always been used for residential purposes and no commercial activity had ever been carried out from the same. **It is correct that the rear portion of S-15, Green Park Main is not fit to be used for commercial purposes and has all along been used for residential purposes.**”*

(emphasis supplied)

Analysis

34. I have heard learned counsels for the parties.

Revisional Powers Of This Court

35. At the outset, it would be relevant to note the powers of a revisional court.
36. Section 25-B(8) of the DRC Act states:



“(8) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section:

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

(emphasis supplied)

37. Explaining the scope of the above proviso, the Hon’ble Supreme Court in ***Sarla Ahuja v. United India Insurance Co. Ltd.***, (1998) 8 SCC 119 has held:

“6. The above proviso indicates that power of the High Court is supervisory in nature and it is intended to ensure that the Rent Controller conforms to law when he passes the order. The satisfaction of the High Court when perusing the records of the case must be confined to the limited sphere that the order of the Rent Controller is “according to the law”. In other words, the High Court shall scrutinize the records to ascertain whether any illegality has been committed by the Rent Controller in passing the order under Section 25-B. It is not permissible for the High Court in that exercise to come to a different fact finding unless the finding arrived at by the Rent Controller on the facts is so unreasonable that no Rent Controller should have reached such a finding on the materials available.”



38. The scope of the proviso was further elaborated in ***Shiv Sarup Gupta v. Mahesh Chand Gupta (Dr)***, (1999) 6 SCC 222:

“11...The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the legislature in drafting Section 115 of the Code of Civil Procedure. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to sub-section (8) of Section 25-B, the expression governing the exercise of revisional jurisdiction by the High Court is “for the purpose of satisfying if an order made by the Controller is according to law”. The revisional jurisdiction exercisable by the High Court under Section 25-B(8) is not so limited as is under Section 115 CPC nor so wide as that of an appellate court. The High Court cannot enter into appreciation or reappraisal of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of “whether it is according to law”. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly



unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available. Ignoring the weight of evidence, proceeding on a wrong premise of law or deriving such conclusion from the established facts as betray a lack of reason and/or objectivity would render the finding of the Controller “not according to law” calling for an interference under the proviso to sub-section (8) of Section 25-B of the Act. A judgment leading to a miscarriage of justice is not a judgment according to law. (See: Sarla Ahuja v. United India Insurance Co. Ltd. [(1998) 8 SCC 119] and Ram Narain Arora v. Asha Rani [(1999) 1 SCC 141] .)”

39. Thus, this Court in exercise of its revisional jurisdiction is not required to go into the evidence but is only required to see whether the learned ARC has committed any jurisdictional error and that the order passed is in accordance with law and on basis of material available before it.

40. With these principles, I will deal with the arguments addressed by the parties.

On Maintainability

41. It is stated by the learned counsel for the petitioner that the petition is not maintainable because: i) a similar petition has been filed concerning the adjoining shop (Shop No. 2) of the same premises, wherein the same plea for *bonafide* requirement is taken and hence there is no clear segregation of which shop is required for what purpose; and ii) in the other eviction petition, a settlement agreement has been arrived at wherein the tenant therein has agreed to handover



the possession of the property to the respondent by 30.06.2025, and hence the need of the respondent stands satisfied and the present petition stands infructuous.

42. I am of the view that the first argument of the petitioner on maintainability is without merit. The respondent has categorically stated his *bonafide* need i.e. one shop for the purpose of consultancy for himself and one shop for the purpose of running a boutique for his wife, and has filed eviction petitions for both the shops together. Suffice to state that the properties are both adjoining each other, face the front of the market, and both the businesses require visibility.
43. In ***Raj Kumar Khaitan v. Bibi Zubaida Khatun***, (1997) 11 SCC 411, the Hon'ble Supreme Court has held that the landlord is not required to specify the precise nature of business they intend to start in the concerned premises:

*“4. It is clear from the averments made in the above-quoted paragraphs that the plaintiffs asserted that there were no other means of livelihood with them and as such they wanted to set up their own business in the premises in dispute. The High Court, however, came to the conclusion that apart from the above-quoted pleadings it was necessary to plead the nature of the business which the appellant-plaintiffs wanted to start in the premises. We are of the view that the High Court fell into patent error. **It was not necessary for the appellant-landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody could bind the***



landlords to start the same business in the premises after it was vacated.”

(emphasis added)

44. The respondent is not required to specify which of the shops would be used for the boutique and which would be used for the consultancy business, and the same is within the exclusive domain of the respondent-landlord. Since the respondent-landlord states that one of the properties is to be used for running a consultancy and one for running a boutique for his wife, it is not required for the respondent-landlord to state which property will be used for which purpose.
45. The second argument of the petitioner on maintainability is also misconceived. The tenant of Shop No. 2, Mr. Hazari Lal Garg, has admitted the *bonafide* need of the respondent and his wife and has undertaken to handover vacant and peaceful possession of the Shop No. 2 on or before 30.06.2025. Hence, the adjoining Shop No. 2 is only satisfying part of the *bonafide* need of the respondent and the respondent has only deferred that need up to 30.06.2025 in view of the settlement.

On Alternative Accommodation and Suitability/Feasibility

46. As regards the issue of availability of alternative accommodation, I am of the view that once the respondent-landlord has succeeded in demonstrating his *bonafide* need to objectively exist, the landlord’s subjective choice of choosing one accommodation out of the others available with him has to be respected by the Court, and the Court cannot compel the landlord to choose another accommodation to satisfy his said need.



47. There are various precedents which hold that the once the Court is objectively satisfied with the *bonafide* need of the landlord, it is not to sit in the armchair of the landlord to opine on the suitability of one premises over the other.

48. In ***Sarla Ahuja v. United India Insurance Co. Ltd.***, (1998) 8 SCC 119, it was held:

“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.”

49. In ***Ragavendra Kumar v. Prem Machinery & Co.***, (2000) 1 SCC 679, the Hon’ble Supreme Court observed as under:

“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.”

50. In ***Shiv Saroop Gupta*** (supra), the Hon’ble Supreme Court has held as under:

“13...Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need...”

51. In addition, in ***Abid-Ul-Islam vs. Inder Sain Dua***, (2022) 6 SCC 30, the Hon’ble Supreme Court held that Section 14(1)(e) of the DRC Act specifically addresses the aspect of *bonafide* requirement, and the contention of alternative suitable accommodation is of secondary importance:



“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 ensure 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.”

52. Once the respondent has stated that his need is the front shop which is on the main side of the market, the petitioner being a tenant cannot be permitted to dictate terms to the respondent as to which area is to be utilized in what way and in what manner.
53. However, I will be going into the merits of this argument to hold that in addition to this settled principle, the learned ARC has correctly held the other alleged premises to be unsuitable as alternate accommodations for the *bonafide* need of the respondent.
54. Regarding the availability of 800 sq. ft. area in the rear side of S-15, Green Park, Main Road, New Delhi, the learned ARC held that the



respondent was within his right to opt for a shop situated on the front lane in comparison to a premises opening towards the back lane. Further, relying upon the cross-examination of the petitioner, the learned ARC held that the rear portion of the tenanted premises cannot be considered to be suitable alternate accommodation as it is not fit for commercial purposes.

55. It is admitted by the petitioner in her cross-examination on 25.04.2017 that the rear portion of the suit property is not fit for commercial purposes.

*“...I cannot say whether the rear portion of the suit premises has always been used for residential purposes and no commercial activity had ever been carried out from the same. **It is correct that the rear portion of S-15, Green Park Main is not fit to be used for commercial purposes and has all along been used for residential purposes.**”*

(emphasis supplied)

56. The learned ARC in his findings in paragraph 60 of the impugned judgment has observed:

*“In my considered opinion, **it would be a completely futile exercise for this court to substitute its own opinion as to whether the rear portion opening towards the rear lane, would be appropriate for the petitioner to use it for commercial purposes or not.** Infact the mere location of the said alternative accommodation which opens at the rear/back lane, is itself a disadvantage for any kind of business activity and not only a consultancy business which the petitioner wishes*



to open. Infact the respondent as RW-1 admitted in her cross-examination that the rear portion of S-15, Green Park Main was not fit to be used for commercial purposes and also the fact that it was being used for residential purposes, all along.”

(emphasis supplied)

- 57.Regarding the availability of First and Second Floor, G-46, Green Park, New Delhi, the learned ARC was of the view that even though a consultancy business could be started from the said premises, it would not be viable for the respondent, who is an old-aged person, to climb stairs of the property on an everyday basis, and hence the first and second floor of the property is not suitable alternate accommodation.
- 58.Regarding the availability of T-15, Green Park Extension, New Delhi, the learned ARC held that the same was being used as a residential property by the respondent and not a commercial one, and hence it could not be treated as an alternate suitable accommodation to start business.
- 59.No fault can be found with the afore-stated findings of the learned ARC, as reproduced above, with respect to the three alleged alternative premises. Admittedly, the respondent requires the tenanted premises for running a boutique for his wife and for a consultancy business for himself. The natures of both businesses are such that they require visibility and footfall.
60. The 800 sq. ft. premises is in the rear portion. It is public knowledge that markets in South Delhi have entries both from the front and the rear portion. The same, however, are not comparable. The front portion of a market always has better visibility and more footfalls



than the rear portion. A boutique business is one which requires visibility as well as footfalls. The visibility is more from the front portion of the market.

61. Further, G-46 premises is on the first and second floor, and T-15 is being used by the respondent as residence. Thus, the alleged alternative properties are not comparable to the tenanted premises, which is in the main market, is facing the front portion, is on the ground floor and located in a prime location in Delhi.
62. It is clear that the tenanted premises would be most profitable for the respondent and the best investment for his commercial needs as against the other alleged properties. Hence, the learned ARC has correctly appreciated the evidence, law and factual matrix of this case.
63. The argument of the petitioner that the respondent has intentionally not disclosed the alternative accommodations is also without merit. The learned ARC has correctly relied upon precedents to hold that non-disclosure of alternate accommodation is not fatal to the eviction proceedings if the case of neither of the parties was prejudiced. The relevant portion of the impugned judgment reads as under:

“71. Of course, it is correct that the petitioner did not disclose the availability of above three premises in his eviction petition. However the question is whether any prejudice was caused to respondent from the said alleged concealment. The answer is no, for the reason that the petitioner has managed to prove that none of the aforesaid accommodation can be termed to be suitable alternate accommodation. Moreover the respondent



has had an opportunity to fully argue and lead evidence to prove the suitability of those accommodations. Reliance can be placed on judgment of Hon'ble Supreme Court in M.L. Prabhakar Vs. Rajiv Singhal (2001) 2 SCC 355, wherein qua the plea of concealment / suppression, it was held that the fact that the landlord has another accommodation would not be fatal to the eviction proceedings if both the parties understood the case and placed materials before the Court and case of neither party was prejudiced. Accordingly, it was held that though the landlord in that case had not mentioned about the other premises but the material in respect of the other two premises had come before the Rent Controller as well as before the High Court and no prejudice had been caused and the parties had squarely dealt with the question. Reliance can also be placed on the judgment in Bhairab Chandra Nandan Vs. Ranadhir Chandra Dutta MANU/SC/0742/1987.”

64. Similarly, in **S. Amolak Singh Correct Name Amolak Raj Singh v. Narender Kumar Dang** 2017:DHC:6652, it was held:

“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. A mere plot of land at an alternative site for warehousing by paper traders and where warehouse has not come up as yet, cannot be said to be alternative suitable accommodation for non-disclosure whereof the petition for eviction can be dismissed.”

65. Hence, I am of the view that the learned ARC has correctly held that the non-disclosure of three alternate premises in the eviction petition did not cause any prejudice to the petitioner as they were not suitable alternate accommodations. The above judgments support the case of the respondent.
66. The petitioner’s argument on the difference between suitability and feasibility, and that the Court may not be required to adjudicate upon the suitability aspect, but it can always look into the feasibility



aspect of alternate premises in determining the *bonafide* need of the respondent, is also misconceived.

67. According to the Cambridge Dictionary, meaning of word “suitable” is “acceptable or right for someone or something”, and meaning of the word “feasible” is “able to be made, done, or achieved”. Thus, while the former has a subjective element to it, the test for the latter lies in objectivity.
68. Section 14(1)(e) of the DRC Act only uses the term “suitable” and not “feasible”. This Court is not required to add/delete/read words into a statute when the words used in a statute are clear and unambiguous and are only capable of one meaning. The Court is bound to give effect to only that meaning. In ***Commr. of Customs v. Dilip Kumar & Co.***, (2018) 9 SCC 1, it was held:

“21. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the legislature.”

69. The relevant provision here i.e. Section 14(1)(e) of the DRC Act clearly concerns itself with “suitability” of the alternative premises. Therefore, there is no reason for this Court to concern itself with the “feasibility” of the said alternative premises. Even otherwise, the phrase “suitable” includes within itself the “feasibility” of the premises.



70. The petitioner has also relied upon the judgment in *Shiv Saroop Gupta* (supra), the operative portion of which states:

“14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural.”

(emphasis supplied)

71. This argument is also misconceived as I have already held above that the tenanted premises are more suited and are required *bonafidely* by the respondent for a consultancy business for himself and a boutique for his wife.

Conclusion

72. For the reasons and findings discussed above, I am of the view that the learned ARC has rightly passed the eviction order against the petitioner and in favor of the respondent. Therefore, the impugned eviction order dated 28.04.2018 is upheld in respect of Shop No. 1, Ground Floor, S-15, Green Park (Main), New Delhi - 110016 and the revision petition is dismissed.



73. In accordance with Section 14(7) of DRC Act, the respondent-landlord shall not be entitled to obtain possession of the demised premises before the expiration of a period of six months from the date of this order.
74. Documents handed over in Court are taken on record.
75. Pending applications, if any, are disposed of.

JASMEET SINGH, J

NOVEMBER 22, 2023
skm