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

Judgment reserved on: 13.07.2023

Judgment pronounced on: 04.10.2023

+ **RC.REV. 540/2018 & CM APPL. 47976/2018**

VIJAY KUMAR FARSHWAL Petitioner
Through: Mr. R.K. Sharma, Mr. Gaurav Patel,
& Mr. Shivam Khanna, Advs.
versus

SHRI KISHAN LAL Respondent
Through: Mr. Haresh Raichura, Mr Rajat Vats,
Ms Parul Sharma and Mr Kalp
Raichura, Advs.

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+ **RC.REV. 541/2018 & CM APPL. 47984/2018**

VIJAY KUMAR FARSHWAL Petitioner
Through: Mr. R.K. Sharma, Mr. Gaurav Patel,
& Mr. Shivam Khanna, Advs.
versus

RAJ KUMAR Respondent
Through: Mr. Haresh Raichura, Mr Rajat Vats,
Ms Parul Sharma and Mr Kalp
Raichura, Advs.

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+ **RC.REV. 603/2018 & CM APPL. 52585/2018**

VIJAY KUMAR FARSHWAL Petitioner
Through: Mr. R.K. Sharma, Mr. Gaurav Patel,
& Mr. Shivam Khanna, Advs.
versus

RANJEET SINGH & ANR Respondents
Through: Mr. Haresh Raichura, Mr Rajat Vats,



Ms Parul Sharma and Mr Kalp Raichura, Adv.

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+ **RC.REV. 608/2018 & CM APPL. 52814/2018**

VIJAY KUMAR FARSHWAL Petitioner
Through: Mr. R.K. Sharma, Mr. Gaurav Patel,
& Mr. Shivam Khanna, Adv.
versus
VIR PAL Respondent
Through: Appearance not given.

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+ **RC.REV. 611/2018 & CM APPL. 52874/2018**

VIJAY KUMAR FARSHWAL Petitioner
Through: Mr. R.K. Sharma, Mr. Gaurav Patel,
& Mr. Shivam Khanna, Adv.
versus
VINOD CHAND & ANR. Respondents
Through: Mr. Haresh Raichura, Mr Rajat Vats,
Ms Parul Sharma and Mr Kalp Raichura, Adv.

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+ **RC.REV. 612/2018 & CM APPL. 52879/2018**

VIJAY KUMAR FARSHWAL Petitioner
Through: Mr. R.K. Sharma, Mr. Gaurav Patel,
& Mr. Shivam Khanna, Adv.
versus
MUKESH Respondent
Through: Mr. Haresh Raichura, Mr Rajat Vats,
Ms Parul Sharma and Mr Kalp Raichura, Adv.

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+ **RC.REV. 613/2018 & CM APPL. 52881/2018**



VIJAY KUMAR FARSHWAL

..... Petitioner

Through: Mr. R.K. Sharma, Mr. Gaurav Patel,
& Mr. Shivam Khanna, Advs.

versus

HALIMA KHATOON

..... Respondent

Through: Mr. Haresh Raichura, Mr Rajat Vats,
Ms Parul Sharma and Mr Kalp
Raichura, Advs.

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+ **RC.REV. 622/2018 & CM APPL. 53341/2018**

VIJAY KUMAR FARSHWAL

..... Petitioner

Through: Mr. R.K. Sharma, Mr. Gaurav Patel,
& Mr. Shivam Khanna, Advs.

versus

SURENDER

..... Respondent

Through: Mr. Haresh Raichura, Mr Rajat Vats,
Ms Parul Sharma and Mr Kalp
Raichura, Advs.

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+ **RC.REV. 623/2018 & CM APPL. 53343/2018**

VIJAY KUMAR FARSHWAL

..... Petitioner

Through: Mr. R.K. Sharma, Mr. Gaurav Patel,
& Mr. Shivam Khanna, Advs.

versus

ANOOP SHARMA & ANR

..... Respondents

Through: Mr. Haresh Raichura, Mr Rajat Vats,
Ms Parul Sharma and Mr Kalp
Raichura, Advs.

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+ **RC.REV. 625/2018 & CM APPL. 53465/2018**

VIJAY KUMAR FARSHWAL

..... Petitioner

Through: Mr. R.K. Sharma, Mr. Gaurav Patel,



& Mr. Shivam Khanna, Advs.

versus

SANTOSH

..... Respondent

Through: Mr. Haresh Raichura, Mr Rajat Vats,
Ms Parul Sharma and Mr Kalp
Raichura, Advs.

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+ **RC.REV. 16/2019 & CM APPL. 1217/2019**

VIJAY KUMAR FARSHWAL

..... Petitioner

Through: Mr. R.K. Sharma, Mr. Gaurav Patel,
& Mr. Shivam Khanna, Advs.

versus

TARSEM (DECEASED) THR LR & ANR

..... Respondents

Through: Mr. Haresh Raichura, Mr Rajat Vats,
Ms Parul Sharma and Mr Kalp
Raichura, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

RC.REV. 540/2018

1. This is a petition seeking setting aside of the order dated 13.09.2018 passed by the learned ARC, wherein the review application filed by the respondent was allowed and the eviction order dated 31.10.2017 passed by the learned ARC earlier was set aside.

Connected Petitions:

2. In RC.REV. 541/2018, the impugned review order is dated



12.09.2018, setting aside the eviction order dated 05.03.2018, concerning the tenanted premises bearing property No. 9328, Katra Ganga Bishan, Bagh Raoji, Gaushala Marg, Kishanganj, Delhi – 110006, for which the respondent pays rent of Rs. 20/- per month for a total area of 272 sq. feet approximately under his tenancy.

3. In RC.REV. 603/2018, the impugned review order is dated 11.09.2018, setting aside the eviction order dated 17.04.2018, concerning the tenanted premises bearing property No. 9336, Katra Ganga Bishan, Bagh Raoji, Gaushala Marg, Kishanganj, Delhi – 110006, for which the respondent pays rent of Rs. 15/- per month for a total area of 272 sq. feet approximately under his tenancy.

4. In RC.REV. 608/2018, the impugned review order is dated 11.09.2018, setting aside the eviction order dated 04.12.2017, concerning the tenanted premises bearing property No. 9340, Katra Ganga Bishan, Bagh Raoji, Gaushala Marg, Kishanganj, Delhi – 110006. The said property is a katra, having common municipal number 9340 and having multiple tenements occupied by tenants including the respondent. The respondent pays rent of Rs. 12/- per month for a total area of 480 sq. feet approximately under his tenancy.

5. In RC.REV. 611/2018, the impugned review order is dated 12.09.2018, setting aside the eviction order dated 17.04.2018, concerning the tenanted premises bearing property No. 9340, Katra Ganga Bishan, Bagh Raoji, Gaushala Marg, Kishanganj, Delhi – 110006. The said property is a katra, having common municipal number 9340 and having multiple tenements occupied by tenants including the respondent. The respondent pays rent of Rs. 25/- per month for a total area of 600 sq. feet approximately



under his tenancy.

6. In RC.REV. 612/2018, the impugned review order is dated 13.09.2018, setting aside the eviction order dated 27.09.2017, concerning the tenanted premises bearing property No. 9329, Katra Ganga Bishan, Bagh Raoji, Gaushala Marg, Kishanganj, Delhi – 110006. The respondent pays rent of Rs. 20/- per month for a total area of 176 sq. feet approximately under his tenancy.

7. In RC.REV. 613/2018, the impugned review order is dated 13.09.2018, setting aside the eviction order dated 17.04.2018, concerning the tenanted premises bearing property No. 9340, Katra Ganga Bishan, Bagh Raoji, Gaushala Marg, Kishanganj, Delhi – 110006. The said property is a katra, having common municipal number 9340 and having multiple tenements occupied by tenants including the respondent. The respondent pays rent of Rs. 100/- per month for a total area of 780 sq. feet approximately under her tenancy.

8. In RC.REV. 622/2018, the impugned review order is dated 11.09.2018, setting aside the eviction order dated 17.04.2018, concerning the tenanted premises bearing property No. 9340, Katra Ganga Bishan, Bagh Raoji, Gaushala Marg, Kishanganj, Delhi – 110006. The said property is a katra, having common municipal number 9340 and having multiple tenements occupied by tenants including the respondent. The respondent pays rent of Rs. 10/- per month for a total area of 920 sq. feet approximately under his tenancy.

9. In RC.REV. 623/2018, the impugned review order is dated 12.09.2018, setting aside the eviction order dated 17.04.2018, concerning the tenanted premises bearing property No. 9340, Katra Ganga Bishan, Bagh



Raoji, Gaushala Marg, Kishanganj, Delhi – 110006. The said property is a katra, having common municipal number 9340 and having multiple tenements occupied by tenants including the respondents. The respondent No. 1 pays rent of Rs. 50/- per month for a total area of 688 sq. feet approximately under his tenancy.

10. In RC.REV. 625/2018, the impugned review order is dated 11.09.2018, setting aside the eviction order dated 17.04.2018, concerning the tenanted premises bearing property No. 9340, Katra Ganga Bishan, Bagh Raoji, Gaushala Marg, Kishanganj, Delhi – 110006. The said property is a katra, having common municipal number 9340 and having multiple tenements occupied by tenants including the respondent. The respondent pays rent of Rs. 12/- per month for a total area of 1,128 sq. feet approximately under her tenancy.

11. In RC.REV. 16/2019, the impugned review order is dated 11.09.2018, setting aside the eviction order dated 17.04.2018, concerning the tenanted premises bearing property No. 9325, Katra Ganga Bishan, Bagh Raoji, Gaushala Marg, Kishanganj, Delhi – 110006, for which the respondent No. 1 pays rent of Rs. 6/- per month for a total area of 80 sq. feet under his tenancy.

12. In all the above rent revision petitions, the factual matrix is the same except for the difference in tenanted premises, the tenants, and the rate of rent. Hence, they are all being dealt and disposed of by a common judgment and for factual matrix, the lead matter being RC.REV. 540/2018 is being considered for the purposes of brevity. The ratio of this judgment shall apply to the above rent revision petitions.



RC.REV. 540/2018

Factual Matrix:

13. The brief facts giving rise to the filing of the present petition, as per the petitioner, are as under:

14. The petitioner is the owner and landlord of property bearing No. 9322 to 9340, 9341 to 9365 (excluding property Nos. 9361, 9363, 9364), 9494 to 9537 known as Katra Ganga Bishan, Bagh Raoji, Gaushala Marg, Kishanganj, Delhi-110006 measuring about 11,552 sq. yds (“demised premises”).

15. The said property is under the tenancy of different tenants, against whom the petitioner has filed the same proceedings in different cases, as elaborated above.

16. It is stated that the petitioner requires the property no. 9330, first floor, Katra Ganga Bishan, Bagh Raoji, Gaushala Marg, Kishanganj, Delhi - 110006 (“tenanted premises”) *bona fide* for the educational activities of one of the members of the HUF namely, Ms. Amisha Chaudhary, who is the wife of Mr. Ankur Chaudhary and is residing in a joint family in the same residential accommodation. Ms. Amisha Chaudhary is the daughter-in-law of the petitioner, being married to his son Mr. Ankur Chaudhary. Ms. Amisha Chaudhary wishes to construct and set up a Management-cum-Higher Education Institute in Delhi.

17. Ms. Amisha Chaudhary is highly educated in business management. She has a two year full time post graduate diploma in business management from New Delhi Institute of Management which is approved by AICTE, Ministry of HRD, Government of India. She has also completed her Doctorate in Management from Bahuguna University, Srinagar,



Uttarakhand, India. She has been helping her husband Mr. Ankur Chaudhary and her brothers-in-law, Mr. Abhishek Chaudhary and Mr. Ashish Chaudhary, in running Institute of Management and Development situated in Okhla Industrial Area, Phase-II, New Delhi.

18. Ms. Amisha Chaudhary does not own any property and is dependent on the petitioner for accommodation. Thus, the petitioner required the demised premises which would, post demolition, accommodate a construction of a built up area of approximately 2,40,000 sq. feet for the *bona fide* requirement of Ms. Amisha Chaudhary for setting up the Management-cum-Higher Education Institute.

19. The respondent pays a meagre rent of Rs. 10/- per month for a total area of 96 sq. feet approximately under his tenancy. However, it is stated, that the prevalent market rate of the tenanted premises is about Rs. 40/- per sq. feet per month. As such if the petitioner hires an accommodation of 2,40,000 sq. feet in Delhi to accommodate the *bona fide* requirement of Ms. Amisha Chaudhary, then the rent borne by the petitioner would come to approximately Rs. 96,00,000/- per month at the rate of Rs. 40/- per sq. feet per month which would make the proposed business venture inviable since inception. Thus, it is stated that there is no reasonably suitable alternate accommodation available.

20. For this above-stated *bona fide* requirement of Smt. Amisha Chaudhary, who is the daughter-in-law of the petitioner, the petitioner requested the respondent to vacate the tenanted premises, but the respondent failed to do so.

Background:



21. The petitioner filed eviction petition against the respondent under Section 14(1)(e) read with Section 25B of the DRC Act. Similar eviction petitions have also been filed against other tenants in the adjoining premises.

22. Since the respondent did not file the application for leave to defend in terms of Section 25B(4) of the Delhi Rent Control Act, 1958 (hereinafter “DRC Act”), the order of eviction dated 31.10.2017 was passed in favour of the petitioner and against the respondent.

23. The respondent filed an application for review of the order dated 31.10.2017 under Section 25B(9) read with Order XLVII Rule 1 read with Section 114 CPC.

24. The respondent stated that the learned ARC has already passed similar orders in case Nos. E-981, 982, 983, 1006 of 2017 on 05.05.2018. The most important ground raised in the review application was that the case of the petitioner in his eviction petition falls within the purview of Section 14(1)(g) of DRC Act, and not Section 14(1)(e). Since a petition under Section 14(1)(g) requires permission of the Competent Authority under Slum Areas (Improvement and Clearance) Act, 1956, the petitioner by filing the petition under Section 14(1)(e) has bypassed this requirement of taking permission from the Competent Authority. It was also stated that the ground under Section 14(1)(e) was not available to the petitioner for seeking eviction for re-building/re-construction which falls under Sections 14(1)(f) & 14(1)(g).

25. In addition, the respondent has also raised other grounds. These grounds are only mentioned for the purpose of narration and are not discussed in my analysis as they have not been discussed by the learned ARC in the impugned order dated 13.09.2018. These include, inter alia, that the respondents are illiterate and poor people due to which they were unable



to file the leave to defend application on time; that the petitioner's title is defective and he is not the owner of the tenanted premises; that the petitioner is relying on the documents of ownership which were forged and uncontested; that the wills on which the petitioner is relying on were never probated; that the petitioner has concealed relevant facts about unauthorised construction so the question of maintainability of DRC Act arises; that the petitioner has lacked in figuring out the map of the premises and joining the necessary parties in the suit; that there is no tenant-landlord relationship between the petitioner and the respondent. It is stated by the respondent that the summons were not properly served, hence the respondent prayed for condonation of 198 days in filing the review application in light of 17 guidelines laid down in *Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors.*, (2013) 12 SCC 649.

26. The learned ARC in the impugned order allowed the application for review and dismissed the petition for eviction filed under Section 14(1)(e) of DRC Act on the grounds of being not maintainable.

27. The learned ARC held that since there is a specific provision in the DRC Act for *bona fide* requirement for reconstruction, demolition, rebuilding, making substantial addition or alteration in the demised premises, the petition would be under Section 14(1)(g) of DRC Act and not under Section 14(1)(e) of DRC Act.

28. The learned ARC was of the view that in case the petition is allowed under Section 14(1)(e), this would prejudice the rights of the tenant under Section 20 of DRC Act which provides protection to the tenants on successful eviction under Section 14(1)(g). Further, since the summary procedure under Section 25B of the DRC Act is only provided for Section



14(1)(e) but not Section 14(1)(g), the learned ARC was of the view that by allowing the eviction petition under Section 14(1)(e), it would greatly prejudice the rights of the tenant as his opportunity to lead evidence may be curtailed, and the petitioner would bypass the provision of taking permission from the Competent Authority under the Slum Area (Improvement & Clearance) Act, 1956.

29. The learned ARC was of the view that the eviction order suffered from error apparent on the face of the record, as it did not effectively deal with and determine an important issue. The learned ARC was of the view that if the law applied is not the law which would be applicable, it would be within the parameters of 'error apparent'. The learned ARC was of the opinion that Section 14(1)(g) of DRC Act provides for eviction of premises for the purpose of building or re-building and hence, the petition would not be under Section 14(1)(e) of DRC Act but under Section 14(1)(g) of DRC Act. This was the only ground on which the review petition was allowed and none of the other grounds raised by the respondent were adverted to or dealt with by the learned ARC.

30. Aggrieved by this order of the learned ARC dated 13.09.2018, the petitioner has filed the present revision petition.

Submissions on behalf of the Petitioner:

31. Mr. Sharma, learned counsel for the petitioner has argued as under:

(i) None of the grounds stated by the respondent in its review application fall within the ambit and scope of Section 114 CPC read with Section 151 CPC, Order XLVII Rule 1 CPC. It is stated that the review application in effect challenges the correctness of the eviction order dated 31.10.2017



without pointing out any ‘error apparent on the face of record’ which can be reviewed. It is argued that the power of review is limited to the extent of leave to defend and not to review the judgment already passed under Section 25B(4) of the DRC Act.

(ii) He states that the learned ARC does not have power to extend the period of filing the leave to defend. He states that the respondent was duly served with the summons on 21.08.2017 and the statutory time period to file the leave to defend application expired on 05.09.2017, within which the same was not filed. It is stated that the recovery of possession on the grounds stated under Section 14(1)(e) is governed by Section 25B of the DRC Act which envisages special procedure for summary trials. Accordingly, in the absence of obtaining leave to defend/if such leave is refused, the order of eviction follows and the respondent is precluded from contesting the same on grounds mentioned in Section 14(1)(e) read with Section 25B of the DRC Act.

(iii) He states that the Review Application under Section 25B(9) is time barred and was filed after a delay of 198 days from the date of the eviction order. He has relied on the judgments in **Prithpal Singh v. Satpal Singh (Dead) through LRs**, (2010) 2 SCC 15, **Rakesh Gupta & Anr. v. Ashok Dilwali**, (2012) SCC OnLine Del 1463, **Shiv Gopal & Anr. v. Shipra Singh & Ors.**, 2011 SCC OnLine Del 764 in support of his contentions on the point that Rent Authorities do not have the power to condone even a single day of delay in filing application for leave to defend. He also relies on **Om Prakash v. Ashwani Kumar Bassi**, (2010) 9 SCC 183, which held:

“24. (...) The Rent Controller being a creature of statute can only act in terms of powers vested in him by statute and cannot,



therefore, entertain an application under Section 5 of the Limitation Act for condonation of delay since the statute does not vest him with such power."

(iv) It is argued that a review petition has a limited purpose and cannot be allowed to be an "appeal in disguise" (***Parsion Devi & Ors. v. Sumitri Devi & Ors.*** (1997) 8 SCC 715). Under Order XLVII Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected". He relies on the judgment in ***Subramanian Swamy v. State of Tamil Nadu*** (2014) 5 SCC 75 wherein it was held:

*"52. The issue can be examined from another angle. The Explanation to Order 47 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") provides that if the decision on a question of law on which the judgment of the court is based, is reversed or modified by the subsequent decision of a superior court in any other case, it shall not be a ground for the review of such judgment. Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed. (Vide *Rajender Kumar v. Rambhai* [(2007) 15 SCC 513 : (2010) 3 SCC (Cri) 584 : AIR 2003 SC 2095].)"*

(v) It is argued that the eviction petition can only be dismissed after leave is granted and the matter is put to trial and if the court comes to the conclusion that the landlord/owner has failed to prove his *bonafide* need, in



that event can the eviction petition be dismissed. It is argued that the ARC in the present case has exceeded its jurisdiction by passing the impugned order.

(vi) He argues that the application seeking review of the judgment dated 31.10.2017 on the ground of subsequent pronouncements in other cases is not maintainable in view of the explanation to Rule 1(2) of Order XLVII of CPC.

(vii) He argues that the impugned order is not maintainable for the reasons that in the review application, the maintainability of the eviction petition is not to be seen. It is argued that if it is so, then it would amount to granting to file the leave to defend application after expiry of 15 days.

(viii) It is argued that the learned ARC has not appreciated the distinction between Section 14(1)(g) and Section 14(1)(e) of DRC Act. He argues that there is no bar for the petitioner to construct the property after an eviction order under Section 14(1)(e) of DRC Act for using it for the purpose for which the eviction has been sought, and that eviction sought under Section 14(1)(e) includes need by the landlord for the purpose of running business or conducting commercial activity.

Submissions on behalf of the Respondent:

32. *Per contra* Mr. Raichura, learned counsel for the respondent has argued as under:-

(i) He states that in a number of cases between the tenants and the same petitioner, it was held that summons triable proceedings under Section 14(1)(g) and 14(1)(f) cannot be converted into summary proceedings as specified under Section 14(1)(e) of the DRC Act, by wrongly labelling petition as *bona fide* need under Section 14(1)(e) of the DRC Act.



- (ii) It is argued that there is no *bona fide* need of the petitioner, and the same is a mere eyewash to bring pleadings under four corners of summary procedure.
- (iii) It is stated that if an eviction petition under Section 14(1)(e) is on the face of it not maintainable because of the bar under Section 14(6), then the same could be rejected by the Controller even if the tenant had failed to apply for leave to contest the eviction petition. For this, he has relied on ***Manoj Kumar Bhatt & Anr. v. Sewak Ram*** 2012:DHC:2445.
- (iv) He states that even if leave to defend was not granted, the Rent Controller is not required to pass automatic judgment, he is still required to satisfy whether *prima facie* requirements of law are satisfied. For this, he has relied on ***Director Directorate of Education & Anr. v. Mohd. Shamim & Ors.*** 2019:DHC:6510-DB.
- (v) It is stated that the Rent Controller may not have the power to recall an order but as per Section 25-B(9) of DRC Act, Rent Controller can review its own order, and if the Rent Controller finds that miscarriage of justice has happened, he can still review its own order, as per the judgment of ***Assistant Commissioner, Income Tax v. Saurashtra Kutch Stock Exchange*** (2008) 14 SCC 171.
- (vi) It is stated that Sections 14(1)(g) & 14(1)(f) and Section 14(1)(e) cannot be used interchangeably, as the former grant some protection and rights to the tenant even after eviction order is passed while the latter does not.
- (vii) He relies upon the judgment of ***Satyawati Sharma v. Union of India***, (2008) 5 SCC 287 to state that the petitioner-landlord may file eviction petition on the ground of *bona fide* requirement for residential needs *vis-a-*



vis residential property only, or on the ground of *bona fide* requirement for commercial needs *vis-à-vis* commercial property only. He cannot file eviction petition on ground of *bona fide* requirement for commercial needs against a residential property.

Analysis:

33. I have heard learned counsels of the parties.

34. At the outset, I am unable to agree with the order of the learned ARC passed in the review application in the present case for the following reasons.

Scope of Review

35. I am of the view that the Delhi Rent Control Act is a special enactment, and Section 25B is a self-contained code which has to be construed strictly.

36. This is iterated in *Rena Verma v. Veena Gupta*, 2012 SCC OnLine Del 4056, wherein this court has held that while dealing with an application for eviction of a tenant under Section 14(1)(e), the Rent Controller has to strictly comply with the provisions of Section 25B of the DRC Act:

*“8. Moreover Section 25B of DRCA, which provides for summary trial of applications for eviction on the ground of bonafide requirement, is a code in itself and **the provisions of Code of Civil Procedure have no applicability in proceedings instituted under the said Section.** Sub-section (1) of Section 25 B clearly stipulates that the application for eviction shall be strictly dealt with in accordance with the procedure specified in this Section. **There is no such thing as any inherent power of court***



to condone delay in filing an application for leave to defend before Court/Authority concerned, unless the law warrants and permits it, since it has a tendency to alter the rights accrued to one or the other party under the DRCA. In *Prithipal Singh v. Satpal Singh (Dead) through LRs.* 2009 (14) SCALE 672, the question of applicability of the provisions of CPC for condonation of delay in filing leave to defend application was raised before the Apex Court. While answering the question in negative, the Apex Court held that Section 25B was inserted by the Legislature for bonafide requirement of a certain classes of landlords, in which the entire procedure has been stipulated. Section 25B itself is a special code and therefore, Rent Controller, while dealing with an application for eviction of a tenant on the ground of bona fide requirement, has to follow strictly in compliance with Section 25B of the Act.”

(emphasis supplied)

37. Further, in *Shiv Sarup Gupta v. Mahesh Chand Gupta (Dr)*, (1999) 6 SCC 222, the Hon’ble Supreme Court has observed as under:

“11. Section 25-B of Delhi Rent Control Act, 1958 finding its place in Chapter III-A of the Act was inserted into the body of the main Act by Act No .18 of 1976 with effect from 1.12.1975. It provides for a special procedure to be followed for the disposal of applications for eviction on the ground of bona fide need. Obviously, this ground for eviction of the tenant has been treated on a footing different from the one on which other grounds for eviction of the tenant stand. Section 25-B is a self-contained



provision in the sense that remedy against an order passed by the Rent Controller thereunder is also provided by that provision itself...”

(emphasis supplied)

38. Section 25B(9) of the DRC Act permits the Controller to review its order. The contours of a review application have been mentioned in Order XLVII of the Code of Civil Procedure, 1908. As per Order XLVII CPC, review can be sought by the aggrieved person from the same court which passed the order/decreed on the basis of: a) discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed/order was made; or b) on account of some mistake; or c) error apparent on the face of the record; or any other sufficient reason.

39. It is for the respondent-tenant to file a leave to defend within the stipulated time of 15 days from the service of the notice of the petition of eviction as envisaged under Section 25B read with the Third Schedule of DRC Act. In case the same is not filed, a decree for eviction has to follow.

40. In *Prithipal Singh v. Satpal Singh*, (2010) 2 SCC 15, the Hon’ble Supreme Court has observed that in the absence of obtaining leave to defend, the landlord’s statement is deemed to be admitted and the eviction order is necessarily followed. The operative portion of the judgment reads as under:

“16. From a careful perusal of sub-section (4) of Section 25B of the Rent Act, it would be clearly evident that the tenant shall not be permitted to contest the prayer for eviction unless he files an affidavit before the Controller stating the ground on which he



seeks to contest the application for eviction and obtains leave from the Controller. This Section also clearly indicates that in default of his appearance in compliance with the summons or his obtaining such leave, the statement made by the landlord in the eviction proceeding shall be deemed to be admitted by the tenant and the landlord shall be entitled to an order for eviction on the ground mentioned in the eviction petition. At this stage, we may also note that in sub-section (4) of Section 25B of the Rent Act read with Third Schedule, it has been made clear by the Legislature that if the summons of the proceeding is received by the tenant, he has to appear and ask for leave to contest the eviction proceeding within 15 days from the date of service of notice upon the tenant and if he fails to do so, automatically, an order of eviction in favour of the landlord on the ground of bona fide requirement shall be made.”

41. In the present case, the leave to defend was not filed and hence, the decree for eviction was passed.

42. The scope of review has been outlined in the case of ***Parsion Devi*** (supra) wherein the Hon’ble Supreme Court has held that review cannot be an appeal in disguise. Under the garb of a review application, the respondent having missed the boat for filing leave to defend cannot agitate issues which should have been taken up in a leave to defend application. Paragraph 9 of ***Parsion Devi*** (supra) reads as under:

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to



be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.”

(emphasis supplied)

43. The judgments relied upon by the respondent are not applicable to the present case as they are distinguishable from the facts of the present case.

44. In ***Manoj Kumar Bhatt*** (supra), the petition under Section 14(1)(e) of DRC Act was held to be non-maintainable due to the bar contained in Section 14(6), which states that where the landlord has acquired any premises by transfer, no application for the recovery of possession of such premises shall lie under the grounds mentioned in Section 14(1)(e) unless a period of five years have elapsed from the date of the acquisition. Accordingly, it held that the summons were wrongly issued under Schedule III of DRC Act, and the respondent therein had rightly filed the written statement instead of filing application for leave to defend. In the present factual matrix, Section 14(6) does not apply, hence the case is distinguishable.

45. In ***Director Directorate of Education*** (supra), the coordinate bench affirmed that ***Prithipal Singh*** (supra) is a precedent on the fetters on the power of the Controller to recall the order of eviction and to consider the application for leave to defend belatedly, and not on the power of this Court



under Section 25B(8). In the present case, the review application was filed by the respondent before the learned ARC and not this Court. The learned ARC, as per the precedent laid down in *Prithipal Singh* (supra), did not have the power to consider the application for leave to defend belatedly. Further, this Court is empowered to set aside the eviction order only if the tenant passes the dual test of: a) prevented by reasons beyond control from applying for leave to defend within the prescribed time (as distinct from every default) and; b) if he/she makes out a substantial case for consideration of the application for leave to defend. This dual test, in my opinion, is also not satisfied in the present case.

46. In *Assistant Commissioner, Income Tax* (supra), the Apex Court, citing *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji*, (1971) 3 SCC 844 and referring to Order XLVII Rule 1 CPC noted that there is no inherent power of review with the adjudicating authority if it is not conferred by law. The Apex Court has further laid down the scope of “error apparent on the face of the record”. As discussed in the later part of my judgment, I am of the view that there is no error apparent on the face of the record in the present case, and hence the learned ARC erred in setting aside the eviction order by holding that the case falls under Section 14(1)(g) and not Section 14(1)(e) of the DRC Act.

47. The respondent has also wrongly relied on *Satyawati Sharma* (supra). The Apex Court in *Satyawati Sharma* (supra) struck down the discriminating part of Section 14(1)(e) of DRC Act to the extent that it made a distinction between premises let for residential and non-residential purposes, and removed the restriction upon the landlord’s right to seek eviction of tenant from premises let for residential purposes only. Thus, this



judgment is irrelevant to the issue under consideration in the present case.

48. In the present case, the action of the learned ARC amounts not to a review but to a fresh adjudication. Hence, I am of the view that the learned ARC has committed an error in passing the impugned order in a review application.

49. In this view of the matter, the impugned order needs to be set aside and the revision petition needs to be allowed on this ground alone. However, I am also proceeding to decide the case on merits.

On Merits

50. The main issue before me is whether the need of the petitioner can be said to be within Section 14(1)(e) of DRC Act or within Section 14(1)(g) of DRC Act.

51. Section 14(1)(e) and Section 14(1)(g) of DRC Act read as under:-

“14.(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

*(e) that the premises let for residential purposes are **required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him**, if he*



is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation.

Explanation.- For the purposes of this clause, “premises let for residential purposes” include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;

(g) that the premises are required bona fide by the landlord for the purpose of building or re-building or making thereto any substantial additions or alterations and that such building or re-building or addition or alteration cannot be carried out without the premises being vacated;

...”

(emphasis supplied)

52. The whole distinction between Section 14(1)(g) and 14(1)(e) lies in the purpose. Under Section 14(1)(e), the purpose is that the landlord requires the tenanted premises for use for himself or for any member of his family dependent on him. The purpose under Section 14(1)(g) is that the landlord requires the premises for building or re-building or making substantial additions or alterations, and that such building or re-building or addition or alteration cannot be carried out without the premises being vacated. Under Section 14(1)(g), the intent that the premises are required *bona fide* “for himself or any member of his family dependent on him” is missing. Once the eviction petition states that the premises are required by the landlord for



his use or for the use of any of his family member dependent on him, the petition would be under Section 14(1)(e). The factum whether the landlord breaks the premises for reconstruction, alters the same for better use of those premises for himself or any of his family members is incidental as it is the “use of the premises” which is of primary consideration.

53. To say that if the landlord would break the premises and thereafter use them for his *bona fide* purpose would take the petition out of the purview of Section 14(1)(e) of DRC Act and bring it within Section 14(1)(g) of DRC Act, is a misnomer.

54. In *Sharifuddin v. Babuddin*, 2008 SCC OnLine Del 1256, this Court has held that demised premises may be re-constructed and made habitable for the *bona fide* need of the landlord under an application for eviction under Section 14(1)(e). Thus, there is no conflict between Section 14(1)(g) and Section 14(1)(e). The operative portion of the judgment reads as under:

“7. (...) There is no conflict between provisions of Section 14(1)(e) and 14(1)(g) of DRC Act. A decree can be passed under Section 14(1)(e) even in respect of a dilapidated premises where the landlord intends to live in the premises after repairing it. Section 14(1)(g) operates in a different area. In case of 14(1)(g) the premises is required by the landlord for the purpose of re-building or making any substantial additions or alterations not because the premises was in dilapidated condition but because the landlord wants to re-construct or wants to make additions or alterations in the premises for whatsoever purposes. Under Section 14(1)(e) the landlord can require the premises for his own use or for the use of his family members from the tenant who



*is in occupation of the premises. A tenant who is paying low rent may continue to live in a dilapidated premises because of meager rent being paid by him but after evicting the tenant from the premises, it was not necessary for the landlord to shift into the premises in the same condition. He is always at liberty to first bring the premises to habitable and suitable condition by either reconstruction or repair and then shift to it. **It is not necessary for him that he should get the premises vacated under Section 14(1)(g) and not under Section 14(1)(e), if he wants to shift to the premises, after making it a habitable.***”

(emphasis supplied)

55. Further, in ***Om Prakash v. Gurdev Singh***, 2015 SCC OnLine Del 9646, this Hon’ble Court elaborated the purpose of Sections 14(1)(g) & 14(1) (f) and their applications:

“7. (...) Section 14(1)(g) is applicable where the eviction of the premises is sought on the bonafide ground by the landlord for the purpose of building or rebuilding or making substantial addition or alteration and that such alteration cannot be carried out without premises being vacated. Section 20 DRC Act provides that while making any order on the ground specified in Clause (f) or Clause (g) of the proviso to sub-Section (1) of Section 14 of DRC Act, the Controller shall ascertain from the tenant whether he elects to be placed in occupation of the premises or part thereof from which he is to be evicted and if the tenants so elects, shall record the fact of election in the order and specify therein the date on or before which he shall deliver the possession so as



to enable the landlord to commence the work of repairs or re-building. Section 14(1)(f)&(g) DRC Act thus permits eviction of the tenant for limited period subject to the tenant exercising the said option, however they do not apply to the cases where the landlord requires the premises bonafidely for his own use or for the use of his dependents.”

(emphasis supplied)

56. The Hon’ble Supreme Court in *Abid-Ul-Islam v. Inder Sain Dua*, (2022) 6 SCC 30 has listed the two grounds for satisfaction in an application made under section 14(1)(e). It has observed:

“15. Section 14(1)(e) carves out an exception to the regular mode of eviction. Thus, in a case where a landlord makes an application seeking possession of the tenanted premises for his bona fide requirement, the learned Rent Controller may dispense with the protection prescribed under the Act and then grant an order of eviction. Requirement is the existence of bona fide need, when there is no other “reasonably suitable accommodation”. Therefore, there has to be satisfaction on two grounds, namely, (i) the requirement being bona fide and (ii) the non-availability of a reasonably suitable residential accommodation. Such reasonableness along with suitability is to be seen from the perspective of the landlord and not the tenant. When the learned Rent Controller comes to the conclusion that there exists a bona fide need coupled with the satisfaction that there is no reasonably suitable residential accommodation, the twin conditions mandated under Section 14(1)(e) stand



satisfied.”

(emphasis supplied)

57. As already observed, the petitioner needed the premises for use of Ms. Amisha Chaudhary, who wishes to set up her own Management-cum-Higher Education Institute in Delhi, and who is a member of the HUF dependent on the petitioner. For meeting that need, the premises would have to be vacated and thereafter certain construction, addition, alteration would be required to make it suitable for the need of that family member dependent on the petitioner.

58. Section 14(1)(g) of DRC Act envisages the requirement of the premises for the purpose of building or re-building which is not the case here.

59. There is no bar in law which prohibits the landlord from carrying out construction or alteration to the demised premises to make it suitable to his/her *bona fide* need, as long as the two conditions for filing a petition under Section 14(1)(e) as iterated in *Abid-Ul-Islam* (supra) are satisfied. This was reiterated by this court in *Rajbir Pal v. Kanwar Partap Singh*, 2023 SCC OnLine Del 2320:

“33. The learned Counsel for the Petitioners has also argued that in the instant case, the tenanted premises being a dilapidated tin shed which is currently being occupied by the Petitioners, the alleged bona fide need of the Respondent would require considerable construction and alteration of the structure, and thus, Section 14(1)(g) of the DRC Act should have been invoked instead of Section 14(1)(e). As a consequence, the summary procedure under Section 25B would



not be applicable in the instant case. This argument of the learned Counsel for the Petitioner also does not hold any water for the reason that it is settled law that the nature of Section 14(1)(e) and Section 14(1)(g) are completely different and that just because construction or alteration is required for the bona fide need of the landlord to be satisfied, does not mean that an eviction petition under Section 14(1)(e) would not be maintainable. There is no prohibition on the landlord from reconstructing the premises according to their needs as long as there is no breach of conditions required to be fulfilled under the law [Refer to Baldev Singh Bajwa v. Monish Saini, (2005) 12 SCC 778].

...

35. Similar observations had been made by this Court in Ram Wati Devi v. Mohan Babu Sharma (supra) noting that there is no impediment on the landlords to refashion the tenanted premises accordingly to their suitability to meet their need and that in such cases, the eviction petition must be moved under Section 14(1)(g). The portion of the said Judgment with this observation is as under:

“16. This Court is of the view that the argument of the tenants that the petition should have been under Section 14(1)(g) is untenable. The domains of Sections 14(1)(g) and 14(1)(e) are different. In the present case, the landlords' requirement for the tenanted premises was for them to start their own shop. It was



also averred that since the size of the three shops were small, they wanted to convert them into two. This would not mean that the landlords' petition should have been filed under Section 14(1)(g). Making alterations to the shops was merely ancillary and the landlords' primary need for the tenanted premises was for them to start their own shop. The landlords needed the space and there is no impediment upon them to refashion it according to their suitability to meet the need. This Court is not persuaded with the other grounds taken by the tenants in this revision petition.”

(emphasis supplied)

60. In my view, and in line with the judgment laid down in **Rajbir Pal** (supra), the need of the petitioner-landlord to reconstruct the demised premises is only ancillary to the main *bona fide* need of using the demised premises for setting up a Management-cum-Higher Education Institute for petitioner's dependant, Ms. Amisha Chaudhary.

61. Hence, I am of the view that need of the Petitioner is *bona fide* and falls within the parameters of requirement under Section 14(1)(e) of the DRC Act. In the absence of there being any leave to defend, no triable issue has been raised by the respondent. The observation of the learned ARC that the need of the petitioner falls within the parameters of Section 14(1)(g) and not Section 14(1)(e) and hence there is an error apparent on the face of record also cannot be sustained in view of my above reasoning.

62. Hence, the revision petitions succeed and the following review orders are hereby set aside:

- (i) Order dated 13.09.2018 in RC.REV. 540/2018;



- (ii) Order dated 12.09.2018 in RC.REV. 541/2018;
- (iii) Order dated 11.09.2018 in RC.REV. 603/2018;
- (iv) Order dated 11.09.2018 in RC.REV. 608/2018;
- (v) Order dated 12.09.2018 in RC.REV. 611/2018;
- (vi) Order dated 13.09.2018 in RC.REV. 612/2018;
- (vii) Order dated 13.09.2018 in RC.REV. 613/2018;
- (viii) Order dated 11.09.2018 in RC.REV. 622/2018;
- (ix) Order dated 12.09.2018 in RC.REV. 623/2018;
- (x) Order dated 11.09.2018 in RC.REV. 625/2018; and
- (xi) Order dated 11.09.2018 in RC.REV. 16/2019.

63. Consequently, the following eviction orders are upheld and the decree of eviction with respect to the tenanted premises mentioned therein is passed.

- (i) Order dated 31.10.2017 in RC.REV. 540/2018;
- (ii) Order dated 05.03.2018 in RC.REV. 541/2018;
- (iii) Order dated 17.04.2018 in RC.REV. 603/2018;
- (iv) Order dated 04.12.2017 in RC.REV. 608/2018;
- (v) Order dated 17.04.2018 in RC.REV. 611/2018;
- (vi) Order dated 27.09.2017 in RC.REV. 612/2018;
- (vii) Order dated 17.04.2018 in RC.REV. 613/2018;
- (viii) Order dated 17.04.2018 in RC.REV. 622/2018;
- (ix) Order dated 17.04.2018 in RC.REV. 623/2018;
- (x) Order dated 17.04.2018 in RC.REV. 625/2018; and
- (xi) Order dated 17.04.2018 in RC.REV. 16/2019.

64. In accordance with Section 14(7) of DRC Act, the petitioner-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.

65. Since I have decided the issue on merits, the other issues with regard to the maintainability of review, power of the ARC to condone delay in review are left open to be adjudicated in an appropriate matter.

66. Brief written submissions dated 12.04.2023 filed on behalf of the respondents is taken on record.

67. These petitions along with pending applications are disposed of.

JASMEET SINGH, J

OCTOBER 4th, 2023
skm