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

+ RC.REV. 28/2016 & CM APPLs. 31410/2021, 38854/2022,
40753/2022, 50417/2022

PAWAN & ORS

..... Petitioners

Through: Mr. Kunal Soni, Advocate

versus

MANGE RAM GUPTA & ORS

..... Respondents

Through: Mr. Ashok Kumar, Advocate

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Reserved on: 29th May, 2023

Date of Decision: 04th July, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. This revision petition has been filed by the Petitioners ('tenants') assailing the order dated 01.06.2015, passed by the Additional Rent Controller (South), Saket Courts, New Delhi ('Trial Court'), in Eviction Petition No. E-07/2014, whereby, their application seeking leave to defend was dismissed and the eviction petition filed by the Respondents ('landlords') under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act') was allowed with respect to Shop No. 25, Central Road, Bhogal, Jangpura, New



Delhi-110014. ('tenanted premises').

1.1. The tenanted premises is situated in property bearing no. 29, Church Lane, Bhogal, Jangpura, New Delhi-110014, which admeasures 342 sq. yards. The said property was originally owned by late Mr. Chhagan Mal and he divided the said property between his two sons i.e., late Mr. Ram Swaroop and late Mr. Kallu Mal. The partition of the said property was made in two equal halves of 171 sq. yards each between the legal heirs of late Mr. Ram Swaroop and late Mr. Kallu Mal, which has been duly recorded in the judgment dated 19.12.2022 passed by the Division Bench in FAO(OS) 137/2022.

1.2. The judgment dated 19.12.2022 records that the legal heirs of late Mr. Ram Swaroop and late Mr. Kallu Mal are in peaceful possession of their respective portions in the said property.

1.3. The Respondents are the legal heirs of late Mr. Ram Swaroop and together are co-owners of 171 sq. yards, which fell onto the share of late Mr. Ram Swaroop. Their inter-se undivided share in the 171 sq. yards is duly recorded in the judgment dated 19.12.2022 passed by the Division Bench in FAO(OS) 137/2022. The tenanted premises are located in the 171 sq. yards, which fell to the share of the Respondents herein; and the said 171 sq. yards forming part of the property known as No. 29, Church Lane, Bhogal, Jangpura, New Delhi-110014 is hereinafter referred to as the 'subject property'.

2. The eviction petition was filed by the three (3) sons of late Mr. Ram Swaroop. During the pendency of the eviction petition one of his



sons Mr. Ishwar Dayal Gupta (original Petitioner no. 2) passed away on 11.05.2011 and his legal heirs were brought on record. After the passing of the eviction order and during the pendency of this revision petition another son i.e., Mr. Jage Ram Gupta (original Petitioner no. 3) as well passed away on 04.10.2017 and his legal heirs were brought on record.

3. The eviction petition was instituted on 21.07.2009. The eviction order as noted above was passed on 01.06.2015 and the statutory period of six (6) months for vacating the premises expired on 01.12.2015. The operation of the eviction order was stayed by this Court on 19.01.2016 and the Petitioners were directed by this Court to pay use and occupation charges at Rs. 10,000/- per month *vide* order dated 03.08.2016.

Arguments of the Petitioners, Tenants

4. Mr. Kunal Soni, learned counsel for the Petitioners made the following submissions:

4.1. He states the sons of the landlords are gainfully employed and are carrying on independent business. He refers to the averment at paragraph 6 and 7 of the Annexure to the eviction petition to contend that as is evident from the said pleading, the Respondents have not decided the proposed use of the tenanted premises or identified the individual/family member amongst them, who will occupy the same, upon eviction. He states in these facts, the landlords do not have any *bona fide* need for the tenanted premises.

4.2. He states that the landlords have available to them alternate accommodation within the 'subject property' and a basement at property no. 71/2, Masjid Road, Bhogal, New Delhi ('Masjid Road Basement



property'). He states that therefore, the landlords have sufficient accommodation available with them.

4.3. He states that the landlords have prior to filing the eviction petition sold two (2) shops after recovering the possession of the said shops.

4.4. He states that the Respondents are not the owners of the subject property, though he admits the existence of landlord-tenant relationship between the parties.

4.5. No other argument was addressed during the course of the oral submissions.

Arguments of the Respondents, Landlords

5. In response, Mr. Ashok Kumar, learned counsel for the Respondents states as under:

5.1. He states that the Respondents have in the eviction petition, at paragraph 3 of the Annexure, specifically enlisted the size of the family members. He states that the details of the family members on whose behalf recovery is sought is duly set out therein and further, the requirement of the landlords and their sons is also duly explained in the Annexure to the eviction petition. He states that there is no dispute raised to the said facts by the tenants in the pleadings. He states that due to the long pendency of the revision petition, there has been further enhancement in the need of the landlords inasmuch as the grandson and another daughter (of the original Petitioners in the eviction petition) also require the tenanted premises.

5.2. He states that the subject property in which the landlords have right title and interest, ad-measures 171 sq. yards only and to substantiate the



same, he relies upon the judgment of the Division Bench dated 19.12.2022 in FAO(OS) 137/2022. He states that the first floor (1st) and the second floor (2nd) of the subject property are used for the residence of the families of the landlords and commercial accommodation is only available at the ground floor.

5.3. He states that a separate eviction petition was similarly filed for recovery of possession of other portions of the subject property from other tenants and the landlords have succeeded in the said eviction petitions as well, wherein, the ownership of the landlords as well as their *bona fide* need has already been tested and upheld by this Court.

5.4. He states that the plea of alternate accommodation at Masjid Road Basement property is without any merit. He states that the said plea was raised for the first time in the rejoinder to the application seeking leave to defend and cannot be considered on this ground alone. Without prejudice, he states that the said property is in the basement and therefore, cannot be considered as an alternate to the tenanted premises, which is located on the ground floor and faces the prominent main road known as 'Central Road Bhogal'. He states that the said basement is even otherwise being used by the landlords for storage purposes and is therefore, neither vacant nor available. He has also placed reliance on the order dated 27.08.2014 passed by a Coordinate Bench of this Court in RC. REV. 73/2014, wherein with respect to another tenant in the subject property, this Court considered and rejected the plea of alternate accommodation based on the Masjid Road Basement property. He states that the SLP filed against the said order dated 27.08.2014 was dismissed by the Supreme Court on 19.11.2014. He states that therefore, the said issue is no more *res integra*.



5.5. He states that fourteen (14) years have passed by since the institution of the eviction petition in 2009. He states that the record of the Court would show that the Petitioners have successfully scuttled adjudication of this petition and delayed the hearings to the prejudice of the landlords.

Analysis and findings

6. This Court has perused the paper book and heard the learned counsels for both the parties.

7. The Petitioners i.e., tenants have not disputed that they are tendering rent to the Respondents i.e., landlords. Therefore, there is no dispute with respect to the existence of the relationship of landlord-tenant.

7.1. In the eviction petition, the landlords have stated that the tenanted premises were let out to late Mr. Agarsen on 16.02.1952 on the basis of a written agreement. The Petitioners i.e., tenants have not disputed the fact of letting in favour of late Mr. Agarsen by the father of the Respondents i.e., late Mr. Chhagan Mal. This admission also evidences that there is no dispute about the existence of landlord-tenant relationship. Further, in view of the said admission, the tenants are estopped under Section 116 of the Indian Evidence Act, 1872 from denying the title of the landlords to the subject property.

7.2. The objection raised by the Petitioners i.e., tenants to the ownership of the landlords is inadmissible in view of Section 116 of Act, 1872 as noted above. Even otherwise, a perusal of the judgment dated 19.12.2022 passed by the Division Bench in FAO (OS) 137/2022 sufficiently evidences the proprietary rights of the Respondents in the subject



property.

7.3. The objection raised by the Petitioners challenging the ownership of the landlords is therefore, without any substance and as correctly held by the Trial Court does not give rise to any triable issue. A Coordinate Bench of this Court in ***Ramesh Chand v. Uganti Devi, 2008 SCC OnLine Del 1187*** has held that a tenant, who denies the title of the landlord, *qua* the premises, to whom he is paying rent acts dishonestly and the challenge to the ownership does not give rise to a triable issue.

8. The Petitioners have challenged the *bona fide* need of the landlords by disputing that the adult sons of the landlords are not dependent on their father for commercial accommodation. However, the Respondents at paragraphs 3 to 7 of the Annexure to the eviction petition have set out in detail the large size of their family and the paucity of commercial accommodation available to them for the family members. The said paragraphs read as under:

*“3. That with the passage of time the family of the Petitioners landlords have **increased in size and presently the petitioners have six sons, daughters and three grandchildren.** The following six one of the Petitioners which are as follows: a) Shri Ashok Kumar, aged 45 years S/o Mange Ram, (dependent) b) Naresh Kumar aged 36 years son of Mange Ram c) Pradeep Kumar, aged 39 years/dependent/son of Ishwar Dayal d) Sandeep Kumar, aged 33 years/dependent son of Shri Ishwar Dayal e) Ajay Kumar, aged 29 years/dependent son of Shri Jage Ram Gupta f) Vijay Kumar, aged 26 years/dependent son of Shri Jage Ram. **That the petitioners have more liability then earlier as a result the Petitioners and their sons have bonafide requirements of the said shop for their own use. The petitioners and their sons have no suitable place for business to earn their livelihood. That the present shop of the petitioners Jage Ram Gupta and one small office of Naresh Kumar son of the petitioner Mange Ram Gupta fall in residential area which is being run on the ground floor of residence.** The other sons of the petitioners are without their own business and any other source of livelihood. The Petitioners are entitled to recover the possession of the said shop which continues to be their property in spite of their letting out the same to the tenants.*



4. That the petitioner Mange Ram Gupta has two sons, the elder son is compelled to run his business at Ghaziabad, U.P. in rented premises while his family resides at Bhogal, New Delhi with parents. He has to face a lot of hardship in managing his business there, once he met an accident on the way to Ghaziabad in the course of running his business. The another son also has no suitable place.

5. That the petitioner Ishwar Dayal Gupta has also two sons, the petitioner is running a shop of Ladies Items with the help of his elder son. The said shop is a very small and he wants to extend it. Both the sons of the petitioner are without their own business and any other sources of livelihood, as a result they are leading an unstable life for their livelihood.

6. That the petitioner Jage Ram has two sons both are well trained in business. Their parents are also ready to manage the funds for their business but they do not have suitable place for their business. They want to start general merchant store but do not have suitable place as a result both the sons are independent on their father for their maintenance.

7. That the petty business have been ancestral profession of the Petitioners. The Petitioners and their dependents do not have requisite qualifications and their dependents do not have requisite qualification to stand on their feet by joining some worthwhile/permanent job to maintain their family but they all are well trained in running petty business as they have been associated with business of their parents. Now want to start business of their own in the said premises which are located in Bhogal adjacent to their permanent residence, where they lived with their old parents and family, so they need the premises for their own use now. The Petitioners will decide at later stage about the distribution of oops among heir sons according to their need. The petitioners are feeling great hardship as the expenditure of the maintenance of the family in increasing day by day. The Petitioner has also marriageable daughter and a school going grand children."

(Emphasis supplied)

8.1. The Petitioners have not disputed the size of the family or the facts set out therein except to state that since the sons of the landlords are already gainfully employed in the same business as the landlords there is no further requirement for the sons to set up an independent business separate from their father. This Court is unable to appreciate the submissions of the Petitioners and is in agreement with the findings of



the Trial Court that the need of the adult sons for the tenanted premises, to start independent business separate from their father, is genuine. The relevant findings of the Trial Court are as under:

“18. The respondents has not challenged the size of the family of the petitioners but disputed the dependency of sons of petitioners on the ground that all the sons of petitioners are in the age of 30-40 years therefore they cannot be deemed to be dependants upon petitioners for accommodation. But dependency does not arise only in case of minor children and same can exist even for aged children. Hence this submission of respondent stands rejected.

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22. The arguments on behalf of the Ld. Counsel for respondent that since Ishwar dayal has expired and shop under his possession can be used by his sons & their bonafide requirement is extinguished is rejected as requirements is to be see on the date of filing of petition and subsequent events cannot be taken into consideration unless they have material bearing on the facts of the case. As per petition shop under possession of Ishwar Dayal is a small shop and which needs to be expanded for accommodating his sons. Hence, this arguments of the Ld. Counsel for defendants stands rejected.

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24. In the present case the respondents only made bald assertions about availability of sufficient and surplus accommodation and also alleges that sons of the petitioner are doing independent business and well settled. But respondent have neither filed a single document to prima facie show the independent business of the sons of petitioner nor any document to show availability of sufficient and surplus accommodation.”

8.2. The Respondents have stated that during the pendency of the revision petition, the married grandson, Mr. Aman and a daughter, Ms. Sapna additionally has need for the tenanted premises.

8.3. In a metropolitan city like Delhi, where the prices of the real estate have skyrocketed, the need of the adult children for accommodation and their dependency for the said need on their parents, who own immovable property, is genuine and stands to reason. The provision of Section



14(1)(e) of DRC Act itself statutorily recognises that the need for the premises could be for the self or for any member of the family dependent on the landlord. The dependency of adult children for the purpose of accommodation on their parents is well recognised. The following decisions passed by the Supreme Court and this court are relevant in this regard:

i. In ***Joginder Pal Singh v. Naval Kishore Behal (2002) 5 SCC 397***, the Supreme Court at paragraph 24 had recognised the need of the adult children of the landlord as *bona fide* and observed as under:

24. We are of the opinion that the expression “for his own use” as occurring in Section 13(3)(a)(ii) of the Act cannot be narrowly construed. The expression must be assigned a wider, liberal and practical meaning. The requirement is not the requirement of the landlord alone in the sense that the landlord must for himself require the accommodation and to fulfil the requirement he must himself physically occupy the premises. The requirement of a member of the family or of a person on whom the landlord is dependent or who is dependent on the landlord can be considered to be the requirement of the landlord for his own use. In the several decided cases referred to hereinabove, we have found the pari materia provisions being interpreted so as to include the requirement of the wife, husband, sister, children including son, daughter, a widowed daughter and her son, nephew, coparceners, members of family and dependants and kith and kin in the requirement of landlord as “his” or “his own” requirement and user. Keeping in view the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region, to which the landlord belongs, it may be the obligation of the landlord to settle a person closely connected with him to make him economically independent so as to support himself and/or the landlord. To discharge such obligation the landlord may require the tenancy premises and such requirement would be the requirement of the landlord. If the requirement is of actual user of the premises by a person other than the landlord himself the court shall with circumspection inquire: (i) whether the requirement of such person can be considered to be the requirement of the landlord, and (ii) whether there is a close interrelation or identity nexus between such person and the landlord so as to satisfy the requirement of the first query. Applying the abovesaid tests to the facts of the present case it is clear that the tenancy premises are required for the office of the landlord's son who is a chartered accountant. It is the moral obligation of the landlord to settle his son well in his life and to contribute his best to see



him economically independent. *The landlord is not going to let out the premises to his son and though the son would run his office in the premises the possession would continue with the landlord and in a sense the actual occupation by the son would be the occupation by the landlord himself. It is the landlord who requires the premises for his son and in substance the user would be by the landlord for his son's office. The case squarely falls within the scope of Section 13(3)(a)(ii) of the Act.*

(Emphasis supplied)

- ii. Similarly, a Coordinate Bench of this Court in ***Labhu Lal v. Sandhya Gupta 2010 SCC Online Del 3423*** held that requirement of adult family members, for the purpose of setting up their business, falls within the ambit of *bona fide* need of the landlord.
- iii. So also, another Coordinate Bench in ***Om Prakash Bajaj v. Chander Shekhar (2003) SCC OnLine Del 97*** at paragraph 11 had observed as under:

“11.The wife, son and son's wife and children are the members of the family of landlord whose need of accommodation is the need of the landlord. There is no dispute about this fact. His requirement is only qualified by its genuineness and bona fide.”

8.4. This Court is, therefore, of the view that the need of the landlords for the tenanted premises for providing commercial accommodation to their adult sons for starting independent business is genuine and the finding of the Trial Court does not suffer from any infirmity.

9. The Petitioners i.e., tenants have raised a plea that sufficient alternate accommodation is available to the landlords in the ‘subject property’ itself and at the Masjid Road Basement property.

9.1. The Trial Court has examined the said issue in detail and with respect to the ‘subject property’ rightly concluded that the upper floors (i.e., first floor and second floor) of the said property, which are being



used for the residence of the landlords and their family cannot be construed as alternate available accommodation. The Petitioners have not disputed that the Respondents reside in the upper floors and therefore, this Court fails to appreciate on what basis the said accommodation is being contended as an alternate accommodation for commercial purposes. The findings of the Trial Court with respect to this contention of the Petitioners reads as under:

“19. As per the site plan of the respondents the area under the possession of the petitioners is shown in yellow colour along with first, second and third floor. The shops in question along with other shops under tenancy are shown in green colour in the site plan. The site plan of the petitioner in English language also shows the same occupancy. The arguments of Ld. Counsel for respondent that the petitioner has deliberately not disclosed the availability of accommodation of first and second floor is a triable issue is rejected as admittedly, the first and second floor are being used for residential purpose of the petitioners and their family. Even the photographs of the said floors filed by respondent primarily show residential. Therefore, such non-disclosure is not fatal to the case of the petitioner and the argument of Ld. Counsel for respondent that the site plan is incorrect is rejected.

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25. A landlord, while seeking the eviction of a tenant on the ground of bona fide requirement for himself or his family members dependant upon him, is not expected to disclose the manner in which he is utilizing the accommodation available with him, if the accommodation with the tenant in respect of which he files the eviction petition is required by him for a purpose different from the purpose he is occupying and using the accommodation already available with him.”

This Court does not find any merit in the submission of the Petitioners that this gives rise to a triable issue.

9.2. The Petitioners next contended that the Masjid Road Basement property is an alternate accommodation. The Trial Court has dealt with this issue in detail and concluded that the said premises is neither suitable



nor available as it is already occupied and being used. The relevant findings of the Trial Court read as under:

“21. With regard to non disclosure of property number 71/2 Masjid Raod, Bhogal by the petitioners. Ld. Counsel for petitioner argued that said property is not suitable for carrying out the business as it is in basement and can be only used is not to be considered when it raises new facts for the first time which were not pleaded in the leave to defend application. It is settled principle that non disclosure of accommodation which is not suitable for the requirement of the landlord is not fatal and landlord cannot be penalized for such non disclosure as held in Surinder Singh Vs. Jasbir Singh 172 (2010) DCT 611. Even otherwise only those accommodation are required to be disclosed which may serve the purpose of alternative accommodation to satisfy the need of the petitioner.

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In the present case also the respondent/tenant had not averred about the availability of property number 71/2, Masjid Road, Bhogal in the leave to defend application and stated so for the first time in the rejoinder filed by them. Moreover, the Basement is shown to be in use as reflected in the photographs filed by the respondent asl and same is not vacant and available for the use by the petitioners. Hence the argument that suitable alternative accommodation is available with the petitioners is rejected.”

9.3. The Petitioners have not disputed that the basement can be used only for storage purposes and in any event the basement is already being used by the landlords and their family members. This Court, therefore, finds no infirmity in the said finding of the Trial Court as well.

10. The Petitioners have lastly contended that prior to the filing of the eviction petition two (2) shops were sold by the landlord. The Trial Court held that no details of the alleged shops or the sale have been placed on record and therefore, the Trial Court opined that these are bald assertions. Even before this Court no details have been shown from the record in support of the said contentions. Therefore, in the opinion of this Court, the Trial Court rightly rejected the said contention as being bereft of any



merit and shorn of any details.

11. In revision, the powers of this Court are supervisory and one of superintendence and this aspect has been reiterated by the Supreme Court in the case of *Abid-Ul-Islam v. Inder Sain Dua*, 2022 6 SCC 30 and more specifically in paragraph 23 therein, which 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, that of a regular first appeal, an act, totally forbidden by the legislature.”*

(Emphasis Supplied)

The Petitioners have failed to show any error in the findings of the Trial Court, which would merit interference by this Court.

12. This Court finds merit in the submission of the learned counsel for the Respondent that the Petitioner has deliberately delayed the adjudication of these proceedings by consistently seeking adjournments. In fact, a perusal of the orders dated 23.11.2022, 08.12.2022 and 13.01.2023 shows that the Petitioners unilaterally stopped making payments of use and occupation charges w.e.f., July, 2020 contrary to the directions issued by this Court on 03.08.2016 and 12.04.2018 while continuing to enjoy the stay on the eviction order.



13. In these facts and circumstances, this Court is of the opinion that there is no infirmity in the order of the Trial Court in rejecting the application seeking leave to defend. This Court also finds that the pleas raised in the revision petition are frivolous and without any merit accordingly, the present revision petition is dismissed with costs of Rs. 1 lakh payable to the Respondents within a period of two (2) weeks, failing which the Respondents shall be entitled to recover the same in the execution proceedings. Pending applications, if any, are disposed of.

MANMEET PRITAM SINGH ARORA, J

JULY 04, 2023/sk/ms

