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**IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment Pronounced on: 03.01.2024*

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**RC.REV. 207/2023 and CM No.37971/2023**

SH. ANIL WADHWA &amp; ANR.

..... Petitioners

versus

SH. M.M.L. KAPUR

..... Respondent

**Advocates who appeared in this case:**

For the Petitioners : Mr. R.K. Sahni, Adv. with Mr. Rajiv Raheja, Adv.

For the Respondents : Mr. Jai Sahai Endlaw, Adv. with Mr. Rajbir Singh and Mr. Zubin, Adv.

**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****[Physical Court Hearing/ Hybrid Hearing]****JUDGMENT****TARA VITASTA GANJU, J.:****TABLE OF CONTENTS**

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**Preface:**

1. The present Revision Petition has been filed by the Petitioners/tenants assailing the Impugned Eviction Order dated 25.01.2023 passed by the learned Additional Rent Controller, West,



Tis Hazari Court, Delhi [hereinafter referred to as “Impugned Order”]. By the Impugned Order, the learned Trial Court has dismissed the Leave to Defend/Contest Application filed by the Petitioners/tenants, and, as a consequence thereof the Eviction Petition filed by the Respondent/landlord was allowed.

**Brief Facts:**

2. The present Petition pertains to one shop admeasuring about 10'6" x 13" situated on the ground floor of premises bearing no. J-38, Rajouri Garden, New Delhi - 110027 [hereinafter referred to as the “demised Premises”]. The Respondent/landlord had let out the demised Premises to the Petitioners/tenants by a Rent Agreement dated 05.07.2000 executed between the parties.
- 2.1 An Eviction Petition was filed by the Respondent/landlord on the ground of *bona fide* requirement. Briefly, it was contended that the Respondent/landlord is a senior citizen and has acquired American citizenship in May 2011. The Respondent/landlord and his wife's relatives are residing in Delhi and close to the demised Premises. Respondent/landlord's own family home is in Delhi. Respondent/landlord's son and his daughter frequently visit India and would prefer staying at their family residence rather than a hotel. The Respondent/landlord and his family members earlier used to reside on the first and second floor above the demised Premises. However, for the last few years, the Respondent/landlord has been unable to climb stairs due to his ailments. Since the building does not have a lift, the Respondent/landlord is seeking eviction of the



Petitioners/tenants from the demised premises which is on the ground floor, for his residential use and that of his family members. The Respondent/landlord also averred that he does not have any other suitable alternate accommodation available.

- 2.2 An Application for Leave to Defend/Contest was filed by the Petitioners/tenants before the Trial Court contending that the Respondent/landlord and his family members are US citizens and do not have a *bona fide* need of a residence in Delhi. There is sufficient place available to the Respondent/landlord on the ground floor for his personal use and in any event the Respondent/landlord can install a lift to use the upper floors.
- 2.3 By the Impugned Order, the leave to Defend/Contest Application filed by the Petitioners/tenants was dismissed. It was held that the Petitioners/tenants failed to raise any triable issue and an order was passed directing the Petitioners/tenants to vacate the Demised premises.
- 2.4 Aggrieved by the Impugned Order, the present Petition has been filed. The Petitioners/tenants had also filed an application seeking interim reliefs in as much as stay of the Impugned Order bearing CM Appl. No. 37971/2023. Arguments were heard and the judgment in the present Petition was reserved on 13.10.2023.

**Issue:**

3. The issue before this Court is, whether findings of the learned Additional Rent Controller call for any interference by this Court in



revisionary jurisdiction in view of the facts and circumstances of the present case

4. It is settled law that while exercising jurisdiction under Section 25(B)(8) of Delhi Rent Control Act, 1958 [hereinafter referred to as “DRC Act”], this Court does not act as a Court of appeal. This Court has only to see whether the learned Additional Rent Controller has committed any jurisdictional error and has passed the order on ignorance of material available before it which makes the order not in accordance with the law.

**Contentions of the Petitioners/tenants:**

5. Learned Counsel for the Petitioners/tenants, has contended as follows:-
- (i) The Respondent/landlord does not have a *bona fide* requirement for the demised Premises as he is a citizen of the United States of America and he does not live in India anymore;
- (ii) There is a suitable alternate accommodation available as other portions of the ground floor and the entire first floor and second floor are available with the Respondent/landlord. The Respondent/landlord has concealed the fact that he is in possession of 2 more shops in the same premises i.e. shop nos.4 and 5, which can also be seen from the site plan filed by the Respondent/landlord. The ground of concealment alone raises a triable issue and the grant of Leave to Defend/Contest to the Petitioners/tenants is only justifiable;



- (iii) The Respondent/landlord has admitted that he is unable to live without constant care as he is suffering from various old age ailments. As the children of the Respondent/landlord reside abroad, the *bonafide* need as expressed by the Respondent/landlord to live in Delhi is not genuine;
- (iv) The requirement for demised Premises as set forth in the Eviction Petition was for the use of Respondent/Landlord and his wife. Unfortunately, the wife of the Respondent/landlord expired during the pendency of the Eviction Petition. With these changed circumstances, the Respondent/landlord has now ample space available within the demised Premises;
- (v) The Respondent/landlord has concealed that he is in possession of two more shops i.e., shop nos. 4 and 5 in the same property on the ground floor. It is thus contended that the present case is also a case of additional accommodation and the Courts have held that in case of additional accommodation, the tenant is entitled to grant of Leave to Defend/Contest to a tenant. Reliance is placed upon *Inderjeet Kaur v. Nirpal Singh*<sup>1</sup>, and *Precision Steel & Engg. Works v. Prem Deva Niranjan Deva Tayal*<sup>2</sup>.
- (vi) Since the Petitioners/tenants has raised triable issues, the Application for Leave to Defend/Contest ought to have been allowed by the Trial Court and the Impugned Order has been wrongly passed.

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<sup>1</sup> (2001) 1 SCC 706

<sup>2</sup> (1982) 3 SCC 270



**Contentions of the Respondent/landlord:**

6. Learned Counsel for the Respondent/landlord, has contended as follows:

- (i) The Respondent/landlord is a senior citizen aged 86 years and although resides with his daughter in California, USA but frequently visits Delhi, and part of his family and friends also reside in Delhi;
- (ii) There is no concealment by the Respondent/landlord that the premises which are being described as Shop Nos. 4 and 5 are two small portions admeasuring 30 sq. ft. and 42 sq. ft. which were previously occupied by the Petitioners/tenants but have since been vacated. One of them has a height of only 7ft. and is the area under the staircase. After both areas were vacated by the tenants, the spaces were amalgamated and are at present being used as a storage by the Respondent/landlord. Therefore, these spaces are neither habitable nor available;
- (iii) The building in which the demised Premises is situated, comprises of ground floor, first floor and second floor but does not have any lift. Due to the Respondent/landlord's old age and ailments, the Respondent/landlord uses a walker/wheelchair to move around and the Respondent/landlord is unable to climb stairs;
- (iv) The ground floor in its present condition does not have a Kitchen, Drawing or Dining room. Further, the Washroom/WC has access only through the Verandah and is not connected to the two rooms situated on the ground floor. There is no separate entrance for the



second room and since the shops are situated in the front of the ground floor, there is always a constant disturbance in the rooms, and it is not possible to have a comfortable residence therefrom. It is averred that once the demised Premises is vacated, the requirement for a separate area for basic needs of a separate dining room, puja room and other such requirements will be fulfilled;

- (v) A foreign citizen is permitted to proceed under the provisions of Section 14(1)(e) of the DRC Act and there is no bar against foreign citizens filing Eviction Petition. In any event, the Respondent/landlord has an Overseas Citizen of India (OCI) card;
- (vi) The Respondent/landlord's requirement for the demised Premises arises whenever he visits India and even a temporary need for the Respondent/landlord has been held by Judgments of this Court as a *bona fide* need. Reliance in this regard is placed on ***S.P. Kapoor v. Kamal Mahavir Prasad Muraka<sup>3</sup>and others*** and ***Sarwan Dass Bange v. Ram Prakash<sup>4</sup>***;
- (vii) It is contended that the judgments passed by the Courts do not lay down that in every case of additional accommodation sought by the landlord, Leave to Defend/Contest must necessarily be granted. The Trial Court is required to examine if the defence is that such eviction by summary procedure is inappropriate and only then Leave to Defend/Contest is granted;

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<sup>3</sup> 2002 (64) DRJ 103

<sup>4</sup> MANU/DE/0204/2010



- (viii) It is a settled law that the landlord is the best judge of his requirements, and the suitability of the demised Premises has to be seen as on the date of the filing of the Eviction Petition. As on that date there was requirement for the demised Premises for the Respondent/landlord.

**Analysis & findings:**

7. Arguments were heard on behalf of both parties in the matter. It is contended by the Petitioners/tenants that the Respondent/landlord has admitted that due to old age-related ailments he requires care and assistance for which reason he has been residing abroad with his children, which is contrary to his *bona fide* requirement stated in the Eviction Petition, as admittedly the children of the Respondent/landlord are settled abroad. Hence, a triable issue was raised by the Petitioners/tenants and Leave to Defend ought to have been granted by the learned Additional Rent Controller.
- 7.1 On the other hand, it is contended by the Respondent/landlord that the Respondent/landlord, thus, visits India from time to time and since he has no adequate accommodation, his visits are infrequent. Reliance, in this regard, is placed on the recent visit of the Respondent/landlord when the Respondent/landlord was present in Court during a hearing of the matter in July, 2023. Since the Respondent/landlord did not have a premises to reside in, he was constrained to reside in a hotel on this visit and other visits.
8. Section 25B of the DRC Act lays down the '*special procedure for the disposal of application for eviction on the ground of bona fide*



requirement'. Sub-section (1) of Section 25B states that every Application for recovery of possession on the ground specified in Section 14(1)(e) of the DRC Act shall be dealt with in accordance with the procedure specified in Section 25B. Sub-section (8) says that no appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Rent Controller in accordance with the procedure specified in this section.

9. The proviso to Section 25-B(8) of the DRC Act sets forth that this Court may exercise jurisdiction to satisfy itself if an order passed under Section 25-B is in accordance with law. It reads as follows :

*“....(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]

10. The Supreme Court in *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta*<sup>5</sup> has explained the powers of this Court, as revisional in nature, in the following extract:

*“11....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*

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<sup>5</sup>(1999) 6 SCC 222



*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’....”*

[Emphasis supplied]

11. The Supreme Court in the *Abid-ul-islam* case while relying on the judgment in the case of *Sarla Ahuja v. United India Insurance Co. Ltd.*<sup>6</sup> has clarified these revisional powers and the scope and ambit of the proviso to Section 25-B(8) of the DRC Act. It has been held that the Legislature was very clear in its intent to consciously remove the right of two stages of appeal and replace it with the power of revision. The scope of interference has been confined to an error apparent showing absence of adjudication *per se*, the High Court should not interfere with a decision of the Trial Court. It is further held that the suggestion of the High Court must be confined to the limited sphere that the order of the Rent Controller is in accordance with law and that the Rent Controller would have reached such a finding based on the facts involved. Reliance is placed on the extract below:

*“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*

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<sup>6</sup>(1998) 8 SCC 119



**power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.**

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25. The aforesaid decision has been recently considered and approved by this Court in *Mohd. Inam v. Sanjay Kumar Singhal* [*Mohd. Inam v. Sanjay Kumar Singhal*, (2020) 7 SCC 327 : (2020) 4 SCC (Civ) 107]:(SCC pp. 340-41, paras 22-23)

“22. This Court in *Sarla Ahuja v. United India Insurance Co. Ltd.* [*Sarla Ahuja v. United India Insurance Co. Ltd.*, (1998) 8 SCC 119] had an occasion to consider the scope of proviso to Section 25-B(8) of the Delhi Rent Control Act, 1958. This Court found, that though the word “revision” was not employed in the said proviso, from the language used therein, the legislative intent was clear that the power conferred was revisional power. This Court observed thus : (SCC p. 124, para 11)

‘11. The learned Single Judge of the High Court in the present case has reassessed and reappraised the evidence afresh to reach a different finding as though it was exercising appellate jurisdiction. No doubt even while exercising revisional jurisdiction, a reappraisal of evidence can be made, but that should be for the limited purpose to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.’

**It could thus be seen, that this Court has held, that the High Court while exercising the revisional powers under the Delhi Rent Control Act, 1958 though could not reassess and reappraise the evidence, as if it was exercising appellate jurisdiction, however, it was empowered to reappraise the evidence for the limited purpose so as to ascertain whether the conclusion arrived at by the fact-finding court is wholly unreasonable.....”**

[Emphasis supplied]

12. In addition, this Court is required to examine whether a case under Section 14(1)(e) read with Section 25B of the DRC Act was made out, for the Petitioners/Tenant to be granted Leave to Defend.



13. The Supreme Court in the case of *Inderjeet Kaur v. Nirpal Singh*<sup>7</sup>, has specified that the Leave to Defend to a tenant cannot be granted on a mere asking and what has to be seen while granting a Leave to Defend Application is that there is a strong prima facie case against the landlord who is seeking eviction.

*“13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be a right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord, leave to defend should not be granted when it is not the requirement of Section 25-B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter III-A of the Act. Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under clause (e) of the proviso to sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide....*

*The ground under clause (e) of the proviso to sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance, a wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend, but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defence may fail. It is well to remember that when leave to defend is refused, serious consequences of eviction shall follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the eviction petition by cross-examination. It may also be noticed that even in cases where leave is granted provisions are made in this very Chapter for expeditious disposal of eviction petitions.*”

[Emphasis supplied]

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<sup>7</sup>(2001) 1 SCC 706



14. Admittedly in the present case, the landlord-tenant relationship between the parties is not disputed, what has been averred is that the requirement of the Respondent/landlord is not genuine and that there is suitable alternate accommodation available to the Respondent/landlord on the ground floor and other floors of the demised Premises.
15. The provisions of Section 14(1)(e) of the DRC Act have been provided with care by the legislature, not only is the accommodation to be 'alternate', but it is also required to be suitable. The Supreme Court in the *Shiv Sarup Gupta* case has held that for an Eviction Petition to fail on the ground of availability of alternate suitable accommodation, the availability of another accommodation shall be suitable and convenient in all respects as the tenanted accommodation from which the landlord seeks eviction of the tenant, as follows:

*“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.”

[Emphasis supplied]

- 15.1 The Supreme Court in the case of *M.L. Prabhakar v. Rajiv Singal*<sup>8</sup>, has also directed that the suitability of the alternate accommodation is to be seen basis on the basis of the way of living landlord and his family members as follows:

“8. It is thus to be seen that the suitability has to be seen from the convenience of the landlord and his family members and on the basis of the totality of the circumstances including their profession, vocation, style of living, habits and background.”

[Emphasis supplied]

- 15.2 The Respondent/landlord is an Octogenarian and requires wheelchair/walker assistance. Since, admittedly, the building has no lift, the accommodation on first, second or any upper floor will not be suitable for him.
- 15.3 On the ground floor and other floors, rooms are stated to be available to the Respondent/landlord as well. However, this has been dealt with by the Impugned Order as well as during arguments by the Respondent/landlord, to state that the ground floor in its present

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<sup>8</sup>(2001) 2 SCC 355



condition does not have a Kitchen, Drawing or Dining Room. The washroom/WC can only be accessed through Verandah and not connected to two rooms on the ground floor. In his advanced age, the Respondent/landlord will require all of these facilities and including a room for staff/attendant who will reside in the premises with him.

15.4 Keeping in mind, the age of the Respondent/landlord and his requirements as explained, it cannot be said that the need of the Respondent/landlord is not genuine or *bona fide*.

15.5 In any event, it is settled law that the tenant cannot dictate the terms to the landlord and that the landlord is the best judge of his requirement [See: *Prativa Devi (Smt.) v. T.V. Krishnan*<sup>9</sup> and *Anil Bajaj v. Vinod Ahuja*<sup>10</sup>].

15.6 Since there is alternate space available, however, it is not suitable accommodation for the Respondent/landlord, the requirement of the demised Premises is *bona fide*.

16. It is not disputed that the Respondent/landlord does not have any other immovable property in Delhi for his residence, other than the property of which the demised Premises forms part of.

16.1 The Petitioners/tenants have averred that shop nos. 4 and 5 on the ground floor are also in possession of the Respondent/landlord. However, these are stated to be less than 7 feet in height and under staircase and incapable of being used as residence, but have been

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<sup>9</sup>[1996] 5 SCC 353

<sup>10</sup>(2014) 15 SCC 610



amalgamated and are now being used for the purposes of storage by the Respondent/landlord. Hence, what was earlier shop no.4/5 cannot be considered as an alternate accommodation.

- 16.2 The only other averment raised by the Petitioners/tenants is that in view of the fact that the wife of the Respondent/landlord expired during the pendency of the Eviction Petition, the requirement for the Respondent/landlord has now diminished. The Respondent/landlord being a single person now has sufficient accommodation for his residence.
17. This Court is unable to agree with the submissions of the Petitioners/tenants, the *bona fide* requirement of a Dining or Drawing Room, Kitchen and a connected Washroom/WC are as much a requirement of a single person as of a couple. Surely, the demise of the wife of the Respondent/landlord cannot be used by the Petitioners/tenants to allege lack of *bona fide* requirement or availability of alternate accommodation.
18. So far as concerns the averments that there was concealment of shop nos. 4 and 5, the explanation given by the Respondent/landlord that the same is not suitable for residence is acceptable. Hence, there was no concealment.
19. The principles as enunciated in the *Charan Dass Duggal v. Brahma Nand*<sup>11</sup> and the *Precision Steel* case that the Petitioners/tenants seek to rely on, will guide this Court in reaching a decision in regard to

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<sup>11</sup>(1983) 1 SCC 301



whether the leave to defend shall be granted to the Petitioners/tenant. What the Court has to look is that there is a genuine need of the landlord and is not a mere desire for the tenanted Premises. This Court has analysed the facts in the present case, the Respondent/landlord is a senior citizen and suffers from old age-related ailments, resulting in him not being able to walk/ climb stairs. The building, where the demised Premises is located is old and cannot accommodate a lift. It has been further stated that the Respondent/landlord frequently visits Delhi and the last time that Respondent/Landlord visited Delhi, the Respondent/landlord was constrained to live in a hotel, as he was not able to climb stairs to reach the first and second floor where the Respondent/landlord used to live. Therefore, this Court observes that the need of the Respondent/landlord is *bonafide* and is not a mere desire.

20. In any event, Section 19 of the DRC Act affords adequate protection to the tenant against landlords who get the demised Premises vacated on the false premise that the property is required for their *bona fide* need or for the need of other persons who are dependent on the landlord. The Petitioners/tenants always have the option to invoke Section 19 of the DRC Act to get back the possession of the demised Premises, in case the Respondent/landlord does not use the demised Premises for the purpose as set forth in the Eviction Petition.

### **Conclusion:**

21. In view of the discussion above, this Court finds no reason to interfere with the Impugned Order.



2024:DHC:9



22. The Revision Petition and all pending Application(s) are dismissed.

**TARA VITASTA GANJU, J**

**JANUARY 03, 2024/SA**