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

Judgment reserved on: 23.07.2024

Judgment pronounced on: 27 .11.2024

+ **RC.REV. 45/2015, CM APPL. 38844/2019, CM APPL.**

40626/2019, CM APPL. 6786/2022

GARG TRADING CO Petitioner

Through: Mr. Gurinder Pal Singh, Mr. Siddharth Bora, Ms.
Jaya Bajpai and Mr. Maryam Beg, Advs.

versus

VIJAY MEHRA & ORS Respondents

Through: Mr. S.N. Choudhari, Ms. Shruti C. and Ms. Dipti
Sareen, Advs.

+ **RC.REV. 104/2015, CM APPL. 40586/2019, CM APPL. 6787/2022**

SH. OM PRAKASH GUPTA Petitioner

Through: Mr. Gurinder Pal Singh, Mr. Siddharth Bora, Ms.
Jaya Bajpai and Mr. Maryam Beg, Advs.
Ms. Neha Malhotra, Adv.

versus

SMT. VIJAY MEHRA & ORS Respondents

Through: Mr. S.N. Choudhari, Ms. Shruti C. and Ms. Dipti
Sareen, Advs.

+ **RC.REV. 47/2015, CM APPL. 38896/2019, CM APPL.**

42276/2019, CM APPL. 13120/2022

M/S MOLU RAM RADHA KISHAN Petitioner

Through: Mr. Gurinder Pal Singh, Mr. Siddharth Bora, Ms.
Jaya Bajpai and Mr. Maryam Beg, Advs.

versus

VIJAY MEHRA & ORS Respondents

Through: Mr. S.N. Choudhari, Ms. Shruti C. and Ms. Dipti
Sareen, Advs.



CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

: **JASMEET SINGH, (J)**

1. These are petitions seeking setting aside of the impugned judgment dated 04.07.2014 passed by the learned Additional Rent Controller - 1 (“**ARC**”) (central), Tis Hazari Courts, Delhi whereby the learned ARC has dismissed the applications filed by the petitioners for leave to defend and the eviction petition filed by the respondents under section 14 (1)(e) read with section 25 B of the Delhi Rent Control Act, 1958 (“**DRC**”) was allowed with respect of the tenanted premises bearing property No. 4082-87, Naya Bazar, Delhi-6 comprising of ground floor (four halls; one of the halls having been partitioned into seven portions), first floor (comprising of six rooms and two halls) and the second floor (comprising of seven rooms) (“**tenanted premises**”).
2. The petitioners are also challenging the order dated 20.01.2015 whereby the learned ARC dismissed the review applications filed by the petitioners seeking review of the impugned judgment dated 04.07.2014.
3. In RC.REV. NO. 104/2015, the petitioner only challenges the impugned judgment dated 04.07.2014 passed by the learned ARC wherein the leave to defend application filed by the petitioner has been rejected and an order of eviction has been passed in favor of the respondents with respect to the tenanted premises.
4. It is pertinent to mention that in RC.REV. NO. 104/2015, no review was filed by the petitioner.



5. The factual narration is being considered as per RC. REV. 45/2015, being the lead matter and the ratio of this judgment shall also apply to RC.REV. NO. 47/2015 and RC.REV. NO. 104/2015.

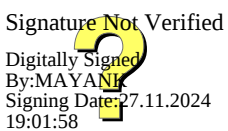
Factual Matrix as per the petitioner

6. An Eviction petition being E. No. 150/2012 was filed by the respondents/ landlords under section 14(1)(e) read with section 25 B of DRC Act on the ground that the tenanted premises were *bonafidely* required by the landlords for themselves and their dependent family members.

7. A total of eight persons were arrayed as respondents (collectively referred as “*tenants/sub tenants*”) in the eviction petition filed by the landlords whereby M/s Molu Ram Radha Kishan (petitioner in RC. REV. 47/2015) was arrayed as respondent no. 1 and was stated to be the only tenant and respondent nos. 2 – 8 were stated to be sub tenants of the landlords in the tenanted premises. The petitioners in RC. REV. 45/2015 and RC. REV. 104/2015, namely Garg Trading Company and Sh. Om Prakash were arrayed as respondent nos. 2 and 3 in the eviction petition and were alleged to be sub tenants inducted by M/s Molu Ram Radha Kishan.

8. It was further stated that M/s Molu Ram Radha Kishan had sub-let, assigned and/or parted with the possession of certain portions of the tenanted premises to various sub tenants including the petitioner herein, illegally and without obtaining the consent of the landlords in writing or otherwise.

9. In the present petition, a site plan has been brought on record showing possessions of different portions of the tenanted premises by the different respondents in the eviction petition and indicating the same by using different colours. The site plan handed over is reproduced as under:





10. As per the site plan the petitioner herein is stated to be the tenant in the portion which is marked as 'C' on the ground floor and first floor of the tenanted premises and is shown in yellow colour. M/s Molu Ram Radha Kishan is stated to be the tenant in the portion marked as 'A' on the ground floor and first floor of the tenanted premises. Mr. Om Prakash is stated to be the tenant in the portion marked as '1' on the ground floor in the tenanted premises.

11. As per the eviction petition, the tenanted premises was purchased by Sh. Madan Lal Mehra (since deceased) in the year 1967. On 16.12.2970, Sh. Madan Lal Mehra executed a will in favor of his wife Smt. Bimlawati, who became the owner of the tenanted premises after the death of Sh. Madan Lal Mehra.

12. Thereafter, on 10.10.1991, Smt. Bimlawati executed a will in favor of her two sons (i) Sh. Manmohan and (ii) Sh. Jagmohan, who became the co-owners of the tenanted premises subsequent to the death of their mother.

13. Sh. Manmohan (since deceased) executed a will in favor of her wife i.e. Smt. Vijay Mehra (Respondent No. 1) on 17.06.2001 bequeathing his share in the tenanted premises to his wife.

14. Sh. Jagmohan died intestate, leaving behind his legal heirs: (i) his wife, Smt. Kiran Mehra (respondent no. 2), and (ii) respondent nos. 3-5, being the daughters of the Sh. Jagmohan, namely, Smt. Pooja Dawar (respondent no. 3), Smt. Tanu Arora (respondent no. 4), Smt. Aditi Chopra (respondent no. 5). Respondent Nos. 2-5 are the successors in interest of Sh. Jagmohan concerning the tenanted premises.

15. The respondent nos. 1-5 collectively are the co-owners of the entire tenanted premises.

16. It is stated that the petitioner herein along with other tenants/sub tenants were occupying their respective shares in the tenanted premises and were paying their respective rents to Sh. Madan Lal Mehra.



17. Hence the landlords filed the eviction petition on account of *bonafide* reasons.

18. The *bona fide* need of the landlord as stated in the eviction petition is as under:

- i. The family of respondent no. 1 consists of herself, her two married sons, Sh. Rishibijli and Sh. Gautam Mehra, and one married daughter, Smt. Poornima Chowdhary. Respondent no. 1 lives with her son, Sh. Gautam Mehra in Amritsar, while Sh. Rishibijli, the other son along with his family resides in a rented accommodation in Greater Kailash - II, New Delhi, paying rent of Rs. 52,000 per month. The respondent no. 1 regularly visits Delhi and finds it inconvenient to stay with Sh. Rishibijli in his rented accommodation, often requiring her and Sh. Gautam Mehra to stay in a hotel during their visits.
- ii. The daughter of respondent no. 1, Smt. Poornima Chowdhary is married and is residing in Jammu and she also requires the tenanted premises for her accommodation whenever she comes to Delhi.
- iii. It is further stated that Sh. Rishibijli is staying in a rented accommodation despite the availability of the tenanted premises owned by the landlords and is unnecessarily paying rent for a premises where he is residing in Greater Kailash-II. For proper and adequate residential requirements of Sh. Rishibijli and his family, the respondents claimed a total of seven rooms, i.e. a drawing room, dining room, bedroom for him and his wife, a bedroom for the children, a guest room, a store room, and a puja room.
- iv. In addition, the daughter of Smt. Poornima Chowdhary/ granddaughter of respondent no. 1 is also residing in Delhi for her education and is living with Sh. Rishibijli in the rented accommodation in Greater



- Kailash-II. For her proper and adequate residential requirements, the respondent no. 1 claimed a total of 2 rooms.
- v. It is further stated that Sh. Gautam Mehra, son of respondent no. 1 also requires two rooms for his visits to Delhi.
 - vi. Concerning respondent no. 2 and her children (respondent nos. 3-5), it is stated that though they reside in Amritsar, however they often visit Delhi and are forced to stay in hotels due to non-availability of the tenanted premises.
 - vii. Apart from the residential needs, it is stated that the tenanted premises was also required for commercial purposes. Both sons of respondent no. 1, Sh. Rishibijli and Sh. Gautam Mehra, who work at senior positions with M/s Amritsar Transport Company Pvt. Ltd., plan to leave their jobs and start their own businesses in Delhi. Sh. Rishibijli and Sh. Gautam Mehra are already carrying on transport business under the names M/s Mehra Sons and M/s Bijli Carrier, which are currently operated from Amritsar due to lack of space in Delhi. The tenanted premises, located near commercial hubs, are deemed suitable for their transport business operations, including office space, goods booking, delivery, and storage.
 - viii. It is further stated that without proper accommodation in Delhi, the trucks are parked in unsafe places, causing inconvenience and potential damage, especially during rainy and winter seasons. In this regard, the respondents pleaded for at least 12 rooms to run both businesses i.e. M/s Mehra Sons and M/s Bijli Carrier effectively.
19. Hence, due to non-availability of a suitable alternative accommodation and a *bonafide* requirement to run business/commercial activities in the tenanted premises, the Eviction Petition was filed by the landlords.



20. Subsequently, M/s Molu Ram Radha Kishan (respondent no. 1 in the eviction petition) filed a separate leave to defend application, and the remaining tenants/sub tenants (respondent nos. 2 to 8 in the eviction petition) also filed separate leave to defend applications.

21. Respondents nos. 2 to 7 (as impleaded in the eviction petition) in their leave to defend applications argued that they were independent tenants and not sub tenants as alleged by the landlords. Respondent no. 8 (as impleaded in the eviction petition) claimed ownership of his portion through adverse possession.

22. *Vide* the impugned judgment dated 04.07.2014, learned ARC was of the view that the landlords have a genuine case against the tenants/sub tenants and all the three parameters required for succeeding in an eviction petition have been made out. The three parameters are mentioned below:

- i. There was a valid landlord-tenant relationship between the petitioner and the landlords.
- ii. The need of the landlords and their family members for their commercial and residential premises in the tenanted premises was genuine and *bonafide*.
- iii. The landlords did not have a suitable alternate accommodation.

23. Learned ARC further observed that no triable issues were raised by the petitioner and the defence setup by the tenants including the petitioner was neither *bonafide* nor genuine. Hence, the learned ARC dismissed the leave to defend applications filed by the tenants/sub tenants and passed an order of eviction in favor of the landlords.

24. Assailing the said judgment passed by the learned ARC, petitioners in RC. REV. 45/2015 and RC. REV. 47/2015 filed a review application against the impugned judgment dated 04.07.2014 passed in E. No. 150/2012 which also came to be dismissed on 20.01.2015. The petitioner in RC. REV. 104/2015 did not prefer a review application.



25. Hence the present petition.

26. Out of the eight respondents impleaded in the eviction petition, respondent nos. 5-7 namely, M/s Khem Chand Ramesh Kumar, Radhe Shyam Goel and Pradeep Transport company had already filed revision petitions being RC.REV. Nos. 347/2015, 342/2015 and 344/2015 and the same have been dismissed *vide* judgment dated 13.10.2014. Pursuant to the said dismissal, the landlords have taken possession of the tenanted premises which was in possession of respondent nos. 5-7.

Submissions of the Petitioner (Tenant/sub tenants)

27. At the outset, Mr. Singh, learned counsel for the petitioner primarily contends that a bare perusal of section 25 B of the DRC Act indicates that an eviction petition under Section 14(1)(e) of the DRC Act can only be filed against a tenant, not an alleged illegal sub tenant as is the case against the petitioner.

28. It is further submitted that seeking eviction of an alleged illegal sub tenant on the grounds of the landlord's *bonafide* requirement falls outside the scope and ambit of section 14(1) (e). It is stated that filing an eviction petition solely against illegal sub tenants under section 14(1) (e) of the DRC Act, simply because they are in exclusive possession of the premises, is impermissible. The only legitimate ground for eviction against an illegal sub tenant is under section 14(1) (b) of the DRC Act. It is stated that by passing an eviction order against an alleged illegal sub tenant under section 14(1) (e), the learned ARC has acted contrary to the statutory framework.

29. It is further submitted that the learned ARC erred in issuing summons to the alleged illegal sub tenants as in terms of the language laid down under section 25 B of the DRC Act, the summons has to be issued to and served upon "the tenant or his agent" and even section 25 B (4) of the DRC Act only talks about the tenant and not the sub tenants. Under section 25 B (5) of the DRC Act only the tenant can



disclose facts which can disentitle landlords from obtaining recovery of possession.

30. He further submits that since the eviction petition was filed by the landlords under section 14(1)(e) read with section 25 B of the DRC Act, it could only be brought against the tenant, not the alleged sub tenants. It is stated that section 25 B of the DRC Act only applies where the tenancy is not in dispute and since the tenancy is disputed in the present scenario, section 25 B of the DRC Act could not have been invoked by the landlords.

31. He further places reliance upon ***Siri Pal Jain vs Brij Kishore and Ors.*** 1982 SCC OnLine Del 135 to state that the provisions of section 14 (1)(e) of the DRC Act would not be applicable to the petitioner as the petitioner is stated to be an illegal sub tenant by the landlords themselves. The operative portion of ***Siri Pal Jain*** (supra) reads as under:

“ 4....If a person who is not a tenant is made a party to the eviction petition under Section 14(1)(e), the application cannot be tried under Section 25(B) as there is no provision to grant an eviction order under Section 14(1)(e) read with Section 25-B in favor of a landlord against a person who is not a tenant.”

32. In this regard, reliance is also placed upon ***Madhumati Kaur vs Harish Chander Khanna*** 1997 SCC OnLine Del 94.

33. In addition, it is submitted that while passing the impugned judgment, learned ARC failed to appreciate that the settled legal position, at the stage of considering a leave to defend application, the correct test is whether a triable issue has been raised, and not the likelihood of final success in the action. In this regard, reliance is placed on ***Inderjeet Kaur vs Nirpal Singh*** 2000 SCC OnLine SC 1799 and ***Agarwal Papers vs Mukesh Kumar (deceased) through LR's*** 2012 SCC OnLine Del 5459.



34. He submits that the learned ARC held that sub tenants/petitioner are necessary parties to the eviction petition, however, it is stated that the application filed by the petitioner for leave to defend indicates that the petitioner has never admitted to be a sub tenant and has claimed to be a tenant in its own rights.

35. He further submits that the learned ARC has wrongly placed reliance on **Sh. Amit Gupta and Ors vs Sh. Dwarka Nath** 2011 SCC OnLine Del 2114 to hold that the sub tenants were a necessary party. On the contrary, the court in **Sh. Amit Gupta** (supra) has nowhere held that the sub tenant is a necessary party and even otherwise. The operative portion relied on by the petitioner reads as under:

“31....It was not essential to implead the sub tenants as party to the eviction petition filed under Section 14(1)(e) of the Delhi Rent Control Act....”

36. He states that even otherwise, the ratio laid down by this court in **Amit Gupta** (supra) is per incuriam as it did not take note of the earlier judgment laid down by this court in **Siri Pal Jain** (supra). In this regard, learned counsel places reliance on **Union of India vs SK Kapoor** 2011 SCC OnLine SC 485 to state that in case of an inconsistent opinion on a settled issue, either the view laid down by this court in **Siri Pal Jain** (supra) must be followed or the matter should be referred to a larger bench.

37. He submits that the petitioner, through a review application, had brought to the attention of the learned ARC, the fact that after the passing of the eviction order, the landlords had either sold or rented out portions of the building. This subsequent event undermines the landlords case, as it clearly demonstrates that they are, in fact, in possession of reasonably suitable accommodation, thereby negating their claim of *bonafide* requirement for the premises in question. This material fact should have been duly considered by the learned ARC.

38. He further submits that the landlords do not have a *bonafide* requirement of the tenanted premises as the landlords have sold or let out one of the shops in the



tenanted premises to M/s Bhanu Prasad and Ors. after the passing of the impugned judgment dated 04.07.2014 and the said fact has not even been disputed by the landlords.

39. It is lastly submitted that the learned ARC could not have tried the eviction petition by way of summary procedure as summary procedure can only be initiated against the tenants and not sub tenants. Once a sub tenant is impleaded in the eviction petition filed under section 14 (1) (e) of the DRC Act, then in such case the dispute could not have been tried summarily.

40. Learned counsel for the petitioner further states that the learned ARC failed to advert to the issue raised by the petitioner regarding the petitioner giving his share of rent to Sh Madan Lal Mehra from the year 1984 to 1995 and thereafter, when Sh Madan Lal Mehra and his agents stopped coming to collect the rent amount, the petitioner deposited his share of rent in the court of learned ARC, vide pay order no. 3527 and deposit no. 3314 which clearly shows that the petitioner was a lawful tenant.

Submissions of the Respondents (Landlord)

41. Mr. Chaudhari learned counsel appearing on behalf of the landlords/respondents states that the plea taken by the petitioner regarding the eviction petition being non maintainable under section 14(1)(e) of DRC Act cannot be sustained as the petitioner had contested the eviction petition by filing its independent leave to defend application. The petitioner claimed itself to be an independent tenant, and hence, cannot now be permitted to turn around to say that the petitioner was a sub tenant.

42. He further states that in terms of section 2 (l) of the DRC Act, the definition of a 'tenant' includes a 'sub tenant' and therefore, the order of eviction against a tenant would be binding against all persons who are in occupation of the tenanted premises and are stated to be the sub tenants.



43. It is further stated that the question of whether the sub tenants are liable for eviction from the tenanted premises has already been adjudicated by this Court in RC.REV. Nos. 347/2015, 342/2015, and 344/2015, (being revision petitions filed by other sub tenants) *vide* judgment dated 13.10.2014, whereby, this Court upheld the findings of the learned ARC, dismissing the stand taken by the sub tenants therein in their leave to defend applications. Hence, the said issue has become *res judicata* and the same will be binding on the petitioner herein as well as this court.

44. The operative portion of the judgment dated 13.10.2014 passed in RC.REV. Nos. 347/2015, 342/2015 and 344/2015 reads as under:

“Though the present petition is being disposed of on the aspect of entitlement to leave to defend taking the petitioner to be a tenant/legal sub tenant...”

45. As regards, the plea taken by the petitioner that subsequent to the passing of the impugned judgment dated 04.07.2014, the landlords have acquired certain portions of the tenanted premises and have either sub-let or sold one of the portions to M/s Bhanu Prasad and Ors is concerned, it is stated that the petitioner have failed to place any proof on record other than a self-reliant photograph to prove the said averment and the petitioner has also failed to specify as to which portion of the tenanted premises has been sold to M/s Bhanu Prasad and Ors.

46. In this regard, it is further stated that the said ground was only taken by the petitioner in the review application and the said fact did not exist at the time of the passing of the impugned judgment and has only been raised at the time of the review and one cannot seek review of a fact that was never adjudicated in the main matter.

47. He also states that out of the eight respondents impleaded in the eviction petition, five of them have already handed over the possession of their respective portions in the tenanted premises and the impugned judgment dated 04.07.2014 cannot be implemented in part.



Analysis and Conclusion

48. I have heard learned counsel for the parties.

Revisional Powers of this Court

49. The scope of the revisional jurisdiction of this court under the DRC Act is limited and narrowly defined. This court's revisional jurisdiction is confined to ensure that the learned ARC has acted within the bounds of law, followed due procedure, and did not commit any jurisdictional or legal errors. The court will intervene only in cases where there is a manifest error of law, perversity in the findings.

50. Under section 25 B (8) of the DRC Act, this court cannot extend its revisional jurisdiction to re-appreciate the facts presented. It is requisite to highlight the scope of revisional jurisdiction exercised by this court which is discussed by the Hon'ble Supreme Court in ***Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta***, (1999) 6 SCC 222 and more particularly in para 11 which reads as under:-

"11... The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the legislature in drafting Section 115 of the Code of Civil Procedure. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to subsection (8) of Section 25-B, the expression governing the exercise of revisional jurisdiction by the High Court is "for the purpose of satisfying if an order made by the Controller is according



to law”. The revisional jurisdiction exercisable by the High Court under Section 25-B (8) is not so limited as is under Section 115 CPC nor so wide as that of an appellate court. The High Court cannot enter into appreciation or reappraisal of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of “whether it is according to law”. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available. Ignoring the weight of evidence, proceeding on a wrong premise of law or deriving such conclusion from the established facts as betray a lack of reason and/or objectivity would render the finding of the Controller “not according to law” calling for an interference under the proviso to sub-section (8) of Section 25-B of the Act. A judgment leading to a miscarriage of justice is not a judgment according to law. (See: Sarla Ahuja v. United India Insurance Co. Ltd. [(1998) 8 SCC119] and Ram Narain Arora v. Asha Rani [(1999) 1 SCC 141.]”

(Emphasis supplied)

51. Further in **Abid-Ul-Islam vs. Inder Sain Dua**, (2022) 6 SCC 30, the Hon’ble Supreme Court has held 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.”

(Emphasis supplied)

52. In light of the aforesaid judgments, it is clear that the revisional powers of this court are confined to assess whether the impugned judgment passed by the learned ARC withstands scrutiny on the sole touchstone of “*whether the order passed by the learned ARC is in accordance with law.*”

53. With the principles as laid down, I will deal with the arguments advanced by the parties.

54. In the present case, the primary argument raised by the petitioner is that as per the landlords own pleading, the petitioner was referred to as a sub tenant and therefore, no petition under section 14 (1)(e) of the DRC Act can lie. As far as this argument is concerned, it is important to appreciate the fact that the eviction petition has been filed by the landlords under section 14 (1)(e) of the DRC Act whereby the landlords have stated (a.) the landlords are the owner of the tenanted premises; (b.) the landlords have no alternate accommodation other than the tenanted premises for their and their dependent family members residential and commercial needs; (c.) the landlords have a genuine and a *bonafide* need for the tenanted premises.



55. To my mind, the present petition is to be seen and adjudicated on the benchmark of the aforesaid parameters and the status of a person in occupation of the tenanted premises is not relevant. The landlords are not seeking vacation of the tenanted premises on the ground that the tenant has inducted sub tenants including the petitioner without the consent of the landlords, but are seeking vacation of the tenanted premises on account of *bonafide* residential and commercial needs. Hence, the present petition is to be tested on the *bonafide* need and lack of alternate accommodation of the landlords. The status of the persons in use or occupation of the tenanted premises, be it a tenant or a sub tenant is not relevant.

56. As regards, the contention raised by the petitioner regarding the non-applicability of section 25 B of the DRC Act and the eviction petition being adjudicated under section 14 (1) (b) is concerned, learned ARC in the impugned judgment dated 04.07.2014 observed as under:

“34. Respondents on the other hand, except respondent no. 8 have thrust their claim primarily on the aspect that respondent no. 1 has not subletted/parted/assigned the portions of premises in question. They have asserted that they are individual and independent tenants of Late. Sh. Madan Lal Mehra. I am dealing with the said version of respondents, at the very outset.

.....

38. Respondents no. 2 to 7 have pleaded facts which are contradictory and vague, with regard to their status in premises in question. Respondent no. 2, 6 and 8 did not mention in their affidavits, as to who had inducted them as tenants in premises in question. They did not mention the terms and conditions of the tenancy. Further none of the respondents placed on record any document with regard to the inception of their tenancy. As per petitioners. Late Sh. Madan Lal Mehra, had died in the year 1991 and his death certificate is on



record. Moreover respondents did not dispute the said factum of death of Late Sh. Madan Lal Mehra. If that was the case, then I fail to understand as to how respondent nos. 2 continued to pay rent to Late Sh. Madan Lal Mehra, till 1995 and who had issued the rent receipts relied by him.

.....

There was no proof on record, which could indicate that Late Sh. Madan Lal Mehra had given his consent to respondent nos 2 to 7 to give the rent to respondent no. 1 so that he can receive the said rent from respondent no. 1

“39. Apart from that respondent nos. 2 to 7 asserted that they were inducted as tenants by Late Sh. Madan Lal Mehra in various years, ranging from 1951 till 1996. They have also stated in their affidavits that Late Sh. Madan Lal Mehra started taking rent only after 1984. Those respondents viz. respondent no. 3, 4, 5 and 7 who were inducted as tenants after 1984 failed to mention as to how they knew that Late Sh. Madan Lal Mehra had started taking rent only after 1984 by himself or by his agent. Further they failed to mention, as to how the said factum of rent being taken by Late Sh. Madan Lal Mehra was relevant for their case as it was taken by Late Sh. Madan Lal Mehra prior to inception of their tenancy. Respondent no. 2 and 6 were inducted in the premises in question in 1972 and 1951 respectively. The said respondents again failed to mention as to how Late Sh. Madan Lal Mehra used to collect rent prior to 1984. Aforesaid versions of the respondents were contradictory and had no sound basis. The said version, did not get the support from respondent no. 1 and therefore the whole picture projected by the said respondents was hazy, on which no triable issue can be framed. Even if chance is given



to the said respondents to lead evidence, then also the evidence which will come on record, will give a confused picture as the basis of the version of the said respondents is in itself not clear.”

57. Learned ARC also addressed the said issue in its order dated 20.01.2015 passed in the review application seeking review of the impugned judgment dated 04.07.2014. The operative portion of the said order reads as under:

“7. In the present case, the petitioners have failed to place on record any additional facts which could not have been earlier produced or error apparent on the face of record committed by this court for which a review should be maintainable. The contention of the respondent that since the respondents no. 2 to 8 are illegal sub tenants, the provision of Section 14(1) (e) read with Section 25-B of DRC Act is not applicable upon them does not hold ground since Section 2(1) of the DRC Act, 1958 clearly defines tenant to include the sub-tenant. Therefore, the order of eviction on the ground of bonafide requirement shall be binding upon all the persons who are in the occupation of the tenanted premises. In Amit Gupta & Ors vs. Dwarka Nath @ Mast Ram through his LRs & Ors.(Supra), it has been clearly held that sub-tenants are necessary parties to the eviction petition and that only bonafide requirement is required to be established against them. Even otherwise, the judgment cited by the respondents in support of their contentions, titled as Siri Pal Jain vs. Brij Kishore & Ors. did not apply to the present case as the facts in the present case are completely different. In that case, it was held that a sub-tenant is in occupation of the tenanted premises and that said person had not been properly served and had not filed his leave to defend application. In this case, full opportunity was given to all the respondents to appear and to contest their leave to defend application and therefore the facts



of Siri Pal Jain vs. Brij Kishore & Ors. do not apply to the present case. Even otherwise, the Hon'ble High Court has held in its judgment that

"though the present petition is being disposed off on the aspect of entitlement of leave to defend taking the respondents to be a tenant/illegal sub-tenant to the petitioner herein (respondent No. 2-8) to the eviction petition along with respondent no. 2 to 8 have been rightly held by the court below as illegal sub- tenants."

8. Even otherwise, Hon'ble High Court in its judgment has clearly recognized respondents no. 2 to 8 as illegal sub-tenants but did not set aside the judgment of the ARC Court on the ground of applicability of Section 14(1)(e) read with Section 25-B of DRC Act stating that the same cannot be applied upon respondents no. 2 to 8. It is well settled that tenants includes the sub-tenants and therefore by making all tenants as a parties to the present petition and by giving an opportunity to contest the leave to defend application, the petitioners have discharged their onus to prove their bonafide requirement against all the tenants including sub-tenants."

58. The petitioner in its leave to defend application contends itself to be a lawful tenant whereby it is stated that the petitioner was paying rent diligently to Late Sh Madan Lal Mehra till the year 1995 and thereafter, the rent was deposited before the learned ARC. However, in the present petition the petitioner is taking a contradictory stand that being a sub tenant, the eviction petition will not lie under section 14(1)(e) of the DRC Act (as taken in the review application). The operative portion of the leave to defend application filed by the petitioner reads as under:



“7. That in the year 1984, Late Sh. Madan Lal Mehra started collecting rent either himself or he used to send an agent to collect rent on his behalf and used to issue receipts against the same.

8. That the Respondent never created any sub-tenancy in the said premises, albeit, the Respondent no. 1 was acting as a 'Thekedar' / custodian till Late Sh Madan Lal Mehra had initiated collection of rent either himself or through his agent.

.....

13. That the Respondent No.2 has been paying rent diligently since its inception till the time either Late Sh. Madan Lal Mehra or his agent came to collect rent i.e. rent at the rate of Rs. 100 per month since the year 1984 to 1995, thereafter, neither Late Sh. Madan Lal Mehra nor any of his agents showed up for collection of rent. Clearly showing that the Respondent No. 2 was inducted as a tenant with consent of Late Sh. Madan Lal Mehra and is enjoying the tenanted portion under his lawful tenancy.

14. That the Respondent no. 2 has been paying rent diligently since its inception till the time either Late Sh. Madan Lal Mehra or his agent came to collect rent, i.e. rent at the rate of Rs. 100 per month since the year 1984 to 1995 thereafter, neither Late Sh. Madan Lal Mehra nor any of his agents showed up for collection of rent. Clearly showing that the Respondent no. 2 was inducted as a tenant with consent of Late Sh. Madan Lal Mehra and is enjoying the tenanted portion under his lawful tenancy.

15. That the Respondent No. 2 has also deposited rent in the Court of Sh. Devendra Kumar Sharma, ARC, Tis Hazari Courts, Delhi in DR-136/2011 vide pay order no. 3527 and deposit no. 3314. No objection till date has been filed by the Petitioners in the said case.”



59. In view of the aforesaid paras, the petitioner in its leave to defend pleaded that he was an independent tenant and was contesting the eviction petition in the capacity of an independent tenant.

60. As per the case of the petitioner, M/s Molu Ram Radha Kishan was only collecting rent from the sub tenants as a ‘*thekedaar*’ till the year 1984 and thereafter, Sh Madan Lal Mehra started collecting rent from 1984 to 1995. Since Sh Madan Lal Mehra and his agents did not come to collect the rent after the year 1995, the petitioner was depositing the rent with the learned ARC for some months.

61. This court in ***Sh. Amit Gupta and Ors vs Sh. Dwarka Nath @ Mast Ram through his LRs & Ors***. 2011 SCC OnLine Del 2114 *inter alia* held as under:

“31.....It was not essential to implead the sub tenants as party to the eviction petition filed under Section 14 (1) (e) of the Delhi Rent Control Act. In case the sub tenants had not been included in the eviction petition and the orders of eviction petition on the ground of bona fide requirement had been passed against the tenants, had the subtenants been unlawful, the eviction order passed only against the tenant would not be binding against the unlawful subtenants. If the subtenants would be lawful, then they would only be entitled to claim that the bona fide requirement be also established against them as on passing an eviction order against the tenants, and by virtue of section 18 of Delhi Rent Control Act, 1958 they would become a direct tenant under the landlords/owner. However in the present case the petitioners who are the subtenants were impleaded as parties to the eviction petition, therefore the ground of bona fide requirement has also been established against them. The petitioners, admittedly did not give any notice under section 17 (2) of Delhi Rent Control Act, 1958 and therefore, on passing of an eviction order against the tenant, they



would not become a direct tenant under the respondents under section 18 of the Delhi Rent Control Act, 1958. In the present case all the tenants and sub tenants were impleaded as parties and the landlords have established their bonafide requirement as against the tenants and the sub tenants. Therefore, the present petitioners who are the sub tenants would also be liable for eviction in case the bona fide requirement of the respondents is sustained and is not set aside on the grounds alleged by the petitioners.”

(Emphasis supplied)

62. As per the above judgement, if the sub tenants were impleaded as parties, the ground for *bonafide* requirement also need to be established qua them.

63. The judgment of **Siri Pal Jain** (supra) is distinguishable. From the said judgement, it seems that the sub tenant therein did not get the right to file the leave to defend application and therefore was not able to present her case. The operative portion reads as under:

“3. The admitted facts are that respondents 1 to 3 are landlords and the appellant is the tenant. Respondent No. 4 Kaushal Kumari Jain is alleged to be a sub-tenant. The allegations contained in the eviction application do not amount to claiming and eviction against the appellant and respondent No. 4 on the ground of sub-letting but it amounts to the claim for eviction only on the ground mentioned in section 14(1)(e) of the Act. The question however is whether in a proceeding under section 14 (1)(e) of the Act an order of eviction can be passed against a person who is not a tenant under the landlord. From the pleadings is clear that respondent No. 4 Smt. Kaushal Kumari Jain is not a tenant. Section 25-B (4) of the Act needs as under:



“(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the form specified in the prayer for eviction from the premises unless the files an affidavit stating the grounds on the which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided, and in default of his appearance in pursuance of the summons of his obtaining such leave, the statement made by the landlord in the Application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled an order for eviction on the ground aforesaid.”

4. According to this section the tenant has to obtain leave to contest the eviction application and if he fails to do so or if he applies and his application for leave to defend is dismissed, the statements made by the landlords in the application for eviction are deemed to be admitted by the tenants. He provision has been brought to my notice that in case of failure to apply for leave to defend of dismissal of application for leave to defend the allegation the eviction application against a person who is not a tenant can be deemed to be correct or admitted by him. In other words if a person who is not a tenant is made party to eviction proceedings under section 14(1)(e) of the Act, the eviction application cannot be tried under section 25-B of the Act as there is no provision to grant an eviction order under section 14(1)(e) read with section 25-B of the Act in favour of a landlord person who is not a tenant. It is for this reason that if a landlord desires to make the eviction order binding on any person other than the tenant he has to prove that the person who is not his tenant was bound by the eviction



order. In the present case respondent No, 4 Smt. Kaushal Kumari Jain is such a person, she is alleged to be a sub-tenant. Assuming that the landlords are entitled to an eviction under section 14(1)(e) of the Act against the appellant-tenant, they have still to prove that such an order of eviction would be binding upon respondent No. 4 Smt. Kaushal Kumari Jain. It is not known what would be the defence of Smt. Kaushal Kumari Jain. She being not a tenant is not entitled to apply for leave to defend. If a person, who is not a tenant is made a party to an eviction case in proceeding under section 14 (1) (e) of the Act, opportunity had to be given to such a person to defend himself without any application being made by him for leave to defend.

5. Under the circumstances, I am of the view that the present eviction application filed by respondents No. 1 to 3 cannot be tried under section 25-B of the Act against respondent No. 4 Smt. Kaushal Kumari Jain who is admittedly not a tenant.....”

64. In the present case, the petitioner along with other sub tenants contested their case by way of filing their respective leave to defend applications. The tenants/sub tenants got an opportunity to file leave to defend applications and the defence/opposition of the petitioner along with other sub tenants was clearly known to the court and was duly considered which was not the case in **Siri Pal Jain** (supra). In addition, the petitioner itself took the stand that they are independent tenants and were paying rent to Sh. Madan Lal Mehra.

65. I am of the view that that the eviction petition is rightly adjudicated under section 14 (1) (e) read with section 25 B of the DRC Act and not under section 14 (1)(b) of the DRC Act.

On Merits



66. In order to succeed in a petition under section 14(1)(e) of the DRC Act, the landlord is required to establish three conditions and the same are mentioned below:-

- i. There must be a relationship between the parties as landlord and tenant.
- ii. The tenanted premises must be *bonafidely* required by the landlords either for themselves or for their dependent family members.
- iii. There is no other alternate suitable accommodation available with the landlord.

Landlord-Tenant Relationship

67. As regards the first condition is concerned, the landlord- tenant relationship has already been adjudicated above and in view of the reasons noted above, the first condition stands satisfied.

Bonafide requirement

68. With regard to the second condition i.e. the landlords *bonafidely* require the tenanted premises for residential as well as commercial purposes, the landlords assert that the tenanted premises is needed to enable them, their children and their dependant family members to conduct business activities as well as residential purposes. Conversely, the petitioner contends that the landlords lack any *bonafide* requirement and argue that the eviction petition has been filed with an ulterior, *malafide* intent aimed solely at displacing the tenant/sub tenant.

69. As regards the *bonafide* requirement of the landlord, it is a settled law that the Court must presume the *bonafide* requirement of the landlord. The Supreme Court in ***Sarla Ahuja v. United India Insurance Co. Ltd.*** (1998) 8 SCC 119 that:-

“14. The crux of the ground envisaged in clause (e) of Section 14(1) of the Act is that the requirement of the landlord for occupation of the tenanted premises must be bona fide. When a landlord asserts that he requires his building for his own occupation, the Rent Controller shall



not proceed on the presumption that the requirement is not bona fide. When other conditions of the clause are satisfied and when the landlord shows a prima facie case, it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bona fide. It is often said by courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bona fides of the requirement of the landlord, it is quite unnecessary to make an endeavor as to how else the landlord could have adjusted himself.”

70. In the present case, the landlords have asserted their need of the tenanted premises with respect to both commercial as well as residential.

i. Commercial need

- a. A part of the tenanted premises is required for commercial use, as both sons of Respondent No. 1, Mr. Rishibijli and Mr. Gautam Mehra, intend to leave their positions at Amritsar Transport Company Pvt. Ltd. to establish their own transport businesses in Delhi. Sh. Rishibijli and Sh. Gautam Mehra are currently carrying on transport business under the names M/s Mehra Sons and M/s Bijli Carrier, which are primarily being operated from Amritsar due to lack of space in Delhi.
- b. The tenanted premises are ideally located near commercial hubs, are deemed suitable for business activities like goods booking, delivery, storage, and office operations, with convenient access for loading and unloading at all hours.
- c. The landlords require 12 rooms each for the effective and efficient operation of the both the businesses namely, M/s Mehra Sons and M/s Bijli Carrier (24 rooms in total).



ii. Residential need

- a. The tenanted premises are also required to meet the residential needs of Respondent No. 1's family, including herself, her two sons, and her daughter.
- b. Currently, her son, Mr. Rishibijli resides in a rented property in Greater Kailash -II, Delhi at the monthly rate of Rs 52,000/-, which could be avoided by utilizing the tenanted premises. In total, seven rooms are required for proper accommodation of the family of Mr. Rishibijli comprising of one drawing room, one dining room, one bed-room for Mr. Rishibijli and his wife, one bed room for their child namely, Kumari Jahzara Bijli; one room for the maid servant, one guest room, one puja room and one store room.
- c. In addition, the distance between the tenanted residence of Mr. Rishibijli in GK-II and his office (M/s Amritsar Transport Co. Ltd. Naya Bazar, Delhi), is about 18-20 Kms which makes it inconvenient for Mr. Rishibijli to handle both his residence and his office from the subject premises.
- d. Respondent No. 1, who resides in Amritsar with her other son, Mr. Gautam Mehra, also requires a total of three rooms (one for respondent no.1 and two rooms for Mr. Gautam Mehra and his family) in the tenanted premises as they frequently visit Delhi for personal and business reasons.
- e. Furthermore, one room in the tenanted premises is also required for the daughter of respondent no. 1 i.e. Mrs. Poornima Chowdhary who is married and often incurs in hotel expenses when she visits Delhi.
- f. Additionally, the granddaughter of respondent no.1 also lives in Delhi for educational purposes and currently shares the rented



accommodation in Greater Kailash-II with Mr. Rishibijli and his family. She also requires one room for herself.

g. As regards, respondent No. 2 is concerned, she resides in Amritsar and often visits Delhi for business purposes and excursion trips. Respondent Nos. 3- 5, also have no space in Delhi and all of them require one room each in the tenanted premises for their personal and business trips.

71. The contention raised by the petitioner is that the landlord had more than enough means to accommodate their commercial as well as residential needs.

72. Another contention raised is that certain portions of the tenanted premises had been lying vacant and the landlords had the possession of the said portions and despite the possession being with the landlords, the same were not used by the landlords. This plea was also taken by the petitioner in the leave to defend application filed by the tenants/sub tenants. In this regard, he draws my attention to paras 20 and 21 of the leave to defend application filed by the petitioner and the same reads as under:

“20. That the Petitioners have further admitted that the portion marked as P' in the site plan is under their own possession however, the Petitioners have miserably failed to reveal rather have concealed that as when they have regained possession of the portion marked as 'P' in the site plan of the said premises.

21. That the Petitioners have further failed to explain the reason restraining them from using the said portion of the said premises for their bonafide requirements, at least the petitioners could have commenced their business from the portion marked as 'P' in the site plan whereas the Petitioners have installed a board of 'Mehra Sons' on the ground floor portion in their possession and stock of M/s Amritsar Transport Co. Pvt. Ltd is being stored. The said portion



marked as 'P' in the site plan has also been let out to M/s Amritsar Transport Co. Ltd. The petitioners should be put to strict proof and it is a triable issue that why the Petitioners are not commencing their alleged dream business from the said portions of the said premises."

73. The petitioner has also stated in its review application that the landlords have also sold one of the shops in the tenanted premises to M/s Bhanu Prasad and Ors. after the passing of the impugned judgment dated 04.07.2014.

74. To my mind, the learned ARC has rightly appreciated that the landlords themselves are the best persons to judge their need and how to accommodate the said need. The learned ARC while dealing with the *bonafide* requirement of the landlords for both the residential and commercial needs has duly appreciated the said need of the tenanted premises and the lack of any alternate suitable accommodation. The relevant findings are as under:

"28. Coming back to the facts of the present case I found that petitioners, who are family members, require the premises in question, for dual purpose viz. residence and commercial. I am appreciating the residential requirement of petitioners, firstly.

29. Petitioners no. 1 and 2 are widow landladies. Petitioner no. 1 has two sons and one daughter. Petitioner no. 2 has three daughters. All the children of petitioners are married and have families. Respondents have not disputed the aforesaid family status of petitioners. They have not raised the issue that there is some tussle or some strained relations between the family members of the petitioners. Therefore I had no ground to doubt the prima facie interest of petitioners, in trying to live together. Based on that premise, off and on visits of petitioner no. 1 to the rented house of her son in Delhi, was not something which can be doubted. In that situation, it was obvious that petitioner no. 1 felt the pinch of not getting sufficient accommodation in Delhi for her stay,



despite having premises in question. Factum of insufficient rented accommodation of Rishibijli, was not disputed. Therefore the obvious corollary was that petitioner no. 1 had to stay in hotels, during her visits, as alleged by her and that give rise to her bonafide requirement of premises in question. Other petitioners, also visit Delhi and the problem faced by petitioner no. 1 is also faced by them, as per the contents of petition. That is no exception.

30. Linked with the aforesaid aspect is the fact that Rishibijli has to pay a very high rent for his rented accommodation. As per petitioners, he require seven rooms for his comfortable living, considering the family members of petitioners. The said factum cannot be doubted. Rishibijli is a family person and if he requires his business premises in close vicinity to his residence, then that by itself is a reasonable approach and cannot be criticized. One of the daughters of petitioner no. 1 is living with Rishibijli for completing her education and her presence has resulted in shrinking of space available with Rishibijli. For maintaining balance of family and business, if Rishibijli needs premises in question, then it is a reasonable approach.

31. Petitioner no. 1, petitioner no. 2 and son of petitioner no. 1 namely Gautam Mehra are residing in Amritsar, in a joint property and if they want to shift to premises in question, for residing, then it is not a doubtful fact. Coupled with the said aspect is the fact that other family members of petitioners can also meet at a common place, under a common roof. And that can best take place, if the said common roofs is owned by petitioners. Therefore I found that so far as requirement of residence is concerned, there is a bonafide requirement among petitioners, qua the property in question.



32. Moving on to the business requirement, I found that both sons of petitioner no. 1 are employed in M/s. Amritsar Transport Company Pvt. Ltd, and have attained experience, spanning over a decade. Both of them want to start their own business from the premises in question, which is present in an area which is hub of business activities. There is nothing strange about their objectives. Both of them, want to start transport business, in which they have attained experience for which they require space and premises in question offer them the same.

33. Petitioners are also doing business under the name and style of M/s. Mehra Sons and M/s. Bijli Carriers. Both the said businesses are related to plying of trucks for transporting goods from one place to other. The said business require space and is functional at odd hours. For meeting out the said requirements, premises in question, are best suited, as per the site plan and claim of petitioners. Respondents were not able to show that the said claim of petitioners was baseless. Viewed from this angle also, I found that there was bonafide need of petitioners, in claiming premises in question for doing their business activities. Moreover, son of the petitioners intend to shift to tenanted premises and also run their business from the said premises keeping in mind the odd hours of their line of business and their need to balance family with work, which is a vital right which cannot be denied to them merely because once upon a time the said tenanted premises was given on rent, Further, petitioners have categorically stated that neither they nor any member of their family dependent upon them is having any additional, suitable, residential or commercial space available in Delhi for the purpose of residence or business. Respondents have vaguely alleged that Sh. Rishibijli, son of petitioner no. 1 owns a house In which he was earlier staying as tenant In



Greater Kailash, New Delhi but the respondent has failed to place on record any proof of the same. On the contrary, petitioners have filed registered lease deed In respect of their house in Greater Kailash, which goes on to prove that Rishibijli is mere tenant and not owner of the said house.

.....

41. Besides that respondent no. 1 challenged the case of bonafide requirement of petitioners and asserted that the petitioners neither required the premises in question for their residence and for their business purpose. He failed to mention the reason based on which, one can doubt the bonafide of petitioners. His claim remained a bald assertion, bereft of any basis and is therefore discarded by me. Further, once he admitted his status of being a tenant in the premises in question and failed to mention the true owners of the said premises, I found that his claim of putting petitioners to strict proof with regard to their identities and locustandi, was a claim, taken just for the sake of it. There was no merit in the said alleged issue raised by him.

42. Respondent no. 1 claimed that petitioners required the premises in question for selling it out at higher prices. The said claim was baseless as there was nothing on record which could have resulted in creating doubts in the claim of petitioners. He failed to mention other alternative accommodation belonging to petitioners and therefore he failed to raise any triable issue.”

75. The desire of the sons of respondent no. 1 to expand their business in the name of M/s Mehra Sons and M/s Bijli Carrier from the tenanted premises cannot be faulted with as they are the best judge of their requirement and it is trite law that tenant cannot dictate to landlords as to how the tenanted premises has to be utilized.



76. As regards, the contention raised in the review petition by the petitioner stating that one shop of the tenanted premises is sold to M/s Bhanu Prasad and Ors. subsequent to passing of the impugned judgment passed by the learned ARC on 04.07.2014 is concerned, learned ARC in the order dated 20.01.2015 has dealt with the said averment as well wherein the learned ARC *inter alia* held as under:

“9....Even otherwise, the petitioners have clearly denied to have sold or parted with any portion of the building in question and the respondents have not placed on record any substantive proof to show that the petitioner have sold out or let out one portion to M/s Bhanu Prasad & Sons. The only evidence filed by the respondents in support of their contention are two photographs showing a alleged sign board of M/s Bhanu Prasad & Sons but from the said photographs, it is not clear that this portion is a portion of suit property or of some other property. There is no building number or shop number mentioned in the said photographs and therefore the said photographs do not go on to prove anything....”

77. Keeping in view the settled law and the fact that the petitioners have brought nothing on record to show that the need of the landlord is not *bonafide*, the second condition also stands satisfied and correctly appreciated by the learned ARC.

No alternate suitable accommodation

78. As regards, the third condition is concerned i.e. the landlords have no other alternative suitable accommodation available with them other than the tenanted premises, the objection raised by the petitioner is that the landlords have sufficient suitable alternative accommodation.

79. In this regard, the Hon’ble Supreme Court in ***Balwant Singh v. Sudarshan Kumar*** (2021) 15 SCC 75 *inter alia* held that: -



“12. On the above aspect, it is not for the tenant to dictate how much space is adequate for the proposed business venture or to suggest that the available space with the landlord will be adequate. Insofar as the earlier eviction proceeding, the vacant shops concerned under possession of the landlords were duly disclosed, but the case of the landlord is that the premises/space under their possession is insufficient for the proposed furniture business.

....

14. On consideration of the above aspects, the genuine need of the appellants to secure vacant possession of the premises for the proposed business is found to be established. According to us, the adequacy or otherwise of the space available with the landlord for the business in mind is not for the tenant to dictate.”

80. The landlords have already stated above that in order to accommodate their residential and commercial needs they need the entire tenanted premises. Admittedly, the 3 respondents in the eviction petition, namely M/s Khem Chand Ramesh Kumar, Radhe Shyam Goel and Pradeep Transport company had earlier filed revision petitions being RC.REV. Nos. 347/2015, 342/2015, and 344/2015 challenging the same impugned judgment and have already been evicted from the tenanted premises in their possession and the possession has also been received by the landlords.

81. It is stated by the landlords that the tenanted premises can only be put to use for the commercial and residential purposes together, once the entire property is handed over to the landlords and until then it is fairly stated by the landlords that the tenanted premises are not being used by them. I am of the view that this court cannot dictate as to how the entire property can be used by the landlords and it is for the landlords to decide the proper utilisation of their own property.



82. It is the sole discretion of the landlord to use the entire tenanted premises once they are vacated as a whole.

83. In view of the above findings, the third condition also stands satisfied and the learned ARC has correctly appreciated that the landlords have no other suitable alternative accommodation available with them. Hence no infirmity has been found on this account.

Conclusion

84. With these observations, the present petition is hereby dismissed and the impugned judgment dated 04.07.2014 passed by the learned ARC (Central), Tis Hazari Courts, Delhi in E. No. 150/2012, passing an eviction order in respect of tenanted premises bearing property No. 4082-87, Naya Bazar, Delhi-6 comprising of ground floor (four halls; one of the halls having been partitioned into seven portions), first floor (comprising of six rooms and two halls) and the second floor (comprising of seven rooms) along with the order dated 20.01.2015 passed in the review application is upheld.

85. Pending application(s), if any, are disposed of accordingly.

86. Interim order(s), if any, stands vacated.

87. The petition is dismissed accordingly.

RC.REV. NO. 104/2015

88. This is a petition filed by Mr. Om Prakash, (respondent no. 3 in the eviction petition) under section 25 B (8) of the DRC Act challenging the impugned judgment dated 04.07.2014 passed by the learned ARC wherein the leave to defend application filed by the petitioner has been rejected and an order of eviction has been passed in favor of the landlords under section 14 (1) (e) of the DRC Act with respect to the tenanted premises.

89. In the eviction petition, the petitioner only contested his case by filing its leave to defend application and has not filed any review application against the



impugned judgment dated 04.07.2014, unlike in RC. REV. 45/2015 and RC. REV. 47/2015.

90. The petitioner contested the eviction petition by filing his separate leave to defend wherein the stand taken by the petitioner was that he was inducted as a tenant and not a sub tenant.

91. It is stated that the petitioner was inducted in the tenanted premises in the year 1987 as a tenant by Late Sh. Madan Lal Mehra and was paying his respective share of rent from the year 1987 to 1993 to Late Sh Madan Lal Mehra. Thereafter, Late Sh Madan Lal Mehra/his agents stopped coming to collect the rent.

92. It is stated that the relationship between the petitioner and Late Sh Madan Lal Mehra was that of a landlord and a tenant.

93. As per the site plan annexed with the judgment passed in RC. REV. 45/2015, the petitioner was in occupation of the portion marked as (1) on the ground floor which is depicted in orange color.

94. I have already considered the similar arguments made by the learned counsel for the petitioner in RC.REV 45/2015 and are not repeated here for the sake of brevity.

95. A detailed judgment has been passed in RC.REV. 45/2015 which squarely applies to the petitioner herein as the position of the petitioner herein is similar to that of the petitioner in RC.REV. 45/2015, namely Garg Trading Company. The petitioner also by way of his leave to defend application pleaded his case before the learned ARC in the capacity of an independent tenant and in the present petition, the petitioner has taken a contradictory stand that being a sub tenant, an eviction petition would not lie under section 14 (1) (e) of the DRC Act.

96. I have already dealt with all the contentions raised by the petitioner already in RC.REV. 45/2015 and the same applies to the petitioner herein as well. The petitioner has not raised any additional ground in the present petition. Hence the



findings arrived at by the learned ARC in the impugned judgment dated 04.07.2014 needs no interference.

97. For the reasons noted above and for the reasons as stated in RC.REV. 45/2015, the present petition is hereby dismissed and the impugned judgment dated 04.07.2014 is upheld.

98. Pending application(s), if any, are disposed of accordingly.

99. Interim order(s), if any, stands vacated.

100. The petition is dismissed accordingly.

RC.REV. NO. 47/2015

101. The present petition has been filed by M/s Molu Ram Radha Kishan (respondent no. 1 in the eviction petition) under section 25 B (8) of the DRC Act challenging the impugned judgment dated 04.07.2014 passed by the learned ARC wherein the leave to defend application filed by the petitioner has been rejected and an order of eviction has been passed in favor of the landlords under section 14 (1) (e) of the DRC Act with respect to the tenanted premises.

102. The petitioner is also challenging the order dated 20.01.2015 passed in the review application filed by the petitioner seeking review of the impugned judgment dated 04.07.2014 passed by the learned ARC.

103. The petitioner contested the eviction petition by filing its separate leave to defend wherein the stand taken by the petitioner was that he was inducted as a tenant in the tenanted premises in the year 1940 i.e. even prior to Sh Madan Lal Mehra becoming the owner of the tenanted premises.

104. In the eviction petition, the landlords also asserted that the petitioner is the only tenant and rest are sub tenants. Therefore, it is an admitted position that the relation between the landlords and the petitioner herein is that of a landlord and a tenant and the issue of sub tenancy does not lie against the petitioner herein.



105. As per the site plan annexed with the judgment passed in RC. REV. 45/2015, the petitioner was in occupation of the portion marked as (A) on the ground floor and first floor which is depicted in blue color.

106. I have already dealt with all the contentions raised by the petitioner already in RC.REV. 45/2015 and the petitioner has not raised any additional ground in the present petition. Hence the findings arrived at by the learned ARC in the impugned judgment dated 04.07.2014 along with the order dated 20.01.2015 passed in the review application needs no interference.

107. For the reasons noted above and for the reasons as stated in RC.REV. 45/2015, the present petition is hereby dismissed and the impugned judgment dated 04.07.2014 along with the order dated 20.01.2015 passed in the review application is upheld.

108. Pending application(s), if any, are disposed of accordingly.

109. Interim order(s), if any, stands vacated.

110. The petition is dismissed accordingly.

JASMEET SINGH, J

NOVEMBER 27, 2024

Priyesh