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

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Date of Decision: 20.11.2024+ **RC.REV. 172/2024 & CM Appl.37313/2024**

SH. BHAJAN LAL

.....Petitioner

Through: Mr. Ravi Tikania, Adv.

versus

SH. RAJENDER PRASAD JAIN

.....Respondent

Through: Mr. Ashok Kumar Sharma, Adv.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed on behalf of the Petitioner/tenant impugning the order dated 21.02.2024 [hereinafter referred to as "Impugned Order"] passed by the learned CCJ-cum-ARC (Central), Tis Hazari Courts, Delhi. By the Impugned Order, the Leave to Defend Application filed by the Petitioner has been rejected with respect to the premises i.e., shop forming part of property bearing no. 5211, Kohlapur Road, Subzi Mandi, Delhi, 110007 [hereinafter referred to as "subject premises"].

2. Learned Counsel for the Petitioner has raised one issue in the matter. He submits that the Petitioner has been running their business from the subject premises for the last almost 30 years. He further submits that there is no *bona fide* need of the Respondent/landlord for the subject premises and this aspect is a triable issue.

3. On the twin requirements of Section 14(1)(e) of the Delhi Rent



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Control Act, 1958 i.e., the landlord-tenant relationship and the ownership, the same has not been disputed by the Petitioner.

4. On the aspect of availability of alternate suitable accommodation by the Petitioner, the learned Trial Court has in the Impugned Order undertaken a detailed examination of this aspect of the matter, in the following manner:

“10. Alternate suitable property:

*As to the third ingredient of availability of suitable alternate accommodation, the respondents have tried to give many advices to the petitioner. **The respondent has stated that the premises number 5211, Kolhapur Road Sabji Mandi, Delhi is of 180 yd. and the most of the portion (as shown in the site plan filed by the petitioner after leaving the shop of the respondent at the ground floor) is in the control of the petitioner which constitutes around 150 to 160 yd. and beside this, there is a basement and first floor on the said premises itself which are under the possession of the petitioner and its roof right is also with the petitioner, whereas the respondent is having possession of only 10x10 space which is nothing in comparison to the portion possessed by the petitioner. The respondent has advised the petitioner that he is having huge space at basement, ground floor, first floor and also having roof upon which any construction can be made and separate portion can be given to both of his sons, moreover, 150 to 160 yd. available at the ground floor itself, is sufficient for his sons.***

*11. With respect to the property bearing No. 5211, Kolhapur Road Sabji Mandi, Delhi, the petitioner has explained that the property is consisting of basement, ground floor, first floor and terrace floor. He has stated that some portion on the **ground floor and basement of this property is being used by the elder son of the petitioner namely Rajiv Jain for his separate proprietorship business, namely M/s Star Fab and** the other shop on the ground floor of this property has already been sold by the **petitioner and his brother way back on 26.06.2002 to one Surinder Kumar by virtue of a registered sale date. He has stated that the first floor of this property is residential in nature** and terrace floor is without any construction. Once the petitioner has explained that the property is not available and vacant, it is not for the tenant to dictate to the landlord as to how he can use the other **properties, he is no one to advise the landlord to construct upon the terrace and fulfil his bona fide requirement. Property available with the petitioner** should not only be vacant but should also be suitable. It*



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is neither for the tenant nor for the court to advise the landlord that from the portion which is in the possession of his 'elder son, some space should be given to his younger son or he should construct upon the property and then property should be made available to petitioner for the use of his younger son.

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13. The respondent claims that the petitioner purchased ground floor of property bearing No. 1 Jaipuria building, Kolhapur Road, Delhi, which was commercial property but he sold it recently. With this transaction, the respondent wants to indicate that the petitioner is having enough money to purchase a new property. **This court of the opinion that it is not prudent for anyone to dictate the landlord that if he is having one of his properties in the possession of a tenant, he should allow the tenant to enjoy the property and he should buy a new property for his needs as he is having enough money.** The respondent has only alleged barley that the property was sold recently. The respondent has not provided any date as to when the petitioner sold the property. The court has to see the availability of the property with the petitioner on the date of filing of the petition. Any transaction done prior to the filing petition is not relevant unless the bonafide need is doubted by the court.

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15. It is claimed by the respondent No.2 & 3 that between the basement and the ground floor, there is another floor which can be said to be an upper ground floor and the same is in the physical possession of Karan Jain (the younger son) who is running his independent business therein. No material however has been produced by them to justify their claim. Even otherwise, there cannot be any comparison between a shop at ground floor and some space between basement and ground floor. It is no well settled that a shop at ground floor will attract more customers in comparison with any other floor (see Mohd. Saleem vs Zaheer Ahamad 2023 SCC OnLineDel 1469, ViranWali vs Kuldeep Rai Kochhar 174 (2010) DLT 328, Dhannalal vs Kalawatibai (2002) 6 SCC 16, Uday Shankar Upadhyay vs Naveen Maheshwari (2010) 1 SCC 503). It would be really preposterous to say that while the tenant will enjoy a prominent space for his business, son of the landlord shall squeeze himself somewhere between basement and ground floor.

16. Respondent No.2 & 3 have also claimed that first floor of the property is commercial. Petitioner stand is clear that the said first



floor is residential. It was clearly then for the respondents to show that first floor was not only commercial but was also available to the petitioner. Nothing in this respect has been shown by the respondents. A bald claim obviously cannot justify anything.”

[Emphasis supplied]

5. The only other issue that has been raised by the learned Counsel for the Petitioner is the need of the Respondent is not *bona fide*.

6. It is settled law and has been dealt in the Impugned Order that the landlord is required to show that he has a *bona fide* need. The *bona fide* need as shown in the Eviction Petition is that the younger son of the Respondent requires to set-up a business. The Respondent/landlord has clarified that he is currently being forced to use an upper ground/mezzanine floor for his business since he has no other space and that the Respondent wishes to settle his son. The Petitioner has not been able to show anything to counter this need.

7. The Supreme Court in the case of *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta*¹ held that *bona fide* need refers to a genuine and honest desire of the landlord to occupy the premises, based on a real and sincere felt need, rather than a mere pretext to evict the tenant. The Court must place itself in the landlord's position and assess whether the need is natural, honest, and substantiated by the facts. A practical approach, considering the realities of life, must be adopted, avoiding overly liberal, conservative, or pedantic interpretations. The relevant extract of *Shiv Sarup* case is reproduced below:

“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

¹ (1999) 6 SCC 222



*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]

7.1 The landlord is required to place *prima facie* material supported by adequate averments. Once this threshold is crossed, the onus of the proof shifts on the tenant to show that the need is not *bona fide*. [See *Abid-ul-Islam v. Inder Sain Dua*²]

8. In the case of *Swaranjit Singh and Anr. v. Saroj Kapoor*³, this Court while relying upon the judgment passed by a Coordinate bench of this Court in the case of *Sunil Kumar Goyal vs Harbans Singh*⁴ has held that the need of the Respondent/landlord to seek economic gain cannot make the need of the Respondent/landlord *mala fide*. The relevant extract of *Swaranjit* case is

² (2022) 6 SCC 30

³ 2023 SCC OnLine Del 7396

⁴ 2017 SCC OnLine Del 9289



reproduced below:

“ 57. It was also observed in the Sunil Kumar Goyal case and its desire to seek economic gain cannot make the need of the Respondent/Landlady mala fide:

*“19. Mention may also be made of Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta (1999) 6 SCC 222 **laying down that the term bona fide refers to a state of mind and a requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of his family. It was held that the Court should place itself in the armchair of the landlord and then ask the question to itself whether in the given facts substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere, honest and that if the answer is in the positive, the need is bona fide.** It was further held that the Court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his need. **The concept of bona fide need was held to require a practical approach instructed by realities of life.** An approach either too liberal or too conservative or pedantic must be guarded against. ...”*

[Emphasis Supplied]

9. The Petitioner has contended that in order to fulfil his requirement, the Respondent can either construct separate floor on the roof of the first floor or can use the first floor of the subject premises and a suggestion has also been given by the Petitioner that the basement or the upper ground floor can be used by the Respondent. All the alternate accommodation suggestions were examined and rejected by the Impugned Order as the ground floor and basement were being used by the elder son of the Respondent and the first floor is a residential property. So far as concerns the suggestion of the Respondent to the Petitioner to construct upon the terrace, the same is misconceived. It is settled law that the Court cannot



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advise a landlord as to in what manner he should utilize his property.

9.1 It is well settled that neither the Court nor the tenant can dictate terms to the landlord. The Supreme Court in the matter of ***Sarla Ahuja v. United India Insurance Co. Ltd.***⁵ has held 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.

9.2 A similar view has been taken by the Supreme Court in the case of ***Prativa Devi (Smt) v. T.V. Krishnan***⁶. It was held that tenant cannot dictate the terms of use of a property to a landlord and that the landlord is the best judge of his requirements. It is not for the Courts to dictate in what manner and how a landlord should live. This Court while relying on the ***Prativa Devi case*** has in the ***R.S. Chadha (thr. SPA) v. Thakur Dass***⁷ held:

“13.1 It is settled law that the tenant cannot dictate the terms of use of a property to a landlord and that the landlord is the best judge of his requirements. It is not for the Courts to dictate in what manner and how a landlord should live. It is also not for the Courts to adjudicate that the landlord has a bonafide need or not. The Courts will generally accept the landlords need as bonafide. The Supreme Court in the case of Prativa Devi (Smt) v. T.V. Krishnan [(1996) 5 SCC 353] has directed:

“2. The proven facts are that the appellant who is a widow, since the demise of her husband late Shiv Nath Mukherjee, has been staying as a guest with Shri N.C. Chatterjee who was a family friend of her late husband, at B-4/20, Safdarjung Enclave, New Delhi. There is nothing to show that she has any kind of right whatever to stay in the house of Shri Chatterjee. On the other hand, she is there merely by sufferance. The reason given by the High Court that the appellant is an old lady aged about 70 years and has no one to look after her and therefore she should continue to live with Shri Chatterjee, was hardly a

⁵ (1998) 8 SCC 119

⁶ (1996) 5 SCC 353

⁷ 2024 SCC OnLine Del 47



ground sufficient for interference. The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The High Court is rather solicitous about the age of the appellant and thinks that because of her age she needs to be looked after. Now, that is a lookout of the appellant and not of the High Court. We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property. We accordingly reverse the finding reached by the High Court and restore that of the Rent Controller that the appellant had established her bona fide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances.”

13.2 In any event, it is only the Respondent/landlord and his family who can decide what is sufficient space as per their needs and requirements. Sufficiency of residential accommodation for any person would essentially be dependent on multiple factors, including his living standard and general status in society. In view of the fact that admittedly the Respondent/landlord has a large family, it is not open to the Petitioner/tenant to contend that requirement of 6 rooms as pleaded by the Respondent/landlord, is not bonafide.

13.3 The Trial Court has dealt with the sufficiency of accommodation of the Respondent/landlord in the Impugned Order. This Court finds no reason to impugn these findings.”

[Emphasis supplied]

10. The Respondent/landlord has explained *bona fide* need as a requirement to settle his younger son, stating that the subject premises will be used by his son for his business. The Petitioner/tenant has contended that the younger son is operating out of an upper ground/mezzanine floor. Hence, the requirement is not *bona fide*. The Trial Court found that even assuming this to be true the ground floor is more suitable for setting up/running



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business. In *Uday Shankar Upadhyay v. Naveen Maheshwari*⁸, the Supreme Court has held that the Court cannot dictate to the landlord as to that extent which floor he must use for his business, besides shops and businesses are usually conducted on the ground floor.

10.1 It is well settled that the ground floor is more suitable for commercial purposes and businesses. If there is availability of space on the ground floor with the landlord, there is no question of the tenant asking him to take alternate premises or to operate out of a mezzanine, which is not a complete floor. The need of the Respondent/landlord thus cannot be said not to be *bona fide*.

11. The other property which was mentioned by the Petitioner is a property at Kolhapur Road, which the Respondent has already stated that he has sold. Thus, the alternate accommodations referred to by the Petitioner/tenant have been dealt with by the learned Trial Court. This Court finds no infirmity with this finding.

12. On the aspect of the fact that the hardship will be caused to the Petitioner, if he is asked to vacate the subject premises, the attention of the learned Counsel for the Petitioner was drawn to the judgment passed by a Coordinate Bench of this Court in the matter of *Bosco Joseph v. Raj Kumar*⁹. The relevant extract of the *Bosco Joseph* case is set out below:

“20. In view of the above, it is settled that the Landlord is the best judge of his requirements, and he also has the complete authority to prioritize the needs of his family and those who are dependent on him over any hardship that might be caused to the tenant. In the instant case, the son of the Landlord is currently unemployed, has no alternative accommodation and is dependent on his father. Therefore, it cannot be said that the requirement of the Landlord is not bona-

⁸ (2010) 1 SCC 503

⁹ 2022 SCC OnLine Del 2029



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fide.”

[Emphasis Supplied]

13. The scope of examination by this Court in a Revision Petition filed under Section 25(B)(8) of the Delhi Rent Control Act, 1958 is well settled. The Supreme Court *Abid-ul-Islam* case has held that the jurisdiction of this Court is only revisionary in nature and limited in scope. The Supreme Court while interpreting the intendment of the legislature in removing two stages of Appeal that were earlier provided in the said Act has held that this is a conscious omission. The High Court is not expected to substitute and supplant its view with that of the learned Trial Court, its only role is to satisfy itself on the process adopted. Thus, the scope of revisionary jurisdiction of this Court has been limited to examine if there is an error apparent on the fact of the record or absence of any adjudication by the learned Trial Court, and it is only then should the High Court interfere. The Supreme Court has also cautioned from converting the power of superintendence into that of a regular first Appeal under revisionary jurisdiction. The relevant extract of the *Abid-ul-Islam* case is below:

“Scope of revision

“22. We are, in fact, more concerned with the scope and ambit of the proviso to Section 25-B(8). The proviso creates a distinct and unequivocal embargo by not providing an appeal against the order passed by the learned Rent Controller over an application filed under sub-section (5). The intendment of the legislature is very clear, which is to remove the appellate remedy and thereafter, a further second appeal. It is a clear omission that is done by the legislature consciously through a covenant removing the right of two stages of appeals.

*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***



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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.

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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]

14. As discussed above, this Court has examined the findings of the learned Trial Court which shows adjudication and adequate reasons. In view of the foregoing discussion, this Court finds no merit in the present Petition



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which is accordingly dismissed. The pending Application stands disposed of. Interim protection granted by this Court on 14.08.2024 stands vacated.

15. Parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

NOVEMBER 20, 2024/r/ha/gj

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