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

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Reserved on: July 03, 2024

Decided on: August 09, 2024

+ **RC.REV. 285/2022**

OM PRAKASH

.....Petitioner

**Through: Mr. Bhupinder Mehtani,
Advocate**

V

SMT. MEENU GUPTA & OTHERS

.....Respondents

**Through: Mr. Raj Kishore Garg,
Advocate**

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The present revision petition is filed under section 25B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as **“the Act”**) to set aside the order dated 17.08.2022 (hereinafter referred to as the **“impugned order”**) passed by the Court of Ms. Paridhi Sharma, ACJ-CCJ-ARC, South West District, Dwarka Courts, New Delhi (hereinafter referred to as **“the trial court”**) in eviction petition bearing RC ARC no. 05/2020 (CNR no. DLSW03-000636-2020)



titled as **Meenu Gupta & others V Om Prakash** whereby the tenanted premises i.e. front portion of shop no. 409 admeasuring about 48 sq. ft. (8 x 6), near Jawahar Chowk, Najafgarh, Delhi- 110043 was directed to be vacated and the petitioner/tenant was ordered to be evicted.

2. The factual background of the case is that Ram Niwas Gupta was the Karta of a joint Hindu family and had two sons namely Kailash Chand Gupta and Anil Kumar Gupta. Ram Niwas Gupta purchased the property bearing shop no. 408-409, near Jawahar Chowk, Najafgarh, Delhi-110043 and let out the front portion of the property bearing shop no. 409, measuring about 48 sq. ft. (8 X 6), near Jawahar Chowk, Najafgarh, Delhi 110043 (hereinafter referred to as the “**tenanted premises**”) to the petitioner/tenant (hereinafter referred to as the “**petitioner**”) for commercial purposes on a monthly rent of Rs.1500/- besides other charges. The rent was collected by Kailash Chand Gupta who also issued the rent receipts to the petitioner. The property was transferred to Kailash Chand Gupta vide a sale deed after the death of Ram Niwas Gupta. Kailash Chand Gupta thereafter executed a registered General Power of Attorney



(GPA) in favour of his brother Anil Kumar Gupta thereby empowering him to collect rent from the joint family properties. Anil Kumar Gupta expired on 15.03.2010 and left behind the respondents as his legal heirs. An oral family partition was affected between Kailash Chand Gupta and the legal heirs of Anil Kumar Gupta i.e. the respondents and the respondents became absolute owners of two properties i.e. house no. 937, Gali Bajajan, Najafgarh, New Delhi which is being used for residential purpose and shop no. 408-409, Main Bazar, Jawahar Chowk, Najafgarh, New Delhi on account of oral family partition. The other family properties i.e. shop no.123, Khasra no.53, Main Bazar, Najafgarh, New Delhi and shop no. 123-A, Khasra no.53, Main Bazar, Najafgarh, New Delhi came to the share of Kailash Chand Gupta. The respondents/landlord/owners (hereinafter referred to as the “**respondents**”) received the possession of the property bearing shop no. 408-409, Main Bazar, Jawahar Chowk, Najafgarh, New Delhi in February 2011 and the petitioner started paying monthly rent to the respondent no.1 in respect of the tenanted premises. The respondents filed an eviction petition bearing RC ARC no. 46/19 titled as **Meenu Gupta & others**



V Brahm Prakash wherein pleaded that Brahm Prakash is the tenant in respect of the tenanted premises who in application for leave to defend stated that he is not the tenant rather his brother Om Prakash i.e. the petitioner is the tenant in respect of the tenanted premises and he being brother was merely assisting the petitioner in his business. The Court of Ms. Ruchika Singla, SCJ/RC dismissed the said eviction petition bearing RC ARC no. 46/19 as withdrawn.

3. The respondent no.1 is running business in the name of “Kala Mandir Shoe House” in shop bearing no.408 and the back portion of shop no.409. The respondent no.2 who is the son of the respondent no.1 is currently unemployed and wants to run his own business of selling ladies dress material. The respondents do not own/possess any other premises which can be used for commercial purpose and the tenanted premises would serve as the suitable accommodation for the respondent no.2 to carry on his business. The respondents filed present eviction petition bearing RC ARC no. 05/2020 under section 14(1)(e) read with section 25B of the Act against the petitioner on the ground of *bona fide* requirement of the tenanted premises.



4. The petitioner filed an application for leave to defend wherein stated that the respondents do not require the tenanted premises for *bona fide* need as the respondent no.2 is running business in shop no. 408 and back portion of shop no. 409, near Jawahar Chowk, Najafgarh, New Delhi and the respondents no 1 and 2 have sufficient area of 61 sq. yards in their possession and the petitioner is in possession of a small portion measuring 5 sq. yards only i.e. the tenanted premises. The petitioner stated that the respondents also possess other properties such as property no. 123-A, Old Grain Market, Najafgarh, New Delhi and the requirement of the tenanted premises is not *bona fide* but *mala fide*. The petitioner denied the relationship of the landlords and tenant between the respondents and him and stated that Kailash Chand Gupta is the owner of the tenanted premises and the rent receipts were issued to the petitioner by Kailash Chand Gupta. The petitioner is using the tenanted premises for his own business which is his only source of income and as such the petitioner should not be evicted from the tenanted premises on false and frivolous ground. The respondents filed reply to application for leave to defend wherein denied the contents of the leave to defend



application and prayed that an eviction order be passed in favour of the respondents. The petitioner filed rejoinder to the reply filed by the respondents.

5. The trial court vide the impugned order dated 17.08.2022 allowed the eviction petition in favour of the respondents and the petitioner was directed to vacate the tenanted premises. The relevant portion of the impugned order dated 17.08.2022 is reproduced as under:

15. Petitioner no. 1 is not required to establish her ownership absolutely. Her title to the tenanted premises indubitably, is better than that of the respondent/tenant. The tenanted premises prima facie devolved upon petitioner no. 1 after the death of her husband and as such, for the purposes of deciding this eviction petition, her claim of ownership over the tenanted premises is better than that of the respondent/tenant. As far as the arrangement of collection of rent is concerned, petitioners have pleaded that rent was collected by Kailash Chand Gupta on their behalf initially and was later paid to the petitioners. There is no reason to doubt the veracity of the said claim. As for the contention of the respondent/tenant that rent receipts were not given to him by Kailash Chand Gupta, the respondent/tenant has not filed any proof to show that he was diligent enough to serve any notice to Kailash Chand Gupta to obtain rent receipts nor has he filed any proof to substantiate the fact that Kailash Chand Gupta was his landlord. The contentions put forth by the tenant to dispute the relationship of landlord and tenant between him and petitioner no.1 thus, appear to be farce.

18. In the present petition, it is the case of the petitioners/landlord that the space available with them is not sufficient to cater to the needs of the growing family.



Petitioner no. 2 is a young man and is unemployed. Petitioner no. 1 is the mother of Petitioner no. 2 and seeks the eviction of the respondent/tenant on the ground that petitioner no. 2 requires to be settled professionally for the latter wishes to open a garment shop in the tenanted premises. In the opinion of this court, the need projected by the petitioners is a genuine one. The respondent/tenant cannot dictate the petitioners as to how their own premises could be put to use by them once they have put forth a need which can be termed as *bona fide*.

19. It has been demurred by the respondent that petitioner no.1 has ample space to accommodate petitioner no. 2 and in actuality, petitioner no. 2 is running the shop which is in occupation of petitioner no.1. However, no proof has been filed by the respondent/tenant to reinforce the latter claim. As far as the former is concerned, petitioner no. 1 cannot be encumbered with the expectation to accommodate petitioner no. 2 in the shops currently in possession of petitioner no. 1. Also, it is not the case of the respondent/tenant that petitioner no. 2 is employed and has a source of income. Petitioner no. 2 is dependent on petitioner no. 1 for his daily needs and livelihood. The projected need thus, appears to be *bona fide*.

20. It would be rather unjust to expect the landlord to accommodate himself as per the wishes of his tenant especially when she bona fidely requires the tenanted premises. The tenant cannot dictate how the property belonging to the landlord should be put to use. Once the landlord shows that there is *bona fide* requirement for the tenanted premises, the Court is bound to allow the eviction petition.

22. As regards the above noted third aspect of availability of other suitable accommodation, respondent/tenant has not specifically enumerated in his pleadings the other premises which are available with the petitioner no. 1. He has merely averred in paragraph no. (v) of his application for leave to defend that the petitioner has many properties



in Delhi, NCR such as property no. 123A, Old Grain Market, Najafgarh New Delhi. However, no documentary proof has been filed in support of the said contention. In the absence of the same, a vague averment cannot be relied upon to outwit the need of petitioner no. 1 to cause the tenanted premises evicted.

23. In light of the above, this court is of the considered view that there is a *bona fide* requirement of the landlord/petitioner. No triable issue is raised by the respondent/tenant. The tenanted premises i.e front portion of shop no. 409, admeasuring about 48 sq. ft. (8 x 6), Near Jawahar Chowk, Najafgarh, Delhi- 110043, is directed to be vacated and the tenant/respondent to be evicted therefrom. However as per the statutory provision U/s 14 (7) of the Act, this eviction order would be executable only after six months.

6. The petitioner being aggrieved filed the present revision petition to challenge the impugned order dated 17.08.2022.
7. The counsel for the petitioner advanced oral arguments and also submitted written arguments. It was argued that the impugned order dated 17.08.2022 passed by the trial court is against law as the respondents are neither the owners nor the landlords of the tenanted premises. Kailash Chand Gupta appointed brother Anil Kumar Gupta as his attorney through General Power of Attorney (GPA) executed on 23.04.1999 to look after the tenanted premises and to collect rent on his behalf. Anil Gupta expired on 15.03.2010 and after his death GPA ceased to exist and became null and void. The trial court while



passing the impugned order in favour of the respondents has failed to appreciate the fact that the respondents have never got any right, title or interest in the tenanted premises as the respondents were never attorned by Anil Kumar Gupta to pursue with the GPA. The trial court has committed an error while passing the impugned order by ignoring the settled law that the GPA comes to an end after the death of the attorney holder. The trial court while passing the impugned order has ignored the fact of ownership as the owner of the tenanted premises/Kailash Chand Gupta was not impleaded as party. The respondents are alleging that there was an oral partition settlement between the Kailash Chand Gupta and the respondents but the same was not mentioned in the legal notice and the oral partition was not even backed by substantial evidence and entries in the revenue record as laid down by the Supreme Court in para 127 and 129 (v) in the case of **Vineeta Sharma V Rakesh Sharma**, (2019) 6 SCC 164. The counsel for the petitioner further argued that there was no landlord and tenant relationship between the petitioner and the respondents as there was no privity of contract between them and the respondents have failed to file any document to prove their ownership over the



tenanted premises. The counsel for the petitioner has placed reliance upon **Inderjeet Kaur V Nirpal Singh**, (2001) 1 SCC 706, **Jatinder Singh Nanra V Sarita Rani**, RC REV no.81/2010, **Vinay Kumar Verma V Harjit Singh Shah**, RC REV. no. 409/2018 and **Chaman Lal V Batuk Prasad Jetly**, RC REV. no. 171/2011 passed by the coordinate benches of this Court and prayed that the present petition be allowed and the impugned order dated 17.08.2022 be set aside.

8. The counsel for the respondents advanced oral arguments and also submitted written submissions. It was stated that there was a Joint Hindu family consisting of Ram Niwas Gupta and his two sons, Kailash Chand Gupta and Anil Kumar Gupta and Shop no. 408-409 was purchased by Ram Niwas Gupta by using the joint family funds and the front portion of the shop was rented out to the petitioner and the rent was collected by Kailash Chand Gupta on behalf of Ram Niwas Gupta. Ram Niwas Gupta passed away on 05.05.1985 and following his death, his legal heirs transferred the properties to Kailash Chand Gupta for the purpose of managing the joint family assets. Subsequently, Kailash Chand Gupta executed a registered GPA in favour of Anil Kumar Gupta (husband of respondent no. 1),



who started to collect rent from the petitioner on behalf of the family. Anil Kumar Gupta passed away on 15.03.2010 leaving the respondents as his only legal heirs and an oral family partition took place after death of Anil Kumar Gupta between Kailash Chand Gupta and the respondents. The respondents out of family settlement received one residential house bearing no 937, Gali Bajajan, Najafgarh, Delhi, and the commercial property i.e. shops bearing no 408-409, near Jawahar Chowk, Najafgarh, Delhi-110043 The petitioner recognized the respondents as his landlords and started to pay rent to respondent no.1. The counsel for the respondents further argued that the trial court has rightly passed the eviction order/impugned order by considering the necessary aspects of the eviction petition under section 14(1)(e) of the act and has rightly enunciated the landlord tenant relationship, *bona fide* requirement of the respondent no.2 and the requisite aspect of the alternate accommodation available with the respondent no.2 before passing the impugned order. The counsel for the respondent prayed that the present petition be dismissed.



9. The counsel for the petitioner primarily argued that the respondents are neither the owner nor landlord of the tenanted premises, rather Kailash Chand Gupta was the owner of the property in his individual capacity and not as *Karta* of HUF and referred sale deed dated 05.04.1999. Kailash Chand Gupta on 23.04.1999 appointed Anil Kumar Gupta, the predecessor in interest of the respondents as his attorney to look after the tenanted premises and to collect the rent on his behalf. Anil Kumar Gupta expired on 15.03.2010 and the General Power of Attorney ceased to exist after the death of Anil Kumar Gupta and became null and void. The respondents being the legal representatives of Anil Kumar Gupta do not have any right, title or interest in the property and cannot file eviction petition in respect of the tenanted premises against the petitioner. The petitioner as such raised triable issue as there was no privity of contract between the respondents and the petitioner for want of relationship of landlord and tenant.

9.1 The respondents also pleaded and as argued by the counsel for the respondents, Ram Niwas Gupta and his two sons namely Kailash Chand Gupta and Anil Kumar Gupta constituted a Joint Hindu



Family and Ram Niwas Gupta purchased shops bearing no. 408-409 from the joint family funds and let the front portion of shop bearing no 408-409 to the petitioner and Kailash Chand Gupta used to collect rent on behalf of Ram Niwas Gupta. Ram Niwas Gupta expired on 05.05.1985 and thereafter his legal heirs for purpose of administration of joint family transferred the property bearing no 408-409 in the name of Kailash Chand Gupta. Kailash Chand Gupta also executed a registered General Power of Attorney (GPA) in favour of Anil Kumar Gupta, the predecessor in interest of the respondents who started to receive rent from the petitioner on behalf of the family. Anil Kumar Gupta also expired on 15.03.2010 leaving behind the respondents as his legal heirs and thereafter an oral family partition took place between. Kailash Chand Gupta and the property bearing shops no. 408-409 came in to the share of the respondents and the petitioner started to pay rent to the respondent no 1. It was firmly argued that there exists a relationship of landlord and tenant between the parties to the present petition.

9.2 The trial court in impugned order observed that the respondent no 1 is not required to establish her absolute ownership and title in



respect of the tenanted premises is better than the petitioner. The tenanted premises *prima facie* devolved upon the respondent no 1 after the death of her husband namely Anil Kumar Gupta. It is reflecting that the respondents have properly explained the facts and circumstances under which shops no 408-409 came into the share of the respondents and their title is much better than the title of the petitioner in respect of tenanted premises. The respondents are able to establish their ownership in respect of the shops bearing no 408-409 including the tenanted premises for purpose of eviction petition under section 14(1)(e) of the Act. There is no force in the arguments advanced by the counsel for the petitioner that there exists no relationship of the landlord and tenant between the parties and Kailash Chand Gupta is owner of the shops bearing no 408-409. The trial court rightly observed that the contention of the petitioner in disputing the relationship of landlord and tenant between the petitioner and the respondents appear to be farce.

10. The petitioner also pleaded and as argued by the counsel for the petitioner, the respondents are already in possession of another shop measuring 61 sq. yds. and are now seeking the eviction of the



tenanted shop which is measuring merely 5 sq. yds. which reflects that the respondents are having *mala fide* intention just to evict the petitioner from the tenanted premises. The respondents in eviction petition pleaded that the respondents require the tenanted shop urgently for the *bona fide* needs and requirements of the respondent no 2 who is unemployed and wants to open business of ladies dressing material. The respondents further pleaded that they are owners and in possession of only two properties i.e. Shop no. 408-409 and house no 937, Gali Bajajan, Najafgarh, Delhi and the property no 937 is purely residential property. The shop bearing no 408 and back portion of shop no. 409 is already occupied by the respondent no 1 who is running a shoe shop under the name & style "Kala Mandir Shoe House". Accordingly, the respondents pleaded that the tenanted premise being situated in main market is suitable for the respondent no 2 to start a new business.

10.1 The trial court in impugned order observed that the respondents pleaded that the space available with them is not sufficient to cater to the needs of the growing family and the respondent no 2 is a young man and is unemployed. The respondent no 1 is the mother of the



respondent no 2 and seeking eviction of the petitioner on the ground that respondent no 2 requires to be settled professionally as the respondent no 2 wants to open a garment shop in the tenanted premises. The trial court after considering the pleas of the respondents opined that need projected by the respondents is a genuine and the petitioner cannot dictate the respondents as to how their own premises could be put to use by them once the respondents put forth a need which is *bona fide*. The trial court also did not agree with the contention of the petitioner that the respondent no 1 is having ample space to accommodate the respondent no. 2 who in actuality is running the shop which is under the occupation of the respondent no 1. The trial court observed that the respondent no 1 cannot to accommodate the respondent no 2 in the shops currently in possession of the respondent 1. The trial court after observing that the petitioner did not plead that the respondent no 2 is employed with source of income held that the respondent no 2 is dependent on the respondent no 1 for his daily needs and livelihood and accordingly held that the need of the respondents is *bona fide*. The trial court also observed that a landlord cannot be expected to accommodate as per



the wishes of tenant especially when the landlord *bona fide* requires the tenanted premises.

10.2 The Supreme Court in **Sarla Ahuja V United India Insurance Co. Ltd.**, (1998) 8 SCC 119 observed that requirement of the landlord for occupation of the tenanted premises must be *bona fide* and the rent controller shall not proceed on the presumption that the requirement is not bona fide when a landlord asserts that he requires his building for his own occupation. The Supreme Court in the case of **Deena Nath V Pooran Lal**, (2001) 5 SCC 705 observed that the statutory mandate is that there must be first a requirement by the landlord which means that it is not a mere whim or a fanciful desire by him; further, such requirement must be *bona fide* which is intended to avoid a mere whim or desire. The Supreme Court in **Sait Nagjee Purushotham & Co. Ltd. V Vimalabai Prabhulal & others**, (2005) 8 SCC 252 held that it is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business. The Supreme Court in **Anil**



Bajaj V Vinod Ahuja, (2014) 15 SCC 610 held that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business and if the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business.

10.3 It is reflecting that the respondent no 1 is mother of the respondent no 2 who despite being young boy is unemployed and is dependent on the respondent no 1 for his daily needs and livelihood. The respondent no 1 is running a shoe shop under the name & style "Kala Mandir Shoe House" in the shop bearing no 408 and back portion of shop no. 409. The other property bearing house no 937, Gali Bajajan, Najafgarh, Delhi which is owned by the respondent no 1 is purely residential property and cannot be used for commercial purposes. The respondent no 1 being mother of the respondent no 2 wants to settle the respondent no 2 professionally and does not have any other accommodation available excepted tenanted shop. It is well in domain of a parent



either mother or father or both to settle child or children in life rather it may be social and family obligation of the parents to settle their children professionally so that they can earn livelihood. If the respondent no 1 needs the tenanted premises for the respondent no 2, then the need of the respondent no 1 is *bona fide* and not *mala fide* or a mere whim or desire. It is also apparent that the respondent no 1 does not have any other suitable alternate accommodation for business of the respondent no 2. The trial court has rightly held about the *bona fide* requirement of the respondent no 1 and the respondent no 1 does not have any other alternate accommodation.

11. The trial court in the impugned order dated 17.08.2022 has rightly appreciated the rival contentions of the petitioner and the respondents in right perspective and has considered the essential component of section 14(1)(e) of the Act in the impugned judgment. The arguments advanced by the counsel for the petitioner are considered in the right perspective and are without any merit. There is no infirmity or illegality in the impugned order dated 17.08.2022 passed by the trial court and does not call for



any interference from this court. The present petition is devoid of merit and is hence dismissed. The pending application, if any also stands disposed of.

DR. SUDHIR KUMAR JAIN
(JUDGE)

AUGUST 09, 2024
N/AK/ABK