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

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Reserved on: 12th July, 2024

Decided on: 16th August, 2024

+ **RC.REV. 278/2018**

ANKUR KUMAR & OTHERS

.....Petitioners

**Through: Mr. Gaurav Gupta,
Advocate**

V

GINNI VERMA & ANOTHER

.....Respondents

**Through: Mr. Harpreet Singh, Mr.
Rajesh Gupta, Mr. S. P.
Gupta, Advocates**

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

ORDER

1. The petitioners/tenants (hereinafter referred to as “**the petitioners**”) filed present revision petition under section 25B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as “**the Act**”) to challenge the order dated 12.01.2018 (hereinafter referred to as “**the impugned order**”) passed by the court of Ms. Susheel Bala Dagar, CCJ-cum-ARC, Central, Tis Hazari Courts, Delhi (hereinafter referred to as “**the trial court**”) in eviction petition titled as **Ginni**

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Verma & others V Rakesh Kumar & others bearing no E-670/2017 whereby the trial court dismissed the application for leave to defend filed by the petitioners.

2. The respondents/landlords (hereinafter referred to as “**the respondents**”) filed an eviction petition under section 14(1)(e) of the Act. The respondents stated that Ram Chander Verma who expired on 19.04.1978 acquired ancestral property bearing no 1165, Kucha Mahajani, Chandni Chowk, Delhi. Late Ram Chander Verma left behind wife namely Asharfi Devi and two sons namely Ram Rattan Verma and Bhagwan Verma. Ram Rattan Verma and Bhagwan Verma as per oral family settlement owned the property bearing no. 1165 and they mutually partitioned said property. Ram Rattan Verma became the owner of the front portion of said property known as 1165-I comprising built up structure on the ground floor, first floor, second floor and third floor and Bhagwan Verma became the owner of back portion of said property known as 1165-II. Ram Rattan Verma was doing jewellery trading from property no. 1165-1. Ram Rattan Verma suffered kidney failure in or about the year 2009 and had to undergo various medical procedures including dialysis 2-3



times in a week till death. Ram Rattan Verma did not take any medical insurance policy during the lifetime and was merely able to sustain him and family comprising wife Ginni Verma (the respondent no 1), son Rohit Verma (the respondent no 2) and five daughters from jewellery trading. Ram Chander Verma had sold second and third floors about 15 years prior to death due to financial requirements and marriage of five daughters. The ground floor of the property no. 1165-1 was comprising two shops and Ram Rattan let out one shop having an approximate area of 32 sq. ft. (hereinafter referred to as “**the tenanted shop**”) in April 1985 on rent to Rakesh Kumar i.e. the petitioner no. 4 and Anil Kumar vide written agreement executed in April 1985 for commercial purposes. Anil Kumar after death was survived by wife namely Bimla Devi and two sons namely Sumit Kumar and Ankur Kumar i.e. the petitioners no. 1 to 3. The petitioners are running a jewellery shop under name and style of Shri Ram & Sons in the tenanted shop. Ram Rattan Verma let out second shop in year 2012 to Pawan Kumar at rent of Rs. 24,400/- pm to meet his medical expenses and sustain him and family members. Ram Rattan Verma sold one shop situated at first floor on



19.01.2015 for purchasing a flat situated on the first floor of property bearing no. F-14D, Laxmi Nagar, Delhi-110092 and let out remaining portion of the first floor comprising a hall/shop to Ajay Kumar Aggarwal on 23.09.2015 for a period of 5 years commencing from 15.10.2015 vide registered lease deed dated 23.09.2015 to meet out his increased medical expenses. Ram Rattan Verma expired on 14.10.2015 and was survived by wife (the respondent no. 1), one son (the respondent no. 2) and 5 married daughters who had agreed not to claim any right in the tenanted shop and as such the respondents are the landlords of the tenanted shop. The respondents are residing at first floor of property no. F-14D, Laxmi Nagar, Delhi- 110092 and do not have any other residential and commercial property available with them in Delhi. The wife of the respondent no. 2 owns agricultural land admeasuring about 1240 sq. yards in Rewari.

2.1 The respondent no 2 was doing silver trading with father Late Ram Rattan Verma from the portion of property no. 1165 and at present is doing jewellery trading for the last 13 years from first floor of property no F-14D, Laxmi Nagar, Deihi-110092 due to paucity of a place/accommodation. The respondent 2 who is having experience



of jewellery trading of 13 years but could not establish business of trading due to ill health of his father Late Ram Rattan and late Ram Rattan Verma due to ill health sold and let out portions of property no. 1165 to meet medical expense and for subsistence of the family. The residential flat/apartment bearing no F-14D, first floor, Laxmi Nagar, Delhi-110092 is barely sufficient for the residence of the respondents and family members. The respondent no 2 due to paucity of space and lack of financial capabilities had to carry jewellery trading from residence but not able to carry business properly and effectively from the residence. The respondent no 2 is unable to entertain clients from residence due to growing family and security reasons. The respondent no 2 was advised by well-wishers, close relatives and friends to open a jewellery shop in the portion of property no. 1165-1 but no accommodation was available in the said property. The respondent no. 2 under compelling circumstances decided to take a small shop on rent in December 2016/January 2017 in the jewellery market situated at Chandni Chowk but the respondent no 2 could not afford to take shop on rent due to financial reasons. The respondent no 2 took on rent a small shop admeasuring



approximately about 10 x 10 ft. forming part of the property bearing no. 72, Main Road, Chander Vihar, Delhi-110092 in name of wife vide lease deed dated 31.12.2016 at a monthly rent of Rs.6,500/- for a period of 11 months commencing from 01.01.2017. The respondent no. 2 since January 2017 is not able to establish business from rented shop and finding difficult to run business effectively from the said shop which was arranged as a stop-gap arrangement. The respondent no 2 is presently carrying on jewellery trading on a very small scale from said rented shop and is only earning Rs 20-25,000/- pm from the jewellery trading. The respondent no 2 is unable to invest in the rented shop and to explore ideas and options to expand business from the rented shop. The respondent no 2 had requested the petitioners to vacate the tenanted shop so that the respondent no 2 can carry his business from the tenanted shop but the petitioners have refused to vacate the tenanted shop which is best suited to carry business effectively and to expand jewellery trading. The tenanted shop being located in the jewellery market of Chandni Chowk is best suited for the business of the respondent no 2 and no any other commercial accommodation is available with the respondent no 2 except the



tenanted shop to start jewellery trading. The respondent no 2 *bona fide* requires the tenanted shop and requirement is genuine. It was prayed that an eviction order be passed in favour of the respondents in respect of tenanted shop.

3. The petitioners after service of summons as per Third Schedule of the Act filed an application for leave to defend along with affidavit. The petitioners stated that respondents are without having any ownership rights as they claimed to inherit the property on basis of oral family settlement which does not have any legal value. The respondent no 2 has claimed that he is having experience of 13 years in jewellery trading and is doing the business of jewellery trading from the first floor of property bearing no F-14D, Laxmi Nagar, Delhi-110092 but no document is placed to prove that the respondent no 2 is having capability of doing the jewellery trading and the respondent no 2 does not have any knowledge of jewellery trading. Late Ram Rattan Verma was having various other properties and the respondents are having sufficient accommodation with them. The respondent no 2 is in occupation of the accommodation on the second floor which is not disclosed by the respondents. The respondents have



filed incomplete site plan. The petition is liable to be dismissed. The petitioners have various triable issues in their favour which cannot be decided without leading evidence. It was prayed that application for leave to defend be allowed.

4. The respondents filed reply to application for leave to defend. The respondents besides reiterating contents of the petition stated that the petitioners have failed to disclose any triable issue and defence of the petitioners is moonshine, sham and a bogus. The petitioners have not denied *bona fide* requirement and also admitted relationship of landlord and tenant between the parties. The petitioners filed the leave to defend application on the grounds that the respondents have not substantiated their claim of ownership in respect of tenanted shop; the family of the respondents own and possess various other properties which were are in the name of Late Ram Rattan Verma, predecessor in interest of the respondents; the respondent no 2 does not have any knowledge and/or experience in jewellery trading; and the respondents have filed incomplete site plan.

4.1 The petitioners did not dispute rent deed executed in April, 1985 between Late Ram Rattan Verma, predecessor-in-interest of the



respondents and the petitioners which is sufficient to prove existence of relationship of landlord and tenant between the parties and the respondents are landlords/owners of the tenanted shop after death of Ram Chander Verma. The petitioners did not deny relationship of landlord and tenant between the parties and payment of rent to the respondents. The respondents have disclosed all properties which were in possession and ownership of Late Ram Rattan Verma during lifetime and the properties possessed and owned by petitioners on the date of filing of present eviction petition. Late Sh. Ram Rattan Verma did not own and/or possess any other immovable property except 1165-I. The respondents do not have any portion of the property bearing no 1165-I available with them in their occupation which can be commercially used by the respondent no 2 to carry jewellery trading. The petitioners did not deny that the tenanted shop is best suited for jewellery trading being situated in jewellery market and as such petitioners have admitted suitability of the tenanted shop for meeting *bonafide* requirements of the respondents to carry out jewellery trading. The respondent no 2 is having 13 years of experience in jewellery trade as he was assisting his father i.e. Ram



Rattan Verma. The respondent no 2 due to non-availability of commercial space had to take a shop on rent in property no. 72, Chander Vihar, Delhi for a period of 11 months commencing from 01.01.2017 to 30.11.2017. The respondents have filed correct site plan. The respondents in reply also stated that the respondent 2 has a right to live with dignity and to earn decent livelihood for him and his family. The respondent no 2 genuinely and *bona fide* requires the suit property. The residential accommodation is barely sufficient for purpose of residence of the respondents and family and the respondent no 2 used to entertain his client from living room of said residential accommodation. It was again reiterated that eviction order be passed in favour of the respondents in respect of tenanted shop.

5. The trial court vide impugned order dated 18.01.2018 dismissed the application for leave to defend. The trial court held that the ownership of the respondents over the tenanted shop for the purpose of the Act as well as existence of landlord and tenant relationship between the respondents and the petitioners proved. The trial court also held that *bona fide* requirement of the respondent no 2 in respect of the tenanted shop to start business also proved and the petitioners



have failed to prove the availability of any alternative suitable accommodation with the respondents for their *bonafide* requirement.

The trial accordingly held as under:-

Thus, from the discussion made above, respondents have failed to raise any triable issue, which requires evidence to be proved. The petitioners, on the other hand, have clearly established their bonafide requirement regarding tenanted premises. Hence, the application for leave to defend filed by respondents is ordered to be dismissed. Consequently, eviction order is liable to be passed against the respondents u/s Section 25 B (4) of the Act. In view of above, petitioners are held entitled for recovery of the tenanted premises, i.e., a shop admeasuring about 32 sq. ft. on the ground floor of the property bearing Municipal No. 1165, Kucha Mahajani, Chandni Chowk, Delhi, as shown in colour red in the site plan annexed with the petition/ reply to leave to defend application. However, the petitioner would not be entitled to initiate execution proceedings for recovery of possession of the tenanted premises before expiration of six months from today in view of provisions given in Section 14 (7) of the Act.

6. The petitioners being aggrieved filed the present petition to challenge the impugned order. The petitioners stated that the trial court dealt with triable issues raised by the petitioners in a cursory manner. Late Ram Rattan Verma on 20.07.2009 instituted an eviction petition bearing no 181 of 2009 against Deen Dayal Sharma on ground of *bona fide* requirement for the respondent no 2 by pleading



that he was unable to find a suitable match to perform the marriage of the respondent no 2 who at that point of time was allegedly unemployed. However, Ram Rattan Verma sold said shop on 18.11.2009 to the tenant Shri Deen Dayal Sharma vide registered Sale Deed dated 18.11.2009. Late Ram Rattan Verma on 06.07.2011 instituted another eviction petition bearing no 39 of 2011 against tenant Madan Lal Sharma under section 14 (1) (e) read with Section 25B of the Act by pleading to start a new and separate business for the respondent no 2 but on compromise sold said shop subject matter of the eviction petition no E-39 of 2011 to Manoj Kumar Sharma and Satish Kumar Sharma. The respondent no 2 on 07.10.2012 created a fresh lease in respect of a shop situated adjacent to the tenanted shop in favour of Pawan Verma at a rental of Rs. 24,400/- pm for a limited period of 11 months. The respondent no 2 on 01.01.2014 executed a fresh lease in respect of the adjoining shop in favour of Pawan Verma at enhanced rental of Rs. 26,840/- for a further period of 11 months. Ram Rattan Sharma in early January 2015 vide sale deed dated 19.01.2015 sold shop situated on the first floor admeasuring 6.73 sq. meters to Rajni Khandelwal for consideration of Rs. 4,25,000/-. Late



Ram Rattan Verma and the respondent no 2 on 23.09.2015 let out a part of the first floor for a lease period of 5 years in favour of Ajay Kumar Aggarwal at a rental of Rs. 1,40,000/- pm with effect from 15.10.2015. The respondent no 2 on 01.05.2016 executed a fresh lease in respect of a shop situated adjacent to the tenanted shop in favour of the said tenant Pawan Verma at an enhanced rate of rent at Rs. 32,476/- for further period of 11 months with effect from 01.05.2016. The *bona fide* need of the respondents is manifestly self-induced in respect of tenanted shop. The petitioners challenged the impugned order on various grounds.

7. The counsel for the petitioners argued that the respondents had concealed that they had filed two eviction petitions in the past on ground of *bona fide* requirement but sold shops subject matter of these eviction petitions to the tenants and as such need of the respondent no 2 is moon shine. The respondents do not have proper ownership rights; the respondent no. 2 does not have any knowledge of jewellery business and did not submit any documents pertaining to jewellery business and the respondents submitted incomplete site plan on record. The counsel for the petitioners further argued that



respondents have renewed the lease of the adjoining shops after 31.01.2017 in favour of Pawan Verma and executed a lease deed for another shop situated at first floor for commercial purposes which is more than 10 times the tenanted shop. The counsel for the petitioners relied on **Charan Das Duggal V Brahma Nand**, (1983) 1 SCC 301, **Deena Nath V Puran Lal**, (2001) 5 SCC 705 and various other pronouncements. It was argued that the present petition be allowed and impugned order be set aside.

8. The counsel for the respondents argued that the respondents filed present eviction petition in respect of tenanted shop on the ground that the tenanted shop is required by the respondent no.2 to carry out jewellery trading. The respondent no 2 since 2013 due to paucity of space was carrying jewellery trading from residence. The respondent no 2 took a small shop on rent in area of Laxmi Nagar as his business could not pick up from residence. The business of the respondent no 2 also could not pick up from said shop and due to this reason the respondents filed the present eviction petition. The respondents do not have any other commercial space. Late Ram Rattan Verma, the predecessor in interest of the respondents had sold second and third



floor of the property in question during his lifetime for financial requirements and marriage of his five daughters and about 15 years before his death. Late Ram Rattan Verma also let out another shop situated at ground floor of the property other than the tenanted shop in the 2012 to meet medical expenses in the year 2012 to Pawan Verma. Late Ram Rattan Verma sold one shop out of three shops situated on first floor in the year 2015 for purchasing a residential accommodation at Laxmi Nagar and further let out remaining portion of the first floor to meet medical expenses and for maintaining family members in the year 2015. The respondents as such had disclosed all the relevant facts in present petition. The petitioners in application for leave to defend did not dispute/controvert any of the facts pleaded by the respondents in the eviction petition except that the respondents have failed to file any documents to prove jewellery trading being carried out by the respondent No.2 and the respondent no 2 does not have knowledge about jewellery trading and does not require the tenanted shop *bona fide*. The petitioners did not dispute that the respondents do not have any other reasonable accommodation



available with them for business activities and did not allege that the respondents have any other accommodation available with them.

8.1 The counsels for the respondents further argued that the petitioners did not deny *bona fide* requirement of the respondents and non-availability of alternate accommodation which can be put to commercial use for carrying out business activities of the respondent no 2. The trial court held ownership of the respondents over the tenanted shop and existence of relationship of landlord and tenant between the parties and *bona fide* requirement of the respondent no 2 to start his business. The petitioners made bald averments about availability of alternate suitable accommodation without any substance. The respondents renewed lease in respect of a ground floor and shop at first floor shop as these premises were already leased out by the predecessor in interest of the respondents prior to the filing of the present eviction petition. The petitioner in the revision petition have pleaded certain additional facts which are filing of two eviction petitions against different tenants in respect of the shops in the subject property in the year 2009 and 2011 which were withdrawn by the respondents/predecessor in interest being



compromised and those shops were sold by the respondents/predecessor in interest. It was argued that those eviction petitions were withdrawn by the respondents on a compromise with the tenants and sold by Late Ram Rattan Verma, predecessor in interest of the respondents for his financial needs and to avoid rigour of litigation more than 5 years prior to the filing of the present eviction petition and was not a necessary fact to be disclosed in present petition. The petitioners in application leave to defend have failed to disclose any triable issue. The respondents had disclosed all relevant facts in eviction petition. The counsel for the respondents relied on **Rakesh Talwar V Sudesh Gulati**, 2017 (238) DLT508, **K.B Watts V Vipin Kalra**, 2015(220) DLT 402, **M P Rawla V S D Tyagi**, 1991 (44) DLT 434 and **Nisar Ahmed V Agya Pal Singh**, R.C. Rev 367 of 2018 decided on 07.07.2023 by this court. It was argued that the present petition be dismissed.

9. The trial court in impugned order referred that proviso (e) to section 14(1) of the Act is a special provision which has been enacted by the Legislature for the class of landlords who require the premises genuinely and their requirement is *bona fide* and they do not have



any suitable accommodation. The essential ingredients for attracting the proviso (e) of the section 14(1) are that the tenanted premises are *bona fide* required by the landlord either for himself or for his family member and they do not have any other reasonable suitable accommodation. The trial court also referred **Deena Nath V Pooran Lai**, (2001) 5 SCC 705 wherein the Supreme Court observed as under:-

The Legislature in enacting the provision has taken ample care to avoid any arbitrary or whimsical action of a landlord to evict his tenant. 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 bonafide which is intended to avoid the mere whim or desire. The 'bonafide requirement' must be in present and must be manifested in actual need which would evidence the Court that it is not a mere fanciful or whimsical desire. The legislative intent is made further clear by making the provision that the landlord has no other reasonably suitable residential accommodation of his own in his occupation in the city or town concerned. This requirement lays stress that the need is pressing and there is no reasonably suitable alternative for the landlord but to get the tenant evicted from the accommodation. Similar statutory provision is made in sub-section (e) of Section 12(1) of the Act in respect of accommodation let for residential purposes. Thus, the legislative mandate being clear and unambiguous, the Court is duty-bound to examine not merely the requirement of the landlord as pleaded in the eviction petition but also whether any other reasonably suitable non-residential accommodation in his occupation in the



city/town is available. The judgment/order of the court/authority for eviction of a tenant which does not show that the court/authority has applied its mind to these statutory requirements cannot be sustained and the superior court will be justified in upsetting such judgment/order in appeal/second appeal/revision. Bonafide requirement, on a first look, appears to be a question of fact. But in recording a finding on the question the court has to bear in mind that statutory mandate incorporated in Section 12(l)(f). If it is found that the court has not applied the statutory provisions to the evidence on record in its proper perspective then the finding regarding bona fide requirement would cease to be a mere finding of fact, for such erroneous finding illegally arrived at would vitiate the entire judgment.

10. Section 14(1) (e) of the Act reads as under:-

14. Protection of tenant against eviction:

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

XXXXXXXXXX

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord



or such person has no other reasonably suitable residential accommodation.

Explanation.-For the purposes of this clause, "premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes.

10.1 The Supreme Court in **Sarla Ahuja V United India Insurance Co. Ltd., (1998) 8 SCC 119** held as under:-

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 endeavour as to how else the landlord could have adjusted himself.

10.2 The Supreme Court in **Inderjeet Kaur V Nirmal Singh, (2001)**

1 SCC 706 discussed relevant factors to be considered at time of consideration of an application for leave to defend and also held as under:-



9. Chapter III-A deals with summary trial of certain applications expressly stating that every application by a landlord for recovery of possession on the ground specified in clause (e) of the proviso to sub-section (1) of Section 14 of the Act, or under Section 14-A or 14-B or 14-C or 14-D shall be dealt with in accordance with the special provisions prescribed in Section 25-B of the Act. As per the broad scheme of this Chapter a tenant is precluded from contesting an application filed for eviction on the grounds mentioned in the aforementioned provisions unless he obtains leave from the Controller to contest the eviction petition. In default of obtaining leave to defend or leave is refused to him an order of eviction follows. It appears recourse to summary trial is adopted having due regard to nature of the grounds on which the eviction is sought with a view to avoid delay so that the landlord should not be deprived or denied of his right to immediate possession of premises for his bona fide use.

10. At the same time, it is well settled and accepted position in law that no one shall be subjected to suffer a civil consequence like eviction from a premises resulting in hardship to him without providing adequate and effective opportunity to disprove the case against him and establish his case as pleaded.

11. As is evident from Sections 25-B(4) and (5) of the Act, burden placed on a tenant is light and limited in that if the affidavit filed by him discloses such facts as would disentitle the landlord from obtaining an order for the recovery of the possession of the premises on the ground specified in clause(e) of the proviso to Section 14(1) of the Act, with which we are concerned in this case, are good enough to grant leave to defend.

12. A landlord, who bonafidely requires a premises for his residence and occupation should not suffer for long, waiting for eviction of a tenant. At the same time a tenant cannot be



thrown out from a premises summarily, even though prima facie he is able to say that the claim of the landlord is not bonafide or untenable and as such not entitled to obtain an order of eviction. Hence the approach has to be cautious and judicious in granting or refusing leave to defend to a tenant to contest an eviction petition within the broad scheme of Chapter III-A and in particular having regard to the clear terms and language of Section 25-B(5).

13. We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be a right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord, leave to defend should not be granted when it is not the requirement of Section 25-B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter III-A of the Act. Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under clause (e) of the proviso to sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of eviction. At the stage of granting leave to defend, parties rely on affidavits in support of the rival contentions. Assertions and counter-assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when



possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under clause (e) of the proviso to sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance, a wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend, but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defence may fail. It is well to remember that when leave to defend is refused, serious consequences of eviction shall follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the eviction petition by cross-examination. It may also be noticed that even in cases where leave is granted provisions are made in this very Chapter for expeditious disposal of eviction petitions. Section 25-B(6) states that where leave is granted to a tenant to contest the eviction application, the Controller shall commence the hearing of the application as early as practicable. Section 25-B(7) speaks of the procedure to be followed in such cases. Section 25-B(8) bars the appeals against an order of recovery of possession except a provision of revision to the High Court. Thus a combined effect of Sections 25-B(6), (7) and (8) would lead to expeditious disposal of eviction petitions so that a landlord need not wait and suffer for a long time. On the other hand, when a tenant is denied leave to defend although he had fair chance to prove his defence, will suffer great hardship. In this view a balanced view is to be taken having regard to competing claims.



10.3 The Supreme Court in *Abid-Ul-Islam V Inder Sain Dua*,

(2022) 6 SCC 30 observed as under:-

12. Section 14(1)(e) carves out an exception to the regular mode of eviction. Thus, in a case where a landlord makes an application seeking possession of the tenanted premises for his bona fide requirement, the learned Rent Controller may dispense with the protection prescribed under the Act and then grant an order of eviction. Requirement is the existence of bona fide need, when there is no other “reasonably suitable accommodation”. Therefore, there has to be satisfaction on two grounds, namely, (i) the requirement being bona fide and (ii) the non-availability of a reasonably suitable residential accommodation. Such reasonableness along with suitability is to be seen from the perspective of the landlord and not the tenant. When the learned Rent Controller comes to the conclusion that there exists a bona fide need coupled with the satisfaction that there is no reasonably suitable residential accommodation, the twin conditions mandated under Section 14(1)(e) stand satisfied.

15. For availing the leave to defend as envisaged under Section 25B(5), a mere assertion per se would not suffice as Section 14(1)(e) creates a presumption subject to the satisfaction of the learned Rent Controller qua bona fide need in favour of the landlord which is obviously rebuttable with some material of substance to the extent of raising a triable issue. The satisfaction of the Rent Controller in deciding on an application seeking leave to defend is obviously subjective. The degree of probability is one of preponderance forming the subjective satisfaction of the Rent Controller. Thus, the quality of adjudication is between a mere moonshine and adequate material and evidence meant for the rejection of a normal application for eviction.



16. Before a presumption is drawn, the landlord is duty bound to place prima facie material supported by the adequate averments. It is only thereafter, the presumption gets attracted and the onus shifts on the tenant.

11. The petitioners pleaded and also argued by the counsel for the petitioners that the respondents do not have proper ownership right in respect of the property bearing no 1165-I. The respondents stated and also argued by the counsel for the respondents that Ram Chander Verma acquired ancestral property bearing no 1165 and left behind two sons namely Ram Rattan Verma and Bhagwan Verma besides wife Asharfi Devi. Ram Rattan Verma as per oral family settlement became the owner of the front portion of the property known as 1165-I comprising built up structure on the ground floor, first floor, second floor and third floor including tenanted shop. Ram Rattan Verma expired on 14.10.2015 and was survived by the respondents and 5 married daughters who preferred not to claim any right in the tenanted shop and accordingly respondents are the owners/landlords of the tenanted shop. Ram Rattan Verma during his lifetime inducted Rakesh Kumar i.e. the petitioner no 4 and Anil Kumar, the predecessor in interest of the petitioners no 1 to 3 as tenant in respect of tenanted shop having an approximate area of 32 sq. ft. vide written



agreement executed in April 1985 for commercial purposes. The trial court in impugned order while accepting relationship of landlord and tenant between the parties and ownership of the respondents in respect of the tenanted premises as per the Act observed that the petitioners did not dispute rent deed stated to be executed in the year 1985 and the respondents are the legal heirs of Late Ram Rattan Verma, who inducted the petitioners as tenant in tenanted shop. The trial court has rightly held that the ownership of the respondents over the tenanted shop for the purpose of the Act and existence of landlord and tenant relationship between the parties stand established. There exists relationship of landlord and tenant between the respondents and the petitioners and the respondents are owners of the tenanted shop for purpose of the Act. There is no legal force in arguments advanced by the counsel for the petitioners that the respondents do not have proper ownership rights in respect of property including the tenanted shop. The respondents rightly claimed ownership in respect of tenanted shop for purpose of section 14 (1) (e) of the Act.

12. The respondents in eviction petition regarding *bona fide* requirement and availability of alternative suitable accommodation



pleaded and also argued by the counsel for the respondents that Ram Chander Verma acquired ancestral property bearing no 1165, Kucha Mahajani, Chandni Chowk, Delhi and left behind wife namely Asharfi Devi and two sons namely Ram Rattan Verma and Bhagwan Verma. Ram Rattan Verma as per oral family settlement became the owner of the front portion of the property known as 1165-I comprising ground floor, first floor, second floor and third floor. Ram Rattan Verma was doing jewellery trading from property no. 1165-1. Ram Rattan Verma due to his various ailments and family responsibilities had sold second and third floors about 15 years prior to death and let out tenanted shop to Rakesh Kumar i.e. the petitioner no. 4 and Anil Kumar, the predecessor in interest of the petitioners no 1 to 3 vide written agreement executed in April 1985 for commercial purposes. Ram Rattan Verma also let out second shop situated at ground floor in year 2012 to Pawan Kumar at monthly rent of Rs. 24,400/-. It is also stated that Ram Rattan Verma sold one shop situated at first floor on 19.01.2015 for purchasing a residential flat bearing no. F-14D, first floor, Laxmi Nagar, Delhi-110092 wherein the respondents are residing and let out remaining portion of the first



floor to Ajay Kumar Aggarwal vide registered lease deed dated 23.09.2015 for a period of five years. The respondents do not have any other residential and commercial property available with them in Delhi however wife of the respondent no. 2 owns agricultural land admeasuring about 1240 sq. yards in Rewari. It is further stated that the respondents no 2 was doing silver trading with Late Ram Rattan Verma from the portion of property no. 1165 and the respondent no 2 for the last 13 years due to paucity of space is doing jewellery trading from flat bearing no F-14D, Laxmi Nagar, Deihi-110092. The respondent 2 despite having 13 years of experience of jewellery trading but could not establish business of jewellery trading and the residential flat bearing no F-14D is barely sufficient for the residence of the respondents and family members. The respondent no 2 due to financial reason could not take any shop on rent in jewellery market in Chandni Chowk due to financial reasons and took a small shop on rent admeasuring approximately about 10 x 10 ft. in area of Chander Vihar in name of wife vide lease deed dated 31.12.2016 for a period of 11 months commencing from 01.01.2017. The respondent no. 2 claimed that he since January 2017 is not able to establish business



from rented shop effectively. The respondent no 2 is carrying on jewellery trading on a small scale from said rented shop with monthly earning of Rs 20-25,000/- and is unable to make further investment and to explore ideas and options for expansion of business. The tenanted shop being located in jewellery market of Chandni Chowk is best suited to the respondent no 2 to carry business effectively. The respondent no 2 does not have any other commercial accommodation except the tenanted shop to start jewellery trading. The petitioners opposed the *bona fide* requirement of the respondent no 2 by stating and also argued by the counsel for the petitioners that the respondent no 2 did not place any document to show that he is having knowledge and experience of 13 years in jewellery trading and is doing the business of jewellery trading from F-14D, First Floor, Laxmi Nagar, Delhi-110092. Late Ram Rattan Verma was having various other properties and the respondents are having sufficient accommodation with them and the respondent no 2 is in occupation of the accommodation on the second floor.

12.1 The trial court in impugned order after negating contentions of the petitioners that the respondents did not file any document to



prove jewellery trading by the respondent no. 2 and capability of the respondent no. 2 to do jewellery trading held that the respondent no 2 can start his own independent business from the premises owned by him and no prior experience is required by a person to start any business. The respondent no. 2 can start his independent business from the tenanted shop. The trial court also observed that the respondent no 2 cannot be forced to do his business from his residential accommodation and tenanted shop is situated in commercial hub of Delhi which will be more profitable for the respondent no 2. The trial court ultimately held that *bonafide* requirement of the respondents qua the tenanted shop for the respondent no. 2 to start his business stands duly proved. The trial court regarding availability of alternative suitable accommodation observed that the respondents have already stated in the eviction petition that the second and third floors of the property were sold by Late Ram Rattan Verma during his lifetime and as such the second floor of the property cannot be said to be in occupation of the petitioners. The respondents after selling the shop situated at the first floor of the property have purchased residential accommodation vide



sale deed dated 19.01.2015. The trial court further observed that the petitioners have vaguely stated the respondents have various other properties in their occupation but could not give any specific details of those properties. It was held that the petitioners have miserably failed to prove the availability of any alternative suitable accommodation with the respondents for their *bonafide* requirement.

12.2 It is reflecting that Late Ram Rattan Verma during his lifetime sold second and third floors of property. Late Ram Rattan Verma also sold one shop situated at first floor of the property to purchase residential accommodation which was purchased vide sale deed dated 19.01.2015. The respondent no 2 was doing business of silver trade with his father Late Ram Rattan Verma and his having experience of about 13 years in jewellery trading and was doing business of jewellery trading from his residence before shifting his business to a rented shop situated in area of Chander Vihar. A tenant cannot ask from the landlord to produce documents of previous experience of one particular business and a landlord is within his rights to start a new business if he does not have any past experience in said business. A tenant is not within his statutory right or otherwise to



dictate a landlord that how to do business and which premises is suitable for landlord to start business. The respondent no 2 cannot be asked or compelled to conduct business of jewellery trading from his residence or from the tenanted shop. There is no reason to disbelieve that that the respondent no 2 is having past experience of 13 years in jewellery trading and was also doing said business with his father Late Ram Rattan Verma. There is no force in plea taken by the petitioners and also argued by their counsel that the claim of the respondent no 2 having vast experience in jewellery trade is not supported by documents is without any merit. It is also surfacing that the tenanted shop is situated in jewellery market of Chandni Chowk and may be suitable for the respondent no 2 to start his business of jewellery trading. The respondent no 2 at present is not having any other commercial suitable accommodation to do or to start his business of jewellery trading.

13. The respondents are seeking eviction of the petitioners from tenanted shop on ground of *bona fide* requirement of the respondent no 2 as the respondent no 2 wants to start business of jewellery trading from the tenanted shop. The present petition was filed in



month of August, 2017. The *bona fide* requirement of the respondent no 2 on its face appears to be genuine and does not base on whims and fancies. However, the need of the respondent no 2 is also required to be examined in light of other facts which were not disclosed in eviction petition by the respondents though not pleaded in application for leave to defend which are discussed herein under.

13.1 The counsel for the petitioners though not pleaded in application for leave to defend along with affidavit argued that the respondents have concealed material facts in eviction petition that Late Ram Rattan Verma filed two eviction petitions bearing no E-181 of 2009 and E-31 of 2011 against tenants on ground of *bona fide* of the respondent no 2 but sold said two shops vide sale deeds executed in favour of tenants of those tenants. The counsel for the respondents did not dispute filing of two eviction petitions bearing no E-181 of 2009 and E-39 of 2011 and selling of those two shops after compromise was affected between the parties to the eviction petitions argued that shops were sold by Late Ram Rattan Verma, the predecessor in interest of the respondents for his financial needs and to avoid rigour of longdrawn litigation. He further argued that the



respondents did not disclose in present eviction petition fact of filing the two eviction petitions and subsequent sale of the shops subject matter of eviction petitions to the tenants being a fact which is more than 5 years old prior to the filing of the eviction petition. It was further argued by the counsel for the respondents that fact of filing of earlier two eviction petitions was not mentioned in application for grant of leave to defend by the petitioners despite having knowledge cannot be allowed to be raised by the petitioners in the revision petition. The counsel for the respondents relied on **Rakesh Talwar V Sudesh Gulati, K.B Watts V Vipin Kalra, M P Rawla V S D Tyagi and Nisar Ahmed V Agya Pal Singh.**

13.2 It is true that the petitioners did not mention in application seeking leave to defend about filing of two eviction petitions bearing no 181 of 2009 and bearing no 39 of 2009 on ground of *bona fide* requirement and subsequent selling of shops subject matter of eviction petitions to the tenants of those shops by Late Ram Rattan Verma and the petitioners may not be permitted to raise new grounds for claiming leave to defend in revision petition. However, one fact which cannot be lost sight is that those petitions were filed on *bona*



fide requirement of the respondent no 2 and present petition is also filed on ground of *bona fide* requirement of the respondent no 2. It was a material fact which was required to be mentioned in eviction petition which the respondents failed to do so and also present eviction petition is silent about shops which were subject matter of two eviction petitions.

13.3 The perusal of eviction petition bearing no 181 of 2009 titled as **Ram Rattan Verma V Deen Dayal Sharma** reflects that it was filed by Late Ram Rattan Verma in respect of one shop measuring 16' X8' situated on ground floor of the property bearing no 1165 primarily on ground that the respondent no 2 at that time was of marriageable age and was not having suitable space for his business. Late Ram Rattan Verma has sold to Deen Dayal Sharma vide registered sale deed executed dated 18.11.2009. The perusal of eviction petition bearing no 39 of 2011 titled as **Ram Rattan Verma V Madan Lal Sharma** reflects that it was filed by Late Ram Rattan Verma in respect of one shop measuring 6.9' X 8.7' situated on ground floor of the property bearing no 1165 primarily on ground that the respondent no 2 wanted to expand the business and to start a new and separate jewellery shop



in the said tenanted shop. Late Ram Rattan Verma has sold to Deen Dayal Sharma vide registered sale deed dated 16.01.2012. These eviction petitions reflect that requirement of the respondent no 2 regarding space to start business was in place since 2009 but Late Ram Rattan Verma sold those two shops to occupants as tenant. If the requirement of the respondent no 2 was genuine in that eventuality Late Ram Rattan Verma should not have sold those two shops to the tenants. There is no force in plea of the respondents that those shops were sold due to financial compulsions and prolonged litigation. The arguments advanced by the counsel for the respondents that it was not a relevant fact to be mentioned in eviction petition and the petitioners cannot raise additional facts in revision petitions are without any merit as it is duty of the landlord to mention and disclose every material and relevant facts in eviction petition and eviction petition should be supported by adequate averments. The respondents have concealed material facts in present eviction petition. It is also relevant to mention here that Late Ram Rattan Verma also let out another shop situated on ground floor to Pawan Verma in year 2012 vide lease deed dated 21.11.2012 which was extended from time to



time and lastly lease in respect of adjoining shop was extended vide lease deed dated 02.06.2016 for a period of 11 months with effect from 01.05.2016 on enhanced rent and too beyond period of filing present petition and these facts are not disputed by the respondents. If a landlord filed an earlier eviction petition on the ground of *bonafide* requirement either for himself or any other family member, the said eviction petition is disposed of as compromised after selling the tenanted premises to the tenant for sale consideration and if said landlord again filed fresh eviction petition on the ground of *bonafide* requirement either for himself or any other family member almost on similar ground, in that eventuality, the tenant may be entitled for grant of leave to defend. In view of facts not disclosed in eviction petition and renting of adjoining shop, the claim of the respondents regarding eviction of the tenanted shop require consideration and the petitioners are entitled for leave to defend.

14. The present petition is allowed and the impugned order dated 12.01.2018 is set aside. The petitioners are granted leave to defend in the present petition and as a consequence of which the eviction order in respect of the tenanted premises i.e., shop admeasuring about 32



sq. ft. situated on the ground floor of the property bearing Municipal no. 1165, Kucha Mahajani, Chandni Chowk, Delhi as shown in red colour in site plan annexed with the petition is set aside. It is made clear that nothing in this order shall be taken as an opinion on the final merit of this case and the trial court shall decide the present petition independent to any observation made in this order.

15. The present eviction petition pertains to the year 2017. Accordingly, the trial court is also directed to make every possible endeavour to conclude the trial of the present petition preferably with a period of 09 months from receipt of this order. The parties are directed to appear before concerned trial court on 02.09.2024 at 2.30 pm for further directions.

16. The pending application, if any, also stands disposed of.

**DR. SUDHIR KUMAR JAIN
(JUDGE)**

AUGUST 16, 2024

Sk/ak/abk