



2024:DHC:10118



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 20.12.2024***+ **RC.REV. 281/2018****AJAY BHATIA**

.....Petitioner

Through: Mr. Akshay Makhija, Sr. Advocate
with Surjeet Singh Malhotra and Mr.
Prateek Kumar Srivastava, Advocates

versus

JITENDER

.....Respondent

Through: None

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

1. The present Petition has been filed by the Petitioner/landlord seeking to challenge an order dated 16.04.2018 passed by Ld. ARC(Central), Tis Hazari Courts [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the learned Trial Court has dismissed the Eviction Petition filed by the Petitioner/landlord with respect to the premises i.e. Shop no. 8, Double Story Market, New Rajinder Nagar, New Delhi [hereinafter referred to as "subject premises"].

2. Notice in this Petition was issued by a Coordinate Bench of this Court on 01.06.2018. The Respondent/tenant was initially represented before the Court through a counsel. However, the Respondent/tenant appeared intermittently before the Court. By an Order dated 28.11.2024, the Respondent/tenant was directed to be proceeded as *ex-parte* for his continuous non-appearance.

3. Briefly the facts are that the Petitioner is the landlord of the subject



premises. The Respondent is the son of the original tenant who was inducted at a monthly rent of Rs. 200/- by the Petitioner/landlord. The subject premises was originally being used for running a sweet shop. Subsequently, the Respondent/tenant converted the subject premises into residential premises after carrying out modifications therein and has been residing there since.

3.1 The Petitioner/landlord filed a Petition under Section 14(1)(e) read with Section 25(B) of the Delhi Rent Control Act [hereinafter referred to as “DRC Act”] before the learned Trial Court for the eviction of the Respondent/tenant from the subject premises on the ground of *bona fide* requirement for the son of the Petitioner/landlord. It was the case of the Petitioner/landlord that his son wished to start a restaurant business and the subject premises is conducive for running such a business.

3.2 The Respondent/tenant contested the Eviction Petition by filing an application for Leave to Defend/Contest, raising various grounds including a challenge to the *bona fide* requirement of the Petitioner/landlord. It was also contended that there is availability of alternate accommodation at Flat No. 4, Double Story Market, New Rajinder Nagar, New Delhi [hereinafter referred to as “Flat no. 4”] and shops at TDI Mall, Rajouri Garden, Delhi and a restaurant in Nizamuddin, Delhi. It was further contended that the son of the Petitioner/landlord is self-employed and is carrying out a business of a consultancy firm from Flat no. 4. Thus, it was averred that the need of the Petitioner/landlord is not *bona fide*.

3.3 The learned Trial Court by its order dated 23.07.2014 allowed the application for Leave to Defend/Contest filed by the Respondent/tenant. A



finding was given by the learned Trial Court that the son of the Petitioner/landlord has been carrying on his business from upper floor of the subject premises and there is a contradiction in his reply to Leave to Defend, and the earlier stance of the Petitioner/landlord. In addition, it was held that the contention raised by the Respondent/tenant, in terms of the availability of alternate suitable accommodation was also required to be examined by the learned Trial Court.

3.4 The Written Statement was filed by the Respondent/tenant and thereafter, the Petitioner/landlord filed his evidence by way of Affidavit. The Petitioner as well as his son entered the witness box as PW 1 and PW 2 respectively. The Petitioner also summoned formal witness PW 3 for the record from the office of Land and Development Office [hereinafter referred to as “L&DO”] to bring on record the mutation letter issued by the office of L&DO, Nirman Bhawan, New Delhi and formal witness PW 4, a clerk from the Record Room (Civil), Tis Hazari Courts, New Delhi, for the record in relation to a Petition filed under Section 27 of the DRC Act by the Respondent/tenant for deposit of rent showing Respondent/tenant as tenant of the Petitioner/landlord¹. The Petitioner and his son were cross examined by the Respondent.

3.5 On 05.08.2017, the statement of the Respondent/tenant was recorded by the learned Trial Court which stated that the Respondent does not wish to adduce any evidence in the matter.

4. By the Impugned Order, the learned Trial Court held that the

¹ DR No. 353/14 titled as Jitender Kumar Vs. Sh. Ajay Bhatia bearing Goshwara No. 70/RC (Central), decided on 08.12.2014



Petitioner/landlord had several shops including one in TDI Mall, Rajouri Garden, Delhi and a restaurant in Nizamuddin, Delhi which were in actual physical possession of the Petitioner/landlord and that the Petitioner/landlord has not filed any Replication to deny these averments. It was thus held that the Petitioner/landlord had alternate accommodation available with him.

4.1 The learned Trial Court had found that the testimony of the Petitioner/landlord with respect to Flat No.4 and Shop No. 7, Double Story Market, New Rajinder Nagar, New Delhi [hereinafter referred to as “Shop No.7”] was contradictory and thus it was held that the Petitioner/landlord had failed to prove the non-availability of any alternate accommodation. The learned Trial Court also found that the use of the subject premises by Petitioner/landlord for business activities of Petitioner/landlord’s son was not *bona fide*, since the son of the Petitioner, in his cross-examination, had admitted that he was already running a business in the name and style of Prateek Consultancy and was not dependent on his father. The learned Trial Court found that a false ground had been created for eviction of the subject premises. Hence, the Eviction Petition was dismissed by the learned Trial Court.

5. This led to the filing of the present Revision Petition by the Petitioner/landlord.

6. The record reflects that the Respondent/tenant has been served in person on 02.09.2019. There was an appearance on behalf of the Respondent/tenant on two dates i.e., on 06.11.2019 and on 19.07.2023. However, there was no appearance on behalf of the Respondent/tenant after



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19.07.2023. As stated above, the Respondent/tenant was proceeded with *ex parte* by this Court on 28.11.2024.

7. Learned Senior Counsel appearing on behalf of the Petitioner/landlord has made the following submissions: -

7.1 The Impugned Order non-suited the Petitioner/landlord on two grounds. In the first instance, it was held that the learned Trial Court failed to appreciate that the Petitioner/landlord's son was facing severe space constraints in his consultancy business and that the business was unsuccessful, which led him to stop/close the business.

7.2 It is settled law that there was no necessity of any prior experience for running of a business prior to filing of Eviction Petition. The Petitioner/landlord relied upon the judgment of a Coordinate Bench of this Court in *M/s Seth & Sons Pvt. Ltd. vs. Arjun Uppal & Anr*², which has held that prior experience for running a business is not necessary.

7.3 The averments made by Respondent/tenant cannot be taken into consideration as the Respondent did not lead his evidence to prove the same. Despite an opportunity given to the Respondent/tenant, the Respondent/tenant did not enter the witness box or lead any evidence whatsoever, thus any averment made by him could not be relied upon. Reliance is placed upon the judgment of a Supreme Court in *Vidhyadhar v. Manikrao & Ors.*³ to submit that, where a party abstains from entering a witness box, it would give rise to an adverse inference against him. It is

² 2017 SCC OnLine Del 10955

³ 1999 3 SCC 573



thus contended that the reliance made by the learned Trial Court on the averments of the Respondent/tenant is without any basis and the averment of the Respondent/tenant that there was alternate suitable accommodation, was not proved by the Respondent/tenant and no reliance could be placed on this contention of the Respondent.

7.4 Lastly, it is the contention of the learned Senior Counsel for the Petitioner/landlord that the Petitioner during his cross examination, explicitly denied any connection with or possession of Shop No.7, however, learned Trial Court failed to consider the same and erred in holding that suitable alternate accommodation is available with Petitioner/landlord.

8. Upon examination of the Impugned Order, it can be seen that the landlord-tenant relationship/ownership is proved in favour of the Petitioner/landlord. The dispute which subsists is on the availability of alternate suitable accommodation and the *bona fide* need of the Petitioner/landlord for the subject premises.

9. IAt the outset, it is apposite to refer to the cross-examination of Petitioner/landlord, (PW-1) dated 12.05.2016. The relevant extract is reproduced below:

“It is correct that Ex. PW1/R1 is the computer generated copy of the bill issued by Delhi Jal Board of Flat No. 4, New Market, New Rajinder Nagar, Delhi. It is correct that Ex. PW1/R2 is the computer generated copy of the bill issued by Delhi Jal Board of the shop bearing No.7, Double Storey Market, New Rajendra Nagar, Delhi. Vol. The names of the owners after the death of my grandfather in the properties mentioned in the bill has not changed in connection to these bills have not changed. I do not remember the exact date of death of my grandfather Sh. Pratap Singh but it was somewhere in the year 1985. It is correct that I have not stated anything about Shop No. 7 in my affidavit or in petition. Vol. As I have nothing to do with the same.



It is correct that at the time of filing of this petition, my son Prateek is employed and running his business activities in the name and style of Prateek Consultancy in Flat No.4, Double Storey Market, New Rajendra Nagar, Delhi. It is wrong to suggest that my son is not dependent upon me. It is wrong to suggest that my son was not financially dependent upon me. I have mentioned in my petition that my son is running Prateek Consultancy, it is wrong to suggest that I am deposing falsely that I have nowhere mentioned in my petition that fact or that I have mentioned this after filing of leave to defend application.”

[Emphasis Supplied]

9.1 Clearly, the Petitioner/landlord has stated during his cross examination that Petitioner/landlord has nothing to do with Shop No.7 and that this shop is not in his possession. In his cross-examination, the Petitioner/landlord also states that the name of owners of the said shop has not been changed after the death of his grandfather. Thus, the finding of the learned Trial Court that there was no denial of this contention by the Petitioner/landlord is not correct.

9.2 In addition, the Petitioner/landlord also summoned an official from the office of L&DO as PW-3 whose statement was recorded in respect of shop Nos.7 and 8, New Rajinder Nagar, New Delhi and in terms of the said statement, Shop No.7 had been transferred to Municipal Corporation of Delhi on 05.05.2006 by way of a gazette notification dated 24.03.2006, published on 27.03.2006.

10. On the aspect of availability of Flat No.4, it is not disputed that this premises is on the top floor and that the son of the Petitioner/landlord has shifted his residential accommodation to the said flat. This is also recorded by the learned Trial Court in the Impugned Order. The learned Trial Court has given a finding that the Petitioner/landlord has not clarified as to whether his son has permanently shifted to Flat No.4 and that he is currently



unemployed. However, the Affidavit, by way of evidence of the son of the Petitioner/landlord which was filed on 12.05.2016, clearly sets out that, after completing his MBA he started the business of consultancy, but due to severe space constraint, the business venture was unsuccessful and it had to be shut down. It also sets out that he is unemployed and he is completely dependent on the financial aid of his father, for day-to-day expenses and that the fact that he does not own or occupy any commercial property in Delhi. Paragraphs 2 to 5 of the Affidavit of PW-2, Mr. Prateek Bhatia, the son of Petitioner/landlord are extracted below:

“2. I say that after completing my MBA, initially I started the business of consultancy; however, due to severe space constraint the same resulted into an unsuccessful business venture and eventually had to stop the said consultancy business.

3. I say that presently I am unemployed and I and my wife are completely dependent on the financial aid of my father to meet out day to day expenses.

4. I say that in order to meet my expenses alongwith the expenses of my wife and most importantly to be permanently settled in life, I want to open a restaurant in the suit property as the space and the location of the same are suitable, ideal and conducive for the business of running a restaurant.

5. I say that I do not own or occupy any commercial property in NCT of Delhi, in any manner, whatsoever.”

11. On the aspect of other alternate accommodations available in Nizamuddin and TDI Mall, Rajouri Garden it has been denied in the Reply to the Leave to Defend, that Petitioner or his son are in possession of any shop in TDI Mall, Rajouri Garden or at Nizamuddin. However, the learned Trial Court has not given any finding on this aspect of the matter.

12. The provisions of Section 14(1)(e) of the DRC Act as provided by the



legislature, state that not only is the accommodation to be 'alternate', but it is also required to be 'suitable'. The Supreme Court in the *Shiv Sarup Gupta v. Mahesh Chand Gupta*⁴ has held that for an Eviction Petition to fail on the ground of availability of alternate suitable accommodation, the availability of another accommodation must be suitable and convenient in all respects, as compared to the tenanted accommodation from which the landlord seeks eviction of the tenant. It was held that:

*"14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. **Firstly, the availability of another accommodation, suitable and convenient in all respects as the suit accommodation,** may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. **Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available then the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction.** Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come."*

[Emphasis Supplied]

12.1 The Petitioner/landlord has produced evidence before the Court that

⁴ (1999) 6 SCC 222



the premises at Shop No.7 is not available and at the time of filing of the Petition, the premises at Flat No.4 was being used by the son of the Petitioner/landlord to run his consultancy business, however, the son of the Petitioner/landlord has also given evidence that the consultancy business was thereafter shut down as it was unsuccessful and that the premises was being used as residential accommodation by the son of the Petitioner/landlord.

13. It is not disputed that Flat No.4 is on the top floor. It is a settled law that the ground floor is the most suitable to run any business. In *Uday Shankar Upadhyay v. Naveen Maheshwari*⁵, the Supreme Court has held that the Court cannot dictate to the landlord as to the extent which floor he must use for his business. Besides shops and businesses are usually on the ground floor. The relevant extract of the *Uday Shankar Upadhyay* case is reproduced below:

*“7. In our opinion, once it is not disputed that the landlord is in bona fide need of the premises, it is not for the courts to say that he should shift to the first floor or any higher floor. **It is well known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily.** The court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide. Hence, the view of the courts below that the sons of Plaintiff 1 should do business on the first floor in the hall which is being used for residential purpose was, in our opinion, wholly arbitrary, and hence cannot be sustained. As regards the finding that the sons of Plaintiff 1 are getting a salary of Rs 1500 from the firm, in our opinion, this is wholly irrelevant and was wrongly taken into consideration by the High Court.”*

[Emphasis Supplied]

13.1 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

⁵ (2010) 1 SCC 503



with the landlord, there is no question of the tenant asking him to take alternate premises or to operate out of the top floor.

13.2 The Supreme Court in the case of *Prativa Devi (Smt) v. T.V. Krishnan*⁶ has 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 also settled law that it is not for the Courts to direct 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 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

⁶ (1996) 5 SCC 353

⁷ 2024 SCC OnLine Del47



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 bona fide.

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]

13.3 The subject premises are required by the Petitioner/landlord for his son who wishes to start his business of a restaurant from the subject premises. Clearly, Flat No.4 which is on the top floor, is not suitable for business purposes, especially as a restaurant. The need of the Petitioner/landlord, thus cannot be said not to be *bona fide*.

14. On the aspect of *bona fide* requirement, the finding of the learned Trial Court is that it is admitted by the Petitioner/landlord that at the time of filing of the Petition, the son of the Petitioner/landlord was employed and running a business in the name and style of Prateek Consultancy in Flat No.4. The learned Trial Court thereafter gave a finding that this admission was also made by PW-2, the son of the Petitioner in his cross-examination



and since at the time of filing of the Petition, the son was employed, a false ground of eviction was created by the Petitioner/landlord. Both the Petitioner/landlord as well as the son of the Petitioner/landlord have in their evidence stated that although, the consultancy business was started by the son of the Petitioner/landlord, this business had to be shut down in view of losses. This was the reason that the subject premises were required by the Petitioner/landlord. In any event, the *bona fides* of the Petitioner/landlord have been challenged by the Respondent/tenant, however, this challenge by the Respondent/tenant was not substantiated/proved since, the Respondent/tenant did not appear in the witness box and offer himself to be cross-examined.

14.1 In the case of *Vidhyadhar case*, the Court has held that where a party to the suit does not appear in the witness-box to state his case on oath and does not offer to be cross-examined by the other side then the Court can presume that the case which was setup by such a party is not correct. The relevant extract of the *Vidhyadhar case* is reproduced below:

“17. Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh [AIR 1927 PC 230 : 32 CWN 119]. This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh [AIR 1930 Lah 1 : ILR 11 Lah 142] and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh [AIR 1931 Bom 97 : 32 Bom LR 924] . The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat [AIR 1970 MP 225 : 1970 MPLJ 586] also followed the Privy Council decision in Sardar Gurbakhsh Singh case [AIR 1927 PC 230:32 CWN 119] . The Allahabad High Court in Arjun Singh v. Virendra Nath [AIR 1971 All 29] held that if a party abstains from entering the witness-box, it would give rise to an adverse inference against him. Similarly, a



Division Bench of the Punjab and Haryana High Court in Bhagwan Dass v. Bhishan Chand [AIR 1974 P&H 7] drew a presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box.”

[Emphasis Supplied]

15. On 05.08.2017, Respondent/tenant submitted before the learned Trial Court that Respondent/tenant does not wish to lead his evidence. The law established in the *Vidhyadhar case* permits the Court to draw an adverse presumption regarding the credibility of the case presented by a party, if that party fails to appear in the witness box or does not offer themselves for cross-examination by the opposite side. In such circumstances, the Court is justified and deems it fit to presume that the case set up by such party is not credible.

16. We find merit in the contention of the Petitioner/landlord that the challenge to the *bona fides* of the Petitioner/landlord made by Respondent/tenant could not be examined and the learned Trial Court ought to have drawn adverse inference against the Respondent/tenant for not appearing in the witness box. This was however not sought to be done and instead the learned Trial Court gave a finding that the Petitioner/landlord is trying to create a false ground of eviction from the subject premises and has failed to prove that the subject premises is required by the Petitioner/landlord for his own use as well as for use of his son for carrying business activities.

17. In a Petition under Section 14(1)(e) read with Section 25(B) of the DRC Act the Court is required to examine the existence of landlord/tenant relationship, the existence of *bona fide* need on the part of the landlord and



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non-availability of suitable alternate accommodation with the landlord. The Impugned Order found that the relationship of landlord-tenant between the parties was proved. The finding impugned before this Court was on the *bona fide* need and non-availability of alternate suitable accommodation with the Petitioner/landlord. In view of the foregoing discussions, this Court finds that the Petitioner had sufficiently proved all ingredients as are requisite under Section 14(1)(e) of the DRC Act.

18. For the reasons as stated, the Petition is allowed. The Impugned Order is set aside. However, in terms of Section 14(7) of the DRC Act, the Respondent/tenant is directed to vacate the subject premises within six months from today.

19. The Petition is accordingly disposed of.

TARA VITASTA GANJU, J

DECEMBER 20, 2024/jn/r

[Click here to check corrigendum, if any](#)