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

% **Reserved on: September 27, 2024**
Decided on: October 22, 2024

\+ **RC.REV. 557/2018**

RAJHANS REALTORS PVT LTD
.....Petitioner

Through: Mr. Rajat Aneja, Mr. Satya Sabharwal, Mr. Ajay Sabharwal, Ms. Alka and Ms. Shivangi, Advocates

V

RAJINDER KUMAR GOYAL & ANOTHER
.....Respondents

Through: Mr. Rajesh Yadav, Sr. Advocate with Ms. Ruchira V. Arora and Mr. Dhananjay Mehlawat, Advocates

CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present revision petition is filed under section 25B (8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as **"the Act"**) on behalf of the petitioner/landlord to challenge the judgment dated 27.09.2018 (hereinafter referred to as "**the impugned**

judgment") passed by the court of Mr. Vikrant Vaid, ACJ-cum-ARC, South East, Saket Court, Delhi, (hereinafter referred to as **"the trial court"**) in eviction petition bearing no. 5203/2016 titled as **Rajhans Realtors Private Limited V Sh. Rajinder Kumar Goyal and others** whereby the eviction petition filed by the petitioner was dismissed by the trial court.

2. The petitioner/owner/landlord (hereinafter referred to as **"the petitioner**") filed the eviction petition titled as **Rajhans Realtors Private Limited V Rajinder Kumar Goyal and others** bearing no. 5203/2016 on ground of *bona fide* need against the respondents in respect of the shop measuring 13'.6" x 37' (about 503 sq.' feet) situated on the front side of the property bearing no M-2, Greater Kailash Part-I, Main Market, New Delhi, 110048 (hereinafter referred to as **"the tenanted premises"**) as shown in red colour in site plan annexed with the petition. The petitioner pleaded that the petitioner was incorporated in the year 2001 and is engaged in the business of real estate dealings and of selling handicrafts, objects of art, precious metal, gold, silver and diamond stones, jewellery etc. The petitioner initially was focusing on the business of real estate but for last 2-3 years, the petitioner is doing business of precious and semi-precious stones, jewellery, artificial jewellery etc. The petitioner is the owner and the landlord of tenanted premises and required the tenanted premises for running its business and does not have any other reasonably suitable accommodation available with it. The petitioner purchased the property bearing no. M-2, Greater Kailash Part-1, Main Market, New Delhi vide sale deed dated 09.10.2002 from its erstwhile owner. The respondent has attorned the petitioner as its landlord and is tendering rent to the petitioner.

2.1 The tenanted premises was let out to the respondents in the year 1968 by the predecessor in interest of the petitioner through oral tenancy at a monthly rent of Rs. 302.50/-. The respondents is using the tenanted premises for running business of cosmetics, garments and general items under the name and style "Goyal Store". The petitioner at present is operating its jewellery business from the rear/back side portion of the property as shown in green colour in the site plan which is not suitable for the business of the petitioner. The said portion is admeasuring only about 169 sq. feet and is situated on the rear side which abuts on the back side service road of the market.

The petitioner is running its business from small space. The petitioner wants to shift its business to the tenanted premises which is situated on the front side and opens towards the market side. The front side of the property is directly accessible to the main road/varandah of the Greater Kailash Market. The main road/atrium of the Greater Kailash Market remains abuzz and humming with the people/customers. The market road (front side) has tremendous movement and the footfall and the shops opening on the front side attracts lot of customers. The nature of business of the petitioner is wholly displayed oriented and, therefore, the petitioner requires to have its showroom on the market side which is suitable in terms of prospective customers as well as proper exhibition of the jewellery and other items. The rear side premises is wholly unsuitable in view of the nature of business involving jewels/jewellery items etc. as such the petitioner wants to shift its business to the tenanted premises which opens on front side towards the market road and the tenanted premises is only suitable premises for the business of the petitioner. The petitioner does not have any other premises to run its showroom or to operate its registered office.

2.2 The petitioner further stated that M-Block, Greater Kailash Market has gradually become a hub of jewellers and is being widely recognized as a jewellery market having about 60 jeweller's shops which are competing with each other. The shops which open on the market road are in a distinctly advantageous position as compared to the premises being occupied by the petitioner which is opening on the rear/service road. The petitioner requires the tenanted premises to compete with other jewellery shops for the growth and development for its business. The premises under occupation of the petitioner is wholly unsuitable as it does not cater basic needs of the petitioner. There is hardly any space for placing wide counter for an effective display and space is even not enough for more than two customers. The lack of proper sitting space and display acts as a deterrent to the prospective customers. The petitioner at present had employed 4 persons including 2 female employees. The premises under occupation of the petitioner is situated adjacent to a toilet which is also being used by the respondents. The petitioner due to the suits filed by the respondents is under constant fear of the premises under occupation of the petitioner is being demolished by MCD. The petitioner urgently requires the tenanted premises to shift its business.

2.3 The petitioner has sold other portions of the property to sitting tenants i.e. Navyug Store and Jagdish Store in the year 2005 vide sale deeds dated 26.07.2005. The petitioner retained a small passage measuring 4'x 9' as shown in yellow colour in site plan annexed with the petition. The petitioner prayed that an eviction order be passed in favour of the petitioner and against the respondents from the tenanted premises.

3. The respondents after service of summons as per the Third Schedule of the Act filed an application for grant of leave to defend which was dismissed vide order dated 28.01.2015 passed by the court of Ms. Pooja Talwar, ACJ/CCJ/ARC-(SE), Saket and accordingly an eviction order was passed in respect of tenanted premises in favour of the petitioner and against the respondents. Thereafter the respondents being aggrieved filed Rent Revision bearing no 318/2015 titled as **Rajinder Kumar Goyal and another V Rajhans Realtors Pvt. Ltd.** and this Court vide order dated 09.05.2016 allowed the application for leave to defend. The petitioner filed SLP bearing no.15998/2016 against the order dated 09.05.2016 in RC REV No. 318/2015 titled as **Rajhans Realtors Pvt. Ltd V Rajinder Kumar Goyal and another** which was dismissed by the Supreme Court vide order dated 18.07.2016.

4. The respondents filed written statement whereby contested the present petition. The respondents in preliminary objections stated that the present petition does not disclose mandatory requirement of section 14 (1) (e) of the Act. The petitioner has deliberately concealed facts including availability of various premises/properties available with the directors and shareholders, family members and their concerns/companies. The present case is reflection of desire of the petitioner based on whims and fancies. There is no *bona fide* requirement in respect of tenanted premises on part of the petitioner. The respondents in preliminary submissions stated that Memorandum of Association of the petitioner reflects that it has two shareholders namely Devender Kumar Gupta and Rishi Gupta holding 10000 equity shares i.e. 5000 shares each as on 05.07.2001. The petitioner has created Form DVAT-16, Department of Trade and Taxes, Government of NCT of Delhi which is created by the petitioner rather the petitioner does not have any business. The petitioner is in occupation of portion measuring 9'x4' adjacent to the tenanted premises and the petitioner never used portion marked 'A' for its jewellery business. The petitioner has also concealed that the petitioner is in possession of one room situated on the terrace above the shop which was owned by owners of erstwhile Navyug Stores but said room is used by Jagdish Stores but the petitioner did not disclose capacity in which Jagdish Store was using said room. The area which is available with the petitioner i.e. 180 sq. feet (A+B) and+36 sq. feet and one room on the first floor is sufficient for the petitioner as per quantum of alleged business of the petitioner. The petitioner has not disclosed that its directors namely Mohan Lal Gupta and Pushpa Gupta and shareholders are close family members.

4.1 The respondents stated that road in front of portion in occupation of the petitioner is main market road and is much wider than the road in front of the tenanted premises. The plea of the petitioner regarding unsuitability of portion under occupation of the petitioner is incorrect as many jewellery shops are situated on same road and adjoining roads where the shop of the petitioner is situated.

The road where the shop of the petitioner is situated is not a service road but a wider road in comparison to the road in front of the tenanted premises. The road where the shop/premises in occupation of the petitioner is situated is having famous jewellery shops. The premises in occupation of the petitioner is sufficient as well as suitable to the petitioner. The petitioner has sold some portion of the property M-2, Greater Kailash-1, New Delhi to the sitting tenants in year 2005 and area/portion with Jagdish Store which was adjoining to the tenanted premises was having same area as that of tenanted premises. The petitioner purchased the property bearing no M-2 only to sell at higher rate as the petitioner is in business of real estate.

4.2 The petitioner filed an eviction petition bearing no. E-512/2007 under section 14 (1) (b) of the Act against the respondents on false allegations of sub letting which was withdrawn on 06.11.2008. The petitioner also withdrawn another eviction petition bearing no E-2/2011 under section 14 (1) (e) of the Act. The petitioner was incorporated in the year 2001 and property bearing no M-2 was purchased in year 2002. The petitioner sold part of the property bearing no M-2 in year 2005 and the present shareholders and directors who are family members, were inducted in year 2008. The petitioner started alleged business of jewellery in year in year 2012 and present petition was filed in year 2014. The respondents stated that these facts combined together raised serious doubts about requirement of the petitioner. The petitioner through its then director Anil Ghai had entered into an agreement to sell dated 22.07.2005 with the respondent no 1 for sale of tenanted premises for sale consideration of Rs. 46,00,000/- and thereafter the respondent no 1 issued a legal notice dated 17.10.2005 due to dispute arose subsequently and as such requirement of the petitioner is not genuine. There are various contradictions in the case set up by the petitioner. The directors and shareholders of the petitioner are having large number of properties.

4.3 The respondents on reply on merits stated that the portions Marked as A, B and C are available with the petitioner which is more than sufficient for the requirement of the petitioner. The petitioner is not doing any business from the premises/shop under the occupation of the petitioner. The petitioner has created self-serving documents. There is no back or front portion in the property bearing no M-2. The respondents denied each and every contention of the petitioner as stated in the petition.

5. The petitioner filed replication wherein reasserted and reaffirmed contents of the petition.

6. The petitioner examined Som Prakash Gupta, Director of the petitioner as PW1 who tendered affidavit Ex. PW1/A in evidence and Rohit Gupta as PW2 who tendered affidavit Ex. PW2/A in evidence. PWs relied on documents which are Ex. PW1/1 to PW1/5 and PW2/1 to PW2/3. The respondents examined the respondent no 2 Narender Kumar Goyal as RW1 and tendered affidavit Ex. RW1/A in evidence and relied on documents which are Ex. RW1/1 to Ex. RW1/9.

7. The trial court vide the impugned judgment dated 27.09.2018 dismissed the eviction petition. The relevant portion of the impugned order dated 27.09.2018 is reproduced as under:

> **14. The petitioner/landlord had the notice of the fact which he had to prove i.e. the fact that his business is flourishing and that consequent thereto the need of additional space arose to satisfy the needs of the growing business. Unfortunately, the petitioner had not produced the books/statement of accounts of its business for the years after the moving of present petition which would have at least led the court to infer that the business of petitioner is moving in direction of succession and flourish. Thus, what**

is apparent is that the foundation on which the petition is brought is false.

15. The fact that the electricity consumption - as manifest fi-om the electricity bills raised by the service provider for the existing place of business of the petitioner and recorded in the balance-sheet for the year ending 31/03/2013- is miniscule i.e Rs 20,740/- corroborates the inference of fact that 'flourishing business' is a moonshine. Electricity consumption was -'Nil' for the year ending 31/03/12 and this is now anybody's guess as to what it meant.

16. At the cost of repetition, it may be noted that the petitioner/landlord had the notice to prove that his business is flourishing and that consequent thereto the need of additional space arose to satisfy the needs of the growing business. The petitioner, failed to lead such evidence which would have overthrown the reasonable suspicion of the court on the fact that whether the business of the petitioner is a flourishing or not. Rather the facts and circumstances placed before me prove otherwise. Thus, the petitioner failed to discharge the burden on him regarding the state of his business.

17. The postulate on which the petitioner raised the theory of his claim to possession fails and thus the petitioner fails. The need of the petitioner for possession of tenanted shop cannot be said to be bonafide.

8. The petitioner being aggrieved filed the present petition to challenge the impugned judgment on grounds. The petitioner besides narrating factual background as stated in eviction petition challenged the impugned judgment on grounds that the impugned judgment is *ex facie* illegal, and perverse. The impugned judgment is based on conjectures and surmises. The petitioner has duly established its requirement for tenanted premises. The trial court has not passed a speaking and reasoned judgment rather unnecessarily influenced by the observation made in order dated 09.05.2016 passed by this court. The trial court passed impugned judgment which is presumptive in nature. The trail court has ignored admissions made by the RW1 in cross examination. The trial court has failed to consider that the business of the petitioner is display oriented. The business of the petitioner is having promising future. The petitioner also challenged the impugned judgment on various other grounds and prayed the impugned judgment be set aside and eviction order be passed in favour of the petitioner in respect of tenanted premises.

8.1 The respondents filed a reply to the present revision petition wherein the averments and contentions of the petitioner were denied. The respondents stated that the trial court passed the impugned judgment in accordance with law and does not suffer from any illegality or infirmity. The trial court has correctly held that the petitioner had to prove that his business is flourishing and the need of additional space arose to satisfy the needs of growing business, however, the petitioner had not produced the books/statements of accounts of its business. The trial has given cogent reason in support of his findings and has correctly held that the petitioner has failed to lead evidence which would have overthrown the reasonable suspicion of the court whether the business of petitioner is flourishing or not. The trial court correctly held that the petitioner does not require the tenanted premises. The respondents besides reiterating contents as stated in written statement has denied *bona fide* requirement of the petitioner for its alleged business. The intention of the petitioner is not *bona fide* but are *mala fide*. The respondents prayed that the petition be dismissed and heavy cost be imposed upon the petitioner.

9. Sh. Rajat Aneja, Advocate advanced arguments on behalf of the petitioner and written submissions were also submitted on behalf of the petitioner. Sh. Aneja argued that the impugned judgment passed by the trial court is non-speaking, unreasoned and extremely sketchy. The impugned order is not sustainable as the trial court has not appreciated the site plan Ex. PW1/4 which was admitted to be correct by the respondents. The trial court did not appreciate that the respondents are having large area under their tenancy and if the tenanted premises is available to the petitioner, then it would have been sufficient for the petitioner. The trial court has misplaced reliance on order dated 09.05.2016 passed by coordinate bench of this court in Rent Revision bearing no 318/2015 and ignored order dated 18.07.2016 passed by the Supreme Court wherein it was ordered that the trial court shall not be influenced by any discussion made in order dated 09.05.2016. The trial court has also overlooked documentary evidence produced on record as well as oral testimony/deposition of witnesses examined by the petitioner. The petitioner does not have any other alternate accommodation for its business of jewellery. The trial court also not appreciated testimony of the chartered accountant Rohit Gupta PW2. The trial court has given subjective interpretation to expression 'Flourishing' as the petitioner being landlord of the tenanted premises is master of its requirement. The petitioner is having under its occupation which is measuring 169 sq. meter and one alleged room on the first floor of the property M-2. Sh. Aneja in argument as well as in written submissions attacked para no 14 of the impugned judgment which has already been produced verbatim herein above. It was forcefully argued that space available to the petitioner at backside of the property is not suitable. Section 22 of the Act is not a bar in filing eviction petition on ground of bona fide requirement in case of the petitioner which is a company. It was argued that the present petition be allowed and the impugned judgment be set aside. The counsel for the petitioner during arguments relied on **Pawan Kumar V Premjit Singh,** 2015 (4) AD (Delhi)) 423 and **Bhupender Singh Bawa V Asha Devi,** 2014 (214) DLT 745. Sh. Aneja also relied on **Bhaskar Refractories and Stoneware Pipes Pvt Ltd V Ishwar Industries Ltd.**, RC REV 257 of 2022 decided on 02.06.2023 by this court and **Ravinder Kumar Verma V Laxmi Narayan Mandir Nirman Sabha and another,** 2016 SCC Online Del 6024 and various other decisions rendered by the Supreme Court and this Court.

10. Sh. Rajesh Yadav, the learned Senior Counsel for the respondents advanced oral arguments and written submissions are also submitted on behalf of the respondents. It was also argued that the petitioner has concealed various properties available with the directors and shareholders of the petitioner and their family members and other concerns/companies of the petitioner. The petitioner owns large number of properties and can be used by the petitioner for its alleged needs/ requirements which are available to the petitioner. The present petition is not maintainable as per section 22 of the Act. The accommodation as per site plan filed by the respondents is sufficient for the petitioner for its business. The premises under occupation of the petitioner is not situated on service road. Sh. Yadav also referred Income Tax Return of the petitioner for the assessment year 2013-14 which reflects gross income as Rs. 1,44,223/- and balance sheet of the petitioner as on 31.03.2013 reflects that shareholders are family members and stock in trade as on 31.03.2013 as per financial statement was of Rs. 3,41,365.20/- and closing stock as on 31.03.2013 was of Rs. 4,90,779.55/-. The electricity bill for year ending on March,2013 as per financial statement was of Rs. 20,740/-. It was also highlighted that petitioner entered into an agreement to sell with the respondent no.1 on 22.07.2005 in respect of tenanted premises which was subsequently cancelled but it reflects that the need of the petitioner is not *bona fide*. The order dated 09.05.2016 passed by this court was also highlighted during course of arguments. Sh. Yadav also referred cross examination of PW1 and cross examination of RW1. It was also argued that non-examination of Mohan Lal Gupta who instituted present eviction petition and due to non-filing of balance sheet of the petitioner till 31st March, 2016 and other documents pertaining to the alleged business of the petitioner such as VAT returns, IT returns, salary paid to the employees and electricity bills, an adverse inference can be drawn against the petitioner regarding his *bona fide* requirement. It was argued that the present petition be dismissed. Reliance was placed on **Janki Vashdeo Bhojwani and another V Indusind Bank Ltd and others,** (2005) 2 SCC 217, **Nibro Limited V National Insurance Company Limited,** 41(1990) DLT 633, **M/s Weston Tubes Pvt Ltd V National Insurance** ,2013 (137) DRJ 449 and **Sudhir Engineering Co. V Nitco Roadways Ltd,** 1995 (2) AD (Del) 189

11. Section 14 (1) (e) of the Act deals with eviction of tenant from tenanted premises are required *bona fide* by the landlord. It 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: -

xxx xxx xxx

(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.

11.1 The Supreme Court in **Sarla Ahuja V United India Insurance Co. Ltd.**, (1998) 8 SCC 119 elaborated and discussed law relating to section 14 (1) (e) of the Act and 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.

11.2 The Supreme Court in **Abid-Ul-Islam V Inder Sain Dua,** (2022) 6 SCC 30 observed as under:

> **15. 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.**

12. It is reflecting from record that the petitioner is the owner and landlord of the property bearing no. M-2, Greater Kailash-I, Main Market, New Delhi vide registered sale deed dated 09.10.2002 Ex. PWl/3. The tenanted premises measuring 13'6" X 37' (approx. 503 sq. feet) as shown in site plan Ex. PW1/4 was let out to the respondents in the year 1968 by the predecessor of the petitioner. The petitioner sold part of the property bearing no M-2 to the sitting tenants in year 2005. The respondents are running business of cosmetics, garments and general items under the name and style of 'Goyal Stores'. The respondents/tenants have already attorned the petitioner as the landlord of the tenanted premises. The petitioner has claimed that it is operating its business along with a registered office from the back portion of property admeasuring about 169 sq. feet. The area where the property M-2 is situated is a prominent place of jewellers. The respondents after service of summons filed an application for grant of leave to defend which was dismissed vide order dated 28.01.2015 and said order was set aside by this court vide order dated 09.05.2016 passed in RC Rev. No. 318/2015. The petitioner being aggrieved filed SLP Civil No. 15998/ 2016 which was disposed vide order dated 18.07.2016 with observation that the trial court shall not be influenced by any of the discussions made in the order dated 09.05.2016 passed by this court.

13. There is no dispute between the petitioner and the respondents regarding relationship of landlord and tenant which is also observed by the trial court. The perusal of impugned judgment reflects that the trial court regarding *bona fide* need of the petitioner regarding tenanted premises observed that the claim of the petitioner regarding tenanted premises is based on premise that due to the ever increasing needs of the business of the petitioner as the said business is flourishing and the space available with the petitioner is wanting in satisfying the said needs and the tenanted premises when added to the existing space will satisfy needs of the petitioner. The trial court also observed that the business of the petitioner is not flourishing as per books of account of the petitioner. It also appears that the trial court was influenced with the observations made by this court in order dated 09.05.2016 while deliberating on expression 'Flourishing'. The trial court also observed that the petitioner had to prove that its business was flourishing and for this the petitioner needs additional accommodation to satisfy need of growing business and further the petitioner had not produced the books/statement of accounts of its business for the years after the moving of present petition which would have at least led the court to infer that the business of petitioner is moving in direction of succession and flourish. The trial court ultimately observed that foundation of the petition is false. The trial court ultimately dismissed the petition.

14. The prime contention of the petitioner is that the petitioner is doing business of jewellery in the portion of the property measuring 169 sq. feet which is situated on back portion of the property towards service lane. The business of the petitioner is flourishing and due to this reason, the petitioner requires the tenanted premises which is measuring 503 sq. feet and is situated on front portion of the property and suitable for the jewellery business of the petitioner. The business of the petitioner is display oriented to attract customers but there is no space for sitting for the staff and the customers. There is no proper toilet for the staff and customers of the petitioner. The space available with the petitioner is not suitable for the business of the petitioner while the tenanted premises is more accessible for the proposed customers of the petitioner. The respondents to the contrary contended that the petitioner and its directors and shareholders are having various properties in Delhi and alleged requirement of the petitioner qua the tenanted premises is an example of fanciful desire which is based on whims and fancies. The petitioner is not running business of jewellery and space which is available with the petitioner is sufficient to run its business and is situated on main market road. The petitioner in past sold portion of property bearing no. M-2 to the sitting tenants and also entered into an agreement with the respondent no 1 to sell the tenanted premises. The respondents as such opposed the claim of the petitioner.

15. PW1 Som Prakash Gupta in affidavit Ex. PW1/A also deposed about ownership of the petitioner in respect of tenanted premises and requirement of tenanted premises for running of its business of primarily jewellery etc. as it is situated on front side of property facing main road. PW2 Rohit Gupta who is a Chartered Accountant in affidavit Ex. PW2/A deposed that he audited balance sheet of the petitioner for the financial year ended on 31.03.2013 and for subsequent financial years. PW1 was extensively cross examined by the respondents. However, PW1 in cross examination deposed that the petitioner started business of jewellery from a portion of the property bearing no M-2 in September, 2012 and the petitioner as on 01.04.2016 was maintaining stock of Rs. 20,00,000/-. PW1 denied suggestion that the petitioner never carried any jewellery business from any portion of the property bearing no M-52. RW1 in cross examination admitted that the petitioner is having space around 200 sq. feet at the ground floor. RW1 also admitted that area under occupation of the respondents is at about 540 sq. feet. The evidence on record reflects and proved that the petitioner is in occupation of portion measuring 169 sq. situated on back portion of the property bearing no M-2 and from there the petitioner is doing business of jewellery etc. since September, 2012. The respondents are in occupation of tenanted premised measuring about 503 sq. feet. The petitioner is not doing business of jewellery on large scale as reflected from documents placed on record.

16. The requirement of the petitioner qua the tenanted premises is appearing to be genuine and *bona fide*. The business of jewellery items and other related items needs sufficient space for staff and customers. The tenanted premises which is more spacious in comparison to the space under occupation of the petitioner is more convenient and suitable as it is situated on front side of the road and being on front side of the road shall be attracting more customers and as such business of the petitioner may flourish. The business of the petitioner at present is flourishing or not is to be assessed by the petitioner itself and it is not for the respondents being tenants to judge or assess whether the business of the petitioner being landlord is not flourishing. The petitioner has every right to take appropriate measures and steps for expansion of his business and to make its business for flourishing. The claim of the petitioner regarding requirement of the tenanted premises is justified and genuine and cannot be doubted. The display of jewellery articles/items is important facet of jewellery business. There is no evidence on record to infer that the petitioner is not doing business of jewellery and other related items. The petitioner cannot be forced or compelled to continue its business in small space situated on back portion of the property bearing no M-2 to the suitability of the respondents. It is not open for the tenant to dictate to the landlord about modalities and manner in which the business is to be conducted by the landlord. The landlord is master of assessment of his own requirement qua the premises under tenancy and it is not open for the tenant to cast doubts as to the requirement of landlord if otherwise case of the landlord is established on record. There is also no evidence that the petitioner is having any other suitable accommodation for further expansion and smooth running of its jewellery business in the area where the tenanted premises is situated.

17. The impugned judgment passed by the trial court is purely based on presumptions and assumptions and is reflective of mere conjectures and surmises. The trial court has not considered merit of the case rather appear to be influenced by observation made by this court in order dated 09.05.2016 which is in contravention of order dated 18.07.2016 passed by the Supreme Court. The trial court in impugned judgment did not consider and discussed evidence led by the parties. The impugned judgment is clearly reflective of non-application of judicial mind by the trial court.

18. There is force in arguments advanced by the counsel of the petitioner that impugned judgment is non-speaking, unreasoned and extremely sketchy and the trial court has not appreciated the evidence led by the parties. The counsel for the petitioner rightly argued that the respondents are having large area under their tenancy which if vacated would be sufficient for the petitioner and further the trial court incorrectly placed reliance on order dated 09.05.2016 ignored order dated 18.07.2016 passed by the Supreme Court. Sh. Aneja rightly argued that space available to the petitioner at backside of the property is not suitable. It was rightly argued that section 22 of the Act is not a bar in filing eviction petition on ground of bona fide requirement. The arguments advanced by Sh. Yadav on behalf of the respondents that the petitioner has concealed various properties available with the directors and shareholders of the petitioner and their family members are without any force in absence of any supporting evidence. There is no factual force in arguments advanced by Sh. Yadav that the accommodation as per site plan filed by the respondents is sufficient for the petitioner for its business. The reliance on financial documents pertaining to the business and electricity bills is misplaced rather financial documents reflect that the petitioner is in business of jewellery and other related items. It was also argued on behalf of the respondents that the petitioner entered into an agreement to sell with the respondent no.1 on 22.07.2005 in respect of tenanted premises which was subsequently cancelled which reflects that the need of the petitioner is not *bona fide*. The said argument is also misplaced due to reason that the present petition was filed after 09 years of execution of agreement to sell on 22.07.2005 and at that time the petitioner was not doing business of jewellery which the petitioner has started in year 2012. Sh. Yadav also argued that the petitioner has not filed balance sheet till 31st March, 2016 and other documents pertaining to the business of the petitioner such as VAT returns, IT returns, salary paid to the employees and electricity bills and as such an adverse inference can be drawn against the petitioner regarding his *bona fide* requirement. It is not open for the respondents being tenant to ask these documents from the petitioner as the petitioner is able to prove that the petitioner has started jewellery business in year 2012 and the petitioner wanted to expand its business which as per the petitioner was flourishing. The arguments advanced on behalf of the petitioner and the respondents are considered and analyzed in right perspective.

19. In view of above discussion, the impugned judgment cannot sustain and is liable to be set aside. Accordingly, the present petition is allowed and impugned judgment is set aside. The eviction petition filed by the petitioner under section 14 (1) (e) of the Act is allowed and an eviction order is passed in favour of the petitioner and against the respondents in respect of tenanted premises i.e. shop measuring 13'.6" x 37' (about 503 sq.' feet) situated on the front side of the property bearing no M-2, Greater Kailash Part-I, Main Market, New Delhi, 110048 as shown in red colour in site plan Ex. PW1/3 annexed with the petition. The benefit of section 14 (6) of the Act shall be available to the respondents from date of this judgment.

20. The pending applications, if any, also stand disposed of.

DR. SUDHIR KUMAR JAIN
(JUDGE)

OCTOBER 22, 2024
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