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

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Reserved on: August 21, 2024**Decided on: October 08, 2024**+ **RC.REV. 521/2017, CM APPL. 41375/2017 & CM APPL. 31442/2024****SUNIL KUMAR JAIN****.....Petitioner**

Through: Sh. Alok Kumar, Senior Advocate with Ms. Manisha A. Narain, Mr. Ram Bhakt Agarwal, Mr Amit Kumar Singh, Mr. Varun Maheshwari, Mr. Sandeep Singh Somaria and Mr. Manan Soni, Advocates

V**DINESH BHATIA****....Respondent**

Through: Sh. Pradeep Dewan, Senior Advocate with Mr. Vineet Malhotra, Ms. Reena Jain Malhotra, Mr. Ashish Aggarwal and Mr. Anupam Dhingra, Advocates with the respondent in person

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**”) to set aside the order dated 30.05.2017 (hereinafter referred to as the “**impugned order**”) passed by the court of Sh. Joginder Prakash Nahar, Senior Civil Judge/Rent Controller, East (hereinafter referred to as “**the trial court**”) in eviction petition bearing RC ARC no. 574/2016 titled as **Dinesh Bhatia V Sunil Kumar Jain** whereby the application for leave to defend filed by the petitioner was dismissed and as a consequence of which an eviction order was passed in respect of the tenanted premises i.e. shop situated on ground floor of the property bearing no IX/545, Subhash Road, Gandhi Nagar, Delhi-110003 (hereinafter referred to as “**the tenanted shop**”) as shown in red colour in site plan annexed with the petition.

2. The respondent filed an eviction petition bearing no RC ARC 574/2016 titled as **Dinesh Bhatia V Sunil Kumar Jain** against the petitioner by the pleading that the tenanted shop was initially let out by father of the respondent/landlord to the petitioner/tenant about 27-28 years back for non-residential purpose of running the business of readymade garments and rate of rent is Rs.560/- per month excluding



other charges. No written agreement was executed at time of creation of tenancy and rent receipts were issued in the name of Sunil Kumar Jain & Sons. There are four shops on the first floor of the property no IX/545 and two shops bearing no. 4 and 5 as shown in yellow colour in site plan annexed with the petition are also under the occupation of the petitioner/tenant under the separate tenancy and rent receipts are also issued in name of Sunil Kumar Jain & Sons. The petitioner is using these shops for the purpose of storage of goods/garments i.e. godown. The respondent also filed another petition against the petitioner for the eviction of petitioner from two shops as shown in yellow colour in site plan.

2.1 The property bearing no. IX/545 is divided into two parts and each part is measuring 120 sq. yards. The part of the property bearing no IX/545 measuring 120 sq. yards which is adjacent to property bearing no. IX/544 is under ownership of the respondent vide registered sale deed and the tenanted shop is situated on the ground floor of said part. The remaining part of the property measuring 120 sq. yards was under ownership of Prem Nath Bhatia and the respondent and his three sisters have become owners of said portion.



The entry to the upper floors is from the portion which is presently under the ownership of the respondent and his sisters. The respondent/landlord is residing at second and third floors.

2.2 The respondent is also engaged in the business of readymade garments and deals in manufacturing and production of jeans. The respondent gets jeans stitched on contract from outside persons (labourers). The respondent is suffering from great scarcity of space for the work of stitching of jeans in his own premises as the shops in the property of respondent are occupied by the various tenants. The petitioner is in occupation of two shops situated at the first floor which are being used as a godown.

2.3 The respondent is in occupation of one shop situated at first floor and one small shop measuring 6.5 x 14 sq. ft. situated at back portion of the ground floor of the property bearing no. IX/545. The respondent is using the shop situated at ground floor for display of goods/garments and shop at first floor is being used as godown and these two shops are less spacious for the respondent to run his business. The respondent also pleaded that if the petitioner is evicted from the tenanted shop along with two shops situated at first floor,



then the respondent can run business by his workers/labourers from his own property smoothly. The tenanted shop shall be used for display of the goods and show room as the tenanted shop is situated on main road i.e. Subhash Road. The two shops situated at first floor which are also under tenancy of the petitioner along with one shop which is being used by the respondent as godown can be used by the respondent for purpose of manufacturing/production of jeans stitched by his workers and as such the respondent may give better future to family by earning more money besides generating employment for workers.

2.4 The respondent in past has expanded business as the respondent was getting export orders from abroad but the respondent since 2013 suffered huge loss and lost export orders from abroad as the respondent was not able to complete orders. The respondent has again planned to expand business by receiving orders from abroad. The respondent filed two petitions for eviction of the petitioner from tenanted shop and two shops situated at first floor and the respondent after getting these shops vacated shall be able to execute export orders from abroad without any delay and problems and would be



able to run his business comfortably and successfully. The respondent does not have any other suitable alternative accommodation with him for expansion of business.

2.5 The petitioner is having various properties including commercial properties in the area of Gandhi Nagar area. The petitioner is also running business from property bearing no. IX/635, Gali No. 2 Subhash Road, Gandhi Nagar, Delhi under name and style of Trishla Garments. The petitioner is also having various other properties as detailed in eviction petition. It is prayed that eviction order be passed in favour of the respondent and against the petitioner.

3. The petitioner after service of summon as per the Third Schedule filed an application for grant of leave to defend along with an affidavit. The petitioner admitted that he is a tenant in respect of tenanted shop and the respondent does not require tenanted shop for any purpose. The respondent is already in possession of more suitable accommodation which is sufficient to meet alleged requirement of the respondent for expansion of business. The respondent recently increased rent of other tenants. The respondent is running business from ground, first, second and third floors of the property bearing no



IX/545 since long and as such does not require tenanted shop either for purpose of sale or storage. The case of the respondent is for additional accommodation for expansion of existing business. The respondent has inducted new tenants after getting premises vacated from old tenants. The respondent is in possession of one shop situated at ground floor being used for display of goods/garments and another shop situated at first floor being used as godown. The respondent wants to open an industry which is not permissible under law. The need of the respondent is outcome of desire and imagination and is not genuine and *bona fide*. The petitioner has raised triable issues which cannot be decided without evidence. The petitioner is entitled for grant of unconditional leave to defend present eviction petition.

4. The respondent filed reply to the application for leave to defend and counter affidavit. The respondent in counter affidavit denied averments and contentions which have been raised by the petitioner in the application for grant of leave to defend and affidavit and reiterated facts as stated in eviction petition. The respondent stated that he served notice to other tenants who were not paying rent for



the last 3-4 years but he did not file eviction petitions against them as they complied with the notice. The need of the respondent is genuine and *bona fide*. The tailoring being a household industry is a non-polluting industry and non-hazardous industry and is permitted even in the residential area. The petitioner has not raised any triable issue which requires evidence. It was prayed that the application for leave to defend be dismissed.

5. The petitioner filed rejoinder wherein reiterated that the petitioner has raised many triable issues and is entitled to grant of leave to defend.

6. The trial court vide the impugned order dated 30.05.2017 dismissed the application for leave to defend filed by the petitioner and passed an eviction order in favour of the respondent in respect of tenanted shop. The operative portion of the impugned order dated 30.05.2017 is reproduced as under:

12. In such view of the matter, it is found that the need of the landlord is found genuine and bona fide and alternative space is not available with him for the purpose of display of goods other than the shop available with the respondent which is most advantages position than the space available with the petitioner.

13. The apprehension of tenant that petition can re-let out the tenanted shop at higher rent is misplaced in



view of Section 19 of DRC Act which provides protection to tenant if such eventuality arise. It was held in case titled V.K. Bhandari vs Sheikh Mohd. Yahya & Ors. on 18 March, 2009 in RC Rev. 17/2009 wherein Hon'ble High Court of Delhi has held as under:

9. As far as petitioner's apprehension that respondents landlords have only filed an eviction petition with a view to get the tenanted premises evicted so that they can sell the same, I am of the view that this apprehension is baseless as firstly no evidence to this effect has either been filed or led by petitioner-tenant. Moreover, Section 19 of DRC Act specifically takes care of this apprehension inasmuch as it provides that landlords after getting the premises evicted under Section 14 of said Act cannot sell the same for a period of three years without obtaining permission of Controller.

14. Consequently, an eviction order is passed in favour of the petitioner and against the respondent. Respondent is directed to hand over the vacant one shop on the ground floor situated in property no. IX/545 Subhash Road, Gandhi Nagar, Delhi and more specifically as shown in red in the site plan filed with the eviction petition. For the purpose of identification, the site plan is Ex. P-1. However, in terms of Section 14 (7) of the DRC Act, petitioner shall not be entitled to obtain possession of the tenanted shop before the expiration of a period of six months from the date of this order. The eviction petition under Section 14 (1) (e) r/w section 25-B DRC Act is accordingly disposed of. No order as to costs.

7. The petitioner being aggrieved filed the present petition to challenge the impugned order on various grounds. The petitioner



stated that the impugned order dated 30.05.2017 is contrary to the established principles of law and is liable to be set aside. The respondent is in possession of two shops in the property in which the tenanted shop is situated from where the respondent is doing his business. The case of the respondent is requirement of the additional accommodation and as such leave to contest should be granted to the petitioner. The respondent is in occupation of one shop at the first floor and one shop at the ground floor which is used as a display/show room by the respondent and as such there is no immediate urgent requirement of the tenanted shop as pleaded in the eviction petition. The trial court has erred in holding that the tenanted shop is more suitable to the respondent for commercial requirement. The respondent is proposing to commence business of export of goods manufactured by him and such a show room is not required. The court of rent controller has granted leave to defend to the petitioner in eviction petition filed by the respondent in respect of shops no.4 and 5 situated on the first floor of the property by holding that case of the respondent is for additional accommodation as the respondent is already in possession of shops situated on the first floor



and the ground floor of the property. The respondent is not a businessman as alleged but he is habit of demanding high rent from tenants but the petitioner refused to increase the rent. The respondent is running his business from the ground, first and second floors and the respondent as such in possession of three floors and does not require the tenanted shop *bona fide*. The respondent six months prior to filing of present eviction petition inducted new tenants in the property. The impugned order suffers from gross irregularities and is against the settled legal principles. The petitioner prayed the impugned order dated 30.05.2017 be set aside and the petitioner be allowed to contest the present eviction petition.

8. 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: -



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(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.

8.1 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.



8.2 The Supreme Court in **Inderjeet Kaur V Nirmal Singh**, (2001) 1 SCC 706 discussed the relevant factors to be considered at the time of consideration of an application for grant of leave to defend and 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 bona fide 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 bona fide 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.

8.3 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.

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18. For availing the leave to defend as envisaged under Section 25-B(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.

19. 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.

9. It is reflecting that the petitioner is a tenant in respect of tenanted shop situated at ground floor of the property bearing no IX/545, Subhash Road, Gandhi Nagar, Shahdara, Delhi-110003 as shown in red colour in site plan under the respondent and the petitioner is doing business of readymade garments in tenanted shop. The petitioner is also tenant in respect of two shops bearing no. 4 and 5 as shown in yellow colour in site plan and these two shops are used by



the petitioner as godown for the purpose of storage of goods/garments. The respondent is also engaged in the business of readymade garments and deals in manufacturing and production of jeans. The respondent claimed that he gets jeans stitched on contract from outside labourers and is suffering from great scarcity of space for the work of stitching of jeans in his own premises. The respondent is in possession of one shop situated at first floor and another shop measuring 6.5 x 14 sq. ft. situated at back portion of the ground floor of the property bearing no. IX/545. The respondent claimed that he is using the shop situated at ground floor for display of garments and shop at first floor is being used as godown. The respondent wants to expand his business by getting work orders from abroad and the respondent can run business smoothly by placing workers/labourers in his own property if the petitioner is evicted from the tenanted shop and two shops situated at first floor. The respondent wants to use tenanted shop for display of the goods/ show room being situated on main road i.e. Subhash Road and two shops situated at first floor as godown. The respondent claimed that he does



not have any other suitable alternative accommodation with him for expansion of business.

9.1 The petitioner admitted relationship of landlord and tenant between the parties. The petitioner also admitted that he is a tenant in respect of tenanted shop and also tenant in respect of shops no 4 & 5 situated at first floor of the property under the respondent. The petitioner claimed that the respondent is already in possession of more suitable accommodation which is sufficient to meet alleged requirement of the respondent for expansion of business. The respondent is running business from ground, first, second and third floors of the property bearing no IX/545 since long. The respondent recently increased rent of other tenants and inducted new tenants after getting premises vacated from old tenants. The respondent does not require tenanted shop either for purpose of sale or storage and is seeking eviction of the petitioner for additional accommodation for expansion of existing business.

9.2 The respondent filed two petitions under section 14(1)(e) of the Act against the petitioner i.e. present eviction bearing no RC/ARC No. 574/16 titled as **Dinesh Bhatia V Sunil Kumar Jain** in respect



of tenanted shop and bearing no RC/ARC No. 575/16 titled as **Dinesh Bhatia V Sunil Kumar Jain** in respect of two shops situated at first floor of the property and these two eviction petitions were pending before trial court. The petitioner in both eviction petitions filed respective applications for grant of leave to defend along with affidavit. The trial court vide impugned order passed in eviction petition bearing no RC ARC bearing no 574/2016 titled as **Dinesh Bhatia V Sunil Kumar Jain** dismissed the application for grant of leave to defend and according passed an eviction order under section 14 (1) (e) of the Act in respect of tenanted shop. The trial court vide order dated 30.05.2017 passed in eviction petition bearing no RC ARC bearing no 575/2016 titled as **Dinesh Bhatia V Sunil Kumar Jain** allowed the application for grant of leave to defend.

10. The perusal of impugned order passed in respect of tenanted shop reflects that the trial court observed that the relationship of landlord and tenant is not disputed between the parties. The trial court in impugned order regarding *bona fide* requirement of the respondent in respect of the tenanted shop observed that the petitioner did not dispute that the respondent is doing business of stitching jeans on



contract basis from outside and was getting export orders for supply of garments. It was further observed that the respondent wants to expand his business and also wants to employ his own labourers for stitching work. The respondent wants to use tenanted shop for display of goods/garments as shop which is under possession of the respondent is situated at back side of the ground floor of the property towards a small *gali*. The trial court in respect of *bona fide* requirement of the respondent qua the tenanted shop ultimately observed that the respondent being at disadvantage having shop on the backside and the tenanted shop being on the main road side has more accessible to customers and as such need of the respondent is *bona fide*. The trial court in respect of availability of alternate accommodation with the respondent observed that availability of alternative shop on back side with the respondent is less advantageous and alternative space is not available with the respondent for the purpose of display of goods other than the shop available with the petitioner which is most advantages position than the space available with the respondent. The trial court accordingly



ordered eviction of the petitioner from the tenanted shop vide impugned order.

10.1 The perusal of order dated 30.05.2017 passed in eviction petition bearing no 575/16 titled as **Dinesh Bhatia V Sunil Kumar Jain** in respect of shop no 4 & 5 situated at first floor of the property by the court of Joginder Prakash Nahar, Senior Civil Judge/Rent Controller, East whereby application for leave to defend allowed reflects that the parties have admitted relationship of landlord and tenant. The court regarding *bona fide* requirement of the respondent observed that the respondent has successfully established his *bona fide* need which is to be satisfied by employing more workers for the purpose of stitching jeans and to supply readymade garments as per orders received in which respondent has failed earlier on account of not having proper set up for preparation of export orders for his clients. The court regarding availability of additional accommodation with the respondent observed that need of the respondent falls in category of additional requirement and as such triable issue is raised by the petitioner. The court accordingly granted leave to defend to the petitioner.



11. Sh. Alok Kumar, the learned Senior Counsel for the petitioner advanced oral arguments and written submissions are also submitted on behalf of the petitioner. The learned Senior Counsel stated that the respondent claimed to be owner of half portion of Yamuna Market/property bearing no IX/545 comprising eight shops at ground floor and four godowns at first floor. The respondent is in possession of one shop situated at ground floor and one godown situated at first floor. The petitioner is in possession of one shop i.e. the tenanted shop situated at ground floor and two godowns situated at first floor. The respondent is also claiming to be owner of remaining half portion of the property bearing no IX/545 along with his sisters comprising nine shops at ground floor and three godowns situated at first floor. The respondent is stated to be in business of making jeans and would run the business of manufacturing of jeans in the godowns situated above the tenanted shop thereby the respondent would expand his business and earn more money. The respondent sued the petitioner by filing two eviction petitions as different tenancies exist in respect of tenanted shop and two shops/godowns situated at first floor. It is further stated that the Rent Controller allowed the leave to



defend qua two godowns situated at first floor but declined leave to defend in respect of tenanted shop.

11.1 The learned Senior Counsel for the petitioner argued that need of respondent as projected in eviction petition is not *bona fide* as the respondent is having one shop at ground floor of the property bearing no IX/545 but still needs tenanted shop. The respondent requires the tenanted shop only to earn money which is not a legitimate need as per legislative mandate of the Act. The respondent issued eviction notices to other tenants namely Arun Kumar Gupta and Chunni Lal for eviction of shops bearing no. 18 and 7 under their tenancy on ground of *bona fide* requirement and got possession of these shops but this fact is not disclosed by the respondent in eviction petition. The respondent also completed his export obligations which is contrary to plea taken by the respondent in eviction petition and as such need of the respondent is not *bona fide*. The respondent is doing export business and as such location of the shop is immaterial due to no walk-in customers. The need of the respondent is not bona fide.

11.2 The learned Senior Counsel for the petitioner further argued that the alleged need of the respondent is for additional requirement. The



respondent is having a shop at ground floor of the property bearing no IX/545 and requires the tenanted shop for betterment/expansion of business. It was argued that as per admissions made by the respondent, the respondent needs additional accommodation for expansion of business and accordingly leave to defend has to be granted. The learned Senior Counsel also argued that the projected need of the respondent is *mala fide* as the respondent is re-letting shops situated at ground floor in same building. The petitioner vide order dated 22.02.2024 permitted to bring subsequent events on record as the respondent has re-let the shops bearing no 12,3,4 and 15 situated on ground floor of the property and as such need of the respondent is self-induced and not *bona fide*. The learned Senior Counsel for the petitioner also argued that the petitioner would not be able to use two godowns/shops situated at first floor of the property in respect of which leave to defend is already granted without the tenanted shop as the staircase leading to godowns situated at first floor is situated in the tenanted shop. The petitioner is using tenanted shop and two godowns jointly for his business and these two tenancies are inseparable from each other. It is also argued that



projected use of the tenanted shop and two godowns are in violation of Master Plan of Delhi. The learned Senior Counsel for the petitioner also cited case law to support arguments.

12. Sh. Pradeep Diwan, the learned Senior Counsel for the respondent advanced oral arguments and written submissions also submitted on behalf of the respondent. It is stated that the tenanted shop is situated at ground floor and forming that part of the property bearing no IX/547 which had fallen in share of the respondent. There are four shops at ground floor and the respondent was residing in second and third floors of the property. The respondent is in possession of one small shop situated at first floor admeasuring 6.5 feet x 14 feet which is being used by the respondent as godown and one shop at ground floor situated on back side of main road which is being used by the respondent for display of goods/ readymade garments. The petitioner also in possession of two shops/godowns situated at first floor under separate tenancy.

12.1 The learned Senior Counsel for the respondent argued that the respondent is engaged in business of readymade garments and deals in manufacturing and production of jeans. The respondent wants to



use tenanted shop situated at the ground floor for showroom/display of goods/garments which is best suited to be used as showroom/display of garments being located on the main road i.e. Subhash Road. The shop which is in possession of the respondent is located on the back side portion of the property towards a small *gali* (street) which cannot be used as showroom/ display of goods/garments. The learned Senior Counsel argued that the respondent intends to start the manufacturing work/stitching of jeans in his own property with two shops on the first floor and one shop situated at ground floor already in possession of the respondent while using the tenanted shop as a showroom/display of goods which is located on the main road. It is also argued that the respondent earlier in year 2013 intended to expand his business and received export orders but could not execute/complete export orders due to paucity of space and suffered losses but the respondent now needs additional space to expand his business and to enhance to increase his income. The petitioner is in occupation and possession of various properties.

12.2 The learned Senior Counsel for the respondent also countered arguments advanced by the learned Senior Counsel for the petitioner.



He argued that the respondent is not seeking additional accommodation and it is not absolute law that leave to defend should be granted in case of additional accommodation. The requirement of the respondent is genuine and *bona fide* although the respondent is in possession of one shop at first floor and one shop at ground floor. The respondent is having business in India and also intends to start export business and showroom is required for business within India and export business. The trial court passed impugned order in present eviction petition after application of mind and need of the respondent subject matter of both eviction petitions cannot be interlinked. The grant of leave to defend in eviction petition bearing no 575/16 does not entitle the petitioner for grant of leave in present eviction petition bearing no 574/16. The respondent has not inducted new tenants as alleged. The respondent did not initiate eviction petition against tenants Chunni Lal and Arun Gupta as they paid arrears of rent after receipt of notice. The respondent during pendency of present eviction petition did not get possession of any shop which was forming part of that portion of property bearing no IX/547 which is under ownership of the respondent.



12.3 The learned Senior Counsel for the respondent stated that the petitioner has not disputed relationship of landlord and tenant, the respondent is owner of 120 sq. yards of the property, earlier export orders procured by the respondent due to non-execution, shop available with the respondent is situated at back side of the property while tenanted shop is situated at the ground floor on main road, the respondent does not have labourers for stitching work for execution of export orders etc.

12.4 The learned Senior Counsel for the respondent ultimately argued that display of goods on the main road has advantage over the shop on the back side of the road. The petitioner has failed to disclose is any triable issue in application for leave to defend as the petitioner cannot dictate the terms upon the respondent/landlord. The counsel for the respondent relied on **Subhash Jain V Ravi Sehgal**, 2014 SCC Online 548; **Udai Shankar Upadhyay V Naveen Maheshwari**, MANU/SC/1876/2009 and **Shanti Sharma V Ved Prabha**, (1987) 4 SCC 193. It was argued that present revision petition be dismissed.



13. The learned Senior Counsel for the petitioner primarily argued that eviction petition filed by the respondent pertains to additional requirement and as such leave to defend ought to have been granted to the petitioner. It is further argued that the respondent is already in possession of one shop at ground floor and one shop at first floor of the property and the tenanted shop is required by the respondent for expansion of his business. The learned Senior Counsel for the respondent cited **Santosh Devi Soni V Chand Kiran**, 2001(1) SCC 255 wherein it was observed by the Supreme Court as under:-

3. The short question is whether in the light of the requirements put forward by the respondent-landlady who is a widow and is in occupation of the first floor of the building in which the suit premises are situated leave to defend to the defendant-appellant could have been refused. As this is a case for additional accommodation and looking to the facts and circumstances of the case, especially in the light of the additional accommodation which is subsequently made available to the respondent as mentioned by the appellant, the question of respondent's need was required to be thrashed out on merits by a full-fledged trial. This Court on *11th January, 1990 in Civil Appeal No. 120 of 1990 in the case of Dr. S.M. Mishra v. D.D. Malik* has ruled that in the cases where additional accommodation is asked for in proceedings under Delhi Rent Control Act, normally leave to defend should not be refused.



13.1 The learned Senior Counsel for the petitioner also relied on **Rajinder Kumar Goyal and others V Rajhans Realtors Private Limited**, RC. Rev 318/2015 decided on 09.05.2016 by this court wherein it was observed as under:-

8.....The third point which has been taken by the respondent is that the accommodation, which is available to it, is not good enough to meet its requirements, nor is it good enough to deal with its jewellery business. As against this, the petitioners/tenants have stated that it is a case of additional accommodation, inasmuch as the respondent is already having 169 sq. feet of area available with them and they need additional accommodation in the front in order to do their business of jewellery and, therefore, in case a party needs an additional accommodation, then invariably leave to defend deserves to be given. I find substance in this contention of the petitioners and also that it is not a case of insufficiency of accommodation as contended by Mr. S.P. Kalra, since insufficiency would arise in the backdrop of the quantum of business, but it is a case of additional accommodation which is needed by the respondent, though it has not been, able to establish on record that they have a flourishing business, despite the fact that the averments in this regard have been made by them. Therefore, this is an additional ground, on the basis of which leave to defend ought to be granted to the petitioners.

13.2 The learned Senior Counsel for the respondent argued that it is not a rule that leave to defend should be granted in all cases of additional accommodation and leave to defend should not be granted if need of the landlord is genuine. The respondent in eviction pleaded



that he requires tenanted shop for expansion of his business of readymade garments and in past suffered losses due to non-fulfilment of export obligations and now the respondent intends to take work orders from outside and due to this reason, he needs tenanted shop. The learned Senior Counsel for the respondent in light of these pleas stated that present case does not pertain to additional requirement but relates to need of the respondent for expansion of business of readymade garments i.e. manufacturing of jeans.

13.3 It is accepted proposition of law that in case of additional accommodation leave to defend has to be granted to tenant. This court in **Bharat Glass and Plywood Co V Sushan Pal Soni**, RC. Rev no 46/2013 decided on 21.03.2014 after following **S.M. Mehra V D.D. Malik**, Civil Appeal No.120/1990 decided on 19.01.1990 observed that if the tenanted premises is required for additional accommodation then normally leave to defend has to be granted.

13.4 The respondent in present case is already in possession of one shop at ground floor and one shop at first floor of the property and the respondent is seeking eviction of tenanted shop for expansion of his business of readymade garments as shop under possession of the



respondent is situated on back portion of the property and is not suitable to the respondent. It is apparent that the respondent is seeking additional accommodation for expansion of business as narrated in eviction petition then the leave to defend ought to be granted to the petitioner. It is also pertinent to mention here that the trial court in eviction petition bearing no 575/2016 in respect of eviction of two shops situated on first floor of the property has granted the leave to defend to the petitioner by observing that it is case of additional accommodation. It was also observed that it is settled law that in case of additional accommodation available the reasonability and suitability of the accommodation needs to be tested and it has raised a triable issue for which leave to defend is granted to the respondent. It may be true that under given facts and circumstances of case, the respondent would not be having sufficient accommodation for expansion of his business as pleaded in eviction petition but again requirement of the respondent for additional requirement which has to be examined in wider perspective by way of evidence. It may not be correct that in every case of requirement of additional accommodation, leave to defend has to be granted as



argued by learned Senior Counsel for the respondent and grant of leave to defend in case of additional requirement depends on facts and circumstances of each individual case. However, in present case, the respondent is seeking eviction of the petitioner from tenanted shop for expansion of his own business and for expansion of business he needs additional accommodation. It is not case of the respondent that he wants possession of tenanted shop for business to be started by or for any other family member but the respondent only desires to expand his own business. The arguments advanced by the learned Senior Counsel for respondent cannot be accepted and does not provide much assistance and help to the respondent. The learned Senior Counsel for the petitioner rightly argued that requirement of the respondent qua the tenanted shop pertains to additional requirement. The petitioner in present petition has raised triable issue as eviction of the petitioner from tenanted premises relates to demand of additional accommodation. The trial court has failed to consider that present eviction petition pertains to additional requirement while considering *bona fide* requirement of the respondent in respect of tenanted shop.



14. The learned Senior Counsel for the petitioner also argued that the respondent issued eviction notices to tenants namely Arun Kumar Gupta and Chunni Lal in respect of shops bearing no 18 and 7 on ground of *bona fide* requirement and got possession of these shops. The respondent has not disclosed said facts in eviction petition and as such need of the respondent is not *bona fide*. The learned counsel for the respondent stated that the tenants Chunni Lal who was a tenant in respect of shop no 7 situated on ground floor and Arun Gupta who was a tenant in respect of shop no 18 situated on ground floor were not paying rent and according notices were issued to them for payment of arrears of rent and since these tenants paid arrears of rent in compliance of notices and as such eviction proceedings were not initiated against them. He further stated that the respondent during pendency of present eviction petition did not receive possession of any shop falling in his share.

14.1 The perusal of notices dated 02.06.2015 issued to Chunni Lal who was a tenant in respect of shop no 7 situated at ground floor of the property and dated 03.06.2015 issued to Arun Kumar Gupta who was a tenant in respect of shop no 18 situated at ground floor of the



property by the respondent for payment of arrears of rent and for their eviction on ground of *bona fide* requirement. The respondent preferred not to initiate eviction proceedings against them as both the tenants have paid arrears of rent in compliance of notices. It is true that landlord is best judge of his requirement and a tenant is not permitted to dictate terms of *bona fide* requirement to the landlord. However if the landlord issued and served notices to the tenant also for eviction on ground of *bona fide* need and thereafter preferred not to initiate eviction proceedings against the tenant then in this eventuality the requirement of landlord for tenanted premises in subsequent proceedings filed on ground of *bona fide* requirement against any other tenant is required to be examined in right and proper perspective and is a triable issue which is to be decided after giving an opportunity to tenant to rebut claim of the landlord regarding eviction of tenant on *bona fide* requirement. The present eviction petition is also filed subsequent to notices dated 02.06.2015 and 03.06.2015 then the *bona fide* need of the respondent subject matter of present eviction petition is required to be examined in wider and proper prospective. The Supreme Court in **Amarjit Singh V**



Khatoon Quamarain, AIR 1987 SCC 741 also observed that if the landlady or the landlord could have reasonable accommodation after his or her need arose and she by her own conduct disintitled herself to that property by letting it out for higher income, she would be disintitled to evict her tenant on ground of her need.

15. The learned Senior Counsel for the petitioner stated that the petitioner is also a tenant in respect of two shops being used as godowns situated at first floor of the property under the respondent and the respondent also filed an eviction petition bearing no 375/2016 in respect of these two shops and in that eviction petition, the petitioner was granted leave to defend. He argued that the petitioner without the tenanted shop shall not be able to use two shops situated at first floor and both the tenancies are inseparable from each other as staircase leading to shops at first floor is leading from tenanted shop. It was also argued that denial of leave to defend to the petitioner in present case would also lead to the petitioner getting shut out from the two shops situated at first floor. It is apparent that the petitioner is a tenant under the respondent in respect of tenanted shop and two shops situated at first floor vide two



separate tenancies and staircase leading to first floor is situated in the tenanted shop situated at ground floor and accordingly it practically not possible for the petitioner to use or to have access to two tenanted shops situated at first floor of the property without being in occupation and possession of tenanted shop at first floor. The trial court should have considered this issue while passing the impugned order. The counsel for the respondent during course of arguments had offered to the petitioner for providing alternate staircase to the petitioner for access to two shops situated at first floor which was not accepted by the petitioner as not found suitable to him and proposed staircase would be in violation of building rules and regulations.

16. The learned Senior Counsel for the respondent to justify *bona fide* requirement of the respondent in respect of tenanted premises stated and argued that the respondent is engaged in business of readymade garments and deals in manufacturing and production of jeans. The respondent wants to use tenanted shop which is situated on the ground floor for showroom/ display of goods/garments and the tenanted shop is best suited to be used as showroom/ display of garments being situated on the main road i.e. Subhash Road. The



shop which is under possession of the respondent is situated on the back side portion of the property towards a small *gali* and the said back side shop cannot be used as showroom/display of goods/garments. It is further stated that the respondent intends to start the manufacturing work/stitching of jeans in his own premises with two shops on the first floor and one shop on the ground floor already in his possession while using the tenanted shop as a showroom/display of goods which is situated on the main road. The respondent could not expand business in past due to paucity of space and now the respondent intends to expand his business. The petitioner is having various properties. The petitioner has denied and controverted these facts being false and baseless.

16.1 The trial court in impugned order regarding *bona fide* requirement of the respondent also observes as under:-

9.5 From the above pleading it is found that the respondent has not disputed that the export orders of the petitioner were cancelled earlier on the ground claimed by the petitioner that petitioner could not fulfill them in time. The shop available with the respondent is on main road Subhash Road and the shop available with the petitioner is on the back side at Satnam Gali. The display of goods on the main road which definitely has advantage over the shop on the back side of the road. It is settled law that the tenant cannot dictate terms to the landlord.



The landlord is at disadvantage having shop on the back side and the shop on the main road side has more advantage which is more accessible to customers. In such circumstances of the case the need of the landlord is found to be bona fide and the petitioner has successfully established his bona-fide need of the tenanted premises of the ground floor shop.

16.2 The facts as stated by the learned counsel for the respondent may be good enough to justify *bona fide* requirement of the respondent but *bona fide* requirement of the respondent in respect of tenanted shop has to be consider and judge in light of the fact that the requirement as projected by the respondent in eviction petition is of additional requirement for himself and other issues as discussed herein above.

17. The petitioner has raised triable issues in eviction petition and is entitled for leave to defend. The arguments advanced by the learned Senior Counsels for the petitioner and respondent oral and written and referred case law/precedents are considered in right context and perspective. The present petition is allowed and leave to defend is granted to the petitioner. The impugned order is accordingly set aside, as a consequence of which, the eviction of the petitioner qua



the tenanted shop vide impugned order is set aside. The pending application if any also stand disposed of.

18. The parties are directed to appear before trial court on 21.10.2024 at 2:30 PM for further directions. It is made clear that nothing in this order shall be taken any final opinion on merit of the case.

DR. SUDHIR KUMAR JAIN
(JUDGE)

OCTOBER 08, 2024

N/tk