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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 28.01.2025***+ **RC.REV. 224/2023****SHRI SHARAD JAIN**

.....Petitioner

Through: Ms. Uma Aggarwal & Mr. Pulkit
Aggarwal, Advocates.

versus

SHRI JAYANTI PRASAD JAIN

.....Respondent

Through: Mr. Mayank Gupta & Mr. Surinder
Jain, Advocates.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed on behalf of the Petitioner/landlord seeking to challenge an order dated 20.04.2023 [hereinafter referred to as the "Impugned Order"] passed by Learned Additional Rent Controller (Central) Tis Hazari, Delhi. By the Impugned Order, the Leave to Defend/Contest Application filed by the Respondent/tenant has been allowed. The premises in issue is shop bearing No. 2392, Ground Floor, Chhatta Shahji, Chawri Bazar, Delhi-110006 [hereinafter referred to as the "subject premises"]

2. Learned Counsel for the Petitioner/landlord submits that the Impugned Order suffers from an infirmity.

3. The triable issue that the learned Trial Court found was in respect of the fact that the Petitioner/landlord had sold two shops in the year 2018 and a finding has been given that this would show that the Petitioner/landlord intends to sell the subject premises as well once vacated. In addition, it has



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been found by the learned Trial Court that there is another premises i.e., a shop bearing No.2393, Chhatta Shahji, Chawri Bazar, Delhi 110006, [hereinafter referred to as “shop no. 2393”] which is available as alternate suitable accommodation.

4 On the aspect of landlord-tenant relationship, the Impugned Order has held that the landlord-tenant relationship between the parties is admitted by the Respondent/tenant in his Rejoinder and the same is not in dispute.

5. Learned Counsel for the Petitioner/landlord submits that the bonafide need as set out by the Petitioner/landlord is for the use by the Petitioner/landlord and his son for running a business of wholesale trading of paper. The Petitioner/landlord has set out that he requires four shops for his use and each of these shops have sitting tenants including the subject premises.

5.1. Learned Counsel further submits that the subject premises is more suitable as the same is located in the wholesale paper market of Chawri Bazar and also on the ground floor.

5.2. Learned Counsel also submits that the subject premises is lying locked for several years by the Respondent/tenant and is being held on to by the Respondent/tenant for extracting money from the Petitioner/landlord.

6. It is further contended by the learned Counsel for the Petitioner/landlord that the Petitioner/landlord in the Eviction Petition, more specifically in paragraph 18 (a) (8) of Annexure A has himself stated that due to his urgent financial requirements, he was required to sell the two



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shops to the sitting tenants who were using those shops. It is further stated in the Eviction Petition that the Petitioner/landlord is not keeping good health and is also unable to climb stairs and the subject premises being on the ground floor is best suited for him.

7. Learned Counsel for the Petitioner/landlord also places reliance on the finding of the Learned Trial Court on the aspect of alternate accommodation, as set out in the paragraph 14 of the Impugned Order, to submit that the document showing that shop no. 2393 is not available with the Petitioner/landlord and the same is being used by Shri Aggarwal Jain Dharmath Aushadalaya was already placed on record.

8. Learned Counsel for the Respondent/tenant seeks to rely upon the judgment of the Supreme Court in *Precision steel & Engineering Works v. Prema Deva Niranjana Deva Tayal*¹ to submit that the leave to defend/contest should be granted if the tenant discloses such facts as would disentitle the landlord for an order for recovery of possession. No other submissions have been made by the learned Counsel for the Respondent/tenant.

9. As stated above, so far as concerns the aspect of landlord-tenant relationship, the same has not been disputed before the learned Trial Court, thus, this aspect requires no additional examination.

10. On the aspect of bonafide need, the grounds on the basis of which the need of the Petitioner/landlord was challenged was that since “two shops were sold” in the last 2-3 years by the Petitioner/landlord, the requirement

¹ (1982) 3 SCC 270



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of the Petitioner/landlord is not bonafide since the Petitioner/landlord will sell the subject premises for monetary gain after getting the same vacated. This contention was denied by the Petitioner/landlord however learned Trial Court on this aspect held that the contention of the Respondent/tenant cannot be discarded straight away merely on oral averments. The relevant extract of the Impugned Order is below:

“13.....As per the respondent, the fact that the petitioner has sold out two shops in the year 2018 and 2019 to the sitting tenant wife of the sitting tenant, itself shows that the petitioner only intends to sell off the tenanted premises also against huge consideration by getting the same vacated . Although, the petitioner has denied the same but this contention of the respondent cannot be discarded straightway merely on the basis of oral averments made by the petitioner and the same requires evidence to be led. Moreover, it is pertinent to mention here that the petitioner has stated that he requires all the remaining four shops including the tenanted shop for himself and his son. Thus, it becomes all the more necessary to examine as to whether the alleged bonafide need of the petitioner and his son would not be met from only one shop or whether the tenanted shop would also be required by him since the approximate area required by the petitioner for their alleged business of wholesale trading of paper and the manner in which it would be used by him, is not disclosed by the petitioner in his petition.”

[Emphasis Supplied]

11. The record reflects that, in paragraph 18 (a) of Annexure-A to the Eviction Petition, the Petitioner/landlord has stated that Petitioner and his brother are joint owners of the premises bearing Shop no. 211 in property bearing no. 1194 in Keshav Market, Maliwara, Delhi measuring only 8.64 sq mtr [hereinafter referred to as “Shop No. 211”] and Petitioner/landlord is running a business in the name and style of M/s Rudraksh Jewels from these premises. However, since the shop is situated on the second floor, and there is no provision of lift, the Petitioner/landlord is unable to climb stairs on regularly basis and hence is not able effectively carry on his business. In



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addition, it is contended that the relationship between the Petitioner/landlord and his brother is not cordial for past few years and the brother of the Petitioner/landlord is seeking a partition of the shop no. 211 which would leave Petitioner/landlord with an available area of 4.32 sq mtr. with 3ft. width which will not be suitable for the Petitioner/landlord to conduct any business to fulfil the increasing financial requirements of the family of the Petitioner/landlord. Hence, it is averred that the subject premises being in the wholesale paper market of Chawri Bazar and also on the ground floor is most suited and required by the Petitioner/landlord for running the business of wholesale trading of paper as paper merchant.

11.1 The Petitioner/landlord had explained his requirement in his Eviction Petition in detail. The relevant extract of the Eviction Petition is reproduced below:

"11. That the petitioner at present is running his business at shop bearing no. 211, situated at the second floor of property bearing no. 1194 in Keshav Market, Maliwara, Delhi measuring only about 8.64 sq. mt. The said property was jointly purchased by Shri Sharad Jain and by Sh. Saurabh Jain vide sale deed dated 21.04.2010. The said shop is in exclusive possession of the petitioner where the petitioner is running his proprietorship concern in the name of M/s Rudrakash Jewels.

12. That, as the said shop is situated at the second floor and there is no provision of lift for going at the Second floor, it has become immensely difficult for the petitioner to effectively carry on his business as he is unable to climb stairs on regular basis after his illness and health issues. The Petitioner is also strictly not permitted to climb stairs at all by his doctors. Hence, his requirement for carrying on his business is of ground floor premises only.

13. That Shri Saurabh Jain, brother of the petitioner, is the joint owner alongwith the petitioner of said shop bearing no. 211 situated at the second floor of property bearing No. 1194 in Keshav Market, Maliwara, Delhi. The said shop measures merely 8.64 sq. mts. Further, the Petitioner is not having cordial relationship with the Shri Saurabh Jain from last two years



and Shri Saurabh Jain is seeking partition of the said shop. The front of said shop is only seven ft only and after partition it is very difficult to carry on the business from the said shop. The said shop is situated at the second floor and area of the said shop is only 8.64 sq mt and share of the petitioner is only 50% and after partition it will be only 4.32sq mt only having width of 3 ft only and same will not be sufficient to fulfil the increasing financial requirement of the petitioner and his family members financially dependent upon him.

14 That all the above mentioned shops, presently owned by the petitioner, are situated at the ground floor and occupied by above mentioned tenants. The disputed premises is under tenancy of the Respondent and is one of abovementioned shops The said shops including the disputed premises is bonafidely and urgently required by the Petitioner for commercial purpose for himself and his son namely Shri Akshit Jain for running a business of wholesale trading of paper as paper merchant so as to meet the increasing financial need of the family. The said shops including the disputed premises are most suitable accommodation for the said business and for meeting the above stated bonafide needs of the Petitioner as the said shops are situated in the wholesale paper market of Chawri Bazar at the ground floor only.

15. That the petitioner needs the said shops urgently and bonafidely as son of the petitioner has also completed his study and of marriageable age and due to ill health of the petitioner and increasing financial need of the family the petitioner needs his help in his business."

[Emphasis Supplied]

12. The finding of the learned Trial Court that the Respondent's contention, stating that the Petitioner/landlord would sell the subject premises after it is vacated since the Petitioner/landlord had sold two other shops 2-3 years ago, requires evidence and therefore warrants the grant of the Leave to Defend/Contest Application, is infirm.

12.1 The Petitioner/landlord has clearly stated in the Eviction Petition that on account of financial difficulties, the Petitioner/landlord was required to sell the two shops to their sitting tenants. If a landlord requires for financial reasons to sell the premises, it does not mean that he does not have a



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bonafide requirement. In any event, this disclosure was made in the Eviction Petition by the Petitioner/landlord. The relevant extract of the Eviction Petition is reproduced below:

“8) That immediately after the demise of Smt. Rama Jain, the petitioner has sold two shops i.e. shop bearing MC no. 2403, measuring about 11.71 sq mts on 2.12.2018 to its sitting tenant and Shop bearing no. 2396, measuring about 11.15, on 8.11.2019 to the wife of its sitting tenants, due to his urgent financial requirements. All the remaining four shops are now urgently and bonafidely required by the petitioner for himself and his son for doing the business.”

[Emphasis Supplied]

12.2 In the case of *Shyam Sunder Ahuja v. Shushil Kumar*,² a Coordinate Bench of this Court has held that the plea that landlord had sold some property or let out some property is not a ground to deny order of eviction to landlord. The relevant extract is reproduced below:

“16. Not only so, the petitioner/tenant also did not state that there was no change in the requirement of the respondent/landlord since then. Merely taking a plea that the respondent/landlord has in the past sold some property or let out some property has in Narender Kumar Shah Proprietor Jay Bharat Steels v. Malti Narang 2014 SCC OnLine Del 3839 and Anil Kumar Bagania v. Shiv Rani 2014 SCC OnLine Del 6645 been held to be not a ground for denying order of eviction to landlord on the ground of self requirement of premises..”

[Emphasis Supplied]

13. In any event, the provisions of the Delhi Rent Control Act, 1958 [hereinafter referred to as the “Act”] provide for a remedy of restoration of possession to a Petitioners/tenants in one situation, i.e., under Section 19 of the Act. In cases allowed under Section 14(1)(e) of the Act, the recovery of possession by a tenant under Section 19(1) of the Act can be obtained if the landlord re-let the whole or part of the subject premises within three years

² 2017 SCC OnLine Del 10624



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from the date of obtaining possession from the evicted tenant. Sub-section (2) of Section 19 of the Act further provides that where such premises are not occupied within two months by landlord or within three years from the date of possession by the person for whose benefit the premises are held, or are re-let to a person without permission of the Rent Controller within three years from the date of possession, the Rent Controller may direct the landlord to put the tenant in possession or pay him such compensation as is deemed fit by the Rent Controller.

13.1. Section 19 of the Act is set out below:

“19. Recovery of possession for occupation and re-entry.—(1) Where a landlord recovers possession of any premises from the tenant in pursuance of an order made under clause (e) of the proviso to sub-section (1) of section 14 [or under sections 14A, 14B, 14C, 14D and 21, the landlord shall not, except with the permission of the Controller obtained in the prescribed manner, re-let the whole or any part of the premises within three years from the date of obtaining such possession, and in granting such permission, the Controller may direct the landlord to put such evicted tenant in possession of the premises.

(2) Where a landlord recovers possession of any premises as aforesaid and the premises are not occupied by the landlord or by the person for whose benefit the premises are held, within two months of obtaining such possession, or the premises having been so occupied are, at any time within three years from the date of obtaining possession, re-let to any person other than the evicted tenant without obtaining the permission of the Controller under sub-section (1) or the possession of such premises is transferred to another person for reasons which do not appear to the Controller to be bona fide, the Controller may, on an application made to him in this behalf by such evicted tenant within such time as may be prescribed, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit.”

13.2. The Supreme Court in ***Abid-Ul-Islam v. Inder Sain Dua***³ case has held that Section 19 of the Act gives a right of re-possession to the

³ (2022) 6 SCC 30



dispossessed tenant if landlord recovers possession under Section 14(1)(e) of the Act and thereafter, the landlord does not use the subject premises for the purpose that it was intended and set out in such Eviction Petition on which basis, an order for eviction was obtained by the landlord. The relevant extract is set out below:

*“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. The object of Section 14(1)(e) vis-à-vis Section 25-B has to be seen in the light of yet another provision contained under Section 19. **Section 19 gives a right to the dispossessed tenant for repossession if there is a non-compliance on the part of the landlord albeit after** eviction, to put the premises to use for the intended purpose. **Such a right is available only to a tenant who stood dispossessed on the application filed by the landlord invoking Section 14(1)(e) being allowed. Thus, Section 19 inter alia throws more light on the legislative objective facilitating a speedy possession.** The object is also reflected in the proviso to Section 25-B(8), denying a right of appeal..”*

[Emphasis Supplied]

14. Given the settled law as discussed above and the explanation as set out by the Petitioner/landlord in the Eviction Petition, this Court is of the view that the finding of the learned Trial Court on the aspect of *bona fide* need of the Petitioner/landlord is not in accordance with law.

15. The learned Trial Court has also given a finding that since the approximate area required by the Petitioner/landlord for the business of wholesale trading of paper is not disclosed by the Petitioner/landlord in the Eviction Petition, the need is not bona fide.

15.1. There is no requirement of a landlord to set out exactly what area is required in terms of giving the measurement. The Petitioner/landlord has clearly stated in his Eviction Petition that he needs four shops. The subject



premises is only one of those shops and the not giving of the requisite area in terms of size cannot be a ground to allow Leave to Defend/Contest Application.

16. The only other ground for which the Leave to Defend/Contest Application was allowed was that Shop no. 2393 is an alternate premises which is available with the Petitioner/landlord. The Petitioner/landlord has stated in the Eviction Petition that Shop no. 2393 is tenanted and the office of Aggarwal Jain Dharmarth Aushadhaley is being operated from there. The relevant extract of the para 18 (a) (3) of the Eviction Petition is reproduced below:

“ 3) That Shri Vijay Kumar, at the time of his death, was the owner of entire third floor of the said property and seven shops on the Ground floor. Details of the said shops are given as under –

i....

ii....

*iii. **Shop bearing MC No. 2393, measuring about 5’5” x 14, is Office of Aggarwal Jain Dharmarth Aushdhalay since the life time of Shri Shambhu Nath....**”*

[Emphasis Supplied]

16.1. In addition, the Petitioner/landlord has also placed on record, copy of Memorandum of Association of Shri Aggarwal Jain Dharmarth Aushadhaley which in clause 2 specifies the address of the registered office as shop no. 2393. The relevant extract is reproduced below:

“2. The registered office of the Society is situated in house bearing no. 2393, Chhatta Shahji, near Bazar Chawri, Delhi.”

16.2 Thus, clearly this premises is not available to the Petitioner/landlord.

17. The Supreme Court in the *Abid-Ul-islam case* has held that for availing leave to defend, a mere assertion by the tenant is insufficient.



Section 14(1)(e) of the Act creates a presumption in favour of the landlord regarding *bona fide need*, which is rebuttable only with substantive material capable of raising a *triable issue*. It was further held that the burden of proof is on the tenant to demonstrate, with cogent evidence, that the landlord's requirement is not genuine. The Court also reiterated the settled principle of law that leave to defend should not be granted on mere asking but when the pleas and contentions raise triable issues. The relevant extract of the *Abid-Ul-islam case* is extracted below:

“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.”

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20. Dealing with a *pari materia* provision, this Court in *Baldev Singh Bajwa v. Monish Saini* [*Baldev Singh Bajwa v. Monish Saini*, (2005) 12 SCC 778], was pleased to clarify the aforesaid position holding the procedure as summary. In such a case, the tenant is expected to put in adequate and reasonable materials in support of the facts pleaded in the form of a declaration sufficient to raise a triable issue. **One cannot lose sight of the object behind Section 25-B in facilitating not only the expeditious but effective remedy for a class of landlords, sans the normal procedural route.** In this regard, we wish to quote the decision of this Court in *Baldev Singh* [*Baldev Singh Bajwa v. Monish Saini*, (2005) 12 SCC 778] : (SCC pp. 790-93, paras 14-17 & 19)

“14. The phrase “*bona fide requirement*” or “*bona fide need*” or “*required reasonably in good faith*” or “*required*”, occurs in almost all Rent Control Acts with the underlying legislative intent which has been considered and demonstrated innumerable times by various High Courts as also by this Court, some of which we would like to refer to.



In Ram Dass v. Ishwar Chander [Ram Dass v. Ishwar Chander, (1988) 3 SCC 131] it is said that the bona fide need should be genuine and honest, conceived in good faith. It was also indicated that the landlord's desire for possession, however honest it might otherwise be, has inevitably a subjective element in it, and that desire, to become a "requirement" in law must have the objective element of a "need", which can be decided only by taking all the relevant circumstances into consideration so that the protection afforded to a tenant is not rendered illusory or whittled down.

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17. In Shiv Sarup Gupta v. Mahesh Chand Gupta [Shiv Sarup Gupta v. Mahesh Chand Gupta, (1999) 6 SCC 222] this Court while dealing with the aspect of bona fide requirement has said that the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, refers to a state of mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the Judge of facts by placing himself in the armchair of the landlord and then posing a question to himself — whether in the given facts, substantiated by the landlord, the need to occupy the premises can be said to be natural, real, sincere and honest.

[Emphasis Supplied]

18. Given the aforesaid discussion, this Court finds that there is no triable issue in the matter. The Eviction Petition is accordingly allowed. However, as set out in Section 14(7) of the Act, the Respondent/tenant shall be granted a period of six months from the date of this order to vacate the subject premises.

19. The Petition is disposed of accordingly.

TARA VITASTA GANJU, J

JANUARY 28, 2025/ ha

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