



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

% Date of Decision: 25.03.2025

+ **RC.REV. 558/2019 and CM APPL. 42321/2019**

GURDEEP SINGH

.....Petitioner

Through: Mr. H.S. Kohli and Ms. Mannat Kohli,
Advocates

versus

JITENDER PAL SINGH NARANG & ANRRespondents

Through: Mr. P.R. Chopra, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present petition, filed under Section 25B (8) of the Delhi Rent Control Act 1958 (hereinafter, referred to as 'DRC Act'), the petitioner/tenant has assailed order dated 19.03.2019 passed by Additional Rent Controller, Central District, Tis Hazari Courts, Delhi in case No. E-126/18, whereby, the leave to defend application of the petitioner was dismissed and the eviction order came to be passed in the favour of the respondent/landlord.
2. The record reveals that an eviction petition under Section 14 (1) (e) of DRC Act was filed by the late respondent/landlord in relation to property being i.e. *shop no. 4124, Naya Bazar, Delhi-110006* (hereinafter, referred to as 'subject premises'). The respondent-landlord claimed that he required the subject premises for the *bona fide* requirement of his son *Gagandeep Singh* for starting his own business.



In his leave to defend application, the petitioner/tenant did not dispute the ownership or landlord-tenant relationship, however, he contended that there were suitable alternate accommodation available to the respondent. The impugned order rejected the leave to defend application of the petitioner, holding that there was no other suitable alternative accommodation except the tenanted premises and no triable issues had been made out.

3. Before this Court, learned counsel for the petitioner/tenant submits that the foremost ground for granting leave to defend is that the Trial Court has failed to consider the fact that initially in the eviction petition, the respondent did not mention the details of entire space available with it and only after the disclosure by petitioner of additional commercial properties, the respondent admitted to the same in reply to the leave to defend application. He further submits that whenever a landlord raises a plea of the bonafide requirement, leave to contest shall be granted to test such plea. In support of this contention, reliance has been placed on the judgment of the Supreme Court in the case of Shanti Devi Vs Rajesh Kumar Jain reported as **(2015) 2 SCC 158**.

4. It is next contended that though the respondent- landlord stated that they were engaged in a transportation business, the eviction petition was silent as to its location and that the respondent has deliberately concealed the fact that they are running their business from a 3-storey building on a plot bearing no. 4110, Naya Bazar, Delhi, which is in their exclusive possession. It is further submitted that upon demise of respondent No. 1 on 12.02.2021, son of respondent assumed control of his business, being the legal heir and thereby is running the business from the said property i.e., 4110, Naya Bazar. Lastly, it is contended that the respondent has deliberately created



paucity of space by letting out/selling different portions of property bearing No. 4124, Naya Bazar, Delhi. It is asserted that on one hand, the respondents are pleading *bonafide* requirement but on the other hand, sales were made with respect to different portion of the subject property to one *Shri Krishan Kant Sharma*, who is running his business in the name and style of M/s Ganeshaya Trading Company.

To support the above contentions, the petitioner has placed further reliance on Mohan Lal v. Tirath Ram Chopra¹, Charan Das Duggal v. Brahma Nanda², Inderjit Kaur v. Nirpal Singh³, Santosh Devi Soni v. Chand Kiran⁴ and Hindustan Zinc Ltd. v. Lt. Col. Satya Prakash⁵.

5. *Per contra*, learned counsel for the respondent/landlord, in response to the petitioner's contention regarding *bona fide* requirement, submitted that the respondent owns only one-half portion of the property No. 4110, Naya Bazar, while the other half portion possessed by the respondent is a tenanted portion. It is clarified that only the ground floor and mezzanine floor of the said property are in their possession, whereas the first floor of the said property is owned by a third party.

Attention of the Court is drawn to the impugned order, wherein it has been categorically noted that the respondent denied the availability of alternate suitable accommodation within property No.4122 to 4124, as the said property has either been sold, tenanted or being used by the labour. As such, the late respondent was not required to disclose the portions that are already sold or not available with them. It is further submitted that the

¹ 1982 (3) DRJ 268

² 1983 1 SCC 301

³ 2001 1 SCC 706

⁴ 2001 1 SCC 255



petitioner failed to file any site plan that would contradict the said contention of the respondent. Insofar as one shop in Kamla Nagar is concerned, it is stated that the respondent alongwith his brother is the joint owner and the said shop is being used for storage of the goods booked for transportation to the other cities.

6. It is a settled position in law that while deciding an application for leave to defend, the Rent Controller must examine only whether a *prima facie* case is made out by the tenant raising issues which may be triable in nature, irrespective of the final outcome of the pleas so raised. Therefore, at the stage of leave to defend, the threshold to be crossed by the tenant is rather low and there is no need for the tenant to lead incontrovertible evidence proving the same; that is to be determined at the stage of trial. In terms of the burden placed on the landlord, while a presumption may exist in their favour as to the *bona fide* need claimed, once an averment is made to that effect and landlord-tenant relationship is established, it is still the responsibility of the landlord to make out an apparent case of sufficient and reasonable need as well as an absence of alternate accommodation to meet the same. Any material doubt raised as to those issues become triable in nature, warranting grant of leave to defend in favour of the tenant. Needless to state, such an issue cannot be frivolous in nature or raised for the sake of raising a defence, and must be something tenable, even if it might ultimately collapse at trial. [Ref: Charan Dass Duggal v. Brahma Nand;⁵ Santosh Kumar v. Bhai Mool Singh⁷ and Precision Steel & Engg. Works v. Prem

⁵ 194 (2012) DLT 244

⁶ (1983) 1 SCC 301.

⁷ 1958 SCC OnLine SC 62.



Deva Niranjana Deva Tayal⁸]. In other words, while at the stage of leave to defend, the tenant need not establish a fool proof case fit for rejection of the petition for eviction in totality, the grounds raised must also not be mere assertions and must raise a triable issue such that gives rise to a necessity for it to be tested at trial for a proper and just adjudication. [Ref: Abid-Ul-Islam v. Inder Sain Dua⁹]

7. A Co-ordinate Bench of this Court in Mohan Lal vs. Tirath Ram Chopra & Ors. (Supra) with regards to the facts to be pleaded by the landlord to establish *bona fide* need, held as follows:-

*“15...The statements of fact may be as elaborate as the landlord may desire to make, but it will be enough for the landlord to state, in , application for eviction, that he is the landlord and owner of the premises and that the same were let for residential purposes. These are averments of facts. It is not necessary for him to state's to how he became the owner, either by sale, gift, transfer or by will or a family arrangement etc. The law requires the disclosure of all material facts in the pleadings and not the evidence by which they have to be proved. **It is for this reason that it is not necessary for the owner of a property to state as to how he became the owner thereof but as bona fide requirement of the landlord or absence of other reasonably suitable accommodation has to be in inferred from all the facts and circumstances, he must plead all such facts and circumstances in his application. He has to show as to how the need for getting the recovery of possession of the premises exists. In this connection he may have to plead the accommodation available with him, the non-existence of any alternative suitable accommodation, the extent of the members of the family dependent upon him and the extent of the need of alternative or additional accommodation...**”(*Emphasis Supplied*)*

8. Supreme Court in the case of Inderjeet Kaur vs. Nirpal Singh (Supra) elucidated upon the burden placed on the landlord to establish his *bona fide* need in the following manner:-

13. We are of the considered view that at a stage when the tenant seeks

⁸ (1982) 3 SCC 270.

⁹ (2022) 6 SCC 30.



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 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 25B(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 IIIA 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 a 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.** (emphasis supplied)

9. The Supreme Court in M.M. Quasim vs. Manohar Lal Sharma and Ors.¹⁰ held that when alternate accommodation has been alleged, landlord has to establish that the vacant premises are not suitable for the purpose of his occupation. It was held that:-

When examining a case of personal requirement, if it is pointed out that there is some vacant premises with the landlord which he can conveniently occupy, the element of need in his requirement would be absent. To reject this aspect by saying that the landlord has an unfettered right to choose the premises is to negative the very raison d'etre of the Rent Act. Undoubtedly, if it is shown by the tenant that the landlord has some other

¹⁰ MANU/SC/0473/1981



vacant premises in his possession, that by itself may not be sufficient to negative the landlord's claim but in such a situation the Court would expect the landlord to establish that the premises which is vacant is not suitable for the purpose of his occupation or for the purpose for which he requires the premises in respect of which the action is commenced in the Court.

10. Recently, in the case of Sanjay Chug vs. Opendar Nath Ahuja and Ors.¹¹, the landlords had stated a bona fide need of their sons to run independent businesses, and the tenants had contended that there were other vacant properties. Granting the leave to defend, a Co-ordinate Bench of this Court held that determining the sufficiency and suitability of the alleged alternate accommodation was a triable issue. It was held that:-

23. Admittedly, in the present case, the respondents have in their possession of commercial accommodation from where their two sons are operating business, their need projected would be nothing but that an additional accommodation for setting up a new business by one of son or expanding the existing business. The projected requirement is to be examined at the time of trial. If the leave to defend is refused, an opportunity to test the requirement as averred by landlord is denied which is not the scheme of the Act.

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25. This aspect directly goes to the bona fide requirement of the respondents as also to assess the suitability or otherwise of the space from where the respondent was carrying the said business. There is no dispute that a respondent is entitled to have the expansion of her business and can also seek additional accommodation for the same, but, then, it is necessary to know that the space available was either insufficient or not suitable for doing the business. It is necessary to know if it was for the expansion of the said business in view of joining grandson in the tenanted shop. It is triable issue, which is seen to have been raised by the petitioner, and projected requirement of the respondents is required to be tested by the Controller. From the respondents' own pleadings, a triable issue is seen to have been raised by the petitioner.

11. Having established the threshold to be crossed by the tenant at the

¹¹ MANU/DE/0070/2014



stage of considering an application for leave to defend, it is prudent to examine the contentions raised by the petitioner in the present case in that light. In his application seeking leave to defend, the petitioner had alleged that the respondent was also occupying property bearing No. 4110, Naya Bazar, Delhi, built up on a plot and measuring 250sq.yard, constructed upto three stories. In the reply to the said application, the respondent had admitted to owning half portion of the property no. 4110, and being in possession of the other half as tenants, at the ground floor and mezzanine. Though the petitioner had alleged that this built up property on a plot admeasuring 250 sq. yds. was a suitable alternative accommodation, the respondent has not specifically averred as to how the portion in their possession is not suitable and sufficient for his requirements.

12. The petitioner had also alleged that the respondent had let out a portion adjoining the demised property to one *Shri Krishan Kant Sharma* of M/s. of Ganeshaya Trading Company stated to be operating from 4124, Naya Bazaar, Delhi. Though the respondent in their reply to leave to defend application in Para 9 have given the details of the other occupants, any mention of *Krishan Kant Sharma* or *Ganeshaya Trading Company* is conspicuously absent. It is also admitted that a portion on the ground floor at property no. 4124 is being used only for purpose of sleeping by respondent's labour. Thus, in present facts as the eviction is sought for requiring additional accommodation, the sufficiency of space already available need to be tested in trial. On these grounds alone, the impugned order must go and this Court need not adjudicate upon another contention raised that tenancy was in the name of M/s B. Natha Singh Karan Singh Pvt. Ltd., whereas the eviction petition was against the petitioner in his individual



capacity. The contention was denied by respondent by referring to sale deed and legal notice.

13. Considering the aforesaid facts and legal position, this Court is of the view that triable issue is made out, hence, the impugned order dated 19.03.2019 rejecting the petitioner's application for leave to defend is set aside. Needless to state that it shall remain open to the LRs of the late respondent to lead evidence in trial to rebut the averments of the petitioner and the same would be considered by the Trial Court as per law and uninfluenced by any observation made herein.

14. The present petition is disposed of in the above terms alongwith pending application. It is directed that the parties shall appear before the concerned Trial Court on 28.04.2025.

15. Copy of this order be communicated to the concerned Trial Court forthwith for information and necessary compliance.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 25, 2025

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(corrected and released on 09.04.2025)