



2025:DHC:2289



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

% Date of Decision: 26.03.2025.

+ **RC.REV. 198/2024 and CM APPL. 41743/2024**

SANJAY KUMAR SHARMAPetitioner

Through: Mr. Sonal Sinha, Advocate

versus

URMILA JAINRespondent

Through: Mr. Anjum Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present revision petition filed under Section 25-B (8) of the Delhi Rent Control Act 1958 (hereinafter, referred to as '*DRC Act*'), the petitioner seeks to assail the order/judgement dated 02.04.2024 passed by ARC-02 (Central), Tis Hazari Courts, Delhi in RC/ARC/208/2022, titled 'Smt. Urmila Jain V. Shri Sanjay Kumar Sharma'.

Vide the impugned order/judgement, the learned ARC dismissed the petitioner-tenant's application for grant of leave to defend and an eviction order came to be passed in favour of the respondent-landlord and against the petitioner, in relation to premises being *one room on the second floor of the property bearing no. 1281, Second Floor, Vakeel Pura, Gali Guliyani, Delhi – 110006* (hereinafter, referred to as '*subject premises*').

2. In the eviction petition, the respondent-landlord, a 70 year old lady, claimed that she had a *bona fide* requirement of the said premises for



residential purposes for herself and her family, including her two school-going grandsons. In his leave to defend application, the petitioner raised primarily two grounds, firstly, that the respondent did not have the ownership rights qua the subject premises, and secondly, that there was suitable alternate accommodation available with the respondent. The impugned order rejected the leave to defend application of the petitioner, holding that the petitioner had made bald averments and failed to deny the respondents claim of requiring the premises for her grandchildren.

3. Before this Court, the primary contention raised by the petitioner is regarding the availability of alternate suitable accommodation with the respondent. Drawing the Court's attention to the petitioner's application for leave to defend, it is stated that the subject premises is a part of a larger building comprising of four floors, all of which are vacant and in control of the respondent, other than the portion under the petitioner's occupation. In this regard, reference is also made to the site plan as well as photographs placed on record. It is contended that the respondent concealed the availability of alternate accommodation in its eviction petition and that suppression of material facts disentitles her from obtaining eviction order summarily.

It is also contended that there is no *bona fide* need for the premises as the respondent has statedly disowned her son and grandsons and neither of them are living with her. Further reference is made to the legal notice dated 23.01.2021 issued by the respondent to the petitioner for vacating the subject premises, wherein no *bona fide* need was stated and instead, the eviction was sought on account of premises being unfit and unsafe for human



habitation.

4. Countering the contentions, the respondent reiterates that she has a genuine, *bona fide* requirement for the tenanted premises. She claimed that being old and paralysed, she wants her son and grandsons to reside with her and for which adequate space is not available. It is submitted by learned counsel for the respondent that the suitability of the premises for *bona fide* need is determined as per the convenience of the landlord and that the presumption lies in the favour of the landlord. In support of his submission, he places reliance on Sudesh Kumar Soni and Ors vs. Prablza Khanna and Ors.¹ Learned counsel also draws the attention of this Court to paragraph 9.3 of the impugned judgement to submit that the petitioner has not denied the respondent's *bona fide* need in his affidavit filed with the leave to defend application.

Respondent has also denied petitioner's assertion that tenanted premises form part a building comprising of four floors. He rather claimed that building is constructed up to 3 floors, the ground and first floors being occupied by other tenants. It is also claimed that the petitioner is himself not occupying the subject premises and is actually residing at *B-7, Ground and First Floor, South Anarkali, Gali No.8, Near Rupa Public School, Delhi-110051*. Reliance is placed on the decision in Sidhharth Viyas and Anr. v. Ravi Nath Misra and Ors.,² to submit that the tenant having suitable alternate accommodation, is liable to vacate the demised premises.

5. It is a settled position in law that while deciding an application for

¹ 153 (2008) DLT 247.

² (2015) 2 SCC 701.



leave the 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 outcomes 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;³ Santosh Kumar v. Bhai Mool Singh⁴ and Precision Steel & Engg. Works and Anr. v. Prem Deva Niranjana Deva Tayal⁵].

6. 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

³ (1983) 1 SCC 301.

⁴ 1958 SCC OnLine SC 62.

⁵ (1982) 3 SCC 270.



proper and just adjudication. [Ref: Abid-Ul-Islam v. Inder Sain Dua⁶]

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

8. In the leave to defend, the petitioner/tenant has primarily challenged the respondent's *bona fide* requirement of the subject premises as well as availability of alternate accommodation. A perusal of the eviction petition shows that the same is silent on the latter aspect, and does not even contend that the other floors are let out to other tenants. Even in the reply to the leave to defend application, the denial is not specific. The petitioner in his leave to defend application has relied on majorly two things in support of his contentions, a Site Plan and some photographs. The Site Plan placed on record on behalf of the petitioner shows four floors in the building, comprising of, on the ground floor - two rooms, latrine bathroom and one shop; on the first floor - three rooms, kitchen and latrine bathroom; on the second floor - three rooms, two kitchens, one latrine bathroom and open veranda and on the third floor - one big hall and two wooden rooms. In the reply to leave to defend application, the respondent denied that the building has four floors. As per the respondent's Site Plan, there is no third floor. Petitioner's averment that the rest of the premises are lying vacant and locked is denied, however, no supporting facts have been supplied regarding their use and occupation. Moreover, the respondent has not challenged or rendered any explanation regarding the photographs of the vacant portions

⁶ (2022) 6 SCC 30.



in the premises put on record by the petitioner. Thus, the contentions put forth by the petitioner regarding alternate accommodation have not been sufficiently denied by the respondent and the question as to the existence of the third floor, the availability of the vacant portion in the same building, and if yes, as to whether the same would suffice as alternate accommodation, are triable issues in themselves, warranting grant of the petitioner's application for leave to defend. The same need to be contested at the stage of trial by leading adequate evidence.

9. Considering the aforesaid facts and legal position, this Court is of the view that triable issues are made out, hence, the impugned order dated 02.04.2024 rejecting the petitioner's application for leave to defend is set aside. Needless to state that it shall remain open to the 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.

10. 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 21.04.2025.

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

MANOJ KUMAR OHRI
(JUDGE)

MARCH 26, 2025/ik