



2025:DHC:5097



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Judgment pronounced on: 01.07.2025***
+ **RC.REV. 226/2018, CM APPL. 73237/2024**

SUDERSHAN KUMAR

.....Petitioner

Through: Mr. P. P. Malhotra, Sr. Adv. with
Ms. Sonia Malhotra Kumar, Mr.
Vishal Gohri, Mr. Lalit Kumar,
Advs. with Petitioner in person.

versus

HARISH CHAND GARG

.....Respondent

Through: Mr. Sanjeev Sindhvani, Sr. Adv
with Mr. Peeyoosh Kalra & Mr.
Yashwant Singh Baghel, Advs. with
Respondent in-person.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****JUDGMENT****TARA VITASTA GANJU, J.:****TABLE OF CONTENTS**

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BRIEF FACTS

1. The present Revision Petition has been filed under section 25(B)(8) of the Delhi Rent Control Act, 1958 [hereinafter referred to as “the Act”] seeking to challenge the judgment dated 06.02.2018 [hereinafter referred to as “the Impugned Judgment”] passed by the court of Ld. SCJ-cum-RC, Central, Tis Hazari Court, Delhi [hereinafter referred to as “the Trial Court”] in Eviction Petition bearing no. 78192/2016 [renumbered from 115/2011] captioned ***Dr. Sudershan Kumar v. Harish Chand Garg*** [hereinafter referred to as “Eviction Petition”] whereby the Eviction Petition filed by the Petitioner/Landlord has been dismissed in respect of the shop forming part of the property bearing no. 29/5, Shakti Nagar, Delhi-110007 measuring front 8’4” and length 23’9” as shown in the red colour in the site plan which is annexed with the Eviction Petition [hereinafter referred to as “subject premises”].

2. Briefly, the facts are that an Eviction Petition was filed by the Petitioner under Section 14(1)(e) of the Delhi Rent Control Act, 1958 [hereinafter referred to as “DRC Act”] seeking eviction of the Respondent from the subject premises in the year 2011. The Petitioner claims to be the owner of the subject premises by way of a sale deed dated 27.07.2006, having purchased the same from the previous owner, one Mr. Vijay Kumar, who had let out the subject premises to the Respondent at a monthly rental of Rs. 200/-. The Petitioner seeks eviction of the Respondent on the ground that the subject premises is required by the Petitioner for his *bona fide* need



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to set up a dental clinic facility.

2.1 An application for leave to defend was filed by the Respondent, which was allowed by the learned Trial Court on 15.12.2012. The order dated 15.12.2012 passed by the learned Trial Court was the subject matter of challenge before a Coordinate Bench of this Court in RC Rev. No. 109/2013 captioned ***Sudershan Kumar v. Harish Chand Garg***, and the same was dismissed by a judgement dated 13.06.2014 [hereinafter referred to as Judgement dated 13.06.2014"]. Thereafter, upon a full trial, the Eviction Petition filed by the Petitioner was dismissed by the learned Trial Court by way of the Impugned Judgment.

CONTENTIONS OF THE PETITIONER

3. Learned Senior Counsel for the Petitioner submits that Petitioner is the owner of the subject premises by way of a sale deed dated 27.07.2006 and the Respondent was inducted as a tenant in the subject premises by the erstwhile owner of the subject premises. The property bearing no. 29/5, Shakti Nagar, Delhi-110007 [hereinafter referred to as "Property No 29/5, Shakti Nagar"], comprises two front-facing shops on the main road, of which one is the subject premises and the other is a separate shop which was given on tenancy to a different tenant and separate proceedings were initiated seeking eviction of that tenant. The back portion of the Property No 29/5, Shakti Nagar is in possession of the Petitioner.

3.1 Learned Senior Counsel for the Petitioner submits that the Petitioner requires the subject premises for the *bona fide* need of the Petitioner to set up a dental clinic facility in the subject premises. It is submitted that the Petitioner is a highly qualified dentist with a Master's degree in Dental Surgery and advanced training abroad in maxillofacial surgery and



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orthodontics, and that the Petitioner has also previously served as the Head of Department and senior consultant at St. Stephen's Hospital for 16 years.

3.2 It is further submitted that the Petitioner is currently running a dental clinic from Shop No. 3, Municipal Market, Kamla Nagar, Delhi, admeasuring 16'-4½" × 14'-4½" [hereinafter referred to as "Shop No.3 Kamla Nagar"]. However, the existing clinic is small and can only accommodate two dental chairs and one X-ray machine in a congested setup, with no proper waiting area for patients. Further, due to space constraints, the Petitioner is unable to provide adequate treatment to the patients and is forced to refer patients elsewhere. Thus, the Petitioner requires the subject premises to set up a modern dental clinic/hospital with round-the-clock facilities, catering to patients, attendants, and staff under one roof, and also for promoting dental tourism.

3.3 Learned Senior Counsel for the Petitioner submits that the Petitioner is residing in a house bearing no. 11/8, Shakti Nagar, Delhi-110007 [hereinafter referred to as "Property No. 11/8, Shakti Nagar"], and the subject premises is situated near the residence of the Petitioner. It is further submitted that the Petitioner is a senior citizen, and thus it will be convenient for the Petitioner to establish a dental clinic near the residence of the Petitioner.

3.4 Learned Senior Counsel for the Petitioner submits that Property No. 11/8, Shakti Nagar is used solely for residential purposes and Shop No.3 Kamla Nagar from where the Petitioner is currently running his dental clinic, has insufficient space. In regards to the vacant portion in Property No 29/5, Shakti Nagar, learned Counsel for the Petitioner submits that the same is not sufficient for the intended *bona fide* need of the Petitioner since



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the Petitioner intends to open a clinic with all modern facilities and as part of the composite plan the Petitioner would require the subject premises as well as the other shop in the Property No 29/5, Shakti Nagar along with the space in the Property No 29/5, Shakti Nagar which is already in possession of the Petitioner.

3.5 Learned Senior Counsel for the Petitioner submits that the second floor of the Property No 29/5, Shakti Nagar is owned by the wife of the Petitioner, however, the same is not suitable for carrying out professional activities and cannot be used for non-residential purposes.

3.6 It is further submitted that the front-facing shops are better placed to run a business in comparison to the shops which are placed on the back side of the property. Reliance has been placed on the judgement of the Supreme Court passed in the case of *Anil Bajaj & Anr. v. Vinod Ahuja*¹.

3.7 It is further submitted by the Petitioner that there does not exist any other reasonable or suitable accommodation with the Petitioner to establish a modern dental clinic/hospital as intended by the Petitioner.

3.8 Learned Senior Counsel for the Petitioner further submits that landlord is the best judge of his requirements and a tenant cannot dictate the terms to the landlord as to how the landlord has to use the property. Reliance in this regard is placed on the judgment of the Supreme Court in the case of *Prativa Devi (Smt.) Vs. T.V. Krishnan*² and a Coordinate Bench of this Court in the case of *Adarsh Electricals & Ors. v. Dinesh Dayal*³ in this behalf.

¹ (2014) 15 SCC 610

² (1996) 5 SCC 353

³ 2010 SCC OnLine Del 3712



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CONTENTIONS OF THE RESPONDENT

4. Learned Counsel for the Respondent, on the other hand, contends that the Petitioner has concealed multiple accommodations which are available with the Petitioner and are suitable for the requirements of the Petitioner. It submitted that the following properties are available with the Petitioner:

- (i) M-3, Greater Kailash Enclave, New Delhi-110048.
- (ii) G-3, Greater Kailash Enclave, New Delhi-110048.
- (iii) M-7 Greater Kailash -I, New Delhi- 110048.
- (iv) C-3 Greater Kailash Enclave, New Delhi-110048.

4.1 Learned Senior Counsel relies on MARK Y, Ex. PW 1/D-4, Ex. PWI/D-5A, Ex PW 1/D-5B, Ex PW 1/D-5C, and Ex PW1/D-5D in this behalf to submit that the Petitioner has failed to give any explanation with respect to the clinic addresses available on these exhibits and the relation of the Petitioner with the clinics. It is further contended that the said exhibits cannot be considered as misprints were being used by the Petitioner during his daily course of the business for the period from the year 2008 to 2012. It is contended that the Petitioner has failed to give any explanation with respect to the clinic addresses available on these exhibits and the relation of the Petitioner with the clinics. It is submitted that the Petitioner is in actual use and occupation for professional purposes in these properties, and even the website of the Petitioner shows that the clinic situated at G-3, Greater Kailash Enclave, New Delhi 110048, is under the head of other branches. It is further submitted that the Petitioner had never disputed that the addresses as provided by the Respondent in the Application for the leave to contest the Eviction Petition.



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4.2 Learned Senior Counsel for the Respondent submits that the Petitioner is in possession of the back portion of the Property No 29/5, Shakti Nagar, and the same is an alternate as well as suitable accommodation available with the Petitioner to run his clinic. Reliance is placed by the Respondent on Ex. PW 1/D-23 (Colly) to submit that the exhibit shows that a mini truck can pass by, and there is availability of ample parking space also in that area. It is further submitted that the Petitioner has failed to provide any cogent reasons as to how this portion is not suitable for the Petitioner for his intended *bona fide* need.

4.3 Learned Senior Counsel for the Respondent submits that the Petitioner is also in possession of Property No. 11/8, Shakti Nagar, which is an alternate as well as suitable accommodation which is available with the Petitioner.

4.4 Learned Senior Counsel for the Respondent submits that the need as set out by the Petitioner is not *bona fide*. It is submitted that at one place Petitioner submits that the Petitioner is agreeable if the Respondent shifts to the back portion of the Property No. 29/5, Shakti Nagar, however on the contrary Petitioner has submitted that the Petitioner intends to establish an ultra-modern dental clinic for which the Petitioner requires the premises on ground floor of Property No. 29/5, Shakti Nagar in composite for the *bona fide* need. Reliance in this regard has been placed on judgement dated 13.06.2014.

REJOINDER BY THE PETITIONER

5. In Rejoinder, learned Senior Counsel for the Petitioner submits that the properties, as claimed by the Respondent to be available with the Petitioner, are not owned by the Petitioner and the Petitioner used to visit



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these clinics as a visiting consultant/doctor only. It is submitted that the Petitioner is owner of only one clinic situated at Shop No.3 Kamla Nagar.

5.1 It is further submitted that the website which is being relied on by the Respondent to say that Petitioner has mentioned G-3, Greater Kailash Enclave, New Delhi 110048 as his other clinic, does not belong to the Petitioner and is not run by the Petitioner and the other exhibits relied on by the Respondent have a misprint of the address of the Petitioner as the Petitioner was only a visiting doctor in these clinics and the same are not owned by the Petitioner.

IMPUGNED JUDGMENT

6. As discussed above, by the Impugned Judgment, the learned Trial Court has dismissed the Eviction Petition filed by the Petitioner after a full trial. On the aspect of landlord-tenant relationship and ownership of the subject premises, the learned Trial Court has held that the Petitioner has established his ownership over the subject premises by way of a sale deed dated 27.07.2006 which is Ex.PW-1/5. On the aspect of landlord-tenant relationship, the Petitioner has relied upon Ex. PW-1/6 which is an Application under Section 27 of the DRC Act filed by the Respondent and Smt. Shashi Kanta Garg in which the Petitioner was arrayed as landlord. The learned Trial Court has held that the Respondent has admitted to the Petitioner as the landlord in this Application and thus the landlord-tenant relationship has been established between the parties.

7. As set out above, by an Order dated 15.12.2012, passed by the learned Trial Court, the leave to defend/contest application filed by the Respondent was allowed and it was held that a triable issue is raised on the aspect of availability of suitable alternate accommodation with the



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Petitioner. It was held by the learned Trial Court that whether or not the Petitioner is a visiting consultant in the clinic as mentioned by the Respondent is a triable issue. It was further held that the second floor of the Property No. 29/5, Shakti Nagar is owned by the wife of the Petitioner and the Petitioner can very well use this floor to conduct a dental surgery and thus, the requirement of the Petitioner was to be scrutinized in greater detail.

8. By the Impugned Judgment, the learned Trial Court has held that the *bona fide need* of the Petitioner remains doubtful since the Petitioner has failed to give plausible explanation with regard to different clinic addresses which have been mentioned on the visiting card of the Petitioner and other documents. The learned Trial Court has held that the explanation given by the Petitioner that the addresses mentioned on these documents carry a misprint is improbable since these documents were used by the Petitioner on ordinary course of business and in such circumstances the Petitioner should have been more vigilant.

9. The learned Trial Court has also held that RTI reply (Ex. PW-1/10 (Colly)) relied upon by the Petitioner even though indicated that the property C-3, Greater Kailash Enclave, stands in the name of Rakesh Malhotra (GF), Pradeep Kumar (FF), D.K. Nijhara (SF); property no. M-7, G.K. Market stands in the name of Laxman Dass (GF, front), Amarnath Gupta and Deepak Gupta, (SF, front) and Shilpi Kopsidass (FF, front), at best it can only be concluded that the aforementioned properties do not belong with the Petitioner however since these properties were mentioned by the Petitioner on the visiting card and other official documents of the Petitioner it cannot be said that the Petitioner was not using these properties for his



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dental clinic and it cannot be said that the Petitioner was not having any concern with these properties.

9.1 The learned Trial Court has further held that the Petitioner has failed to place on record details of properties viz. M-3, Greater Kailash Enclave, New Delhi-48 and G-3, Greater Kailash Enclave, New Delhi-48 and thus there is a possibility that the Petitioner is using these properties and that the Petitioner does not have any alternate accommodation. It was thus held by the learned Trial Court that the Petitioner has failed to remove the doubt that these clinics do not amount to alternate suitable accommodation.

10. On the aspect of second floor of the Property No. 29/5, Shakti Nagar, the learned Trial Court has held that the second floor of the Property No. 29/5, Shakti Nagar can be conveniently used by the Petitioner for running dental hospital. It was further held that even though the Petitioner has made a claim in his examination in chief that there is no lift in the Property No. 29/5, Shakti Nagar and a patient with knee pain, heart problem or old age would not be able to climb stairs, however, the Petitioner has failed to lead any other evidence in this regard. Thus, the Petitioner has failed to prove his *bona fide* need based on the preponderance of probabilities, and the plan of the Petitioner to open an ultra-modern dental clinic remains a far-fetched theory.

10.1 In addition, it was held by the Learned Trial Court that Petitioner has failed to prove the site plans of the subject premises and the proposed site plan of the dental clinic, and in the absence of these plans the learned Trial Court had no comparative data for appreciating the *bona fide* need of the Petitioner. It was held that the intent of the Petitioner to encourage dental tourism and provide dental services at cost effective price could not



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be proved.

10.2 The learned Trial Court has further also taken into consideration the financial status of the Petitioner and has held that the Petitioner has admitted in his cross-examination that the FDRs in the sum of Rs. 30 lakhs are not sufficient to establish an ultra-modern dental clinic, and arranging additional funds of Rs. 50 lacs do not seem to be probable. It was further held that the Petitioner had not checked the Master Plan of Delhi 2021 or the building bye laws in force and the intent of the Petitioner would remain to be a mere desire if the requirements as per the law are not fulfilled.

10.3 The learned Trial Court has also perused the record of the Clinic of the Petitioner and has held that from May 2015 till December 2015 the Petitioner has treated 1616 patients on average, and the claim of the Petitioner to treat 10,000 patients in the proposed dental clinic does not seem to be probable.

10.4 It has further been held that the Petitioner has deposed in his testimony that in case the Petitioner succeeds in the Eviction Petition, the Petitioner will continue with the main clinic at Shop No.3 Kamla Nagar, however the Petitioner being more than 70 years of age it would be too much to expect from the Petitioner.

ANALYSIS AND FINDINGS

11. Section 14(1)(e) of the DRC Act is a special summary procedure for eviction of a tenant for premises for the *bona fide* need of the landlord. The three essential ingredients under Section 14 (1)(e) of the DRC Act that a landlord is required to show for obtaining an eviction order are:

- (i) Existence of landlord-tenant relationship between the parties;



- (ii) Existence of *bona fide* need on part of the landlord; and
- (iii) Non-Availability of reasonable suitable alternative accommodation with the landlord.

11.1 Section 14(1)(e) of the DRC Act reads as follows:

“14. Protection of tenant against eviction:

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant: Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:

xxx

xxx

xxx

(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation. Explanation. – For the purposes of this clause, “premises let for residential purposes” include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes.”

[Emphasis Supplied]

11.2 The Supreme Court in the case of *Abid-Ul-Islam v. Inder Sain Dua*⁴, has held that Section 14(1)(e) carves out an exception to the regular mode of eviction and provides that where a landlord makes an application seeking possession of the tenanted premises for his *bona fide* requirement, the landlord has to satisfy two grounds which are (i) the requirement being bona fide, and (ii) the non-availability of a reasonably suitable residential accommodation. It has further been held that such reasonableness along with suitability is to be seen from the perspective of the landlord and not the tenant. The relevant extract of the *Abid-Ul-Islam* case is below:

“Requirement under Section 14(1)(e)

⁴ (2022) 6 SCC 30



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.**”

[Emphasis Supplied]

Landlord-Tenant Relationship

12. As set out above, on the aspect of the landlord-tenant relationship and ownership of the Petitioner *qua* the subject premises, the learned Trial Court has held that the Petitioner has established his ownership over the subject premises by way of a sale deed dated 27.07.2006 and relying on the record pertaining to an Application under Section 27 of the DRC Act which was filed by the Respondent and Smt. Shashi Kanta Garg in which the Petitioner was arrayed as landlord (Ex. PW-1/6), the learned Trial Court has held that the Respondent has admitted to the Petitioner as the landlord and thus the first ingredient of Section 14(1)(e) of the DRC Act stands established.

12.1 This finding of the learned Trial Court has not been challenged by either party before this Court.

Bona Fide Need and Availability of Alternate Suitable Accommodation

13. The 2nd and 3rd ingredient of the provision are being discussed together. The need as set out by the Petitioner in the Eviction Petition is to



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set up an ultra-modern dental clinic facility in the subject premises. It is the case of the Petitioner that he has qualified with a Master's degree in Dental Surgery and advanced training abroad in maxillofacial surgery and orthodontics. The Petitioner has also previously served as the Head of Department and senior consultant at various reputable hospitals in Delhi. It is further stated that the Petitioner is currently running his clinic from Shop No.3 Kamla Nagar however, this space is not sufficient for the Petitioner as there is no space for the waiting patients and other such facilities. It is contended that the Petitioner is not able to provide the facilities to his patients and has to refer his patients to other clinics in view of the paucity of space. The Eviction Petition further sets out that the Petitioner intends to set up an ultra-modern 24 hours dental hospital where the Petitioner is able to provide all the facilities and promote dental tourism in India by providing his services at a cost-effective price. The relevant extract of the Eviction Petition is set out below:

"18A. The ground on which the eviction of the tenant is sought. The petitioner is a highly qualified medical practitioner (Dentist), and has obtained Master Degree of Dental Surgery in the year 1968 from Lucknow University. The petitioner has also got expert training in the field of dental surgery and various disciplines in dentistry, namely maxilla-facial surgery and orthodontia from abroad. The petitioner had also worked as Senior Consultant and head of the department in St. Stephen Hospital, Delhi for almost 16 years. Petitioner had also been Consultant in Tirath Ram Hospital, Rajpur Road, Delhi. Presently, the petitioner is Head of the Department of Dental Surgery in Sunder Lal Jain Hospital, Ashok Vihar, Delhi and Pentamed Hospital, Derawal Nagar, Delhi. After completing his education in the sphere of dental surgery, the petitioner established his own dental surgery clinic, and presently operating from shop bearing no.3, on the ground floor, having an area of 16'-4 1/2" x 14' 4 1/2", situated at Municipal Market Mandelia Road, Kamla Nagar, Delhi. The petitioner, over a period of time, has established his name as a reputed Dental Surgeon in which only two dental chairs and one x-ray machine has been installed in a very cramped manner. Sometimes it is very difficult, rather impossible, for the petitioner and his two associate junior doctors and assistants to work together at a time in such conditions. Apart from this also there is no space for



awaiting patients and they had to stand outside the shop even with severe pain as there hardly remains any space in the clinic of the petitioner. Due to paucity of space, the petitioner is unable to provide basic facilities to his patients and to accommodate persons accompanying them, with the result, the petitioner had to refer his patients for these facilities to different hospitals/clinics. The petitioner wants to provide all types of basic ultra modern facilities to his clients/patients, their attendants, associated junior doctors and clinical staff under one single roof, relating to all dental care and surgery with 24 hours dental hospital, where the petitioner is able to operate the patients and provide them with indoor and day care facilities. By expanding infrastructure and installing all the most modern gadgetries in his proposed dental hospital, not only for the local peoples but also to encourage and promote Dental Tourism, by imparting/providing his expert skill to the foreign Tourists, including NRI, visiting India, for Dental services from their respective countries at a much cheaper cost. Therefore, the petitioner bonafidely needs a bigger space for his dental hospital /clinic, to meet the competitive modern conceptual facilities, which are available around. It is utmost important for the petitioner to cater essential needs and the ever growing requirements of his clients/patients, which is long overdue. It is worth to mention that in America and other European Countries, the dental surgery is so costly that the people suffering from dental process frequently visits India for medical treatment, as the cost of such treatment in India is much more cheaper in comparison to those countries. ...”

[Emphasis Supplied]

13.1 The Eviction Petition further sets out that the Petitioner is residing in the Property No. 11/8, Shakti Nagar and the subject premises is at a walking distance from the residence of the Petitioner, making it most suitable and convenient for the Petitioner to run his ultra-modern dental clinic. It is further stated that Property No. 11/8, Shakti Nagar is being used only for residential purposes, Shop No.3 Kamla Nagar does not have sufficient space for the intended *bona fide* need of the Petitioner and vacant portion in Property No. 29/5, Shakti Nagar in possession of the Petitioner is not sufficient to execute the desired plan of the Petitioner. The second floor of the Property No. 29/5, Shakti Nagar is owned by the wife of the Petitioner however, the same is not suitable to run a dental clinic and even



otherwise the same cannot be used for commercial activities. Apart from these accommodations, it is stated in the Eviction Petition that no other reasonable or suitable accommodation is available with the Petitioner to establish, run, and promote his dental hospital. The relevant extract of the Eviction Petition is below:

“18 A. xxx ...

The petitioner is residing in house no. 11/8, Shakti Nagar, Delhi - 110007, and the tenanted shop is situated near to his house, at a walking distance, therefore it will be very convenient for the petitioner to establish his modern dental clinic with all critical care near his residence, hence the premises including the tenanted shop is the most suitable accommodation for the petitioner to establish his dental clinic and the petitioner, being senior citizen shall also be able to take rest at his residence as and when required because of the said nearness, which the petitioner is finding difficult. The tenanted premises is most suitable place for the petitioner to establish his hospital with latest facilities and infrastructure. Besides this, it will also be very convenient to the petitioner to approach his dental clinic-cum-hospital at any time to attend the patients who require immediate and urgent dental surgery or treatment. The suit property consists of two shops on the front side and are situated on the main road and the tenanted premises is one of the shop in occupation of the respondent. The other shop is occupied by another tenant. The petitioner is also filing the petition for eviction against the said tenant also.

The petitioner is residing at house no. 11/8, Shakti Nagar, Delhi. The said premises is being used by the petitioner only for residential purposes. Apart from his residential house, the petitioner is presently running his dental clinic from shop no.3, Municipal Market, Mandelia Road, Kamla Nagar, Delhi. Because of the small area of the said clinic, the petitioner is unable to cater to the needs of his patients. Apart from the accommodations, the petitioner has no other reasonably and suitable accommodation available with him to establish, run and promote his dental hospital. The vacant portion in possession of the property purchased by the petitioner, of which the tenanted shop is a part, is also not sufficient enough to execute the desired plan. The petitioner is enclosing a plan alongwith present petition in respect of the ground floor depicting its future utilization by the petitioner. The second floor of this property is owned by the wife of the petitioner. The accommodation available on the second floor is not suitable for carrying out the professional activities of the petitioner and the same cannot be used for carrying out dental surgery etc., as no patient would like to approach the petitioner for dental treatment there. Even



otherwise, the second floor of this property cannot be used for any commercial activities, being the declared residential area. The petitioner shall use the accommodation of the second floor of the property for resting/staying his staff i.e. doctors, nurses and helpers and for storing medicines, surgery etc., as the petitioner shall be providing 24 hours clinical services to the patients. As stated above, the accommodation available on the second floor shall not be suitable for the purposes of establishing 24 hours dental hospital. The petitioner is in acute shortage of accommodation for establishing his dental hospital on the ground floor within the area available with him. In the site plan of the suit property, the portion and occupation of the respondent is shown in red color, and the portion in possession of the petitioner is shown in blue color. The portion shown in yellow color is common open areas between the petitioner and the other owner of the property namely Shri Raj Kumar. The portion shown in yellow color, being common area between the two owners cannot be covered or constructed or used for any clinic activities. The petitioner submits that the tenanted premises are required bonafide by the petitioner for himself and the petitioner has no other reasonably suitable accommodation with him to set up his 24 hour dental hospital."

[Emphasis supplied]

13.2 Thus, in the Eviction Petition filed in the year 2011, the Petitioner set out in great detail his requirement to set up an ultra-modern dental clinic in the subject premises to promote his dental practice. The Petitioner also referred to the other accommodations available with him at Shakti Nagar, Kamla Nagar and how these spaces are not suitable for the purpose required. The Eviction Petition also referred the space available in the subject premises and its intended use. It was averred that no other suitable or alternate accommodation is available with the Petitioner for this intended *bona fide* need.

14. The Respondent filed an Application seeking Leave to Defend/contest under Section 25-B(4) and (5) of the DRC Act setting out that the need of the Petitioner is not *bona fide* and that the Petitioner is only seeking eviction of the Respondent to sell the subject premises. It was further contended that the Petitioner has concealed multiple



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accommodations which are available with the Petitioner and are also suitable for the requirements of the Petitioner which are:

- (i) M-3, Greater Kailash Enclave, New Delhi-110048, [hereinafter referred to as “Property bearing No. M-3”];
- (ii) G-3, Greater Kailash Enclave, New Delhi-110048, [hereinafter referred to as “Property bearing No. G-3”];
- (iii) M-7 Greater Kailash -I, New Delhi- 110048, [hereinafter referred to as “Property bearing No. M-7”];
- (iv) C-3 Greater Kailash Enclave, New Delhi-110048, [hereinafter referred to as “Property bearing No. C-3”];
- (v) Back Portion and second floor of Property No. 29/5, Shakti Nagar;
- (vi) Property No. 11/8, Shakti Nagar; and
- (vii) Shop No.3 Kamla Nagar.

15. A detailed Reply was filed by the Petitioner explaining that each of the premises detailed by the Respondent are either not available or not suitable for the need of the Petitioner.

16. The learned Trial Court allowed the Application under Section 25-B(4) and (5) of the DRC Act by its order dated 15.12.2012. It was held that a triable issue as to whether the Petitioner is running clinics at the other accommodations or whether he is only a visiting consultant. In addition, it was also held by the learned Trial Court that a dental hospital can also be run from the 2nd floor property in Kamla Nagar, Thus, the application of the Respondent for grant of leave to contest was allowed and the Respondent was granted leave to contest this Petition. The relevant extract of the Order dated 15.12.2012 is below:

“13. Petitioner has denied that accommodations mentioned at Srl. No.(ii) to (v) are available with him. He admits only of property at Kamla Nagar. Regarding other places, petitioner submits he only visits those places occasionally as and when he is called upon by the said clinics. Ld. Counsel for respondent referred to copies of visiting cards, letterpads, prescription



slips etc. In these documents petitioner has given the address of not only the Kamla Nagar Clinic but also other clinics. The inference which can be drawn from these documents is that petitioner is also available at those addresses. This also shows that petitioner is associated in someway with the running of the clinics at the said places. Had the petitioner been only visiting consultant, petitioner would not have mentioned those addresses on the said documents. It becomes a triable issue as to whether petitioner is running clinics at those addresses or not. It becomes a triable issue whether petitioner is only a visiting consultant. This will throw light on the issue of alternative accommodation already available with the petitioner.

14. From the petition itself it is apparent that entire second floor of the property is owned by petitioner's wife. A dental hospital can conveniently be run on the second floor but petitioner contends that it is not possible to conduct dental surgery on second floor. I am not impressed with the of the petitioner. The dental surgery can conveniently be conducted on second floor. Rather it can be conducted on any floor. The requirement as projected by the petitioner has to be scrutinized in greater detail which exercise can be done only in full trial.

15. In view of the above, application of respondent for grant of leave to contest is allowed and respondent is granted leave to contest this petition."

[Emphasis Supplied]

16.1 Although, the order of 15.12.2012 was challenged by the Petitioner in the case of ***Sudershan Kumar v. Harish Chand Garg***⁵, the challenge was dismissed by a Coordinate Bench of this Court upholding the order dated 15.12.2012.

17. The Respondent filed its Written Statement reiterating its contentions in the Application for Leave to Defend. The Petitioner also filed its Replication.

17.1 Evidence was led by both parties. Several documents were also filed in support by both parties. Both the Petitioner and the Respondent presented themselves for examination and cross-examination. The learned Trial Court held that except for the site plan and lay out plans filed by the

⁵ 2014 SCC OnLine Del 3396



Petitioner, the remaining documents stood proved by him.

18. Although the order dated 15.12.2012 referred only the triable issue being availability of alternate suitable accommodation and *bona fide* need of the Petitioner, a perusal of the Impugned Judgment reflects that a full trial on all issues has been conducted by the learned Trial Court.

19. The learned Trial Court examined in detail the alternate accommodations that were stated to be available by the Respondent and the responses given by the Petitioner on these alternate accommodations and gave a finding that the plan of the Petitioner to establish an ultra-modern dental clinic was a far-fetched theory and thus, held that the Petitioner does not have a clear and precise *bona fide*.

Law on Alternate Suitable Accommodation

20. As stated above, the learned Trial Court has discussed each of the alternate accommodations stated to be available by the Respondent and gave a finding that the Petitioner was not able to "probabilize" his case and thus, denied the Petitioner relief. Learned Trial Court has given its findings based on the probabilities of the accommodations being available. However, the learned Trial Court has not given any finding as to whether these accommodations are alternate, available and are suitable for the Petitioner for his *bona fide* need in terms of the settled law.

21. At this stage, it is apposite to set out the law on availability of alternate suitable accommodation. The provisions of Section 14(1)(e) of the Act have been provided with care by the legislature, not only is the accommodation to be 'alternate', but it is also required to be suitable. The



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Supreme Court in the *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta*⁶ has held that for an Eviction Petition to fail on the ground of availability of alternate suitable accommodation, the availability of another accommodation must be suitable and convenient in all respects as the tenanted accommodation from which the landlord seeks eviction of the tenant. The Supreme Court has further held that once the Court is satisfied of the *bona fides* of the need of the landlord for the premises or for the additional premises, then the subjective choice of the landlord to choose a premises out of more than one accommodation available with the landlord should be respected by the Court and the Court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose. Therefore, the Court would not in such a case, thrust its own wisdom upon the choice of the landlord by holding that not one but another accommodation must be accepted by the landlord to satisfy his such need. The relevant extract of the *Shiv Sarup Gupta* case is below:

“13.... Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

14. The availability of an alternative accommodation with the landlord i.e. an accommodation other than the one in occupation of the tenant wherefrom he is sought to be evicted has a dual relevancy. Firstly, the availability of

⁶ (1999) 6 SCC 222



another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to the bona fides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. Availability of such circumstance would enable the court drawing an inference that the need of the landlord was not a felt need or the state of mind of the landlord was not honest, sincere, and natural. **Secondly, another principal ingredient of clause (e) of sub-section (1) of Section 14, which speaks of non-availability of any other reasonably suitable residential accommodation to the landlord, would not be satisfied. Wherever another residential accommodation is shown to exist as available then the court has to ask the landlord why he is not occupying such other available accommodation to satisfy his need. The landlord may convince the court that the alternative residential accommodation though available is still of no consequence as the same is not reasonably suitable to satisfy the felt need which the landlord has succeeded in demonstrating objectively to exist. Needless to say that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction.** Convenience and safety of the landlord and his family members would be relevant factors. While considering the totality of the circumstances, the court may keep in view the profession or vocation of the landlord and his family members, their style of living, their habits and the background wherefrom they come.”

[Emphasis Supplied]

22. In addition, it is settled law that neither the Court nor the tenants can dictate the landlord as to how to use his premises. This Court in the case of ***Swaranjit Singh & Anr. v. Saroj Kapoor***⁷, while relying on the judgement of the Supreme Court in the case of ***Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal & Ors.***⁸ and in ***Anil Bajaj & Anr. v. Vinod Ahuja***⁹, has held that the tenant cannot dictate to the landlord as to which premises is more suitable for the landlord to run the business. The relevant extract of the ***Swaranjit Singh case*** is reproduced below:

“46. The law is well settled that a tenant cannot dictate to the Respondent/Landlady as to which premises is more suitable to satisfy the bona fide requirement under the DRC Act. Reference in this regard may be made to the decision of the Supreme Court in *Sait Nagjee*

⁷ 2023 SCC OnLine Del 7396

⁸ (2005) 8 SCC 252

⁹ (2014) 15 SCC 610



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Purushotham & Co. Ltd. v. Vimalabai Prabhulal[(2005) 8 SCC 252] and in *Anil Bajaj v. Vinod Ahuja* [(2014) 15 SCC 610], wherein the Supreme Court has reiterated this principle in the following words:

“6.What the tenant contends is that the Landlady has several other shop houses from which he is carrying on different businesses and further that the Landlady has other premises from where the business proposed from the tenanted premises can be effectively carried out. It would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the Landlady as to how the property belonging to the Landlady should be utilized by him for the purpose of his business.”

[Emphasis supplied]

23. It is no longer *res integra* that the landlord can choose a more suitable premises for carrying on the business, and the tenant cannot dictate the landlord as which premises the landlord should start the business from. The Supreme Court in the ***Bhupinder Singh Bawa v. Asha Devi***¹⁰, has held that it is perfectly open to the landlord to choose a more suitable premises for carrying on the business, and the tenant cannot dictate the landlord as which premises the landlord should start the business from. The relevant extract of the ***Bhupinder Singh Bawa*** case is below:

“12. In light of the above, the Additional Rent Controller and the High Court rightly concluded that no alternative premises were lying vacant for running business of the respondent's son. The High Court rightly relied on the ratio of *Anil Bajaj v. Vinod Ahuja* [*Anil Bajaj v. Vinod Ahuja*, (2014) 15 SCC 610 : (2015) 4 SCC (Civ) 469] to hold that it is perfectly open to the landlord to choose a more suitable premises for carrying on the business by her son and that the respondent cannot be dictated by the appellant as to which shop her son should start the business from.”

[Emphasis Supplied]

23.1 In the case of ***Mohd. Ayub & Anr. v. Mukesh Chand***¹¹, Supreme Court has held that it is well settled that the landlord's requirement need not be a dire necessity. It was held that the Court cannot direct the landlord

¹⁰ (2016) 10 SCC 209

¹¹ (2012) 2 SCC 155



to do a particular business or imagine that he could profitably do a business rather than the business the landlord proposes to start. It has also been held that even though hardship will be caused to the tenant who is being asked to move out of the premises, but depriving landlord from occupying his own premises is likely to result in more hardship.

“15. It is well settled the landlord's requirement need not be a dire necessity. The court cannot direct the landlord to do a particular business or imagine that he could profitably do a particular business rather than the business he proposes to start. It was wrong on the part of the District Court to hold that the appellants' case that their sons want to start the general merchant business is a pretence because they are dealing in eggs and it is not uncommon for a Muslim family to do the business of non-vegetarian food. It is for the landlord to decide which business he wants to do. The court cannot advise him. Similarly, length of tenancy of the respondent in the circumstances of the case ought not to have weighed with the courts below.

xxx

xxx

xxx

xxx

*18. In the ultimate analysis, we are of the view that the perverse findings of the courts below on the aspect of comparative hardship must be set aside. The High Court has rightly found the need of the appellants to be bona fide. It has however, fallen into an error in directing the respondent to hand over only one room to the appellants. **In our opinion, the hardship the appellants would suffer by not occupying their own premises would be far greater than the hardship the respondent would suffer by having to move out to another place. We are mindful of the fact that whenever the tenant is asked to move out of the premises some hardship is inherent. We have noted that the respondent is in occupation of the premises for a long time. But in our opinion, in the facts of this case that circumstance cannot be the sole determinative factor.** That hardship can be mitigated by granting him longer period to move out of the premises in his occupation so that in the meantime he can make an alternative arrangement.”*

[Emphasis Supplied]

23.2 The Respondent/tenant thus cannot compel the Petitioner/landlord to use other portions which are not suitable for his requirement.

24. From the foregoing, the following can be culled out for the purposes of a Petition under Section 14(1)(e) of the DRC Act:

(i) The accommodation has to be available and also be suitable to the



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landlord for the need as projected;

- (ii) Mere availability is not enough for the provision of Section 14 (1)(e) of the DRC Act and the suitability is also of equal importance;
- (iii) Neither the Court nor a tenant can dictate to a landlord as to which premises must be used by him for his requirement. It is the landlord's choice;
- (iv) Businesses and shops are usually set up on the ground floor. Tenant cannot dictate to a landlord to conduct his business from another floor, especially if these are not suitable for his requirement.

25. The review of the Impugned Judgment shows that it has been passed in contravention of the settled legal principles. The learned Trial Court has not only decided which premises should be used by the Petitioner/landlord, it has also dictated the manner of its use.

25.1 It is the case of the Respondent that the Petitioner has multiple accommodations available with the Petitioner. These accommodations have been set out in paragraph 14 above. The Petitioner has both in its Reply to Leave to Defend and its Replication dealt with each of these accommodations setting out that each of these are either not suitable or not available for the purpose set out. It is apposite to set out the explanation in this behalf by the Petitioner which was placed before the learned Trial Court in a tabular form below:

S. No.	Properties	Contentions of the Respondent	Contentions of the Petitioner
1.	G-3, Greater Kailash Enclave, New Delhi-45	Respondent relies on the copy of an online listing website showing address of the Petitioner under the head of other branches as Property bearing No. G-3.	Website not operated by the Petitioner thus the Petitioner has no control over what content has been put on the website.



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2.	M-3, Greater Kailash Enclave, New Delhi-48	Respondent relies on the copy of the visiting card of the Petitioner, Photocopy of the Payment slips and Prescription slips of the Petitioner, to submit that the documents which are used by the Petitioner in ordinary course of business in running his dental clinic mention these addresses.	Used to visit the Clinic as visiting consultant; misprint on the visiting card.
3.	C-3, Greater Kailash-I, New Delhi-48	As per RTI itself the property does not belong to the Petitioner.	
4.	M-7, GK-1, New Delhi		
5.	Back Portion and Second floor of Property No 29/5, Shakti Nagar	Back Portion of the said property and Second floor has suitable space to set up a dental hospital.	Back Portion of the property alone would not be suitable for the requirement of the Petitioner. Second floor is owned by the wife of the Petitioner and is not suitable to run a dental hospital not it is allowed to use second floor of the property to use it for commercial purposes.
6.	Property bearing No. 11/8, Shakti Nagar	Adequate space is available with the Petitioner in Property No. 11/8, Shakti Nagar and thus Dental Clinic can be set up there.	Property No. 11/8, Shakti Nagar is the residential property of the Petitioner and thus, cannot be used.
7.	Shop No. 3 Kamla Nagar	Shop No. 3 Kamla Nagar has adequate space for the Petitioner to run his dental clinic.	Shop No. 3 Kamla Nagar is currently being used by the Petitioner as his clinic and does not have sufficient space.

26. In regard to Property bearing No. G-3, M-3, C-3, M-7 in Greater Kailash and Greater Kailash Enclave, the Petitioner has relied upon a reply to the RTI [Ex. PW-1/10] to submit that these properties do not belong to the Petitioner but belong to different individuals other than the Petitioner. It has been stated that Property bearing No. C-3 stands in the name of Rakesh Malhotra (GF), Pradeep Kumar (FF), D.K. Nijhara (SF) and Property



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bearing No. M-7 stands in the name of Laxman Dass (GF, front), Amarnath Gupta and Deepak Gupta, (SF, front) and Shilpi Kopsidass (FF, front). Thus, these two properties [property bearing no. C-3 and M-7,] are not owned by the Petitioner.

26.1 So far as Property bearing No. M-3 is concerned the Petitioner has specified that the Petitioner was a visiting consultant and a typographical error crept in the visiting card of the Petitioner [Ex. PWI/D-4]. So far as Property bearing No. G-3 is concerned, the reliance has been placed by the Respondent on Mark Y which is an extract from a website which shows the address Property bearing No. G-3 as address of the Petitioner under the heading of other branches from where the Petitioner run his clinic.

26.2 The learned Trial Court has after examining the evidence including the RTI replies has held that the only issue that is to be considered is as to who is using these properties and in view of the documents confronted to the Petitioner, the only possibility is that the Petitioner is using these properties. It was further held that by failing to give plausible explanations, with regard to different clinic addresses, the Petitioner did not project convincing picture before the learned Trial Court as to how the Petitioner will run the proposed super speciality dental hospital in wake of his visits to different clinics. Thus, it was held that the *bona fide* need of the Petitioner is doubtful. Paragraph 25 of the Impugned Judgment in this behalf is set out below:

*“25. To start with, respondent was given leave to contest present eviction petition, as Ld. Predecessor of this Court had found certain triable issues. The first triable issue, which was found, was whether petitioner is running clinics at his addresses at 3, New Market, Kamla Nagar, Delhi-7, M-3, Greater Kailash Enclave, New Delhi-48, G-3, Greater Kailash Enclave, New Delhi-48, M-7, Greater Kailash Enclave, New Delhi-48 and C-3, Greater Kailash Enclave, New Delhi-48. **With regard to said official***



addresses, petitioner was confronted with his visiting card Ex.PW-1/D4 which mentions his official addresses at 3, New Market, Kamla Nagar, Delhi-7 and M-3, Greater Kailash Enclave, New Delhi-48. Petitioner deposed that the said address at Greater Kailash Enclave, was a misprint. He gave similar explanation when his official documents Ex.PW-1/D5A, Ex.PW-1/D5B and Ex.PW-1/D5C were put to him. The said explanation was improbable as those documents were such, which are used by petitioner in ordinary course of business and in such circumstances, it is expected that he should be vigilant in furnishing his official addresses. His aforesaid explanation, did not reflect that he had acted cautiously, in notifying his official addresses. He did not depose that he had stopped using those documents in his profession for the reason that those documents contained wrong official addresses. He did not explain that after finding misprint in those documents, he had taken any step to notify general public or concern, about the wrong mentioning of his official addresses. The only probability, therefore, arose is that petitioner failed to improbabilize the situation that he has not available in all the aforesaid clinics. He did not project any situation, which is reasonable, dismantling the aforesaid probability. In fact, petitioner deposed in his testimony that said mistake in mentioning his different clinics, was a casual thing. That deposition, indicated that petitioner was not serious, while preparing those documents and as such did not help his cause. He relied upon RTI reply Ex.PW-1/10 (colly) to show that aforesaid clinics did not belong to him. That reply from the concerned department noted that properties C-3, G.K. Enclave, stands in the name of Rakesh Malhotra (GF), Pradeep Kumar (FF), D.K. Nijhara (SF). It also noted that property no. M-7, G.K. Market stands in the name of Laxman Dass (GF, front), Amarnath Gupta and Deepak Gupta, (SF, front) and Shilpi Kopsidass (FF, front). Though at best, it can be concluded that aforesaid properties did not belong to petitioner but the fact that visiting card and other official document of petitioner mentions the fact that those properties are used by petitioner for running dental clinic indicate that petitioner cannot be seen as a person having no concern with those properties. Here the issue was not that who owns those properties. The issue was who is using those properties. In the wake of documents, confronted with petitioner, the only possibility, which arises that petitioner is using those properties. Apart from that, petitioner did not place on record details of properties viz. M-3, Greater Kailash Enclave, New Delhi-48 and G-3, Greater Kailash Enclave, New Delhi-48. Failure on the part of petitioner, in that regard, resulted in the possibility that petitioner is using those properties also and as such those properties amounted to alternative suitable accommodation in the absence of any evidence to the contrary. Petitioner, therefore, failed to remove the doubt that those clinics did not belong to him and they did not amount to alternative suitable accommodation. Hon'ble Delhi High Court, while passing judgment dated 13.06.2014, had observed that it is not the case of petitioner that he intends to abandon and/or give up his professional practice at his various clinics and hospital to devote full time to the so called proposed super specialty



*hospital, that to after carrying out the expensive additions/alterations and constructions in the half share of suit property, purchased by him. **By failing to give plausible explanation, with regard to different clinic addresses, petitioner did not project convincing picture before the court, to the effect as to how he will run the said proposed super specialty dental hospital in the wake of his visits to different clinics, as mentioned above. His bonafide need, therefore, remained doubtful.** Petitioner as such failed to remove the doubt, as raised by Hon'ble Delhi High Court, while passing judgment dated 13.06.2014. It did not help his cause."*

[Emphasis supplied]

27. This Court is unable to agree with this finding. The learned Trial Court held that the visiting card [Ex.PW-1/D4] of the Petitioner mentions Property No. M-3, Greater Kailash Enclave, thus the property was available with the Petitioner. It is the case of the Petitioner that there was a misprint on the visiting card of the Petitioner and that the Property bearing No. M-3 does not belong to the Petitioner. There is no reason given by the learned Trial Court as to why the misprint was "improbable".

27.1 The learned Trial Court has also relied on [Mark Y] to hold that the Petitioner has a clinic at Property bearing No. G-3. A perusal of the Mark Y reflects that it is a print out of website which is an online listing website. The Petitioner has clarified that the Petitioner is not operating any clinic from these premises. This is also found improbable by the learned Trial Court.

27.2 Usually, the information on listing websites is accessible to public at large for editing and there is no verification process undertaken to verify the details that are put on such website. In addition, the website called "khojguru.com" does not appear to have a valid web address and is not accessible online to check authenticity of the contentions as raised by the Respondent. In any event, since the "Mark Y" was not proved, reliance cannot be placed on the same by the Respondent to submit that Property



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bearing No. G-3 is available with the Petitioner.

28. The findings of the learned Trial Court conclude that since the Petitioner is already running various clinics, so he would be unable to visit the dental hospital. The learned Trial Court has also held that even if it is considered that these properties are not owned by the Petitioner, since the official documents of the Petitioner do mention the address of these properties, it cannot be said that the Petitioner does not have a concern with these properties and thus these would be alternate accommodations.

29. This finding of the learned Trial Court is contrary to the settled law. A person not owning a property cannot possibly be compelled to set up a dental clinic/hospital in it, that too while his own property is tenanted. It is also usual for doctors/dentists to visit other clinics and operate for certain days and timings out of the clinics of other doctors/dentists. This however does not take away the fact that they would like to set up their own dental hospital where other consultants would visit. In fact, given the fact that the Petitioner is a senior citizen, it is more probable that instead of visiting other clinics, the Petitioner sets up a larger dental clinic where consultants can also visit and work together with the Petitioner without the Petitioner having to move from place to place like he was doing previously.

29.1 In any event, the Petitioner has made a statement on oath that the Petitioner does not own these properties and the only property which the Petitioner owns and uses for the purposes of his clinic is Shop No.3 Kamla Nagar and Shop No.3 Kamla Nagar, does not have adequate space for the Petitioner to effectively run his clinic. This statement has not been dispelled by the Respondent. All that has been said is that this property is available for the intended use – which cannot be correct. Even if the Petitioner was



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visiting the clinics being run in the said properties, it cannot be said that these properties are the properties of the Petitioner and are alternate accommodations which are available with the Petitioner for his need as set out in the Eviction Petition.

30. In addition, the learned Trial Court has proceeded on its finding that setting up of a dental clinic is improbable given that the Petitioner is working from several other clinics. However, there is no evidence on record to show that after the dental clinic is set up, the Petitioner will continue to visit other clinics or properties. In fact, a specific question was put to the Petitioner during his cross examination conducted on 03.06.2017 in this behalf to which the Petitioner clarified that he would only continue with his main clinic at Kamla Nagar. The learned Trial Court has not referenced this finding and has instead referred to an earlier order passed by the High Court in a Petition filed challenging the grant of leave to defend. The relevant extract of this cross-examination is reproduced below:

“Q. Do you intend to say that if you succeed in these eviction proceedings pending before this court and set up successfully a ultra modern dental clinic in premises 29/5, you will shut down other clinics / hospitals as mentioned by you earlier. What do you say?”

Ans. I will continue with my main clinic which has been in existence for last about 45 years i.e. 3, Mandalia road, Delhi and I wish to provide the facility for the proposed clinic which I cannot provide in the existing clinic because of lack of space.”

[Emphasis Supplied]

30.1 In addition, the learned Trial Court has also ignored the pleading of the Petitioner in this behalf including the Eviction Petition which sets out that the use of the subject premises is for expansion of his business. Clearly, once the business of the Petitioner is expanded, he will not require to visit other clinics. This also forms part of paragraph 18 and 18A of the



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Eviction Petition which are reproduced in paragraph 13.1 above.

Back Portion and Second Floor of Property No. 29/5

31. A lot of emphasis was laid by the learned Senior Counsel for the Respondent that that the Petitioner has adequate space available in the back portion of the Property No. 29/5, Shakti Nagar. The Petitioner has explained that the 2nd floor is not suitable without a lift for patients, and the back part of the Property No. 29/5, Shakti Nagar is not adequate or suitable. The Learned Trial Court has however given a finding that that the Petitioner has adequate space in the back portion of the Property No. 29/5, Shakti Nagar and the same has not been effectively appreciated by the Petitioner. The learned Trial Court has further held that the Second floor of the Property No. 29/5, Shakti Nagar can be used by the Petitioner even if no lift is available in the property. The learned Trial Court has also held that the Petitioner has not examined any of the patients who were senior citizens, or were suffering from knee pain, or heart ailments which would prove the case of the Petitioner that the second floor of the Property No. 29/5, Shakti Nagar is not a suitable premises.

31.1 The second floor of the Property No. 29/5, Shakti Nagar is owned by the wife of the Petitioner and not by the Petitioner. The Petitioner has also submitted that the second floor of the Property No. 29/5, Shakti Nagar cannot be used for non-residential purposes as per the local municipal laws.

31.2 It is apposite to extract the evidence of the Petitioner in this regard below:

"12. That the vacant back portion at ground floor of No.29/5, Shakti Nagar, Delhi-110007, is the only space available and in possession of the deponent, which alone is not sufficient for the deponent to execute his long awaited desired plan. The Lay out plan in respect of the ground floor of No.29/5, Shakti Nagar, Delhi-110007, depicting its future



utilization, by the deponent is exhibited as PW1/7.

13. That though the second floor of this property No. 29/5, Shakti Nagar, Delhi is owned by the wife of the deponent, but it is not suitable at all for the deponent to carry out his professional activities, as the same cannot be used for carrying out and / or performing dental surgery etc., because the first floor of property No. 29/5, Shakti Nagar, Delhi does not belong to the deponent and / or his wife, there is also no lift available in the building nor there is any space available in the building for installation of the lift for upper floors, and no patient with acute severe pain or some knee problem or any other problem like heart or old age would like to climb to the second floor by narrow stairs of the property No. 29/5, Shakti Nagar, Delhi, for treatment. Otherwise also, the property No. 29/5, Shakti Nagar, Delhi is situated in a mixed land use area, and only the ground floors of the properties are permitted to be used for commercial activities, by group Authorities, therefore, the second floor of property No. 29/5, Shakti Nagar, Delhi cannot be used by the deponent for running an ultra modern dental clinic. In any case, the accommodation available on the second floor is not suitable for the purposes of establishing 24 hours dental hospital, except the deponent shall be able and proposes to use the accommodation of the second floor of the property only for taking rest and breaks by his para-medical staff, other staff i.e. doctors, nurses, helpers and/or for storing medicines, day to day clinical consumables and sterilization of instruments etc. The copy of sale deed of second floor of No.29/5, Shakti Nagar, Delhi- 110007 is **Exb. PW-1/8 (OSR).**

The deponent states that there is an acute shortage of accommodation for establishing his dental clinic on the ground floor, within the back portion area available with him. The site plan of ground floor of property No. 29/5, Shakti Nagar, Delhi is exhibited as Exb. PW1/9. The deponent states that in the site plan Exb. PW1/9, the area / tenant portion in occupation of the respondent has been shown in Red Color, and the area/portion, available and in possession of the deponent is shown in Blue Color. The portion shown in yellow color is common open space area, between the deponent and the other owner of the property namely Shri Raj Kumar, which cannot be covered by raising• construction by one, hence can be used by the deponent for clinic activities. The deponent being the owner of the suit property submits that the tenanted premises / shop are bonafide required by the deponent for himself, and for his own use and occupation and that the deponent has no other reasonably suitable accommodation with him to set up his 24 hour dental clinic. The information obtained through RTI about status of this area is exhibited as Exb. PW-1/10."

[Emphasis Supplied]

32. It is a well-known fact and affirmed by judicial precedents that businesses are run more effectively from ground floor and from the shops



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which are front facing. In *Uday Shankar Upadhyay v. Naveen Maheshwari*¹², the Supreme Court has held that the Court cannot dictate to the landlord as to the extent to which floor he must use for his business. Besides, shops and businesses are usually set up on the ground floor. The relevant extract of the *Uday Shankar Upadhyay* case is reproduced below:

“7. In our opinion, once it is not disputed that the landlord is in bona fide need of the premises, it is not for the courts to say that he should shift to the first floor or any higher floor. It is well known that shops and businesses are usually (though not invariably) conducted on the ground floor, because the customers can reach there easily. The court cannot dictate to the landlord which floor he should use for his business; that is for the landlord himself to decide. Hence, the view of the courts below that the sons of Plaintiff 1 should do business on the first floor in the hall which is being used for residential purpose was, in our opinion, wholly arbitrary, and hence cannot be sustained. As regards the finding that the sons of Plaintiff 1 are getting a salary of Rs 1500 from the firm, in our opinion, this is wholly irrelevant and was wrongly taken into consideration by the High Court.”

[Emphasis Supplied]

32.1 Neither the Court nor the tenant can dictate to the landlord as to how the landlord should utilise the property of the landlord. Here the learned Trial Court has assumed the role of an arbiter to choose the property’s suitability for the Petitioner. Thus, and in view of the settled law, these findings of the learned Trial Court are not tenable in law.

33. In order for an accommodation to be considered as an alternate accommodation, the accommodation must actually be owned by the landlord. The Supreme Court in the case of *Dhannalal v. Kalawatibai & Ors.*¹³, has held that a shop on the first floor cannot attract the same number of customers and earn the same business as a shop situated on the ground floor would do. It was further held that in order for the accommodation to

¹² (2010) 1 SCC 503

¹³ (2002) 6 SCC 16



be a suitable and alternate so as to defeat the requirement of the landlord, it should be suitable in all respects and in comparison, from such the accommodation where the landlord is seeking eviction. The Supreme Court in the ***Dhannalal*** case, while relying on the ***Shiv Sarup Gupta*** case has further held that the *bona fides* of the landlord have to be determined by applying objective standards and an accommodation on the first floor [or the second floor] cannot be said to be an alternative suitable accommodation in comparison of the ground floor. The relevant extract of the ***Dhannalal*** case is below:

*“27. So far as the challenge to proof of requirement is concerned it merits a summary dismissal. The Rent Controlling Authority and the High Court, both, have on a meticulous evaluation of evidence found the requirement proved. None of the landlords is possessed of any other suitable alternative accommodation of his or her own to satisfy the requirement found proved. **A landlord cannot be compelled to carry on business in rented premises and the proved requirement cannot be defeated by the tenant submitting that the landlord can start or comfortably continue to run his business in rented premises.** It has come in evidence that the landlords have secured possession of some premises in Ahilyapura locality situated at a short distance from the suit premises but the Ahilyapura accommodation is again a tenanted accommodation and hence irrelevant for defeating the claim of the landlords. **To be an alternative accommodation relevant within the meaning of Section 12(1)(f) or Section 23-A(b), it must be “of his own”, that is, the one “owned” by the landlord.** Another alternative accommodation pointed out by the tenant is the one situated on the first floor of the building. It has come in the evidence that the second floor of the building is used for residence of the landlords while the first floor is used partly as a godown and partly for stitching clothes which are sold as ready-made garments in the shop of Respondent 3. **To amount to an alternative non-residential accommodation so as to defeat the requirement of the landlord for the suit premises, it should be a reasonably suitable non-residential accommodation. It should be suitable in all respects as the suit accommodation is. In Shiv Sarup Gupta v. Dr Mahesh Chand Gupta [(1999) 6 SCC 222] this Court has held that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction.** The availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to the *bona fides* of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. **The bona fides***



***of the need of the landlord for the premises or additional premises have to be determined by the court by applying objective standards and once the court is satisfied** of such bona fides then in the matter of choosing out of more accommodations than one available to the landlord, his subjective choice shall be respected by the court. **For the business, which Respondents 2 and 3 propose to start or continue respectively, an accommodation situated on the first floor cannot be said to be an alternative suitable accommodation in comparison with the shops situated on the ground floor. A shop on the first floor cannot attract the same number of customers and earn the same business as a shop situated on the ground floor would do. Moreover, there is no evidence adduced by the appellants to show that in M.T. Cloth Market, shops are also situated on the first floor of buildings and attract the same business as the shops on the ground floor do.** The High Court and the RCA have held that none of the premises pointed out by the appellant tenants was such alternative accommodation as may defeat the respondents' claim. We find no reason to take a different view. Between the years 1987 and 1989 late Krishnadas, the then sole owner of the building, had sold three shops but that was an event which had taken place in the lifetime of late Krishnadas and cannot have relevance for denying the claim of the respondent landlords filed in the year 1995.”*

[Emphasis Supplied]

33.1 There is no finding of the learned Trial Court that the alternate premises which have been set out by the Respondent are alternate or suitable for the Petitioner so as to defeat his requirement in the Eviction Petition, despite which, the premises on a second floor have been found to be alternate and suitable contrary to the settled law by the learned Trial Court.

34. Thus, the back portion and second floor of the Property No. 29/5, Shakti Nagar cannot be considered as a suitable alternate accommodation available with the Petitioner.

Property No. 11/8

35. It is the contention of the Respondent that Property No. 11/8 is available with the Petitioner. The Petitioner has contended that Property No. 11/8 is the residential property of the Petitioner and thus the same is



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not suitable for the Petitioner to run his clinic. The Respondent has contended that Property No. 11/8 is available with the Petitioner and can be used by the Petitioner to run his clinic. On this aspect, the learned Trial Court has held that the Petitioner has failed to discharge the onus as there was no categorical evidence to the effect Property No. 11/8 is to be utilized by the Petitioner exclusively for residence only. It has further been held that the Petitioner can use this property since it is the case of the Petitioner himself that there are other commercial properties in the area where Property No. 11/8 is situated.

35.1 The learned Trial Court has here gone to the extent of deciding that the Petitioner must not live in his residence but convert the residence into a dental clinic. The finding of the learned Trial Court that there was no categorical evidence placed on record once again shows that the learned Trial Court did not apply objective standards in reaching this finding.

35.2 The Supreme Court in the case of ***Sarla Ahuja vs. United India Insurance Co. Ltd.***¹⁴, has held that when a landlord asserts that the landlord requires the tenanted premises for the *bona fide* need the rent controller shall not proceed on the presumption that the requirement is not *bona fide*. The Supreme Court has further held that it is not for the tenant to dictate terms to the landlord as to how the landlord can adjust without getting possession of the tenanted premises and it is not necessary to make an endeavour as to how the landlord could have adjusted without seeking the possession of the tenanted premises. The relevant extract of the ***Sarla Ahuja*** case is below:

“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

¹⁴ (1998) 8 SCC 119



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.”

[Emphasis Supplied]

35.3 In view of the settled law, it is not for the tenant [or the Court] to dictate to the Petitioner as to how the Property No. 11/8 is to be used or to “advise” the Petitioner to open his clinic in the residence of the Petitioner. A Court cannot ask the Petitioner to “adjust” but not seek possession of the tenanted premises. Thus, Property No. 11/8 cannot be considered as suitable alternate accommodation available with the Petitioner either and the finding of the learned Trial Court in this behalf cannot be sustained.

Shop No.3

36. It is the contention of the Petitioner that the Petitioner is currently running his clinic from Shop No.3 Kamla Nagar, however, it is very difficult, rather impossible, for the Petitioner and his two associate junior doctors and assistants to work together at a time in the clinic. It is further contended that there is no space for awaiting patients and the patients have to stand outside the shop even with severe pain as there hardly remains any space in the clinic of the Petitioner. On the contrary, the Respondent has contended that Shop No.3 Kamla Nagar, has sufficient space and the Petitioner does not have any *bona fide* need to take possession of the subject premises.

36.1 The need as set out by the Petitioner is to open an ultra-modern



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dental hospital which could provide better facilities with better equipment. The Petitioner has explained in great detail this requirement along with the specification therefore. A plan for this was also filed by the Petitioner with the Eviction Petition, which was exhibited as PW1/7, which reflects that need of the Petitioner was thus clearly of a space bigger than Shop No.3 Kamla Nagar which admeasures 21.88 sq. m. (approx.), in area, to operate a dental hospital. It is the landlord's prerogative if he wishes to expand his business and the requirement as set out by the Petitioner was clearly one of an expansion.

37. The Supreme Court in the ***Sait Nagjee Purushotham & Co. Ltd.*** case, has held that if landlord is already running a business and the tenanted premises is required for the *bona fide* need of the landlord to expand the business, the need of the landlord cannot be said to be not *bona fide* on the ground that the Petitioner is already running a business and wants the tenanted premises to expand the same. It was further held that a landlord cannot be denied an opportunity to expand his business to deny eviction. The relevant extract of the ***Sait Nagjee Purushotham & Co. Ltd. case*** is below:

"4. First of all we shall take up the question of bona fide need of the landlords. So far as the partition of the property and the present premises coming to the share of the landlords are concerned, there is no dispute that the portion of the building has come to the share of the landlords and they are the owners as a result of the partition of the family properties. But the question is whether the landlords who are the owners of the portion of the building have substantiated the allegation with regard to the bona fide need or not. We have gone through the findings of the trial court as well as that of the Appellate Authority and the High Court and after closely scrutinising the same, we do not think that the finding recorded by the appellate court and the High Court can be interfered with by this Court on the ground of being perverse or without any basis. The landlords have led evidence to show that one of their sons who had requisite qualification for starting a computer institute wants to establish the same at Calicut and others for extension of their business. The trial court as well as the first



appellate court and the High Court examined the statements of PWs 2 and 3 and after considering their evidence, the appellate court reversed the finding of the trial court and held that the need of the respondent landlords to start a business at Calicut, is bona fide and genuine. It was held that it cannot be said that a person who is already having a business at one place cannot expand his business at any other place in the country. **It is true that the landlords have their business spreading over Chennai and Hyderabad and if they wanted to expand their business at Calicut it cannot be said to be unnatural thereby denying the eviction of the tenant from the premises in question. It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not. It is always the privilege of the landlord to choose the nature of the business and the place of business. However, the trial court held in favour of the appellant tenant. But the appellate court as well as the High Court after scrutinising the evidence on record, reversed the finding of the trial court and held that the need of establishing the business at Calicut by the landlords cannot be said to be lacking in bona fides.**

[Emphasis Supplied]

38. The learned Trial Court has held that that the Petitioner has failed to give plausible explanation with regard to different clinics addresses and thus the *bona fide* need of the Petitioner remains to be doubtful. This finding is contrary to the facts and evidence. As discussed above, all the properties which were contended to be available with the Petitioner have been found to either be unsuitable or unavailable as being owned by others. Thus, these cannot possibly be termed as 'alternate and suitable' accommodation available with the Petitioner.

38.1 The finding of the learned Trial Court is that the Petitioner has failed to prove by preponderance of probabilities, his plan to open an ultra-modern dental clinic and that this averment “far-fetched dream”. In addition, the learned Trial Court has analysed the financial position of the Petitioner, the record of the patients of the Petitioner who visited his clinic



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to give a finding that it would be too much to expect from the Petitioner to run his clinic along with his proposed dental hospital. It has further been held that since the Petitioner has not analysed the Delhi Master Plan 2021 or the building bye-laws for opening the dental clinic, the need of the Petitioner cannot be said to be *bona fide*.

39. The learned Trial Court has lost sight of the fact that admittedly, the Respondent is also using the subject premises to run his jewellery business and thus putting it to commercial use. Dentists/Doctors in this city are permitted to utilise residential areas for operating their clinics so there was no requirement for the Petitioner to prove his analysis of the Master Plan for Delhi, 2021/Unified Building Bye Laws for Delhi, 2016 to show his *bona fides*. In fact, all the premises referred to/relied upon by the Respondent are all in residential areas of the city and not in commercial ones.

39.1 Thus, as discussed above, the Petitioner does not have any other accommodation which is 'alternate' or 'suitable' for the *bona fide* need of the Petitioner.

BONA FIDE NEED

40. A perusal of the cross-examination of the Petitioner reflects that the Petitioner was subject to cross-examination on five dates. The Petitioner was asked questions about his practice, number of patients, machinery used and clinics that he visited. A review of the cross examination of the Petitioner reflects the following:

- (i) The Petitioner has to refer his patients to other diagnostic labs for the purposes of X ray, OPG x-rays and other diagnostic tests, treatment planning like dental implant, laser surgery and prothesis



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since these facilities are not available in the Petitioner's clinic due to inadequacy of space.

(ii) The Petitioner is not able to provide emergency services due to lack of space at his current clinic. However, the Petitioner proposes to provide such facilities in the modern dental hospital which the Petitioner wishes to set up.

(iii) The Petitioner has colleagues/friends/juniors who are settled in USA and UK and whenever the Petitioner visits these countries, the Petitioner often discusses the broad spectrum of professional charges in these countries in comparison to India and also discusses how Dentists in India can provide for better opportunities promote dental tourism at a cost effective rate.

(iv) The Petitioner has categorically stated that the Petitioner never had his clinics at Greater Kailash Enclave, Panchsheel, etc. It has been stated that the Petitioner was visiting one clinic at Greater Kailash-I owned by Dr. Y.K. Narain as a consultant who later shifted his clinic at property bearing no. C-3.

(v) The Petitioner in his cross examination also refers to the misprint in his visiting card by the printer and as to how the Petitioner never anticipated that it would become an issue for the Petitioner in these proceedings, and the same was also clarified about this in one of the affidavits which was earlier filed by the Petitioner.

(vi) The back portion of the Property No. 29/5 is not suitable for the Petitioner since that area is not easily accessible as the lane is



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narrow and cars are parked on both sides of the road. It is further stated that the Petitioner has a composite plan for Property No. 29/5 and the space available with the Petitioner in isolation would not meet the requirement of the Petitioner.

40.1 The analysis of the evidence reflects that the Petitioner has been able to prove that the space as available in Shop No.3 Kamla Nagar is not adequate and in order to expand the business of the Petitioner, the Petitioner would require the subject premises for his bona fide need to set up a modern dental clinic and expand his business. The relevant extract of the cross-examination of the Petitioner is below:

“17.05.2017

PW-1 : Dr. Sudershan Kumar (recalled for cross-examination after 16.05.2017)

On SA

...Q. You say in para 22 of your affidavit by way of examination-in-chief that in last two decades you had treated about 10000 patients. Kindly tell me how many of them are still your patients and how many of them have stopped coming to your clinic.

Ans. It is difficult to remember how many patients are continuing and how many patients have discontinued.

It is further wrong to suggest that several thousand patients have stopped coming to you because of the fact that they have not been happy with the treatment meted out to them by you. It is further wrong to suggest that I am not willing to show the records of those patients who have been coming to me for treatment for last more than 5 years because there are no such patients who have been taking treatment from me for last more than 5 years.

I refer my patients to other diagnostic labs namely Xray, OPG x-rays and other diagnostic test and treatment planning but I do not refer them to other dentist or ortho dentist. Vol. I do refer patients for the facility which is not available in my clinic like dental implant, laser surgery and prothesis.

To my knowledge, four X-ray clinics in Roop Nagar, Shakti Nagar, Jawahar Nagar etc. are providing X-ray facility.

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Q. I put it to you that all the space (as stated above) has not been used by you and particularly the portion mark X on the site plan or the garage or the mezzanine in this building for housing medicaments or emergency staff because you have never felt the need to provide any emergency services in your clinic at 3, Mandalia Road.

Ans. The emergency services cannot be provided at the abovesaid place because of lack of space at the existing clinic and the proposed place can be used only after getting the possession from the tenant.

It is correct that the Ex.PW-1/5 and Ex. PW-1/8 do not have any dimensions of service road or front road. I do not have any layout plan. The clinic at 3, Mandalia Road opens at 9.30 AM and closes at 1.30 PM or till I have patients to be examined. Thereafter, clinic again opens at 5.30 PM to 8.30 PM or till I have patients to be examined...

25.05.2017

PW-1 : Dr. Sudershan Kumar (recalled for cross-examination after 17.05.2017)

...Q. You have placed on record certain performa invoices. Please tell me which of these equipments you have purchased or taken on hire-purchase basis from 1970 till today.

Ans. Since the equipment mentioned in my performa invoice required a bigger space to be placed in my clinic, I did not order because lack of space. I did not order any of these equipments for my clinic because of lack of space.

Q. Kindly tell me as to what perform invoices you obtained during the period 2006 till filing of this case.

Ans. In fact the representatives of various companies, keep on coming to me and send the performa invoices for the upgrading of my clinic. Because of lack of space, I did not place any order as such.

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Q. Have you ever visited a dental clinic in USA / UK to confirm their professional charges for making a denture for you?

Ans. Many of my friends, colleagues, juniors as well as patients are settled in these countries and whenever I visit or they visit, we often discuss the professional charges as compare to India. According to their version, fee of dentist is quite high in those countries and many patients wants to get their job done in India because of the cost. Otherwise, many of the dental treatments are not covered by their insurance. I discussed the fee pattern of the fellow dentist. I have not obtained any certificate or document with regard to the abovesaid facts.

It is incorrect to suggest that para 4 of my affidavit by way of examination in chief is a sermon delivered by me at the behest of the draftsman of this



affidavit.

I had never my clinics at Greater Kailash Enclave, Panchsheel etc. I was visiting one clinic at Greater Kailash-I owned by Dr. Y. K. Narayan as a consultant and later he shifted his clinic at C-3, Greater Kailash Enclave-I.

I have seen the affidavit filed by the respondent seeking leave to defend this eviction petition in particular at page 15 thereof. The addresses which are given at Sr. no. (b) and (c) sub para (iv) of para 3.1 thereof are not in my knowledge.

I have seen the counter affidavit dated 23/24 March 2012 filed on this record. It bears my signatures. I have seen page 233 of judicial file (internal page 12 of my counter affidavit).

I have seen the portion mark X to Y on this counter affidavit. I have seen one document at page 1433 which is a photocopy of visiting card. Same is Ex. PW-1/D4.

After seeing the document, witness states that it was a misprint in the visiting card as well as in one of the prescription in bill book which the printer requested me to keep it as it is waste for him.

Witness has been shown some documents at page no. 1435, 1437, 1439 and 1441 and same are Ex.PW-1/D5A, Ex.PW-1/D5B, Ex.PW-1/D5C, Ex.PW-1/D5D respectively.

After seeing the document Ex.PW-1/D5A, witness states that address mentioned printed in my bill book is misprint. As far as Ex. PW-1/D5B is concerned, witness states address is correct. After seeing the Ex. PW-1/D5C, witness states that address is misprint. After seeing the Ex. PW-1/D5D, witness states that address is correct.

I do not remember whether I mentioned about misprinting of document to my counsel after getting the photocopies of the documents from the respondent.

I did not score out the misprinting because I never anticipated this problem at any point of time as to my knowledge it was a casual thing.

Ex. PW-1/D5A and Ex.PW-1/D5B are of a date prior to the Institution of this eviction petition while others are of date subsequent to the institution of this petition.

I have seen one document at page no. 1431 of judicial record and this is a print out which is not displayed at my instruction and same is mark Y. Vol. This is not my official website. More so, it is a commercial website by khojguru.com. It is not my website.

03.06.2017

PW-1 : Dr. Sudershan Kumar (recalled for cross-examination after 25.05.2017)



Q. I put it to you that you have stated in your affidavit that an ambulance cannot reach with a patient to the garage on the rear side of the building i.e. 29/5 and therefore the said garage is not suitable accommodation for use as your dental clinic. You have also deposed that the rear lane of this building 29/5 is hardly 8 to 10 feet wide. I put it to you that an ambulance as well as mini truck can reach the garage road on the rear side at 29/5, Nagia Park in as much as the rear lane is 15 ft 5 inch wide.

Ans. In fact, I am planning for a composite unit in ground floor 29/5 where accessibility of the ambulance is not possible because of the obstruction created by NDPL poles and the encroachment of various people to their entrances and their own parked cars in front of their gates, there hardly any place left for the movement even for a small vehicle except two wheeler. Therefore, I suggest that ambulatory patients who are in emergency will not wait to remove their car from the back lane and give me a clear entrance from back side.

I have not measured the gali i.e. back lane therefore I cannot admit or deny the width 15 ft x 6 inch.

There are many patients who come to me in ambulance. I do not remember the names of those patients.

At this stage, witness has been shown two photographs. After seeing the photographs, witness states that these two photographs belonged to rear lane of back side. Same are Ex. PW-1/D23 (colly).

It is correct that my garage is visible in the said photograph and one mini truck is parked there. There is hardly space left for crossing other vehicle.

It is wrong to suggest that the existing garage, the store, the kitchen and the two rooms on the rear side (ground floor) (29/5, Nagia Park) are habitable accommodation atleast for my staff particularly emergency staff for there is a common toilet and common bathroom in the common courtyard on the ground floor of this building.

I am not using the above said space because I am not getting the rented front portion place of the shops no. 1 and 2 for carrying out my composite plan.

As far as printing error is concerned (as mentioned in my-earlier examination), the same facts I have mentioned in my earlier affidavit, I do not remember the exact date. I do not remember whether I have mentioned these facts in my revision petition which was pending before Hon'ble High Court of Delhi. I stopped going to the clinic at C-3, GK Enclave in 2009. Vol. Other clinics as mentioned situated at Greater Kailash do not exists..."

[Emphasis Supplied]

40.2 The Petitioner has been able to establish that the existing clinic of the Petitioner does not have adequate space and because of which



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Petitioner is not able to expand the facilities in his current setup. It is an admitted case of the parties that the Petitioner is a well-qualified dentist and who has been practicing since past many years. Thus, having the adequate skill set, experience and qualification the Petitioner now wishes to expand his existing clinic to make a dental hospital to put to use the vast experience which the Petitioner has gained. The only hinderance which the Petitioner is facing is lack of adequate space to set up his dental hospital. This requirement of space is met if the Petitioner is able to implement his composite plan in the Property No. 29/5. Thus, the Petitioner has been able to establish his *bona fide* need to set up a dental hospital.

SHIFT IN THE COURT'S APPROACH WHILE INTERPRETING THE RENT CONTROL LEGISLATIONS

41. At this stage, it is also requisite to set out the change in the approach of the Courts over the last two decades. The Supreme Court in the case of *State of Maharashtra & Anr. v. Super Max International (P) Ltd. & Ors.*¹⁵, has referenced the shift in the Courts approach while interpreting the rent control legislations and has held that there is a need for a more balanced and objective approach to the relationship between the landlord and tenant. It has further been explained that the Courts should not hesitate in leaning in favour of the landlord since now there is no longer any room for the assumption that all tenants, as a class, are in dire circumstances and in desperate need of the Court's protection under all circumstances as was the situation in the early 1950s and thereafter.

41.1 The Supreme in *Super Max* case has held that during the period from early 1950s to early 1990s, the Court's paramount object was to

¹⁵ (2009) 9 SCC 772



provide safeguards for tenants against exploitations by landlord in view of the acute scarcity of property at that time. The Court has thereafter in later judgments specially in the judgments from the year 2000 onwards has held that a reasonable and balanced approach must be adopted while interpreting rent control legislations to ensure equal treatment to both landlords and tenants. The relevant extract of the ***Super Max*** case is below:

“67. The way this Court has been looking at the relationship between the landlord and the tenant in the past and the shift in the Court's approach in recent times have been examined in some detail in the decision in Satyawati Sharma v. Union of India [(2008) 5 SCC 287] . In that decision one of us (Singhvi, J.) speaking for the Court referred to a number of earlier decisions of the Court and (in para 12 of the judgment) observed as follows: (SCC pp. 304-05)

“12. Before proceeding further we consider it necessary to observe that there has been a definite shift in the Court's approach while interpreting the rent control legislations. An analysis of the judgments of 1950s to early 1990s would indicate that in majority of cases the courts heavily leaned in favour of an interpretation which would benefit the tenant—Mohinder Kumar v. State of Haryana [(1985) 4 SCC 221] , Prabhakaran Nair v. State of T.N. [(1987) 4 SCC 238] , D.C. Bhatia v. Union of India [(1995) 1 SCC 104] and C.N. Rudramurthy v. K. Barkathulla Khan [(1998) 8 SCC 275] . In these and other cases, the Court consistently held that the paramount object of every rent control legislation is to provide safeguards for tenants against exploitation by landlords who seek to take undue advantage of the pressing need for accommodation of a large number of people looking for a house on rent for residence or business in the background of acute scarcity thereof. However, a different trend is clearly discernible in the later judgments.”

68. The learned Judge then referred to some later decisions and (in para 14 at SCC p. 306 of the judgment) quoted a passage from the decision in Joginder Pal v. Naval Kishore Behal [(2002) 5 SCC 397] , to the following effect: (Joginder Pal case [(2002) 5 SCC 397] , SCC p. 404, para 9)

“14. ... ‘9. ... The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as to take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations



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where the landlords too are weak and feeble and feel humble.’ ”

(emphasis in original)

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71. We reaffirm the views expressed in *Satyawati Sharma* [(2008) 5 SCC 287] and emphasise the need for a more balanced and objective approach to the relationship between the landlord and tenant. This is not to say that the Court should lean in favour of the landlord but merely that there is no longer any room for the assumption that all tenants, as a class, are in dire circumstances and in desperate need of the Court's protection under all circumstances. (The case of the present appellant who is in occupation of an area of 9000 sq ft in a building situate at Fort, Mumbai on a rental of Rs 5236.58, plus water charges at the rate of Rs 515.35 per month more than amply highlights the point.)”

[Emphasis Supplied]

DUTY OF THE COURT IN INTERPRETATION OF THE PROVISIONS OF THE ACT

42. The Supreme Court in the case of *Bega Begum & Ors. v. Abdul Ahad Khan (Decd) by LRs & Ors.*¹⁶, while placing reliance on Section 11(1)(h) of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966 which provides for eviction of tenant for requirement of the landlord, has held that the connotation of the term “need” or “requirement” should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. The relevant extract of the *Bega Begum* case is below:

“13. Moreover, Section 11(h) of the Act uses the words “reasonable requirement” which undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term “need” or “requirement” should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course

¹⁶ (1979) 1 SCC 273



would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts prevalent in other States in the country. This Court has considered the import of the word “requirement” and pointed out that it merely connotes that there should be an element of need.”

[Emphasis Supplied]

42.1 The Supreme Court in the case of *Joginder Pal v. Naval Kishore Behal*¹⁷, has held that even though the rent control legislations are heavily loaded in favour of the tenants yet the courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. The relevant extract of the *Joginder Pal* case is below:

“9. The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords — both. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble.”

[Emphasis Supplied]

43. The learned Trial Court, however, has completely ignored the shift in

¹⁷ (2002) 5 SCC 397



the interpretation of the rent control legislations by the judiciary keeping in mind the need for more balanced and objective approach in rent control matters as has been explained by the Supreme Court in *Super Max* case.

SCOPE OF INQUIRY UNDER SECTION 14(1)(E) OF THE DRC ACT

44. The Supreme Court in the case of *Rajendra Tiwary v. Basudeo Prasad & Anr.*¹⁸ has held that the scope of enquiry under the rent control legislations is limited to the question: as to whether the grounds for eviction of the defendant have been made out under the Act and the Court of Rent Controller having limited jurisdiction to try suits on grounds specified in the Special Act the Courts under such Acts do not have jurisdiction of the ordinary civil court. The relevant extract of the *Rajendra Tiwary* case is below:

“7. It is evident that while dealing with the suit of the plaintiffs for eviction of the defendant from the suit premises under clauses (c) and (d) of sub-section (1) of Section 11 of the Act, courts including the High Court were exercising jurisdiction under the Act which is a special enactment. The sine qua non for granting the relief in the suit, under the Act, is that between the plaintiffs and the defendant the relationship of “landlord and tenant” should exist. The scope of the enquiry before the courts was limited to the question: as to whether the grounds for eviction of the defendant have been made out under the Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms “landlord” and “tenant” in clauses (f) and (h), respectively, of Section 2 of the Act.

xxx

xxx

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xxx

15. These are cases where the courts which tried the suits were ordinary civil courts having jurisdiction to grant alternative relief and pass decree under Order VII Rule 7. A Court of Rent Controller having limited jurisdiction to try suits on grounds specified in the special Act obviously does not have jurisdiction of the ordinary civil court and therefore cannot pass a decree for eviction of the defendant on a ground other than the one specified in the Act. If, however, the alternative relief is

¹⁸ (2002) 1 SCC 90



permissible within the ambit of the Act, the position would be different.”

[Emphasis Supplied]

45. Thus, the judicial intent is to provide for balance of equities between the landlord and a tenant. The Courts cannot artificially extend the interpretation of the terms of the provisions to make it impossible for the landlord to get a degree of eviction. The intent of the legislature is to balance out the *bona fides* of the landlord while providing a safeguard for tenants against exploitation by landlords who seek to take undue advantage of the pressing need for accommodation. The Courts have also emphasized that the court should not hesitate in leaning in favour of the landlords to take care of the interest of the landlord. However, a perusal of the Impugned Judgment would reflect that this transformative shift in the interpretation of the rent control legislations has been ignored by the learned Trial Court.

46. By the Impugned Judgment, the learned Trial Court has gone into a detailed examination of the evidence of the Petitioner as if the onus was on the Petitioner to prove his case beyond all reasonable doubt. Such pattern of examination in the proceedings under the DRC Act is contrary to the settled legal principles as enunciated above.

47. This Court is also unable to agree with the findings of the learned Trial Court that since the Petitioner is a senior citizen, it would be too much to expect from him to undertake an expansion of his business. Once again, the learned Trial Court delved into the territory of dictating to the landlord as to how the landlord should use his premises and even his capability. Admittedly, the Petitioner runs his current clinic and visits a few other clinics and hospitals, despite being a senior citizen and has been found to



be seeing several hundred patients every month. The Petitioner is stated to being an able-bodied person. It is set out in the Eviction Petition, that the Petitioner is a renowned doctor who has worked/is working in multiple hospitals at senior designations. In fact, it is the case of the Respondent itself that the Petitioner has been running several clinics and managing them.

47.1 The finding that the Petitioner has no dependents and thus, has no need to run the dental hospital is also a finding which cannot be sustained. Thus, it is not for the Courts to undermine the capabilities of senior citizens in the manner it has sought to be done to find the Petitioner's need to be not genuine.

48. The provisions of Section 14(1)(e) of the DRC Act do not provide for the Court to undertake a roving and fishing enquiry at the behest of the tenant. The Rent Controller is required to examine whether the three ingredients of the Section stand satisfied. The analysis by this Court shows that no other alternate suitable accommodation is available and the need of the Petitioner cannot be said to be "wishful" or "fanciful".

49. In any event, the provisions of the DRC 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 DRC Act, the recovery of possession by a tenant under Section 19(1) of the DRC Act can be obtained if the landlord re-let's the whole or part of the subject premises within three years from the date of obtaining possession from the evicted tenant. Sub-section (2) of Section 19 of the DRC 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 back in possession or pay him such compensation as is deemed fit by the Rent Controller.

49.1 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.”

49.2 This provision has been explained by the Supreme Court in ***Abid-Ul-Islam*** case. It was held that Section 19 of the Act gives a right of re-possession to the 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]

50. The Eviction Petition was filed by the Petitioner in the year 2011 and after a full trial, the Impugned Judgment was passed in the year 2018 dismissing the Eviction Petition. The Petitioner/Landlord has thus been trying to regain possession of the subject premises to set up his Dental Hospital for the last more than a decade. Undisputably, the subject premises is located at a prime location in Shakti Nagar and is being used by the Respondent for the purposes of doing the business of sale/purchase of jewellery at a monthly rental of Rs. 363/- per month.

51. In the case of ***Shiv Sarup Gupta*** case, the Supreme Court has held that the High Court is obliged to test the order of the Rent Controller on the touchstone of “whether it is according to law”. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available. The relevant extract of the ***Shiv Sarup Gupta*** case is below:

*"11. **Section 25-B of the Delhi Rent Control Act, 1958** finding its place in*



Chapter III-A of the Act was inserted in the body of the main Act by Act 18 of 1976 with effect from 1-12-1975. **It provides for a special procedure to be followed for the disposal of applications for eviction on the ground of bona fide need. Obviously, this ground for eviction of the tenant has been treated on a footing different from the one on which other grounds for eviction of the tenant stand. Section 25-B is a self-contained provision in the sense that** remedy against an order passed by the Rent Controller thereunder is also provided by that provision itself. Sub-section (8) provides that no appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in Section 25-B:

“Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law (or not), call for the records of the case and pass such order in respect thereto as it thinks fit.”

The phraseology of the provision as reproduced hereinbefore provides an interesting reading placed in juxtaposition with the phraseology employed by the legislature in drafting Section 115 of the Code of Civil Procedure. Under the latter provision the exercise of revisional jurisdiction of the High Court is circumscribed by the subordinate court having committed one of the three errors, namely (i) having exercised jurisdiction not vested in it by law, or (ii) having failed to exercise a jurisdiction so vested, or (iii) having exercised its jurisdiction with illegality or material irregularity. Under the proviso to sub-section (8) of Section 25-B, the expression governing the exercise of revisional jurisdiction by the High Court is “for the purpose of satisfying if an order made by the Controller is according to law”. The revisional jurisdiction exercisable by the High Court under Section 25-B(8) is not so limited as is under Section 115 CPC nor so wide as that of an appellate court. **The High Court cannot enter into appreciation or reappraisal of evidence merely because it is inclined to take a different view of the facts as if it were a court of facts. However, the High Court is obliged to test the order of the Rent Controller on the touchstone of “whether it is according to law”. For that limited purpose it may enter into reappraisal of evidence, that is, for the purpose of ascertaining whether the conclusion arrived at by the Rent Controller is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available. Ignoring the weight of evidence, proceeding on a wrong premise of law or deriving such conclusion from the established facts as betray a lack of reason and/or objectivity would render the finding of the Controller “not according to law” calling for an interference under the proviso to sub-section (8) of Section 25-B of the Act. A judgment leading to a miscarriage of justice is not a judgment according to law.** (See: *Sarla Ahuja v. United India Insurance Co. Ltd.* [(1998) 8 SCC 119] and *Ram Narain Arora v. Asha Rani* [(1999) 1 SCC 141].)”

[Emphasis Supplied]



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52. The examination by this Court reflects that the jurisdiction exercised by the learned Trial Court has not been exercised in view of the settled law in this behalf. The re-appraisal of the evidence as discussed in detail above, shows that the findings of the learned Trial Court are based on an incorrect foundation and cannot be sustained.

CONCLUSION

53. In view of the discussions above, the Impugned Judgment cannot be sustained and is accordingly set aside.

54. This Court is persuaded that the Petitioner has been able to satisfy all the ingredients of Section 14(1)(e) of the DRC Act. The Eviction Petition is accordingly allowed. The pending Application also stands closed.

55. During the course of arguments, an option was given to the Respondent by the Petitioner if he wished to take additional time to vacate the subject premises. Learned Counsel for the Respondent, on instructions from the Respondent, who was present in the Court, declined this option.

56. The Respondent is, however, granted six months to vacate the subject premises in terms of Section 14(7) of the DRC Act.

57. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JULY 01, 2025/ha/r